The green bag

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SIR GEORGE JESSEL.

The Green Bag.

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SIR GEORGE JESSEL,

MASTER OF THE ROLLS.

By Joseph Willard.

THE fame of an eminent lawyer is proverbially short-lived, and we doubt if that of Sir George Jessel will prove an exception. He died March 21, 1883, at the age of sixty, and in the fulness of his reputation, no judge even among his superiors in station being more highly regarded, and the most exalted position in his profession seeming almost within his grasp; and yet we apprehend that to many of the present generation he is little more than a name.

To his own generation he was a very marked and lively personality. Apart from their sound conclusiveness, his opinions were characterized by a vigorous and pungent emphasis, which penetrated the dull air of the court-room like a rifle-shot, and his unsparing criticism was impartially distributed between the bar and the bench. Like Sarah Battle, "he held not his sword like a dancer." No adequate memoir of him has yet appeared; none perhaps may ever be written, nor do we intend anything so serious. "Non præter solitum leves," the epic of a legal biography is not for us, and we profess only to give in outline what manner of man the Master of the Rolls was, mainly in the light of some of his opinions.

In one respect he was a notable figure in English legal history. He was a Hebrew in race, faith, and communion; the first of that race, we believe, to attain high judicial station.[1] England has certainly advanced since the earnest but costly dentistry of the feudal day made a Jew disclose his treasures at the risk of his teeth; or even since Lord Hardwicke's time, when Elias da Paz's charitable bequest to educate the youth of the house of Israel in their ancestral faith was held wholly void for that purpose, but by a charmingly logical application of the doctrine of *cy près* was transmuted into instruction in the English Church catechism; and Front de Bœuf would have been hardly more amazed if a prophetic vision had revealed to his eyes a Jew as premier outranking England's nobility, than would the great Lord Chancellor that his successor should come from the despised house of David.

His religious faith excluding him from Oxford and Cambridge, young Jessel received his education at the London University. He was called to the bar in 1847, and rose rapidly in his profession, making £1,000 in the second year of his practice. His income while Solicitor-General in the two years before his promotion to the bench was £25,000 each year.

The period of his judicial service extended less than ten years; his first reported decision[1] having been rendered Nov. 8, 1873, and his last[2] March 15, 1883, less than a week before his death. Before he had occupied the judicial seat a year he decided the great Epping Forest case, which lasted twenty-two days; one hundred and fifty witnesses having been examined, and the evi-

[1] L. T 74, p. 390.

[1] Re W. Canada Oil Co., L. R 17 Eq. 1.
[2] Ex parte Willey, L. T. 74, p. 366.

dence filling several bulky volumes. The inquiry concerned the ancient rights of twenty manors, and forest rights claimed to have existed for centuries; but his judgment was given *viva voce* immediately on the conclusion of the case. No appeal was taken from his decision, which threw open to the public the largest forest in the immediate neighborhood of London.

While perhaps his marked energy of expression was not so conspicuous during the time he sat only as a judge of the first instance, as it was after he became a member of the Court of Appeals, yet during this period his reputation soon achieved a solid basis, and early justified the language held by the eulogist after his death:[1] "As a judge he was at once so swift and so sure that the surprise which each quality called forth became nothing less than astonishment at the union of the two. When he reasoned, it seemed as though he could dispense with authority; when he quoted, his learning and research admitted of no comparison. . . . Such achievements could only have been possible to a man gifted with the swiftest apprehension and the most tenacious memory. And in truth he seemed only to need to reach his hand in any direction to lay hold upon the keystone which at once fitted and completed the arch of legal reasoning upon any matter which was before him."

His peculiar power consisted not merely in a grasp of the subject so masterful that he readily dispensed with mere technical language, but in a hearty scorn of this, or of argument resting only on terms or definitions. The essence of each case was presented by him in a form level with the most ordinary comprehension, and yet as striking from its racy vigor as from its simple and almost colloquial directness. It carried conviction from the mere mode of statement.

Few things were more gratifying to the layman or more interesting to the lawyer than to see this legal Samson burst asunder the bands of precedent, or expose the flimsiness of some technical absurdity respectable only from its age. Thus in sustaining the exercise of a power of appointment of personalty in the nature of a power in gross, by an infant feme covert, he says:[1] "As regards a power simply collateral, it is settled — so it appears from such a book of authority as Sugden on Powers — that that power can be exercised by an infant. On principle it is very difficult to see why it is so settled. I mean it is very difficult to see why if discretion is required for the disposal of property, it should not be so in the case of the exercise of a power. However, as the law stands, that appears not to be so; and the reason, if reason is to be found anywhere, seems to be this, *that it requires more discretion to dispose of your own property than to dispose of other people's.* That is the only reason I can find."[2]

In Couldery *v.* Bartrum[3] another technical doctrine was treated with similar uncompromising plainness. "According to the English law, a creditor might accept anything in satisfaction of a debt except a less amount of money. He might take a horse or a canary or a tomtit if he chose, and that was accord and satisfaction; but by a most extraordinary peculiarity of the English law, he could not take 19*s.* 6*d.* in the pound. . . . That was one of the mysteries of the English Common Law . . . and as every debtor had not on hand a stock of canary-birds or tomtits or rubbish of that kind, it was felt desirable to bind the creditors, etc."

In Cope *v.* Cope,[4] where the power of an administrator durante minore ætate to sell for the payment of debts was denied, the Master of the Rolls thus shortly disposed of

[1] Sol. Jour. & Rep. xxvii 342.

[1] Re D'Angibau, 15 Ch. D. 228.

[2] It is noticeable that in the Court of Appeals, Brett, L. J., is led to speak frankly with regard to the settled law prohibiting the exercise of a like power as to real estate: "The authority we are bound to obey with regard to real property is founded, I venture to say, in my opinion, upon one of those artificial rules with regard to real property which have done more to bring the law into popular question than any other part of its administration."

[3] 19 Ch D. 394, 399.

[4] 16 Ch. D. 49, 52.

the objection: "The question in this case is raised by reason of some obscure dicta in some musty old law-books about the power of an administrator durante minore ætate. The limit to his administration is no doubt the minority of the person; but there is no other limit." On another point he remarked: "Then it is said the sale is not beneficial. That may be. It sometimes is not beneficial for a man to pay his debts." In Osborne *v.* Rowlett,[1] he says: "As regards the question in this case, it is one of those curious questions of real property law not depending on any ascertained or ascertainable principle, but simply on authority." In Gen. Finance Co. *v.* Lib. Building Co.,[2] he begins: "It is a very unpleasant thing to have to decide a case of this kind without knowledge of the reasons for some of the distinctions which are established by the old cases." "The doctrine of estoppel of this kind [by deed], which is a fictitious statement treated as true, might have been founded in reason; *but I am not sure that it was.*"[3] "In order to find out what sort of a statement will do, you must have recourse to authorities, and as far as I am concerned, I shall treat them as binding and conclusive; for I am not going to enquire how they came to be decided the way they were; *there they are.* [We feel as if we were being shown the antiquated horrors of Madame Tussaud's Museum.] Now this," he continues, "shows that the grant, though it would amount in equity to a representation, does not amount in law to a representation, that the man has a right to grant. It is very odd that it should be so; but it is so, and that is all one can say about it." In Re Emmett[4] he remarks: "Under this will any layman would understand that all the children of George N. Emmett would become entitled at whatever time they were born; *and in the absence of authority so should I*," — a very mild comment on the doctrine imported into the law solely on ab inconvenienti reasons by a sort of judicial legislation, under which, on a gift to children at twenty-one, only those take who are born when the eldest reaches twenty-one. On the question whether a reversionary interest in personalty should be excluded from a gift of "any estate or interest whatever," he says: "I see no reason whatever why it should; *but not wishing to speak disrespectfully of some of the decisions*, I shall say nothing further about it."[1] In an action[2] by a purchaser of a reversion on a lease to a trustee of a dissenting chapel for ninety-nine years, with perpetual renewal, not enrolled, as required by 9 Geo. II., ch. 36, he frankly states: "This is certainly a very singular action, and I believe that in no country in the world but in England, could such an action be maintained."

It was not to be expected that a judge who would show so little respect for the venerable shades of John Doe and Richard Roe would be more nice in dealing with the shams of to-day. On a suit to hold directors of a limited company liable for a dividend paid out of capital, the Master of the Rolls, after discussing some legal aspects of the case, proceeds: "As to their saying they did it bona fide . . . a man may not intend to commit a fraud, or may not intend to do anything which casuists would call immoral . . . but when he has the facts before him, when the plain and patent facts are brought to his knowledge, as I have often said, and I now say again, *I will not dive into the recesses of his mind* to say whether he believed, when he was doing a dishonest act, that he was doing an honest one. I can't allow that man to come forward and say: 'I did not know I was doing wrong when I put my hand into my neighbor's pocket, and took so much money, and put it in my own.'"[3] In Marris *v.* Ingram,[4] where a son, while

[1] 13 Ch. D. 774. [2] 10 Ch. D. 15.
[3] The Italics throughout this article are ours.
[4] 13 Ch. D. 484, 490.

[1] Re Jackson's Will, 13 Ch. D. 189, 201.
[2] Bunting *v.* Sargent, 13 Ch. D. 330, 335.
[3] Re Nat Funds Assurance Co. 10 Ch. D. 118, 128
[4] 13 Ch. D. 338, 344.

agent for his father, appropriated funds to his own use, and set up a counterclaim and plea of poor debtor, "This," says his candid lordship, "shows the sort of rogue I am dealing with. As to merits, he has none whatever." In a case involving the title to real estate, the defendant averring that he was lord of the manor, and was possessed of numerous documents sustaining his claim, the plaintiff's prayer to be allowed to inspect these was thus curtly disposed of by the Master of the Rolls: "The plaintiffs say that they have a right to see these documents, although they claim adversely to the manor and the manorial rights, and say, 'We should like to see your title before the trial in order to pick holes in it.' That is certainly not a course which the Court will sustain."[1] Equally refreshing is his reductio ad absurdum of a purely technical objection in modern practice. "The argument we have heard," he says, "amounts to this that, where a simple slip has been made in the form of a notice of appeal, we are not to allow it to be amended. If this be so, the only case in which the power given by Order lviii., rule 3, can be exercised, is where a mistake has been made on purpose, — which is absurd."[2] In Labouchere *v.* Wharncliffe,[3] where the famous English radical leader had been expelled from the Beefsteak Club, his honor characteristically begins: "If I have any difficulty in this case, it does not consist in the slightest hesitation as to what I ought to do; but in bringing myself to believe that, with such clear rules before them, the Committee of the Beefsteak Club could have imagined that they were following the directions given by those rules in acting as they have done."

Indeed, nothing is more characteristic of the man than the exordium of so many of his decisions, — "In this case I feel no doubt whatever;"[4] "In this case I have no doubt whatever as to the decision I ought to give;" or, "This point is really very simple."[1] It shows with what celerity his conclusions were reached, and would awaken distrust if these had not been so constantly sustained on appeal. "M. Deschapelles boasts," was said of the famous French chess-king; "but then the devil of it is he acts up to what he boasts." Indeed, the difficulty with the Master of the Rolls was not in determining what the law was, but in making the unruly precedents conform thereto; or, as he expresses it in one case,[2] "This question is one of great difficulty *by reason of the authorities*, and my decision may possibly not be reconcilable with one or more of them. In the view which I take of them I think they do not, when fairly considered, prevent my arriving at the conclusion *at which I should have arrived had there been no authorities at all.*" So, where the question was of a gift over to those who would have taken if the tenant for life had died "without ever having been married," he begins: "To my mind — apart from some recent authorities which I will mention presently — plainer words, or words that are less ambiguous, could not have been used."[3] "I must say," he begins in Wallace *v.* Greenwood,[4] "I should not have found any difficulty in this case had it not been for two decisions by Vice-Chancellor Bacon. Those decisions do not appear to me to be quite consistent, and with great respect I do not think they are right."

Hence his language in dealing with the decisions of judges of co-ordinate jurisdictions was frequently unceremonious, and not overburdened with conventional courtesy. "When I first had the honor of sitting here, I used to think myself bound by any decision of a Vice-Chancellor that was twenty years old [the decision, not the Vice-Chancellor]; but the Court of Appeal in one

[1] Owen *v.* Wynn, 9 Ch. D. 29, 33.
[2] Re Stockton.
[3] 13 Ch. D. 346, 349.
[4] Besant *v.* Wood, 12 Ch. D. 605, 612.

[1] Comm. Ins. Co. *v.* Lister, 9 Ch. App. 483, 484.
[2] Re Nat. Funds Assurance Co. 10 Ch. D. 118, 124.
[3] Emmins *v.* Bradford, 13 Ch. D. 493, 495.
[4] 16 Ch. D. 362.

instance held that I was not so bound. I then reconsidered my position, and thought I was not bound by any decision of a court of co-ordinate authority, and I have since frequently declined to follow their authority." [1] And of this he gives abundant proof.

Thus in Re Parker,[2] when considering whether first cousins once removed are included under the term "second cousins," he deals with a case [3] relied on in the affirmative as one "which with great deference to successive counsel and successive judges I may say has been wholly misunderstood. The case is by no means so absurd as it looks at first sight." After explaining what in his view it meant, — and there can be but little question his view was right, — he says: "Mr. Sugden argued [4] that the case of Mayott *v.* Mayott has established that it is not material by what name relations are designated, provided they are within the degree of relationship which the testator meant to include in his bequest. Mayott *v.* Mayott established no such thing; and I have no doubt that this statement of the supposed principle in Mayott *v.* Mayott was invented for the occasion." The Vice-Chancellor, Sir J. Leach, next received his attention: "Now here is a case in which the Vice-Chancellor was misled by a statement of counsel of eminence into considering that Mayott *v.* Mayott established what it did not establish, and then supposing he was following it, he altered the will without, as far as I can see, any ground for so doing." "The next case is a very apt illustration of what happens when you follow authorities without looking at them, or seeing what is the principle on which they are decided."

So, in Re Hallett's Estate,[5] referring to a decision by Fry, J., that upon authority the cestui que trust could not follow money mixed by the trustee with other money of his own, he says: "First of all, this decision of Mr. Justice Fry's may do mischief if it is not corrected; and secondly, it appears to me, speaking with the greatest possible respect of such an eminent master of equity as Mr. Justice Fry, that he has entirely misconceived the proper use of authorities in holding himself to be bound by a long line of authorities to decide against that which he saw most clearly was good equity, in other words, in utter oblivion of what I will take the liberty of stating, is the right mode of viewing authorities." He then asks: "What is the proper use of authorities?" and declares it to be "the establishment of some principle which the judge can follow out in deciding the case before him." [1] He then returns to the unfortunate Mr. Justice Fry. "So here," he says, "he decided the case wrongly, in deference to a long line of authorities. That being so, I feel bound to examine his supposed long line of authorities *which are not very numerous*, and show that not one of them lends any support whatever to the doctrine or principle which he thinks is established by them."

That a decision to be a binding authority should proceed upon some principle properly applicable to the case in hand, will command general assent; and a judge would yield to it upon its applicability appearing. But the rule suggested by Jessel had in his conception a very different side to it, for if he did not regard the principle as sound, even though enunciated by a higher court, he felt quite at liberty to say that there was no principle whatever.

An apt illustration of the convenient working of this rule, that a determination even of a higher court is not binding unless it decides a principle which the judge of the lower court recognizes as such, occurred in Re International Pulp Co.[2] Pressed by the authority of two cases previously decided by

[1] Osborne *v.* Rowlett, 13 Ch. D. 774, 779; Re Jackson's Will, 13 Ch. D. 189, 198.
[2] 15 Ch. D. 528.
[3] Mayott *v.* Mayott, 2 Bro. C. C. 125.
[4] Tiicox *v.* Bell, Sim. & Stu. 301.
[5] 13 Ch. D. 676, 711, 712.

[1] This rule he repeatedly reaffirmed and acted upon. See Re Parker, 15 Ch. D. 528, 530; Emmins *v.* Bradford, 13 Ch. D. 493, 496; Re Jackson's Will, Ib. 189, 195.
[2] 6 Ch. D. 556.

the higher court, his honor says: "I will not attempt to distinguish this case from the cases before the Court of Appeal, but I will say that I do not consider them as absolutely binding upon me in the present instance, and for this reason that as I do not know the principle upon which the Court of Appeal founded their decisions, I cannot tell whether I ought to follow them or not. If those decisions do lay down any principle, I am bound by it; *but I have not the remotest notion what that principle is.*" And after discussing them, he concludes: "Not being at liberty to guess what the principle of those decisions is . . . I am only bound to follow them in a precisely similar case; consequently as the legal decisions do not stand in my way, I dismiss the summons with costs."

Nothing is more common when he is about to upset some precedent than this prelude: "Although I wish to treat the decision with every possible respect," etc.[1] Thus in one case he begins: "Now, speaking with the most sincere deference for his lordship, I am utterly at a loss to conceive on what ground his judgment was founded;"[2] and in another he says: "And yet that learned judge, of whom I wish to speak with the greatest respect [Sir J. L. Knight Bruce, V. C.], refused specific performance. . . . I am utterly at a loss to know what were the grounds of his decision."[3] So in Re International Pulp Co., where two decisions of the Court of Appeals were cited: "With the greatest possible respect for the Court of Appeals, I must say that those decisions do not commend themselves to my mind."[4] This is not altogether unlike the process by which the boa-constrictor is said to preface an act of wholesale deglutition; or, as one may say, Jessel only states his respect for his adversary when he is about to show that he entertains none, — a negative like the inscriptions of "brave," "intrepid," and "valiant" which the Chinese soldiers bore on their backs, from which their foes never knew that they were "brave" and "valiant" until they ran away. A decision perhaps as illustrative as any of his combative style where even this conventional politeness disappears was Johnson *v.* Crook.[1] There the question was whether a gift over when the first legatee dies before he shall have "actually received" the legacy is operative, though the legacy had vested in the first taker, if not yet paid to him. The Master of the Rolls held that it was. He begins characteristically: "The first question I have to decide is what the will means. Then I have to decide whether or not I am at liberty by law to give effect to the will as it stands. Now, as to the will, I really think, speaking of course of the impression on my mind, there is no doubt whatever. It does not appear to me doubtful that 'actually received' means 'actually received.'" To a proposition thus put denial certainly seems somewhat difficult. He proceeds: "The only question I have to decide is whether the law will allow effect to be given to this will. Now, there is no statute law or common law to prevent. If there is any law to prevent it, it must be found in some law manufactured by the judges of the equity jurisdiction. This will is clearly expressed. Uncertainty, in my opinion, there is none; difficulty in ascertainment there is none; general policy there is none." Certainly this is no "uncertain sound." But we might be curious to inquire why so much energy in a perfectly clear case? Unhappily it appears that, like the eleven obstinate jurymen, most of the equity judges, including ex-Chancellor Selborne, thought the other way; and the Master of the Rolls proceeds to pay his compliments to them very much as Mr. Samuel Weller did to the constabulary of Ipswich, who were obeying the behests of Mr. Nupkins, the mayor. "If there is such a law, it must have been made about

[1] Gledhill *v.* Hunter, 14 Ch. D. 492, 495.
[2] Levy *v.* Walker, 10 Ch. D. 436, 447.
[3] Camberwell Blg. Soc. *v.* Holloway, 13 Ch. D. 754, 761.
[4] 6 Ch. D. 556, 558.

[1] 12 Ch. D. 439.

the year 1866. Now, it could only be made in the year 1866 by statute, because in the year 1866 equity judges did not profess to make new law." After quoting from Vice-Chancellor Wood, he goes on: "All I can say about it is, being very clearly of opinion that the Vice-Chancellor did not arrogate to himself in 1866 legislative powers . . . that it was simply a mistake of the Vice-Chancellor, and that is how I shall treat it." Then quoting from Lord Chelmsford's opinion, he pleasantly adds: "I am no Edipus; I do not understand the passage." Then another ex-Lord Chancellor receives his attentions. "Lord Selborne says 'Lord Thurlow said' so and so. There is a very good answer to that, — he did not say so." Clearly here "Tros Tyriusve nullo discrimine agitur."

Notwithstanding this vigorous allocution, some of the erring judges failed to kiss the rod; Malins, V. C., saying, in Bubb *v.* Padwick,[1] "I entirely dissent from his judgment, and I entertain a totally different opinion."

It was not often that his lordship admitted himself overcome by authority when he felt that justice was on the other side; but occasions there were, though they never passed without a distinct protest on his part. Thus where a house before the date of completion of the purchase was destroyed by fire, and the vendor received the insurance money, but refused to relieve the purchaser, Jessel said: "If this case were *res integra*, and I had to decide it in my view of what was reasonable, I might have found some way of assisting the plaintiff [purchaser]; but it appears to me that the case is really concluded by authority."[2] "The first point I am going to decide," said he, in Camberwell Bldg. Soc. *v.* Holloway,[3] "is one which if there were no authority I should have thought ought to be determined differently from the way in which it has been decided. As I understand the decisions, it has been decided that when a man sells a lease for a defined term of years, etc., he does not make a good title to the lease unless he shows that he holds direct from the freeholder, etc. I am not in a position to overrule these decisions. There are too many of them." One is tempted to say with Hamlet, —

> "Let Hercules himself do what he may,
> The cat will mew, the dog will have his day."

Still more rarely do we find on his part confession of a great or insuperable difficulty in reaching a conclusion; but his frankness in these rare instances is taking. "The questions raised on this will are by no means easily solved," he begins his judgment in Hampton *v.* Holman,[1] "and I am thankful to say I have only to solve two of them." And again: "During the argument of this case[2] I have felt what I seldom feel, — considerable difficulty, because there is a strong technical argument in favor of the appellants; but as it appears to me the common sense and justice of the case are in favor of the respondents." It is perhaps needless to say that the respondents prevailed.

It would be a marvel if so strong and positive a mind never made any errors; but it may fairly be said that when he was overruled, the vigor and masterful quality of his intellect displayed itself quite as clearly as when he was sustained. A few instances — and there are not many to be found — will suffice. A case had been sent by him to a referee to assess damages, which the referee did, stating the principle upon which he had acted. Upon the report coming in, his honor not being satisfied with the principle followed by the referee, proceeded to reassess the damages, using the short-hand report of the evidence before the referee, but upon a different principle than that adopted by the latter, thus practically making himself a jury as well as judge. The Court of Appeals, while admitting the correctness of his principles, reversed his decree as unauthorized in practice, and remitted the

[1] 13 Ch. D. 517, 523.
[2] Rayner *v.* Preston, 14 Ch. D. 297, 300.
[3] 13 Ch. D. 754. 759.

[1] Hampton *v.* Holman, 5 Ch. D. 183, 185.
[2] Jones *v.* Rimmer, 14 Ch. D. 588, 591.

case to the referee; adding, however, a wise word of caution to the latter not to give any reasons for his conclusions, but simply to report his finding.[1] So in a case[2] where a purchaser declined to accept, because part of the premises sold were in an undivided interest instead of in severalty, his lordship held him to his purchase prefacing his decision with his customary emphasis: "I am of opinion that the purchaser has been wrong from begining to end;" but the Court of Appeals thought otherwise.

In another case[3] where two men had acted as directors without possessing the required qualification of shares, upon the question of their liability under the Companies' Act for a misfeasance, he commences: "Now, what is the case? Two gentlemen of the name of Coventry and Dixon, who are not the less aware of their liabilities because they happen to be lawyers of experience, are elected directors. . . . They took part in the management of the company, knowing they had no right to intervene at all. . . . It does appear to me to be as plain a case of misfeasance or misconduct as you can possibly state, and upon that point I think it too clear for argument. The next question I have to consider is whether I can reach these gentlemen, for I certainly will if I can, etc." And he did; declaring as the penalty that they should pay in to the company the price of 100 shares, or £500 each. Unfortunately his indignation carried him too far. The calmer sense of the Court of Appeals reversed his decision; James, L. J., saying: "With all deference to the Master of the Rolls and the strong opinion he has expressed in this case, we differ from his decision. I am of opinion, speaking with all respect, that he has not been construing the act, but legislating for the purpose of putting a stop to a proceeding which is no doubt wrong."

If it is not too extravagant a figure to use, these were but spots on the sun. His errors came from too keen a sense of justice, or an impatience with the formal delays of the law. We should, moreover, have given a very false impression if it were thought that he was in any way odd or grotesque. The bluntness which in a lesser man might have appeared so, was in him but the natural concomitant of his vigor. If he had "the nodosities of the oak," he had also its strength. Feeling deeply how liable the common law is to be devitalized by the incrustations of the past, he sought to free it from these and make it a living body in every member, organ, and articulation. To this end he devoted a capacity for work which has had few parallels, and with an unremitting faithfulness to the very last. As a judge of the first instance he heard and disposed of his daily list on Saturday, March 17, only four days before he died.

As we remarked at the outset, this is no attempt to do justice to his great judicial qualities; for that would demand a volume, or at least a not inconsiderable number of his decisions given in full, with all the facts on which they were founded, and a topical survey of the doctrines involved; and the more closely we should scan his work the greater would he appear. He stands certainly not as the least imposing figure in a century that has seen such equity judges as Eldon, Cottenham, Wigram, Westbury, and Cairns.

[1] Dunkirk Co. *v.* Lever, 9 Ch. D. 20.
[2] Arnold *v.* Arnold, 14 Ch. D. 470.
[3] Coventry & Dixon's Case, 14 Ch. D. 660.

DEED OF MOUNT CHOCORUA.

(*Recorded in Carroll County (N. H.) Registry of Deeds, Book* 49, *Page* 167.)

KNOW *all men*, Lords, esquires, and peasants,
And know all *women* by these presents,—
In short, let all *creation* know,
That I, *Bill Fox* of Wolfboro,
State of New Hampshire, County Carroll,
A yeoman bald unused to hair oil,
In duplicate consideration
Of good will towards my blood relation,
And two Bears' feet most oleaginous
(Ungrateful let no man imagine us,)
To me in hand before enditing,
Or ever thought of, was this writing
(And which I, bound for land o' Canaan,
Will daily rub upon my cranium),
Delivered by one *Witt De Carter*,
A true descended Son of Sparta,
And ward *ad litem* of old Nimrod
The Tutelar saint of gun and ramrod,—
Of Ossipee in State aforesaid,
And county ditto (be no more said
Of that venue for tattlers gossipy,
Enough will tell of "righteous" Ossipee!) —
Do thus remise, release, and *quitclaim*,
Nor to myself henceforth one whit claim,
So long as I am reckoned vital,
To said De Witt all right and title
Which I or my male tail descendant,
In gross in common and appendant,
Can claim or hope to claim or covet,
While glitters gold and misers love it,
In and unto a certain parcel
Or piece of land (don't deem it farce all).

In *Sam's* dominions situated,
Containing, as 't was estimated
By actual measurement and survey
Of engineers (now dead with scurvy),
Five million acres nine square perches,
Besides the Intervale of Birches,
Including mountains, hills, and hollows,
And bounded and described as follows,
To *witt:* Begin at Whiteface Schoolhouse,
And running tow'rds McGaffey's tool-house,
Thence where two highways fork and spangle,
Jog off upon the sin'ster angle
To Dave Rowe's cabin hospitable,
Thence where the d——l you are able,
Keeping in close perambulation
Within the metes of Yankee nation,—
Remembering, when at last you 've done it,
To leave off at the bounds begun at:
Hereby both meaning and intending
(That litigation it may n't end in)
The said grantee shall be invested
With all *Chocorua* granite crested,
Whereon grim *Bruin* growls in glory,
From verdant base to summit hoary,—
To have and hold the same forever,
Provided he be longest liver,
To him, his heirs, assigns, successors,—
A chain of undisturbed possessors,—
With each appurtenance and privilege
Thereto belonging — in a civil age.
And I do covenant with said *Carter*,
While earth is land and two thirds water,
And I am spared by rueful *Nemesis*
To warrant and defend the premises,
To him and his from parchment blunder,
And scamps unborn me claiming under;

But not to warrant and defend 'em
When *Ursa Majors* seek to rend 'em,
But rightful lords and lawless squatters
For title then to trust their trotters.
In witness whereof, *super Vellum*,
I set my *manum et sigillum*.
Year eighteen hundred six and sixty,
September third, O Deed, I fixed ye, —
May *Sirius* ne'er in wrath o'erwhelm us:
Subscripsi.

VULPUS GULIELMUS. SEAL.

Acknowledgment *et ceterarum*
Justitiæ et pacisque quarum.

Received Sept. 22d, 1866, examined by
LOAMMI HARDY, *Recorder*.

A true Copy of Record, Attest
JAMES O. GERRY, *Register of Deeds*.

"SLEEPING ATTORNEYS."

BY JOHN DOUGLAS LINDSAY.

IN the early days of the present century juries in Connecticut were not protected against approach and improper influence, but on the contrary no safeguards whatever against embracery seem to have been provided.

Lawyers' fees being low, each litigant employed two and sometimes three attorneys; and all of these were required to perform the full value of their fees. Accordingly the trials were prolonged to an absurd length, and the most trivial causes often engaged the entire time of the court for several days, each of the counsel, in addition to the share he performed in the examination of witnesses and the raising of points of law, being expected to make at least one long speech.

During each day's session the courts took two recesses, the jurors meanwhile enjoying the most complete freedom, coming and going as they chose without regard to whom they met or conversed with. Pending the proceedings upon the trials and before the charge was delivered by the presiding judge, the court exercised no surveillance whatever over the conduct of the jurors.

It naturally followed that the jurors publicly discussed among themselves and with strangers, in the taverns and elsewhere, the features of the various cases, discoursed upon the justice and merits of the causes with the suitors themselves, and with their friends and partisans. Indeed the practice was so well established that conduct of this sort, which

to-day would suffice to set aside any verdict that resulted in such a case, besides subjecting the jurors to fine and imprisonment, then passed without comment. Perhaps our forefathers were worthy of greater confidence than we are now willing to place in the integrity of the average jurymen; or it may be, the litigants of those days were above directly tampering with justice through jurors.

Overnight the members of the jury lodged in public houses, which then usually contained very large rooms with sleeping accommodations for a number of men, separate beds being provided for each. These rooms were known as "many-bed" rooms, and were in much favor with jurors, who were thus enabled to continue in their chambers the discussions that had occupied them through the day.

Out of this absence of judicial supervision of juries pending the trial, there grew up a new occupation for the talents of the practitioner. From the nature of the services rendered, and the method by which the desired purpose was accomplished, the lawyers employed in this line of practice were called "sleeping attorneys."

The "sleeping attorney" was secretly retained on behalf of one of the parties to a suit, and it was his business to secure lodging in the particular "many-bed" room occupied chiefly by the jurors, or a majority of them, sworn to try his client's cause. He usually found very little difficulty in gaining admittance to the room, because, although known to be an attorney, he was not supposed to have any interest in the particular suit on trial.

Thus, being established immediately with the jurymen, with some of whom he was not infrequently well acquainted, the possible value of his presence there is manifest.

When the candle was extinguished, the honest men would at once renew the debate in which from the time they left court they had been engaged. Frequently they would differ in opinion upon some question vitally affecting the result of the trial, and often their differences would be due to an ignorance of the law appropriate to the subject in dispute. It was then that the usefulness of the "sleeping attorney" was put to test.

This gentleman would permit his rest to be disturbed by the discussions of his fellow-lodgers, and if he was appealed to, his opinion of the law (artfully adjusted to suit the exigency, and of course always favoring his client's cause) was cheerfully given. But though his advice was not directly asked, he would not ordinarily refrain at opportune times from modestly volunteering it. His legal wisdom being recognized, and as he commanded a happier flow of language and clearness of expression than the ordinary juror, and had, besides, previously acquired a thorough understanding of the questions involved in the suit, it followed that the discussion was almost always brought to a close by an adoption of the "sleeping attorney's" views; and coming, as the jurors supposed, from one wholly unconcerned in the cause, this was but natural.

But even though he failed to bring about the desired unanimity of judgment, the "sleeping attorney" was able to impress upon the jurors some principle of law, or expose some defect in the case of the adverse party, of which his colleagues took advantage when the trial was resumed the next day; and in any event he was able to discover the weak points on both sides, and confidently guide his associates in the direction to which their efforts should be chiefly addressed.

PRACTICAL TESTS IN EVIDENCE.

III.

By Irving Browne.

RACE. To determine a question of race, however, the jury may look at the person. Jones *v.* Jones, 45 Md. 151; Garvin *v.* State, 52 Miss. 207; Warlick *v.* White, 76 N. C. 175; S. C. 41 Am. Rep. 453.

Age. But the jury may not look at an infant for the purpose of determining how old he is. Ihinger *v.* State, 53 Ind. 251. This was an indictment for selling intoxicating liquor to an infant; and the defence was that the seller supposed him to be of age. The infant was well-grown, eighteen years old, and weighed one hundred and seventy-five pounds. The court said: "Doubtless evidence would have been competent to show the appearance of the witness as to age. But we know of no principle of law that would permit the jury to pass upon the age of the witness by his appearance to them." The contrary was held in Com. *v.* Evans, 98 Mass. 6.

Human Remains. In State *v.* Weiners, 66 Mo. 13, a murder case, the bones of the deceased were exhibited in court, to explain the relative attitude and position of the deceased and the defendant at the time in question. In Grangers' Life Ins. Co. *v.* Brown, 57 Miss. 308; S. C. 34 Am. Rep. 446, the insurers asked for an exhumation of the body of the insured for the purpose of showing that he had suffered a fracture of the skull; but this was refused on account of the delay of eighteen months. The court intimated that it might be done in a proper case, but said "it would be a proceeding repugnant to the best feelings of our nature." The same view was taken in Knowles *v.* Crampton, 55 Conn. 336, an action for a broken rib, where counsel offered "to show the exact location of the ribs in the human system by means of a section of a human body." The refusal was held discretionary. But on a recent trial in the Superior Court, at Boston, a skeleton was brought into court and used by the surgical experts to point the plaintiff's bodily injuries in question. The reporter says: "This uncanny object became the butt of irreverent remarks by the lawyers." In McNaier *v.* Ry. Co. 51 Hun, 644, the court allowed the exhibition of a skull as a diagram, as well as surgical instruments, to explain the operation necessary to relieve the injury, observing that they could not "inflame the passions of the jury." In Com. *v.* Brown, 121 Mass. 69, an indictment for procuring death by abortion, injured parts of the woman's body, preserved in spirits, were allowed to be exhibited to point expert testimony. In the celebrated case of Com. *v.* Webster, for the murder of Dr. Parkman, the artificial teeth of the deceased, identified by the dentist who made them, by fitting them to the plaster mould, were the damnatory evidence. On the celebrated trial of Billings for the murder of his wife, in Saratoga County, New York, in 1880, skulls were produced in court to show the result of experiments in firing at them.

Conduct of Arrested Person.

Evidence of the flight of one accused of crime is always competent. In People *v.* Greenfield, 85 N. Y. 75, evidence was held admissible that the prisoner, accused of murdering his wife, shed no tears on account of her death. Mr. S. C. Huntington argued against this evidence as follows:—

"Do the profoundest sorrow, the strongest and most poignant grief and mental agony, always, with each person, under all circumstances, manifest themselves by tears? If the question can, in accordance with the laws of the human intellect, its

passions and emotions, be answered in the affirmative, then said evidence was legal. If the scientific answer be in the negative, then such evidence is illegal, and the judgment must be reversed. To answer said question intelligently and scientifically, all that is or can be known of the intellect, the passions and emotions of man must be put in requisition. If the answer to such question be not a universal affirmative, then defendant might be an exception, and the evidence would then be illegal. The record of man proves, the consciousness of man convinces, the experience of all men demonstrates, each known classical writer upon this subject corroborates and verifies, this universal axiom, — that the deepest anguish, the most profound and life-consuming grief, the blackest despair, do not manifest themselves in tears. The fiery furnace of grief consumes the foundation of tears. He who suffers most discloses his agony least. The strongest natures, the most noble of earth's creatures, control their emotions, nor manifest to human eye one sign of the mental agony preying upon their vitals. Prometheus, chained to the rock, with the vulture gnawing at his vitals, did not utter a cry nor shed a tear. Only the weak manifest the sorrow which they are unable to endure, by the tears which they are unable to restrain. A true man, conscious of his innocence, overwhelmed by a dark ocean of affliction, crushed beneath a volcano of suspicion, burned to the quick, through every life-strung nerve and organ of the brain by grief, agony, and fell despair, as was poor Greenfield on that awful day, was never known to shed a tear. The world's history of human misfortunes and agony verifies this assertion. The weak may weep at the loss of a bauble; the strong shed not a tear though whelmed in a fathomless ocean of irrepressible (inexpressible?) grief and unutterable despair. Such was the awful fate of the defendant, the most unfortunate of men, upon that fatal day. 'He must die, if such evidence be legal, because the awful circumstances, the laws of his own nature, the laws of the emotions, and the laws of the Eternal Ruler of the universe, and the black demon of despair gnawing at his vitals, rendered it impossible that he, during the first crisis of his terrible agony, should find relief in tears.' Such is not the divine, and such is not the human law."

The evidence was held admissible; but Miller, J., observed: —

"Innocent persons, appalled by the enormity of a charge of crime, will sometimes exhibit great weakness and terror, and those who have been crushed with the weight of a great sorrow will manifest the greatest composure and serenity in their grief, and meet it without the shedding of a tear."

It is probable that the jury laid more stress on Greenfield's reply to a witness, who said it was a sad affair that occurred at his house, "Yes, I had a load of oats stolen."

In People *v.* Gonzalez, 35 N. Y. 49, evidence was allowed that when the accused was confronted with the body of the man whom he was accused of having murdered, he "started." This was objected to because it was "like the rule applied to witches in the olden time."

In a recent case in the Court of Appeals of Kentucky, on appeal from a conviction of murder, it was held proper to show that the accused, two hours after the murder, wiped some blood off the body, smelled it, and then gave his finger a jerk to throw the blood off. The court said: "If the appellant had gotten on his knees, and bellowed over the corpse like a bull, it would have been proper to go to the jury, as showing the condition of his mind." I have for a long time believed this kind of evidence very unsafe, and that if admitted, it should be accompanied by a clear warning from the judge of its inconclusive character. It might well be argued that the omission to show grief should tend to give an impression of innocence, for a cunning wrong-doer would be apt to feign grief. According to my observation, the waters of deep grief run still. Men who are easily moved by the fictitious sorrow of literature and the stage will sometimes assume strange composure when overtaken by great personal sorrow. On the other hand, the widower who knocks his head against the wall, avows that his heart is in the grave, and makes himself a nuisance to his friends by dwelling on his "dear, lost, sainted Maria," is quite apt to marry again instantly after the lapse of the conventional year, and sometimes sooner.

Many men are like Job Trotter, who had "a main in his head as was always turned on." In one of Jean Paul Richter's tales, "Walt and Vult," a testator left his estate to that one of his relatives who should first shed a tear in his memory on the reading of the will. The struggles of the assemblage to pump up the essential condition precedent are very amusingly described. Great and sincere grief is more apt to stun than to melt, and is far more painful and dangerous to the sufferer than the noisy and demonstrative. The great seer of the human mind said most exquisitely and truthfully, —

"Give sorrow words; the grief that does not speak
Whispers the o'erfraught heart and bids it break."

And again, —

"Sorrow concealed, like an oven stopped,
Doth burn the heart to cinders."

Many a juryman is melted to tears by the paid rhetoric and oratory of counsel, and would not shed a tear on finding his wife or child dead on his return home.

Photographs.

Photographs have been much resorted to in our courts in late years for many purposes, as in questions of personal identity, to show localities, to test handwriting, and the like. In Eborn *v.* Zimpleman, 47 Tex. 503, s. c. 26 Am. Rep. 315, counsel made the following ingenious plea for the introduction of photographic copies instead of original writings: —

"Until photography was discovered, nothing in nature was exactly like any other thing, except that thing's image reflected in a polished surface, which disappeared when the object was removed. Until this discovery there was, therefore, reason in the rule which required the production of the original paper writing as the best evidence of its appearance. Science now steps forward and relieves the difficulty, by making permanent, and materializing with minute exactness the reflected image. What reason thus remains why a discovery which destroys the foundation for a rule should not be used as proposed in the ascertainment of right? Every object seen with the natural eye is only seen because photographed on the retina. In life the impression is transitory; it is only when death is at hand that it remains permanently fixed on the retina. Thus we are secure in asserting that no witness ever swore to a thing seen by him without swearing from a photograph. What we call sight is but the impression made on the mind through the retina of the eye, which is nature's camera. Science has discovered that a perfect photograph of an object, reflected in the eye of one dying, remains fixed on the retina after death. (See recent experiments stated by Dr. Vogel in the May number, 1877, of the Philadelphia Photographic Journal.) Take the case of a murder committed on the highway; on the eye of the victim is fixed the perfect likeness of a human face. Would this court exclude the knowledge of that fact from the jury, on the trial of the man against whom the glazed eye of the murdered man thus bore testimony? In other words, would a living eye-witness, whose memory only preserved the fleeting photograph of the deed, be heard, and the permanent photograph on the dead man's eye be excluded? We submit that the eye of the dead man would furnish the best evidence that the accused was there when the deed was committed, for it would bear a fact, needing no effort of memory to preserve it. It would not be parol evidence based on uncertain memory, but the handwriting of nature, preserved by nature's camera."

The photographic copies were held improper in that case, and leaning to the same view is Matter of Foster's Will, 34 Mich. 21; while the contrary view is supported by Re Stephens, 9 C. P. 187; s. c. 8 Eng. (Moak) 481; Leathers *v.* Salvor Wrecking Co., 2 Wood, 682.

Photographs of the defendants were received in People *v.* Smith, 121 N. Y. 578, to prove their identity with persons formerly convicted in Philadelphia.

In comparison of handwriting magnified photographs are much received, under decisions like that in Marcy *v.* Barnes, 16 Gray, 161, which holds them admissible "under proper precautions in relation to the preliminary proof as to the exactness and ac-

curacy;" but they were excluded in Tome *v.* Railroad Co., 39 Md. 693; s. c. 17 Am. Rep. 540, the court observing: "Photographers do not always produce exact *fac-similes* of the objects delineated, and however we may be indebted to that beautiful science for much that is beautiful as well as ornamental, it is at last a mimetic art, which furnishes only secondary impressions of the original, which vary according to the lights and shadows which prevail while being taken." And in Matter of Foster's Will, 34 Mich. 21, the court leaned to the same view, observing: "It is not always true that every photographic copy would be safe on any inquiry requiring minute accuracy. Few copies can be so satisfactory as a good photograph. But all artists are not competent to make such pictures on a large scale, and all photographs are not absolutely faithful resemblances. It is quite possible to tamper with them; and an impression which is at all blurred would be very apt to mislead on questions of handwriting where forgery is claimed. Whether it would or would not be permissible to allow such documents to be used, their use can never be compulsory. The original and not the copy is what the jury must act upon, and no device can properly be allowed to supersede it." This was said of the proposal to furnish the jury with photographic copies of a will alleged to be forged.

Photographs have been admitted to show premises, as a highway, Blair *v.* Pelham, 118 Mass. 421; a cellar floor, Cozzens *v.* Higgins, 33 How. Pr. 439; the grade of a street, Church *v.* Milwaukee, 31 Wis. 512; the scene of an accident, Dyson *v.* Railroad Co., 57 Conn. 9, s. c. 14 Am. St. Rep. 82; Chestnut Hill, etc. Co. *v.* Piper, Pennsylvania Supreme Court, 1884; and to dispense with a view by the jury, Locke *v.* Railroad Co., 46 Iowa, 109. In Church *v.* Milwaukee the court said: —

"Of course, the main thing was to bring before the minds of the jury the location of the plaintiff's lot and improvements and all the surroundings; and this had to be done by the description of witnesses acquainted with the place, or by pictures or diagrams. If the photograph was a perfect representation of the premises, why should it not be admitted in evidence to aid the jury, in determining how they were affected by the alteration of the grade? It is said that the premises themselves were the highest evidence, and if the jury could have had a view of them, it would have greatly assisted them in passing upon the questions before them. So undoubtedly it would. But as a view was impracticable, the jury had to obtain the best idea they could of the location of the premises with reference to the changed grade. They were compelled to rely upon the description of witnesses, pictures and diagrams, and such means of information as they had before them. And it appears to us that it was no violation of the rules of evidence to allow the photograph of the premises to go to the jury with the other testimony."

So photographs have been admitted as likenesses of deceased persons. Udderzook *v.* Commonwealth, 76 Penn. St. 340; Ruloff *v.* People, 45 N. Y. 213.

LEGAL EDUCATION IN MODERN JAPAN.

I.

By Professor John H. Wigmore.

IT is a superstition of the home-keeping citizen that the ordinary traveller gains a knowledge of the character and institutions of the peoples he visits. Where the journey has prolonged itself into a sojourn of a few years, the cup of the sojourner's wisdom must be filled, and there is no question that may not be asked of him. But experience speedily dissipates this superstition. We find that the mere dwelling in a place teaches very little. Knowledge of a country's institutions is not absorbed through the pores as one treads the streets of a foreign land. Moreover, no nation is as ready to tell about itself as is the American. Knock as vigorously as we may, the door of information is elsewhere not easily opened, and those who are bent on knowing must force the gate from its hinges. But one has not always the time to enter on the quest of systematically informing himself. When I say that not a missionary in all Japan can furnish a fair account of the popular religion of the Japanese, that not an exporting-house in Yokohama can explain the Japanese commercial customs, and that not all the curio-dealers together know as much upon the subject of keramics as a certain retired artillery officer of artistic tastes, then I shall perhaps be excused for professing to know little about legal education in Japan, and for any errors of statement that I may fall into, in complying with the editorial request for information on that subject.

What I can offer is merely a few figures and some impressions received from personal experience.

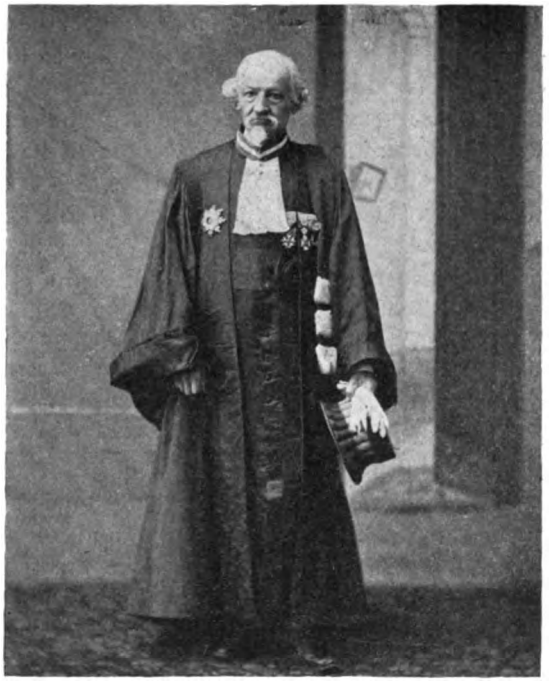
That I may give some idea of legal education in that country, it will be well to touch on these topics: (1) The law that is taught; (2) The organization of the schools; and (3) The general features of the teaching.

I.

The rule prescribed for the Japanese judges in the decision of cases is to consider, first, the statute law, if any applies; second, whatever custom may be brought to their knowledge; and third, natural equity, — that is, the notions of justice possessed by the judges. The importance which these three sources of law possess in legal education may be estimated by exactly reversing the above order. For twenty years past a system of Codes, based on Western legislation, has been in preparation. A stimulus was thus early given to the study of Western law, and increasing attention has been paid to it. Ever since the drafts of the Codes were published, some two years ago, they have been constantly studied; and the material of these Codes or their original sources now forms the substance of the judicial knowledge and of the instruction in the schools. We must first notice briefly, then, these Codes.

The Codes of Crimes and Criminal Procedure were made by M. G. Boissonade, an eminent French jurist. M. Boissonade is sixty-nine years old, and until 1873 he was for twenty years an instructor in the Paris Faculté de Droit. He still retains an honorary connection with that college, but has for the past twenty years been in the Japanese service as legal adviser to the Government and instructor in the Imperial University. He has, I believe, been an Associate Editor of the "Revue Historique du Droit." The Criminal Codes were begun by him in the year 1874, and completed in 1879. After passing through the hands of a Commission, they went into force in January, 1881. The Civil Code was begun by the same scholar in 1879, finished in April, 1889, and promulgated in 1890, to take effect Jan. 1, 1893.

The Code of Civil Procedure was prepared by a German jurist, published in draft form in 1886, and promulgated in 1890; it took effect on Jan. 1, 1891. The Law of Organization of Courts was prepared by Herr Otto Rudorff (the son of an eminent German jurist of the last generation), and went into force Nov. 1, 1890. The Commercial Code was prepared at the beginning of the last decade, and goes into force with the Civil Code on Jan. 1, 1893. Revised Codes of Crimes and of Criminal Procedure will be promulgated within a year or two. In every case the authors modelled their drafts, naturally enough, on the legal systems with which they were most familiar. The result is that the imported laws are partly French and partly German, in about an equal proportion. The Commercial and the Civil Codes form of course the substance of this legislation. The former has not yet appeared in a Western language; but Herr Rudorff states that it differs little from the German Commercial Code. The Civil Code is an embodiment of modern French jurisprudence rather than an imitation of the Code Civil. As far as can be judged by one not skilled in French law, it is an admirable production. The text is clearly and accurately phrased, and the *motifs* are carefully and minutely elaborated. If the whole work differs essentially in style from the work with which we naturally compare it, the Draft German Code and its *motif*, the difference is to the advantage of Japan. The principle of the German authors seems to have been to generalize as widely as possible, and to express no detail where it can be gathered by implication from some existing principle; while the *motif* assumes a general acquaintance with jurisprudence, and sets forth merely what is necessary by way of justification. The new Japanese Code, on the other hand, gives expression to every salient feature of a subject, even though it may be deducible from something already laid down, and does not hesitate to repeat a principle, — for instance, a method of extinguishing a right, — in every place where it may have application; and the *motif* confessedly begins at the beginning of things, for the benefit of students who have not access to European legal literature.



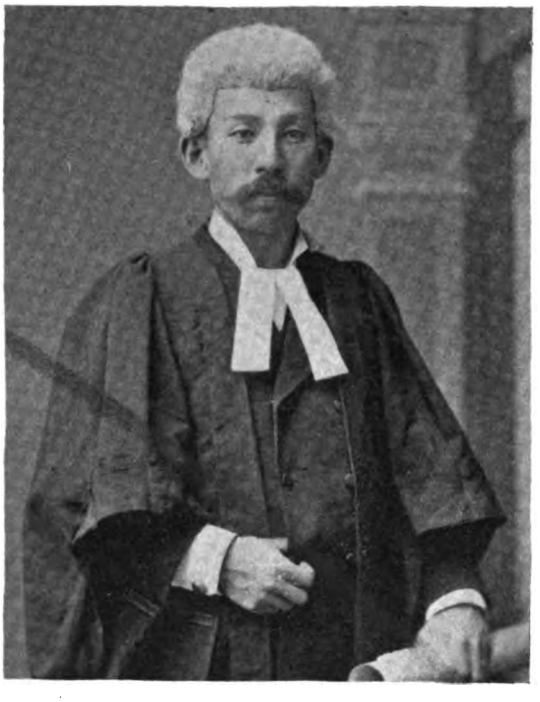
GUSTAVE BOISSONADE.
(Author of the Japanese Civil Code, and Professor in the Imperial University.)

The part which Japanese custom plays in the Civil Code has been somewhat disputed; but it seems to be small. Book I. and Part II. of Book III., containing the Law of Persons and of Inheritance (not yet translated), were to have been substantially an embodiment of indigenous custom, though I am told that French notions have prevailed. If we except this portion, the Japanese flavor is very slight. What there is appears chiefly in the sections on mortgages and on emphytensis.

The law, then, that is now being studied is chiefly French law. The Code Civil was translated into Japanese twenty years ago, and a few other treatises have since been translated; but the basis of a student's work

is usually the new codes. German law comes in for consideration chiefly in the Commercial Code; but I believe that the only translations from the German have been of certain political works, and direct acquaintance with German law is made through the instructors in these subjects, who have usually received their education in Germany.

But this continental influence is of quite recent growth. Two years ago the English law formed the favorite study of the majority of law students. The change has come about since the promulgation in 1890 of the new codes. Up to that time the question of codes had been, from the outside, a debatable one. Codes were being made by the Government, to be sure; but few had seen them, and nobody knew when they would be finished. Their existence was hardly realized. The English-trained section of the bar and many influential merchants were strongly opposed to them. Parliament was coming, and there was a possibility that the whole enterprise would be abandoned. It was for these reasons that the schools continued confidently with the existing curricula, in which English law played the chief part. How little people believed in the actuality of the new Codes may be seen from the fact that within one year before their promulgation a new law school was established, in which the instruction was to be given in part by a foreign instructor specially engaged, and was to include English law only. The belief at the time was that the English-trained lawyers in the Government would be able to carry the day. But the result was against them. The decree of 1890 fixed the fate of the Codes, and the study of English law has since that date inevitably suffered a decline. With the continental law as the basis of the national system, and the material for bar and bench examinations, the student is naturally obliged to make it his chief work, and in the schools it has virtually become a prescribed course.



HOZUMI NOBUSHIGE.
(Formerly Dean of the Law Department of the Imperial University.)

But English law has by no means been crowded out. The measure of popularity which it still retains is in some respects even a better test of its practical value, and a surer indication of its merit. Although English law has been distanced in the race for national adoption, although it is often taught in the least satisfactory method by prescribed doses of text-book perusal, although the text-books are not suitable, and are mountains of difficulty to the Japanese student, — notwithstanding these hindrances it is still studied side by side with the authoritative Codes of the Empire. In the Imperial University the English section continues far to outrank in number of students the sections of German and of French law. The concreteness of our own system, even when embalmed in the dry pages of a text-book, has a secret attraction for many students as compared with the simple but intangible abstractions of the Continental Codes; and the decline of its popularity has, I think, reached its ebb.

It is easy to see why different attitudes were taken by different bodies of men. For the Government, on the one hand, invested with the duty of providing the nation with a systematic body of law, and persuaded that resort was impossible to the indigenous customs, it was natural to turn to France. Here they found, as they considered, and as M. Boissonade has said, "a complete legislation — civil, commercial, and criminal — in clear and concise form," easy to adapt and simple to teach. Subsequent investigation and a changed policy led them to find similar virtues in German legislation. As France and Germany once turned from their own formless and confused customs to the cultured civil law, as to-day Russian and Scandinavian jurists, fascinated by the scientific form of German jurisprudence, are introducing the leaven of the civil law into their indigenous systems; so Japan turned to the continental law for her model. But in Japan the movement came from governing statesmen, not jurists. They had two great systems to choose from; they might have turned to England or America instead of to the Continent. But with the English common law as the representative of the second system, and with Mr. Field's American code not yet accepted, they rightly judged that they could neither adopt the English law in its formless condition nor attempt to do what England had not yet done for herself, — cause it to be codified. Their choice was, under the circumstances, a natural one. On the other hand, the leaders of the Tokyo Bar were and are to-day chiefly English-educated lawyers. They had found the English law the best training for the bar. Their interests, their convictions, and their sympathies were in its favor; and they, naturally enough again, threw their influence against continental law. As for the mercantile class, they were for the most part conservative men, proverbially devoted to custom and tradition. They saw they did not know what innovations impending, and they protested. Whether the new law was French or English, it was to them equally distasteful; and for the moment their cause was identical with that of the lawyers, and the forces were joined. But all this is now a dream of the past. The Codes have taken their place on the statute-book, and their existence is a part of the immutable order of things.

KONAKAMURA KIYONORI.
(Formerly Professor of Ancient Japanese Law in the Imperial University.)

One naturally asks, What rightful place can Anglo-American law have in legal education in Japan, if continental law is the staple of its jurisprudence? It has such a place, and for several reasons. First, its practical character makes it an invaluable element in the training of students. The Japanese student, for reasons which will be touched upon later, needs just such concrete material as our law furnishes; and it is well understood here that for the sake of mental exercitation alone it is well worth retaining in the curricula. Again, there are certain topics in Anglo-American law — such, for

instance, as Torts, Damages, Specific Performance of Contracts, Evidence, and a few minor ones — which are specially developed to an extent not found in the Code Civil or the Franco-Japanese Code, — I do not say in French legal literature.

In the treatment of these subjects it will always be worth while to maintain the study of Anglo-American law. But although I am persuaded that this must be the ultimate *raison d'être* of the study of our law here, I cannot say that it is yet generally recognized in the curricula. There is, however, a third reason why the study still flourishes; it is that the students want it. This reason (which any one who has tasted Japanese life will at once recognize as the *Quod principi placuit* of education) rests in part upon the prestige of English law and the preponderating influence of the English-speaking foreign community in the East. It also comes in part from the success and eminence of the English-trained members of the bar, for the student community has not been slow to draw inferences from this. But probably the chief influence is the peculiar ideal of the Japanese student. He labors not so much to train himself for bread-winning as to acquire knowledge, — not at all with the consuming thirst for knowledge as a source of power which Bulwer attributes to the ambitious Randal Leslie, but with the less practical and more reverent conception of knowledge as in itself a possession and an accomplishment. The Japanese student is thus eclectic, and wishes to include in his attainments an acquaintance with all important legal systems, so far as he may. Emerson's "The one prudence in life is concentration" does not figure in his philosophy, and he prefers to distribute his twenty-five hours a week of lectures over as large a number of subjects as possible.

TOMII MASAKIRA.
(Dean of the Law Department of the Imperial University.)

But nothing has yet been said about a very important element of education, and some one doubtless asks, Where does the native Japanese law come in? It does not come in at all. So far as I am able to learn, there is to-day no instruction given in any law school of Tokyo on the customary law yet prevailing in all parts of the country. The case is, in this respect, even less satisfactory than it was two years ago. At that time there were at least two professors in the Imperial University, — Konakamura Kujonori and Naito Chiso, — who gave a part of their time to the ancient law of the country. These gentlemen are perhaps the two most eminent scholars of the older generation; and although they dealt in their lectures rather with the public statutory law than with the private customary rules, they kept the subject before the public, and vindicated its right to a place in the curriculum. The general interest of the learned community in such things is rather on the increase than otherwise, and courses are planned for the near future; but at this moment nothing is being done. Here, again, a good deal must be attributed to what may be called the con-

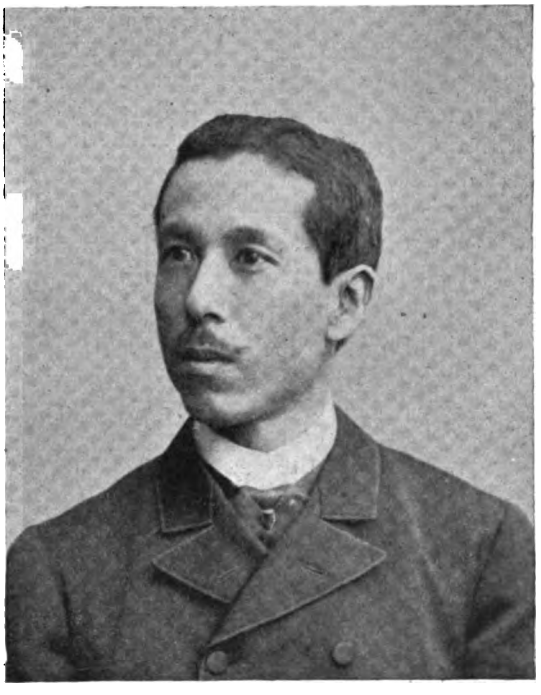
ditions of the educational market. There is no demand for this article among the students. They have put off the old Japan, and are as yet so fond of the new garments of Western science that there is a positive contempt for the ideas and customs of the past generation. Sensitive enough on points of national honor in international relations, they have not yet learned to value the inheritance of their past, and they cannot be persuaded to take up its study. The students of a certain instructor of my acquaintance are aware of his interest in their customary law; but not only do they withstand all efforts to engage their own sympathies in it; they look upon him with the pity which they would feel for one who had a fondness for collecting broken bricks or old iron. This feeling will some day pass away; but while it lasts the condition of things cannot be called a healthy one. The legal conceptions of a whole people cannot be changed in a generation, especially where they lie in custom rather than in legislation. To send a young graduate into the world of practice with no knowledge whatever of the prevailing notions of rights and duties, is to fail in the purpose of education. Even if one concedes that the new Codes are in every way desirable and the old customs are in every way to be opposed and annihilated, it is still the part of prudence to give the student some idea of what notions he is to meet with among his clients. But the present is a time of retrenchment in expenses, especially in Government schools. The understanding is that the instructors above-named were retired from the Law School staff purely because of lack of funds. Under such pressure the instruction in old Japanese law must for the present be the first to suffer, since it serves the wants of a minimum number of students. But the spirit of nationality will some day bring about a reaction, and that which is native will come back once more into favor.

TERAO TORU.
(Professor in the Imperial University)

II.

Some knowledge of elementary law is gained in the ordinary academical department of many of the colleges of Japan, not through a special course of instruction, but from text-books (usually Mr. Terry's "Elements of Law") read in an English-language class. But there are in Tokyo a number of special schools of law and political science, and it is here that the only systematic instruction is given. Before taking up the separate institutions, some explanation is necessary of the general system of secondary instruction. The near future may see radical changes, but at present each of the forty-odd provinces has a so-called Government Middle School, corresponding to our High School, but somewhat lower in rank. The course here is five years. Next in rank (but requiring a special intermediate preparation for graduates of the Middle Schools) is the Higher Middle School, which would roughly correspond to our ordinary college, though again of not so high a rank as our best. After this follows the University, consisting

of specialized departments of Law, Engineering, Medicine, and so forth. Alongside of the Higher Middle Schools exist a few private institutions in Tokyo and Kyoto, giving similar instruction, but usually of not so high a grade. One of these, Keiogijuku, has added a university department, with schools of Law, Literature, and Economics; and the Doshisha of Kyoto is preparing a similar addition. But the vast majority of intending law students, after leaving the Middle School, go for their legal training to the so-called special schools (technical they should, perhaps, be named). These are private institutions, offering a course three years in length. They are successful in competition with the universities, not only because they are easier to enter and save the student a few years' time, but because they cater more to the tastes of the student community, and because membership in them involves a minimum restraint of liberty in respect to attendance, choice of studies, and other matters. These attractions, and the fact that several of them bring to their students, equally with the Government University, an exemption from conscription, make up for the special advantages which the latter has in respect to scholarships and to prizes in the shape of Government positions. Of the four thousand law students in Tokyo some ninety-five per cent attend the special schools.



MIYAZAKI MICHISABURO.
(Of the Imperial University.)

Taking the chief institutions in the order of their establishment, we find, —

1. *The Law Department of the Imperial University.*

The present Imperial University was formed in 1886 by uniting the Tokyo University with the Engineering College. The former in its Law Department was the result of an amalgamation of the Tokyo Law School (established in 1871 by the Judicial Department) with the Tokyo University, — a protean institution which, under various names, traced its beginnings back to Tokugawa times, and had, in the course of its history, absorbed a polytechnic and a medical school, with other minor institutions. The first law course dated from 1873; but the real strength of the Law Department came from the Tokyo Law School, among whose graduates — some thirty in number — one finds most of the leading French lawyers of to-day in Japan. As the department is now organized, graduation from a Higher Middle School or the attainment of an equivalent degree of knowledge, is required for admission; but practically none but graduates of these institutions enter. The ordinary fee is two and a half yen (the yen is now worth about seventy-five cents) per month; but a student of good deportment and high scholarship may be excused from payment, and may, if necessary, borrow annually not more than eighty-five yen as a loan scholarship. How many avail themselves of these privileges I do not know. The total number of students in 1886 was 130; in 1891, 308. But here, as in most of

the schools, a course in Political Science forms part of the Law Department, and the law students proper in 1891 numbered only 227. These were divided among the classes as follows:—

	1st year.	2d year.	3d year.
Division A (English Law) . .	52	44	29
„ B (French Law) . .	17	18	30
„ C (German Law) . .	14	12	11

The department is divided into two sections,—a principal and a special section. The former embraces all courses dealing with the Codes and other laws of Japan, as well as a few other subjects. The latter is in three divisions, of English, French, and German law respectively, one of which every student must elect. This arrangement was made only last August. For some years there were two sections devoted exclusively to English and French law respectively, and in 1888 a German section was added; but the new plan has been rendered necessary by the promulgation of the Codes. It is a part of the plan to extend the course to four years in all.[1] By the new arrangement the curriculum comprises the following courses:

FIRST YEAR.

	Hours per Week.
General Principles	1
Civil Code, Book II., Part I. (Property)	3
Criminal Code	4
Roman Law	4
Elements of Civil Code	2
(*a*) English Division.	
Contracts	4
Torts	2
(*b*) French Division.	
General Principles	4
(*c*) German Division.	
History of German Law	2
Pandects	3

[1] The students already on the rolls will graduate at the end of their third year, and the courses of the fourth year will therefore not be given on the new plan for three years to come. The course there included on "The History of the Japanese Legal System," even if it is intended to deal with the private law of Tokugawa times, is thus as yet on paper only; and the statement above as to the lack of instruction in native Japanese law is not affected by it.

SECOND YEAR.

	Hours per Week.
Civil Code, Book II., Part II. (Obligations)	4
Criminal Procedure Code	3
Elements of Civil Code	2
Constitutional Law	3
Public International Law	2
Practical Applications of Principles.	
(*a*) English Division.	
Property	2
Commercial Law	4
(*b*) French Division.	
General Principles	4
(*c*) German Division.	
Pandects	3
Private Law	2

THIRD YEAR.

Civil Code, (1) Book III. (Acqusition of Rights)	3
(2) Book IV. (Suretyship and Mortgage)	2
(3) Book V. (Proof)	2
(4) Book I. (Persons)	2
Elements of Civil Code	2
Administrative Law	4
Practical Applications.	

FOURTH YEAR.

Commercial Code	5
Civil Procedure	4
Private International Law	3
Jurisprudence	2
Criminal Law	2
History of the Japanese Legal System	2
Practical Applications.	
(*a*) English Division.	
Equity	3
(*b*) French Division.	
Civil and Commercial Codes	2
History of French Law	2
(*c*) German Division.	
Constitutional and Administrative Law	3
Bankruptcy	1

The Chief Professor, or Dean of the Law Faculty, is Mr. Tomii Seisho, a French doctor of laws, Laureate of the Faculty of Lyons. The previous incumbent was Mr. Hatoyama Kazuo, a D.C.L. of Yale College, who has

since resigned, and is now practising law. Before him the position was filled by Mr. Hozumi Nobushige, barrister of the Middle Temple, and still on the staff of instructors. Anglo-American law is ably represented by the cnief instructor, Mr. Alexander Tison,[1] an A.M. and LL.B. of the Harvard Law School. Associated with him is Mr. Hijikata Yasushi, a barrister of the Middle Temple, recently returned from England. Of the other Japanese professors, one of the ablest is Mr. Miyazaki Michisaburo, who at present lectures on Roman and German law. Trained in Germany, his special interest since his return has been the early institutions of his own country; and it is to him, with one or two others, that we must look for the most valuable results in the department of native Japanese law. The entire staff of professors numbers fifteen; there are one assistant professor and six lecturers. The remaining foreigners are Dr. Reirlliod (French Law), Dr. Lönholm (German Law), Dr. Eggert (Finance), and M. Boissonade (Civil Code). Of the whole staff of professors, perhaps one half give substantially their whole time to this institution.

HATOYAMA KAZUO.
(President of the Semmon Law School.)

The whole number of graduates (counting since 1886 only) is 307. The average age at graduation was, in 1889, twenty-four years eight months; in 1890, twenty-four years ten months; in 1891, twenty-five years. The present occupations of the 307 graduates are distributed as follows: administrative officials, 106; judicial officials, 114; teachers, 11; lawyers, 22; students abroad, 12; corporation officers, 8; graduate students at the university, 3; unknown, 20; and the deaths number, 13. This list, of course, contains duplicate insertions.

[1] To whom I am indebted for some of the information regarding this school.

2. *Meiji Law School.*

Meiji ("enlightened government") is, as every one knows, the name of the period covered by the present reign, and is often used as the title of institutions. This law school was founded some eleven years ago by a few earnest disciples of French law, who had then recently returned from a course of study in France. Marquis Saionji, since then Minister to Germany, was among them. The school opened with seven lecturers and 381 students. It has added to its staff from time to time, and enlarged its quarters, and in popularity with law students it has been led by the English law school only. The number of regular lecturers is fifteen, and the students number 1115. There are two departments, — Law and Political Science. The law course is as follows: —

FIRST YEAR.

	Hours per Week.
Criminal Code	3
Criminal Procedure Code	1
Civil Code (Persons)	1
" " (Property)	2
General Principles.	

SECOND YEAR.

Civil Procedure Code	4
Civil Code (Property)	1
" " (Proof)	1
" " (Acquisition of Rights)	2
Commercial Code	1
Practical Applications	1

THIRD YEAR.

Civil Code (Acquisition of Rights)	1
" " (Suretyship and Mortgage)	1
Commercial Code	2
Administrative and Constitutional Law	4
Practical Applications.	

The students have the privilege of attending both departments at once; and I imagine that a large number follow this course. The Political Science Department gives a modicum of instruction in private law (the lectures being given to both classes at the same time), with additional courses in History, Economics, Logic, and International Law. The most noted of the lecturers are Messrs. S. Isobe, Assistant Attorney-General of the Empire, S. Tomitani, S. Kawamura, and K. Mayeda, the last three being recent graduates of French and German institutions, and officials of the Department of Justice.

Out of the 1100 students, not more than one fourth attend regularly. The figures of past years afford some interesting conclusions on the subject of attendance, which will be presently alluded to. These figures include both departments, and I am unfortunately unable to say what proportion the law students proper represent; but each department, as has been seen, gives substantially what we should call a law course.

	Entered.	Graduated.	Passed Bar Examination.
1881	381		
1882	405	19	
1883	343	15	55
1884	234	35	
1885	311	21	18
1886	492	13	12
1887	1262	62	13
1888	676	78	16
1889	873	152	23
1890	865	438	58
1891		115	
	5842	948	

The monthly fee is one yen, with an entrance fee of one yen. Certain classes of students are admitted without examination, — graduates of Middle Schools, of Normal Schools, or of higher Government Schools, and members of certain other Special Schools. All others must pass an examination in Arithmetic, Chinese, and Japanese Composition.

3. *Law Department of the Semmon School.*

This institution was founded some ten years ago by Count Okuma, the sagacious and far-seeing statesman who so nearly accomplished Treaty Revision in 1889, and is now looking forward to the Premiership if the Opposition wins in the elections of February. It is often spoken of as a nursery for supplying the Count with young politicians devoted to himself. No doubt this type of school was common enough in Western Japan twenty years ago, especially in the Satsuma dominions; and in all probability the Count, when he left the Government in 1881 and founded this institution, looked forward to the time when he could rely on the support of a body of young men not indebted to the Government for an education, and not inculcated with the ideas of his opponents, — a prospect which he is now realizing. But as the school is now organized, there is nothing, except the patronage of Count Okuma to raise a doubt as to the educational aims of its managers. It is, next to the Imperial University, one of the best-equipped institutions of collegiate rank, and it is nominally in the hands of its alumni in all important matters of management. Its staff includes some of the ablest young men in literature and political science. The name *Semmon* corresponds to our "Technical;" but as yet there are only three departments, — Literature, Law, and Political Science. The Law Department is divided into two courses, — one for those students who intend entering administrative branches of the civil service, and the other giving a general legal education. The lectures on

private law are common to both classes. The Law Department proper is again divided into two sections: in one the Japanese language only is used; in the other and more advanced, English text-books are used, and a few foreign lecturers are employed. The courses are arranged as follows: —

FIRST YEAR.

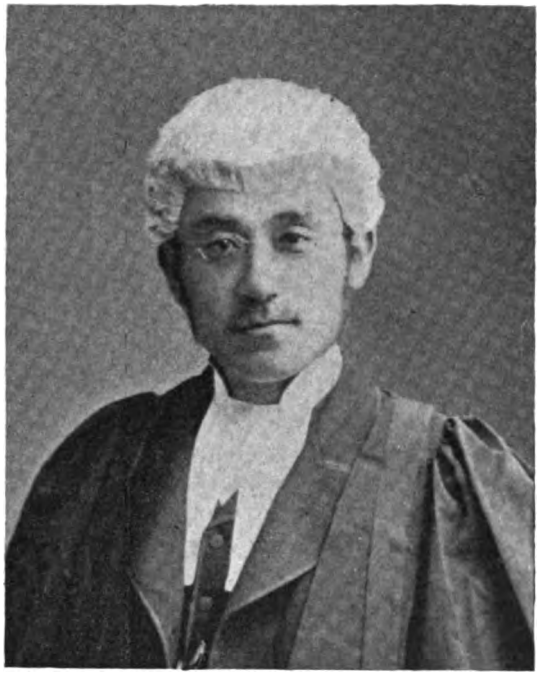
Elementary Law. — Civil Code (Property) — Contracts (English Law) — Civil Procedure Code — Criminal Code — Logic — Torts (English Law) — Civil Code (Persons).

SECOND YEAR.

Civil Code (Acquisition of Property, Proof) — Commercial Code — Criminal Procedure Code — Moot Courts.

THIRD YEAR.

Civil Code (Obligations) — Civil Procedure Code — English Equity — Commercial Code — Jurisprudence — Public and Private International Law — Roman Law — Administrative and Constitutional Law — Bookkeeping — Moot Courts.



MASUJIMA ROKUICHIRO.
(Formerly President of the Law Institute.)

Each year is divided into two terms, some of the foregoing subjects being given in one term only, and others continuing through the year. The number of hours per week in the different years and sections varies from sixteen to twenty. The President of the institution is Mr. K. Hatoyama, formerly Dean of the Law Department in the Imperial University. The staff of lecturers in the Law Department numbers eleven, the most noted being Messrs. S. Isobe, Assistant Attorney-General of the Empire, and S. Ito, a judge of the Superior Court of Tokyo. English law is represented by Mr. G. Hirata, a barrister. The Political Science Department has recently been re-organized by Dr. T. Iyenaga, a graduate of Oberlin College and of Johns Hopkins University. In the Law Department none of the instructors are resident, or give their whole time to the institution. The annual fee is fifteen yen, with an entrance fee of one yen. The number of law students this year is about 180, and the graduates of last July numbered about 75. Entrance is obtained either upon showing certificates of graduation from a Middle or Normal School, or a higher Government School, or from certain Special Schools, or upon passing an examination in Japanese Composition and in Chinese. The larger number of the graduates find their way either into active practice or into politics.

4. *German Law School.*

This school had its origin at a time when German influence had begun to affect Japanese politics and science. Count Ito, whose European trip of 1881 had left him most favorably impressed with the German system of government, was in 1885–87 at the height of his power; and out of the general stimulation a desire arose to have a school where German law could be directly studied in its original literature. This School of Law and Political Science was then founded in 1886, and the existing German Language School

became its preparatory department. The president of the school is Mr. Kato Hinoyuki, the President of the Imperial University; and the Dean is Dr. Yamawaki Gen. The actual teaching staff numbers seven, three of these — Messrs. Lönholm, Nippold, and Wernicke — being foreigners specially engaged for this school. The course is as follows: —

FIRST YEAR.

	Hours per week.
Commercial Law	6
Civil Code	3
German Criminal Law	2
Criminal Procedure	1
Civil Procedure	2
Practical Cases	1

SECOND YEAR.

Criminal Code	2
German Criminal Law	2
Roman Law	5
Civil Procedure	1
Civil Code	3
International Law	3
Economics	3

THIRD YEAR.

International Law	3
Roman Law	2
Criminal Code	1
Economics	6
Constitutional and Administrative Law	3

The number of graduates has been, in 1888, 13; in 1889, 9; in 1890, 7; and in 1891, 19. The present students number 95 in the Law Department, and 329 in the Preparatory Department. As a knowledge of German is a requirement, entrance to the Law Department is practically open only to those who graduate from the Preparatory Department, which aims at giving a Middle School education. The annual fee is fifteen yen, the entrance fee being one yen. The school is working without ostentation, and the more thorough quality of its training does not tend to make it a popular one. But it has influential backing (Prince Kitashirakawa of the Imperial family, for instance, is its chief patron, a distinction which only one other school can boast); it is attended by a good class of students, and its instruction is of the best. Its special merit is the attention it pays to Roman Law; for, as will be seen from the curricula, the average Japanese student is cut off from any considerable acquaintance with the historical associations of the new national law.

5. *Law Institute (formerly English Law School).*

We come next to the most popular school in Tokyo, the great representative of Anglo-American law, now known as the Law Institute (*Hogaku-In*). Up to 1885 the only place where English law could be studied was the Imperial University. In that year a few of the graduates of that institution, realizing that the new Codes existed no longer in imagination only, and were to be opposed then, if ever, and desiring at the same time to furnish greater facilities for the study of Anglo-American law, and to create a popular feeling in its favor, met and took measures to found a law school. The committee consisted of Messrs. Takahashi Kazumasa (an English barrister now deceased, whom reputation names as the greatest member of the Tokyo Bar, past or present), Masujima Rokuichiro (an English barrister, the most successful of living practitioners), Okayama Kanekichi (now always named among the leaders of the bar), and Takahashi Kenzo (editor of the "Official Gazette").

The school was opened in the fall of 1885 with 97 students; the number now enrolled falls a little short of 1,200. The daily attendance is from 500 to 600. The graduates numbered, in 1886, 4; in 1887, 18; in 1888, 51; in 1889, 143; in 1890, 309; in 1891, 343. In 1886 two sections were formed, one studying from English textbooks expounded in Japanese, the other conducted in Japanese entirely. About one third of the students belong to the former section, their training in English having usu-

ally been received in the English Language School associated with the Law School. For the work of this section a number of text-books were cheaply reprinted, and sold at a price within the means of the students. These included Pollock's "Contracts," "Torts," and "Partnership," Story's "Agency," Kent's "Corporations," Powell's "Evidence," Newson's "Shipping," Chalmers' "Bills and Notes," and a few others. The plan was also put in practice of printing certain of the lectures in sheet form, and issuing them to persons at a distance for private study. In 1887 there were 1,200 of these subscribers. The Meiji Law School afterwards imitated this popular measure.

KIKUCHI TAKEO.
(President of the Law Institute.)

For six years Mr. Masujima was the president of the School. He gave his personal supervision (which the nominal chiefs do not always do), and also lectured on Court Practice. The annual banquet of the teachers and patrons of this school was always the occasion for an exchange of greetings between the British and American members of the profession who happened to be in Japan. Minister Hubbard, Consul Greathouse (both of them famous story-tellers), Chief-Justice Hannen (a brother of the Lord Justice), Francis Piggott (he of "Piggott on Torts"), — these and many others have contributed both wit and wisdom at these esoteric gatherings, tasting the fraternal pleasures at once so rare and so attractive in this distant land to the brethren of the "green bag," the joint inheritors of Coke and Story, Eldon and Kent. I do not think that I am mistaken in crediting the energy and zeal of Mr. Masujima with the greater part of the results accomplished by this school. For the past six years the English Law School has been the backbone of the popularity of English law in Japan, and Mr. Masujima has been the backbone of the school. But the promulgation of the Codes has made a great change. It has forced the management to devote the greater part of the course to the new Codes, and English law has become subsidiary. For various reasons, indirectly connected with this change, Mr. Masujima has retired from the presidency. Many instructors have changed. The school is no longer the centre of attraction for the friends of English jurisprudence. Its prestige continues among the student community, and the attendance has not diminished. But the hopes of the English section of the bar have been crushed. Their interest in the institution is waning. It was impossible, in the nature of things, for their intimate connection with it to continue. They have helped to make it what it is, but it must henceforth lose its distinctive character. The practical methods of its founders have left an indelible impression; but it is now merely the largest law school in Japan.

Some idea of the change may be obtained from a comparison of the courses as they stood in 1889 and as they stand now.

1889.	First Year.	1892.
Contracts.		Civil Code (Property).
Torts.		Civil Code (Obligations).
Agency.		Civil Code (Persons).
Partnership.		Criminal Code.
Bailments.		Criminal Procedure Code.
Domestic Relations.		Roman Law.
Criminal Law (Eng. and Jap.).		Commercial Code.
Logic.		Constitutional Law.
Constitutional Law (Jap.).		Logic.
18 hours.		Contracts.
		Torts.
		25 hours.

	Second Year.	
Sales.		Civil Code (Acquis. of Rights).
Personal Property.		Civil Code (Proof).
Contracts.		Commercial Code.
Evidence.		Civil Procedure Code.
Corporations.		Criminal Procedure Code.
Bills and Notes.		Roman Law.
Shipping.		General Principles.
Criminal Procedure (Jap. and Eng.).		Evidence (Eng.).
Constitutional Law (Jap.).		Commercial Law (Eng.).
Administrative Law.		Administrative Law.
Roman Law.		Practical Cases.
Practical Cases.		33 hours.
22 hours.		

	Third Year.	
International Law (Public).		Civil Code (Surety and Mortg.).
International Law (Private).		Commercial Code.
Jurisprudence (Eng.).		Civil Code (Acquis. of Rights.).
Roman Law.		International Law (Public).
Administrative Law.		International Law (Private).
Constitutional Law.		Roman Law.
Moot Courts.		Jurisprudence (Eng.).
20 hours.		Equity.
		Administrative Law.
		Practical Cases.
		28 hours.

In the requirements for admission there has been a decline. In 1889 the examinations (for those not possessing Middle School or equivalent diplomas) were upon Geography, History (universal), Arithmetic, Algebra, and Geometry. The only subjects now set are Arithmetic, Japanese Composition, and Chinese. The entrance fee is one yen, and the monthly dues are one yen. The tuition in English law is chiefly in the hands of Mr. Hijikata, already mentioned in connection with the Imperial University. Among the most noted of the staff are Messrs. K. Matsuno (judge of the Tokyo Superior Court), Yamada Kannosuke (ex-Attorney-General of the Empire and now Manager), Hozumi Nobushige (former Dean of the Imperial University, Law Department), Yezi Chu (a Councillor of the Home Department), and Kikuchi Takeo (a graduate of Boston University Law School, since Secretary of the Judicial Department, and now President of the school).

6. *Franco-Japanese Law School.*

By 1886 there had come into existence, outside of the Imperial University, special schools devoted to the study of the English and the German legal systems in the vernacular literature. The adherents of French law were not satisfied with this condition of things, and in 1887 an association was organized to establish and support a school offering equal facilities for the study of French law. The plan adopted was similar to that of the German Law School; and Imperial and aristocratic patronage has assured the success of the new institution. It might have been expected that the founders could act to better effect by influencing the methods of the Meiji Law School, which had always been under French control. But it seems that the managers of the latter were conservative in tendency, and did not desire to alter their methods; and the result was the creation of a new institution. The number of students at the opening was 40. To-day the books show 600, with an average attendance of 300. In 1890 the graduates numbered 100; in 1891, 53.

Here, as in the German School, instruction by foreigners is a specialty. M. Boissonade (the author of the Civil Code) is Dean; M. Reirlliod (of the Imperial University), and M. Paternastro (a legal adviser to the government), also lecture. The best-known Japanese lecturers (the working staff numbers fifteen) are Messrs. Terao,

Tomii, Mayeda, and Tomitani, already mentioned in other places. The courses are as follows: —

FIRST YEAR.

Elements of Civil Law — Civil Code — Criminal Code — Criminal Procedure Code — Civil Procedure Code — International Law — French Civil Code — French Jurisprudence — Economics — Gymnastics . . . . . 22 hours.

SECOND YEAR.

Civil Code — Criminal Code — Criminal Procedure Code — Civil Procedure Code — Commercial Code — French Civil Code — French Jurisprudence — Constitutional Law — Finance — Moot Court — Gymnastics 26 hours.

THIRD YEAR.

Civil Code — Civil Procedure Code — Commercial Code — French Civil Code — International Law — French Jurisprudence — Moot Court — Gymnastics 26 hours.

The monthly dues are one yen, and the entrance fee is one yen.

KANEKO KENTARO.
(President of the Japan Law School.)

7. *Law Department of Keiogijuku University.*

Keiogijuku College — the oldest institution in the country, next to the Imperial University, and the first to teach the English language and literature — has an interesting history, the events of which are indissolubly associated with the career of Mr. Fukuzawa, the great educator and editor. A democrat, severely practical, having a compelling personality, entirely independent, — one could not pick out four qualities less frequently met with in such a degree in this country. He has done for general education what Mr. Masujima has tried to do for legal study, — make it practical and effective. The college has been the field for the working out of his ideas. Of late he has given himself up to his newspaper, the *Fiji Shimpo*, the largest in the Empire; and the growth of the college has thrown its management into the hands of the men who have been trained by him. A Japanese of the Japanese, and a gentleman of the last generation, yet sagacious to discern the spirit and the needs of to-day, he has always been a lover of things American. Twice he has visited the United States; his three oldest sons were educated there (one of them in Boston); and in 1889, when he founded a university department (with funds partly contributed from alumni), he sent to the United States for his foreign instructors. The Law Department has at present for its law courses a staff of seven instructors, — one of them a resident foreigner. Messrs. Mayeda, Kawamura, and Tomitani (German and French lawyers, already mentioned), and Motoda (lately president of the Tokyo Bar Association) are the best known. Like the German Law School, this new department begins unassumingly, the students during the first two years numbering only eighteen all told. Many reasons contribute to make the number a small one. The annual fee is thirty yen; the entrance fee is three yen, — treble the figures of

most schools, but in keeping with the traditions of the college. Moreover, Keiogijuku has steadily resisted the pressure to join the "Specially Sanctioned Schools," some seven in number, which possess with government colleges, an exemption from conscription, and the exclusive privilege of sending candidates to the civil service examinations. The lack of these privileges is a great handicap, and keeps away most young men of law-school age. But Keiogijuku has always preferred, like the wolf in the fable, to pursue its own course free and untrammelled, rather than wear the collar of servitude as the price of feasting upon government favors; for in return for these privileges, the Sanctioned Schools must submit to certain paternal restrictions in regard to curricula, *personnel*, reports, inspection, etc., which interfere seriously with the discretion of the managers. Another reason is that Keiogijuku College, which would naturally be the great feeder of the university departments, has always sent most of its able graduates, into journalism or commerce, and not into law.

A final and most powerful deterrent of patronage is the difficulty of the entrance examinations (judged by the average student attainments). Admission is granted without examination to graduates of the college. All others must pass an examination (usually fairly difficult) in Arithmetic, Algebra, Geometry, Physics, Chemistry, Geography, History, English, Chinese, and Japanese Composition. No law school in the country, except the Imperial University, makes such requirements for entrance. With such a high standard, it is of course impossible to compete on anything like equal terms with great private law schools, opening their doors freely to those who have little more than a primary-school education. Nor is it desired to enter into such a competition. The aim of the school is to educate competent men as thoroughly as possible, without regard to numerical success or to popularity with the student community.

The courses of the law department are as follows:—

FIRST YEAR.

	Hours per Week.
Civil Code (Property)	4
Contracts (1st and 2d Terms), Evidence (3d Term)	5
Torts (1st Term), Property (2d and 3d Terms), Quasi-Contracts (3d Term)	4
Latin	2
Economics	5

SECOND YEAR.

Civil Code (Obligations, Acquisition of Rights, Suretyship and Mortgage)	4
Equity (1st and 2d Terms), Damages (3d Term)	2
Roman Law	3
Civil Procedure Code	3
Criminal Code	2
Criminal Procedure Code	2
French	3
Practical Applications.	

THIRD YEAR.

Commercial Code	4
Jurisprudence	3
International Law	3
Constitutional and Administrative Law	3
German	3
Practical Applications.	

8. *Japan Law School.*

Less than two years ago, when the Codes were on the eve of promulgation, it was announced that a new school of law was to be established, under the special patronage of the Minister of Justice. The idea seems to have been to devote the instruction in this school entirely to Japanese law as such, and not to treat of foreign systems by name. It is planned to lecture upon Japanese Customary Law; but the course is assigned to the third year, and the school is as yet only in the second year of its existence. The new institution has a distinct official flavor. All the highest functionaries have been pressed into service. The President of the Supreme Court (Kajima), the ex-President (Ozaki), the President of the Adminis-

trative Court (Makimura) the Attorney-General (Matsuoka), — these, and others lend their names. The President of the school is no less than Mr. Kaneko Kentaro, the Chief Secretary of the House of Peers, whose name is familiar in the United States and England. "His tastes and his capacity as a scholar fit him eminently for this position, and one almost regrets that his patriotism leads him to consecrate chiefly to politics the services that would otherwise be so valuable to science. It is to Mr. Kaneko's official influence that we may look principally for all that is being done and that will be done for the scientific study of Japanese legal history."

It is worth a passing notice that the chiefs of three of the eight important law schools were educated at American law schools. The "Institute for History and Antiquities," the centre of antiquarian studies, has an intimate connection with the Japan Law School, and some of its members, including Mr. Konakamura, Mr. Naito, and Mr. Kimura, the three great legal scholars of the older generation, are nominally on the law school staff. But I cannot find that they have yet done more than deliver an occasional public lecture. However, Mr. Matsuzaki, one of the best younger scholars and a specialist in Local Institutions and Taxation under the Tokugawas, lectures on Economics; and Mr. Miyazaki, the best modern student of the indigenous law, is preparing a brief course of lectures on that subject. The courses are: —

FIRST YEAR.

Civil Code (Property), 5 hours; Civil Code (Persons), 2 hours; Criminal Code, 3 hours; Criminal Procedure Code, 1 hour; Constitutional and Administrative Law, 3 hours; Economics, 2 hours.

SECOND YEAR.

Civil Code (Obligations), 7 hours; Civil Code (Suretyship and Mortgage), 2 hours; Civil Code (Persons), 2 hours; Civil Code (Proof), 1 hour; Civil Procedure Code, 3 hours; International Law, 2 hours.

A JUDICIAL ANTHOLOGY.

II. AMERICAN SPECIMENS.

By Henry A. Chaney.

THE scientific observer upon a comparative basis cannot fail to be interested in the conspicuous proof which these specimens present in demonstration of the theorem that the inheritance of genius is not a question of hemispheres. If England has her Coleridges, father and son, not only judges but poets, so has the United States her Durfees, filling the same high post in succession and possessed of the same divine gift.

As other comparisons are inevitable, it is not out of place to suggest that, on the whole, the American judge seems to be taken more fully into the confidence of his Muse than his English brother. The tributes which Tenterden and Eldon pay to their wives do full credit to their hearts, but otherwise they are rather commonplace; Chief-Justice Chase's melancholy meditations and Gibson's solitary effort show feeling as deep and greater felicity of expression. Hardwick's jolly doggerel is far surpassed by Parsons's letter to his little girl; and as for Durfee's oriole sonnet, is it not fully equal to Thurlow's Harvest Home; and is not Chipman's Anacreontic as faithful to the spirit of the original as Denman's Horatian ode? Blackstone and Story are both a little humdrum, but both are smooth and clear and easy. In the matter of sacred poetry, however, much the stronger showing is made by the English. The most recent psalmodies are enriched by Lord Chief-Justice Coleridge's hymn. It is doubtless the finest specimen of British verse in this collection, though Bacon's grand paraphrase of the Ninetieth Psalm, in which, of course, the thoughts are the Psalmist's, has an almost Shakspearian freshness and vigor.

But the best original poem here is found in Chief-Justice Fuller's noble lines on Grant; how good they are one may judge by placing them side by side with Milton's resounding sonnet to Cromwell; the last is stately and magnificent enough, but it altogether lacks the tender pathos with which the Chief-Justice interweaves a personal tribute fully as superb.

This little collection makes no pretence to completeness. All that it contains has been published here and there, and is more or less easily accessible. Much more, probably, might have been added. There is nothing here, for instance, of Chief-Justice Bleckley's; but previous numbers of this magazine have contained specimens of his verse.[1]

WHEN I AM DEAD.

Show no vain pomp nor mockery of woe,
Let my pale corpse no slow procession lead,
For me put on no senseless weeds of show,
When I am dead.

My tomb let no grand mausoleum tell,
Lay not a single stone to mark my bed;
I would that none should know my narrow cell,
When I am dead.

But silent bear me to my last abode,
On its cold pillow gently lay my head:
For worms my dust; my soul, oh, take it, God,
When I am dead.

Horace P. Biddle.

1 "Toombs," The Green Bag, vol. i. p. 185; and see vol. vi. pp. 51, 74.

THE UNIVERSITY OF MICHIGAN.

[An ode, read at the opening of the Guest Hall of the University, in 1873.]

No more the craftsman lingers
  Around the finished walls,
But songs of many voices
  Ring through the sounding halls.
They hail the work completed,
  They hail the mission planned,
Of toil for thought and spirit,
  With rest for toiling hand.

Rejoice, O bounteous mother!
  Thy home is broad and fair;
And throngs of loving children
  Shall rise to bless thee there.
From valley, plain, and mountain,
  Green isle and ocean shore,
Young States and hoary kingdoms,
  They seek thy open door.

With gracious welcome cheer them;
  Protect from guile and wrong;
And make them wise with counsel,
  In faith and honor strong.
So thou shalt be their glory
  And they shall be thy crown,—
Their lives thy joy and comfort,
  Their fame thy best renown.

Our hopes await the Future,
  Far off and dim and vast;
But through thy courts are gliding
  Sweet memories of the Past.
O house already hallowed
  By souls of truth and might,
Forevermore within thee
  Be life and peace and light!

James Valentine Campbell.

TO MISS L. C. L.

THE autumn wind sings mournfully
  The death-song of the year,
And yielding to Time's stern decree,
  All bright things disappear.
. . . . . .

The zephyr that with perfumed wing
  Played erewhile round our path
Hath flown away with gentle spring
  From winter's waking wrath.

The beautiful and fragrant flowers,
  Fair Nature's crown and pride,
From rustic walks and garden bowers
  Have faded all and died.

And I with sad, presageful heart
  Contemplate the decay,
Till summoned in my turn to part,
  I, too, shall pass away.

Salmon Portland Chase.

PARAPHRASE FROM ANACREON.

UNHAPPY he whose callous heart
  Ne'er felt the joys of love,
Whose bosom, steeled to soft desires,
  Not Venus' self can move.

Unhappy he who yields his heart
  A prey to Love's enchanting snare,
Whose hopes of bliss alone depend
  On some inconstant fair.

But more unhappy he who loves
  Yet meets no kind return,
Whose sighs, whose tears and tender vows
  Are all repaid with scorn.

Nathaniel Chipman.

HYMN BY TWILIGHT.

. . . . . .

GOD is in the hues of heaven
  Fading from the sky and bay;
God is in the shades of even
  That chase the heavenly hues away;

God is in the torrent falling,—
  In the song of whip-poor-will,
In the voice of shepherd calling,
  In the bleating on the hill.

In the cloud the distance glooming,
  In the distant thunder's roar,
In the far-off ocean booming
  On his everlasting shore.

God! thou art all substance wreathing
Into forms that suit thy will;
God! thou art through all things breathing
One harmonious anthem still.

Job Durfee.

CONSTANCY TO THE IDEAL.

As in the year's sweet prime, the oriole goes
Picking, with busy bill, small scraps of things
To weave the pendent home, which daily grows
In beauteous cincture from whate'er she brings;
For that she bears within her tiny breast
The heavenly plan whereafter she doth build,
And closely knits and softly lines her nest,
With glad forethought of how it shall be filled:
So we, like her, should work in joyous mood.
Doing each day the duty of the day,
And, constant to our fairest dream of good,
Fashion our lives thereby, as best we may,
In faith that every perfect fruit of earth
Within it bears a seed for heavenly birth.

Thomas Durfee.

NATHAN HALE.

To drum-beat and heart-beat
A soldier marches by.
There is color in his cheek,
There is courage in his eye,
Yet to drum-beat and heart-beat
In a moment he must die.

. . . . . .

With calm brow and steady brow
He listens to his doom;
In his look there is no fear,
Not a shadow-trace of gloom;
But with calm brow and steady brow
He robes him for the tomb.

. . . . . .

'Neath the blue morn, the sunny morn,
He dies upon the tree,
And he mourns that he can lose
But one life for Liberty;
And in the blue morn, the sunny morn,
His spirit-wings are free.

. . . . . .

From Fame-leaf and Angel-leaf,
From monument and urn,
The sad of Earth, the glad of Heaven
His tragic fate shall learn;
And on Fame-leaf and Angel-leaf
The name of HALE shall burn.

Francis Miles Finch.

GRANT.

. . . . . .

AND as with him of old,
Immortal captain of triumphant Rome,
Whose eagles made the rounded globe their home,
How the grand soul of true heroic mould
Despised resentment and such meaner things,
That Peace might gather all beneath her wings!

No lamentation here:
The weary hero lays him down to rest,
As tired infant at the mother's breast,
Without a care, without a thought of fear,
Waking to greet upon the other shore
The glorious host of comrades gone before.

Earth to the kindred earth;
The spirit to the fellowship of souls!
As slowly time the mighty scroll unrolls
Of waiting ages yet to have their birth,
Fame, faithful to the faithful, writes on high
His name, as one that was not born to die!

Melville Weston Fuller.

RETROSPECTION.

. . . . . .

WHY, Memory, cling thus to Life's jocund morning, —
Why point to its treasures, exhausted too soon,

Or tell that the buds of the heart at the dawning
Were destined to wither and perish at noon?

On the past sadly musing, oh, pause not a moment;
Could we live o'er again but one bright sunny day,
T were better than ages of present enjoyment,
In the mem'ry of scenes that have long passed away.

But Time ne'er retraces the footsteps he measures, —
In Fancy alone with the past can we dwell;
Then take my last blessing, loved scene of young pleasures,
Dear home of my childhood, forever farewell!

John Bannister Gibson.

A LETTER TO HIS LITTLE GIRL.

BOSTON, MARCH 2, 1795.

DEAR MARY: By these lines you 'll find
That your papa has kept in mind
The promise, made at Newburyport,
To write you, when at Boston Court.
Since then I have increased in health,
But added little to my wealth;
Enough there still remained in store
To purchase books, in number four,
For Robin, Flopsy, Dicksy, Hopsy,
With stories filled, to turn them topsy,
Such as poor Gulliver, of old,
To make folks merry, often told,—
Of little men six inches high,
Of larks not bigger than a fly,
Of sheep much less than common rats,
And horses not so big as cats;
He next of monstrous giants talked,
High as a steeple when they walked;
Whose beasts and birds and even flies
Were all proportioned to that size.
An hundred curious stories more
Which will delight you to read o'er,
These wondrous books in truth contain,
All sprung from his creative brain.
Do not, my dear, impatient burn
To read these books; on my return
I 'll bring them safe, each child to please,
While Pecksy dances on my knees,
And dear mamma exults with pleasure
To see around her all her treasure.

Theophilus Parsons.

ADVICE TO A LAWYER.

WHENE'ER you speak, remember every cause
Stands not on eloquence, but stands on laws.
Pregnant in matter, in expression brief,
Let every sentence stand in bold relief!
On trifling points nor time nor talents waste,
A sad offence to learning and to taste;
Nor deal with pompous phrase; nor e'er suppose
Poetic flights belong to reasoning prose.
Loose declamation may deceive the crowd,
And seem more striking as it grows more loud;
But sober sense rejects it with disdain,
As naught but empty noise, and weak as vain.
The froth of words, the school-boy's vain parade
Of books and cases,— all his stock in trade,—
The pert conceits, the cunning tricks and play
Of low attorneys, strung in long array,—
The unseemly jest, the petulant reply,
That chatters on, and cares not how or why, —
Studious, avoid,— unworthy themes to scan,
They sink the Speaker, and disgrace the Man,
Like the false lights by flying shadows cast,
Scarce seen when present, and forgot when past.

Joseph Story.

THE AMERICAN TORIES.

(M'FINGAL, CANTO I.)

"AND are there in this freeborn land
Among ourselves a venal band;
A dastard race, who long have sold
Their souls and consciences for gold;
Who wish to stab their country's vitals,
Could they enjoy surviving titles;
With pride behold our mischiefs brewing
Insult and triumph in our ruin?
Priests who, if Satan should sit down
To make a bible of his own,
Would gladly, for the sake of mitres,
Turn his inspired and sacred writers;
Lawyers, who should he wish to prove
His claim to his old seat above,
Would, if his cause he 'd give them fees in,
Bring writs of *entry sur disseisin*,
Plead for him boldly at the session,
And hope to put him in possession;
Merchants, who for his friendly aid
Would make him partners in their trade,
Hang out their signs in goodly show,
Inscribed with *Beelzebub & Co.*;
And judges who would list his pages
For proper liveries and wages,
And who as humbly cringe and bow
To all his mortal servants now?"

"There are; and Shame, with pointing gestures,
Marks out th' Addressers and Protesters;
Whom following down the stream of fate,
Contempts ineffable await;
And public Infamy forlorn,
Dread Hate, and everlasting Scorn."

John Trumbull.

JUDGES' PREDICAMENTS.

FROM London "Tit-Bits" we cull the following amusing anecdotes of some of the English judges:—

On one occasion Mr. Justice Manisty was on circuit at Exeter for the Assizes. One morning he left his lodgings early for a stroll, and finding that he had plenty of time on his hands before the court assembled, he turned into a hairdresser's shop for the purpose of getting shaved and generally trimmed up. Customers being scarce at that early hour, there was only one assistant present in the place.

When the Judge entered the man jumped up with alacrity, and bowed him into the operating-chair with all a barber's suave politeness. Having lathered his distinguished customer's face, and stropped his razor with more than ordinary vigor, he commenced to attack the judical stubble. But he had n't gone far in his work before he suddenly paused, with one hand on the Judge's nose and the other waving the razor painfully near Sir Henry's throat.

"Blessed if I don't think," said the barber, "that you 're the old cove what gave me five years at Winchester."

The Judge's feelings may be better imagined than described; but he merely replied, with what coolness he could summon to his aid,—

"I don't know, my good fellow; I have a bad memory for faces."

However, the man went on shaving, and Mr. Justice Manisty congratulated himself that the ex-convict did n't bear malice. This easiness of mind came a little too soon. After the shave the Judge, with characteristic determination, decided to carry out his original programme and have his hair cut as well. To his horror, the barber had no sooner exchanged the razor for his scissors than his locks began to fall in a perfect shower on the floor.

"Hold on, man, hold on!" exclaimed the Judge. "I only want a trim up, I tell you; don't cut it so short."

"Cut it short be blowed!" replied the barber, slicing away triumphantly; "you did n't cut it short when you give me five year in the stone jug. This is the prison crop you 've got to have, old man, as sure as a gun; so you 'd best take it kindly."

A Judge was journeying up to the North of England in a fast train, which, after leaving London, did not stop till it came to Rugby. The only other occupant of the carriage was a well-dressed and apparently gentlemanly man, who took no notice of the Judge till the train had left the terminus. Then the man came over, and seating hinself opposite the Judge, poured out a torrent of foul-mouthed abuse and threats against the latter for having sent him to penal servitude for coining some years before. The Judge waited till the man paused for breath, and then said very quietly, —

"My dear sir, don't you think it 's rather bad form to talk shop in private life? Ah, you don't think so! Very well, then, let us relate some of our mutual experiences. I have no doubt that I shall find yours a good deal more entertaining than you will mine."

The fellow was so nonplussed by the Judge's fearless good-humor that he quieted down, and actually did expatiate upon some of the incidents in his career. Probably he never saw the nice point of satire in a judge appealing to a convict he had sentenced on a question of "bad form."

The following is told of Sir Henry Hawkins, who, rightly or wrongly, has the reputation of being a severe judge, and is consequently more dreaded than beloved by the criminal classes. Sir Henry, as is well known, is in private life an ardent follower of the turf, and when more serious business permits, seldom fails to attend Newmarket races.

On one occasion he was returning from a meeting on the classic heath, and had entered a railway-carriage at the station for the purpose of returning to town. Three undesirable-looking fellow-passengers followed him in, and Sir Henry was thinking of changing his carriage, when a fourth man, who was also on the point of entering, stared hard at the Judge, got back on to the platform, and, addressing his companions, said, —

"Come, get out of that, boys, — a nice warm shop that is you 've got into. Do you know who that 'mug' is you were going to take on?"

"Who is it, Bill?" asked one of the men, as they cleared out of the compartment.

"Why, 'Orkins, to be sure, — a proper sort of 'mug' that to try our game on, eh?"

Sir Henry in the mean while, laughing in his sleeve, had recognized the man who had moved the others off as a man he had sentenced at the Old Bailey for card-sharping in railway-trains. The others, not knowing him, had marked him down as a "mug" or "flat" on whom to practise. The Judge's reputation probably saved him from annoyance.

AN EPISODE IN LORD COLERIDGE'S COURT.

IN the month of August, during a short stay in London, I dropped into Lord Chief-Justice Coleridge's court. The case of Harrison against the Duke of Rutland, Lord Edward Manners, and others was on trial before the Chief-Justice and a jury, and the court-room was stuffed. As I stood in the crowded aisle listening to Sir Henry James's able argument of a question of highway law, my eye suddenly rested on the faces of one of the judges of my home circuit and of a brother member of the bar of my home city, and I felt the thrill that a familiar and beloved face unexpectedly seen in a strange land always gives one. I elbowed my way to the Judge's side, and after a hearty handshake, and the "Where in the d——l did you come from?" from the Judge, we stood listening to the trial of the case. After another hour of standing I thought the Judge seemed weary, and turning to a junior in the stall beside me, I said: "That elderly gentleman just in front of you is an American judge. Don't you think you could find him a seat?" "I am very sorry," he replied, "but there is not a vacant seat in the court-room except those three seats on the Queen's Counsel bench just in front, and none but Q. C's. are ever permitted to sit there. You see six or seven peers on that backless bench in front, and even they could not occupy the bench reserved for 'silks.'" He then whispered to his brother juniors, then to a "silk" in front of him; some word was passed to Lord Coleridge and back, and the junior said to me, "If the American Judge will hand up his card, Lord Coleridge will ask him up on the bench." I told the Judge to give me his card and go up. This he positively declined to do; more whispering, and at last a Q. C. arose and invited the Judge, Brother D——, and myself to seats on the Q. C.'s bench beside him.

The case on trial was of unusual interest. It was for £500 damages for an assault. Harrison, the plaintiff, a combination of poacher and gamekeeper, having some spite against the Duke of Rutland, proceeded to make it hot for the noble Lord in the manner following: The Duke, with Lord Edward Manners and several other noblemen, went to the Duke's preserves near Sheffield one fine October morning to shoot grouse; the butts — or blinds, as an American sportsman would call them — were near an unfrequented highway, and the gamekeepers were about to drive the grouse across the highway towards the deadly guns of the noble lords behind the butts, when Harrison, the plaintiff, planted himself in the highway between the butts and the gamekeepers, and when they tried to drive the grouse, threw up his hat, opened his umbrella, etc., thereby frightening and turning the grouse and completely spoiling the sport. The noble Lords gently pleaded with him, telling him they had no objection to his viewing the sport, but they wished he would not spoil it, and warning him that he was in danger from a chance shot if he insisted on standing just where he was. Harrison replied that the Queen's highway was for the use of her Majesty's subjects to pass and repass upon according to their sweet will, and he proposed to suit himself as to his location in the highway and preferred that particular spot. The hot blood of young Lord Edward Manners arose, and he told Harrison not to come into the butts; if he did he would get shot, and if he was shot his blood would be on his own head, pointing his lordly periods with an occasional "big D," all to no purpose. Harrison stood pat, and seemed to be an artist at making a nuisance of himself and to enjoy doing so. The Duke at last ordered his gamekeepers to gently place their hands (*manus mollienter imponere*) upon the obnoxious Harrison, throw him upon the ground, and sit upon his legs and abdomen until the thirst of his noble guests for grouse's blood had been

appeased. This they proceeded to do, throwing him down and gently sitting upon him for the space of about twenty-five minutes: *hinc illæ lacrimæ*, hence this damage suit.

As soon as Sir Henry James, who appeared for the Duke of Rutland, had gotten fairly started on his address to the jury, the Lord Chief-Justice, with great deliberation, proceeded to take a nap; whereupon a young barrister behind me leaned over, and calling my attention to the fact that his Lordship was sound asleep, said, "You now see the Chief-Justice of England in his usual attitude." When Sir Henry James, and Mr. Cock, in behalf of Harrison, had finished their able addresses to the jury, his Lordship proceeded orally to charge the jury after the English method, which charge to an American certainly contained, besides, of course, good law, much of what we call in America "horse sense," enlivened by some very racy dicta. He said: "You and I, gentlemen of the jury, must judge fairly between this great man and this little man. The noble lords have a right to indulge in their so-called sport; although when I was a young man it would hardly have been called sport to stand behind butts or blinds, and slaughter with ready, loaded guns, handed to the sportsmen by gamekeepers, half-tame birds driven by other gamekeepers almost to the muzzle of the deadly shooting-irons, — hardly manly sport, gentlemen of the jury; but the noble lords [there were six or seven of them sitting in the court-room just before him] call it sport, and they have a right to indulge in it, subject to the rights of the Queen's subjects to pass and repass at pleasure on the highway. This man Harrison was evidently making a great nuisance of himself; but a man may lawfully make a nuisance of himself within certain limits. These noblemen have conducted themselves with considerable patience towards Harrison, and in such a manner as would be expected from men of their breeding, except a certain young nobleman [referring to young Lord Edwards Manners, who sat directly in front of him], who so far forgot himself as not only to indulge in profane language, but to tell Harrison that if he came into the butts he would be shot, and if he got shot his blood would be on his own head. I must beg to inform that young nobleman that if Harrison had gone into the butts and had been shot, not only would his blood *not* have been on his own head, but the noble young Lord's neck would have been in danger, under the laws of this realm."

At this point young Lord Manners arose from his seat and said, "Ah — ah — I beg pa'don, my Lord, but —"

Lord Coleridge, pointing his finger at him, said, "Sit down, sit down! Do not interrupt me, sir." Down went the noble Lord like a whipped schoolboy; and Lord Coleridge proceeded: —

"An assault has been committed, gentlemen, a wrong done, and the law broken; and the only question is what sum will compensate Harrison for this assault. I would remind you, however, that his physical injuries could not have been very severe, as the evidence shows that when lying upon the ground with a superincumbent weight of gamekeepers upon his abdomen, he facetiously remarked, 'Won't somebody sing a song? There is nothing *on* now,'— which remark would appear to indicate that his physical sufferings were not very great."

At the conclusion of the charge young Lord Manners again arose and said: "I beg pa'don, my Lord, but I wish to say that when I talked to Harrison about getting shot if he came into the butts I had no intention of shooting anybody. It was a mere idle threat. Your Lordship has almost made me out a murderer."

Lord Coleridge fixed his satirical gaze upon the young scion of nobility, and in his blandest manner replied,—

"Ah, you were an incident in this case, and I alluded to your connection with it as I thought my duty required. I have no explanation or apology to make to you, sir. You may sit down." And down he went.

with great promptness and considerable confusion.

The jury returned a verdict, without leaving the box, of five shillings against the Duke, which sum had already been paid into court by him; and the Judge, Brother D——, and I rustled out among the "silks," grateful for the courtesies shown us in a strange land. I suggested to the Judge that he open the October term in a wig and gown, and that he require all lawyers practising in his court to carry the "green bag." To this he only replied,—

"The law was sound; Lord Coleridge's judicial manner very fine. The wig and gown and all the rest of it are a lot of flumadiddle."

H. D. A.

KANSAS CITY, MO.

LONDON LEGAL LETTER.

LONDON, Dec. 10, 1892.

A NUMBER of the common law judges have been engaged since term began in trying election petitions throughout the country. There are always a number of these trials after a general election. At the close of such a national electoral struggle as we had in July, there are generally a large number of constituencies in which heated and disappointed partisans impute corrupt and illegal conduct to their successful rivals. Immense interest was excited by the petition brought against Mr. Balfour, the leader of the Opposition, by his defeated opponent, Professor I. E. C. Munroe; the judges were invited to declare the election null and void on the ground of what I may conveniently call the employment of corrupt influences by Mr. Balfour's agents. Professor Munroe is a political economist of some distinction, and enjoys among his friends a reputation for hard-headedness, so that a large section of the public were tempted to suppose the professor would not have risked the chance of a defeat on his petition, if he had not some tangible evidence of corruption at his disposal. You can imagine what a nasty flout to the Unionist party it would have been had their darling leader in the House of Commons been unseated by reason of the improprieties of his subordinates. I know that a number of influential Gladstonians confidently anticipated the eviction of Mr. Balfour from East Manchester. Bnt this was not to be. Not only did the petitioner's case fail; it failed miserably. Many general accusations were unsupported by a title of proof, while the evidence in support of others utterly broke down. All England laughed at Professor Munro's discomfiture, and it is to be hoped that he finds some consolation in those economic studies in which alone he has hitherto found laurels.

The only other case of the kind I need allude to is the South Meath election petition, where the anti-Parnellite member has been unseated on account of illegal influence persistently exerted in his favor during the contest by the Roman Catholic bishop of the diocese and his priests. In giving judgment the judges were careful to abstain from disputing the absolute right of the clergy to exercise moral suasion, but it was clearly proved that the political counsels, tendered to their flocks had gone far beyond this limit. Men were threatened with the refusal of the sacrament, of the last offices of religion, and even of Christian burial if they gave their vote for the Parnellite candidate. Under these circumstances the judges had no hesitation in finding for the petitioner.

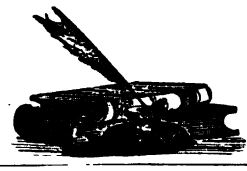
One of our foremost legal periodicals, the "Law Journal," is changing hands; it has hitherto been characterized by quiet, unostentatious merit, scarcely trespassing into fields other than those purely legal. Under the coming régime I fancy a bolder policy will be pursued. The new proprietor is Mr. Lewis Edmunds, one of our leading patent lawyers, a man whose name is synonymous with successful energy. He is the author of the standard treatise on the law of patents, and brings to bear on this class of cases an amount of scientific and chemical knowledge which you rarely find outside the laboratory of the pure scientist. With us there has been a great development in professional journalism of late years. Such periodicals, whether they were religious or legal, used to ex-

hibit a terribly technical narrowness; with the encircling current of external events and circumstances they had simply no contact at all. Now much of this excessive professionalism has disappeared, and we find that papers mainly conceived for a special class of readers command the interest and attention of a much wider public. Personally I should hope that Mr. Edmunds would endeavor to secure for his paper a position of power and influence outside even the tolerably extended bounds of the English-speaking legal profession.

I doubt if your readers realize what careful provision is made for the religious necessities of members of the Temple. Of the glories of the Temple Church with its pure Norman porch consecrated in the twelfth and the rest of it in the following century, not a few American travellers are perfectly familiar. But the authorities of the Inner and the Middle Temples are not content with merely maintaining this picturesque fabric of the past in fit structural array; they watch over the due conduct of religious worship within its walls as zealously as could any bishop. The preacher enjoys the proud name of Master of the Temple; and at one time I imagine he may really have been so. The present renowned and venerable occupant of the office is Dr. Vaughan, a man who as much as any one for the last forty years has conspicuously sustained the dignified traditions of the Anglican pulpit. With the Master of the Temple is associated the "Reader," whose duties are to conduct the liturgical part of the service on all occasions, and preach as well on Sunday afternoon. The Master of the Temple preaches on Sunday morning. We are losing Canon Ainger, who has been reader for many years; he has been appointed to an important living in Oxford. His sermons have always been listened to by large and admiring congregations, and his reputation as an ecclesiastical elocutionist is second to none. For the vacancy there are said to be four hundred candidates in the field, so that the benchers of the Middle Temple with whom is the patronage will have no easy task of selection, if they propose weighing the merits of each individual applicant. The services at the Temple Church are also noted for the excellence of the music, which is of the ornate Anglican type; the widely known organist, Dr. Hopkins, being himself a composer of no small merit.

* * *

The Lawyer's Easy Chair.



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

BY IRVING BROWNE.

THE Editor of the "Green Bag" has invited us to take charge of a new department of his magazine, in an attempt to combine "business with pleasure," and join the useful and the entertaining. He has been kind enough to give us leave to ride our hobbies with a free lance. It is to be hoped that the readers of this periodical will not pronounce the undertaking Quixotic. In this department they may confidently look for honest opinion and criticism on current matters of direct or indirect interest to our profession, and for an array of any peculiar, novel, or striking judicial decisions of the month. They will bear in mind that we shall not take ourselves too seriously in this department. It is to be an Easy Chair for the Lawyer; not a seat at a lecture, a barber's, or a dentist's; not a pew in a church; not requiring an attitude of painful attention on the one hand, nor so soothing as to invite slumber on the other; intended to keep the reader in a state of pleasant alertness rather than combative strain or dreamy sloth; a revolving chair, whence we shall view the lighter legal topics of the world, from New York to India, from Australia to England; keep an eye on the bench to see that it does not overawe or oppress the bar, and an eye on the bar to see that it does not insult or decry the bench; recommend advances and reforms, and deprecate standing still or backsliding. If the principal Editor shall now and then turn over to us a book for review, we shall strive to temper the wind of criticism, and say a good word for any author who has a good word to say to the profession, and preserve the profession from the oppression of men of mere scissors and paste-pot. In short, we propose to afford herein just the one oasis in the legal desert where the weary traveller may rest and refresh himself and not be bored. As we wrote for the first number of the "Albany Law Journal," so we wrote for the first number of the "Green Bag;" and so long as we are suffered to write for either, we hope it may be said that we have written honestly, amusingly, and profitably.

CURRENT TOPICS.

A SILVER JUSTICE. — It is probably for advertising purposes chiefly that Montana is going to send to the Columbian Exposition a statue of Justice in silver. It will serve to advertise the State, the artist, and the model. The silver one can understand; but why Justice? Is it because it is so prevalent or so scarce in Montana? We should imagine the latter, and it would seem more appropriate to send a silver image of that "Lynch-Law Tree," a copy of which appeared in the last number of this periodical. The project has served to stir up a good deal of animosity among actresses who possess fine figures and are not averse to displaying them. We are glad Miss Rehan has been selected as the model, for if the choice had fallen upon some one of many other actresses we should have feared that the statue would have been too suggestive of free silver. But we are amazed to learn that the shy and shrinking Lillian Russell, who went to law rather than keep her contract to appear in "tights," is actually envious of Miss Rehan, because the latter's figure has been preferred to hers. Miss Lillian intimates that it was the figures of her check that prevailed; and yet it does not seem that a woman said to be five feet six inches tall, and whose waist measures only seventeen inches, can be deemed to have a good figure for Justice: it is too light-waisted. But all this belongs to art and physiology, and not to law, except the subject of the statue. It may be permitted to us, however, to suggest materials for statues for other States which may wish to follow the example of Montana. Maine's statue should be of ice, New Hampshire's of granite, Vermont's of maple-sugar: New Jersey's should be a mosquito of heroic size; Pennsylvania should send one of coal; Texas should put in a steer; Louisiana a Fortune at her wheel, with the bandage slightly off one eye; a mule would answer for several Southern States in which that useful animal is much in litigation; Delaware should contribute a sheriff wielding a whip, Maryland a terrapin-catcher, Ohio an office-seeker. Kansas an Eolus; Arkansas a tramp with stick and pack, to typify her immortal "traveller;" Utah should offer Lot's wife; Kentucky a figure of Louis XIV., the greatest of the Bourbons; Nebraska a ghost, if a ghost can be figured; King Cotton would do for several Southern States; Michigan's offering must certainly be of wood, Illinois' should be of brass; New York should send a tiger; Minerva with spectacles would answer well for Massachusetts; Connecticut might fitly bestow a colossal wooden nutmeg, Colo-

rado a figure of Spring, New Mexico a cowboy or a train-robber, Alaska a seal; Wisconsin an enormous keg, fit to rival the tun of Heidelberg; South Carolina a Persian fire-worshipper; nothing short of an appalling image of Divorce parting husband and wife would do for South Dakota; and California should show Justice cutting off a Chinaman's cue.

MR. COUDERT ON THE NEW YORK BAR. — There has come to our chair a pleasant pamphlet on "The Bar of New York, 1792–1892," by Mr. Frederic R. Coudert, well known to all New Yorkers as one of the wittiest and wisest of men, as well as one of the most brilliant members of the New York City Bar. In this excellent reminiscence the writer speaks some wise words, such as. "Take away the sanction of the law and nothing is left in Pandora's box, least of all, freedom, for freedom without the law ceases to be anything of value. Government by law, administered by lawyers, is the best that has thus far been tried." He also observes. "Washington was not a lawyer, at least so far as I am informed. Probably there were many occasions in which this chasm in his early training was to him a source of deep but unavailing regret." Some impious person might reply that the good man could not have regretted the omission, for a reason implied in the hatchet incident. Speaking of the transience of the lawyer's fame, and instancing Hamilton and Burr as examples, he says: "If they had been engaged in the manufacture of tinplate, they would have been equally (if not more) conspicuous." Of Chancellor Robert R. Livingston (whom he misnames Brockholst) he narrates this incident:

"It seems that Mr. Livingston was a bit of a wag — this was, of course, before he was placed on the bench — and amused himself on a certain occasion in writing an account of a political meeting which had been attended by some of his political adversaries. These he sought to turn into ridicule. His raillery seems to us at this day quite harmless. He spoke of a Mr Fish as a stripling about forty-eight years old, and of a Mr. Jones as 'Master Jimmy Jones, another stripling about sixty.' Why Messrs. Jones and Fish should have resented so mild a form of pleasantry does not appear, but they did feel very deeply whatever sting there may have been in these mysterious imputations. They demanded an explanation of Mr. Livingston while he was walking on the Battery with his wife and children. The explanation does not appear to have suited Mr. Jones, who proceeded to chastise Mr. Livingston with a cane, whereupon Mr. Livingston became, in his turn, dissatisfied and gave evidence thereof by challenging and killing Mr. Jones, after which performance he felt at liberty to resume his promenade, *en famille*, on the Battery, which he did without further molestation. Mr Jones having been removed in this summary but orthodox fashion, there was nothing to prevent Mr. Livingston from reaching high political preference. He accordingly became Chancellor and shortly after a Justice of the Supreme Court of the United States."

Perhaps it was the Chancellor's intense waggishness that led him to conceal from his contemporaries and posterity the manner of his own death, — or indeed that he has ever died, for his taking-off was never accounted for. It is to be hoped that none of the Jimmy Joneses made away with him. Mr. Coudert also indulges in some speculations as to the comparative merits, intellectual and moral, of the early and the present New York Bar. He quotes some pessimistic utterances of Kent upon the growing degeneracy of the bar of his day, and descants thereupon as follows: —

"Who would have believed that our professional forerunners were afflicted with such fearful propensities? Good, great, venerable gentlemen we supposed them to be, eminently respectable from the top of their bald heads to the soles of their gaitered feet, moving with decorous deliberation from their shabby office to their uptown residence in Prince or Houston Street for dinner, returning to work until supper-time, unmolested by telephones, undisturbed by telegraphs, ignorant of messenger-boys, living in happy though unconscious immunity from stenographers, interviewers, law reporters, daily law journals, and other sources of unhappiness — to think that the virus of avarice, gambling, selfishness, and the like had polluted their simple and virtuous natures! Perhaps we may be better than they, after all, for we have to contend against all these insidious foes, and yet we still exist as a body, and upon the whole may claim, in comparison with the rest of the community, to constitute a very respectable class of citizens."

Mr. Coudert says that Hamilton's character was good, and that Burr's was bad; but yet Hamilton was no Joseph, as he confessed in print, by reason of which failing his enemies got a bitter advantage of him. In asserting that Hamilton contended, fifty years before Erskine, that the jury were judges of the law in libel, he has probably confused him with Andrew Hamilton, of Philadelphia, who was the first, we believe, to make that contention in this country, about 1730. Mr. Coudert celebrates the merits of the earlier lawyers, O'Conor, Cutting, Brady, Wood, Evarts, Fullerton, Field, Van Buren, Noyes, Gerard, Silliman, but also has a good word to say of Carter, Choate, Parsons, and Butler, and might well have included Beach and Porter. Although he could not gracefully include himself, we can and will do it for him. Indeed as a lawyer he has but one fault, and as a Frenchman but one anomaly. — he is opposed to Codification!

A BILL OF FARE. — We always like to set before our readers a good bill of fare. The following was provided at a "banquet" to retiring judges Finn and Lawler, by their associates of the Superior Court, at San Francisco, on December 2: —

"The friends thou hast, and their adoption tried,
Grapple them to thy soul with hoops of steel."

MENU.

Sauterne OYSTERS
Cresta Blanca Eastern, Half Shell

"Wery fine power o' suction, Sammy;
You 'd ha' made a oncommon fine oyster."
Ex parte Weller: Pickwick, 472.

SOUP

Mock Turtle à la *caveat emptor*

HORS D'ŒUVRES

Cornets Farcie à la Statute of Frauds

"I smell it; upon my life it will do well."

FISH

Trout à la Chambord

"Here 's a fish hangs in the net like a poor man's right in the law; 't will hardly come out."
See Bait on the demise of Rat.

ENTRÉES

Bordeaux Chicken Sauté, Marengo
Pâtés Toulouse, *ex delictu*
Filet of Beef, with Truffles à la Judgment

"The urging of that word, judgment, hath bred a kind of remorse in me."
III Richard, 1-4.

VEGETABLES

Stuffed Artichokes, Buttons
String Beans à la Fictitious Name

"With wine and feeding, we have suppler souls than in our priestlike fasts."
In re Coriolanus, 5.

Pommery Sec BREAD
Vienna Rolls à la John Dough

"I can drink no more than a sponge."
Hudibras.

ROAST

Canvas-back Duck
Salad Celery Currant Jelly

"Cut this flesh from off his breast; the law allows it and the Court decrees it."
Shylock v. *Antonio: 1 Shak.* 602.

DESSERT

Ice Cream, Neapolitane
Gâteaux de Soirée (real name unknown)
Cakes à la Estate of Deceased Person
Fresh Fruits Almonds, *et al.*
Cheese

CAFÉ NOIR.

Liqueurs

"What doth gravity out of his bed at midnight?"
4 *Hamlet*, 2.

"Wilkins," said Mrs. Micawber, "has what my pa terms a judicial head."

ADJOURNMENT.

We print the foregoing because it seems to have been expected of us; but it would have been more becoming to send us one of the original bills of fare, which, we are informed, "were printed on parchment in the highest style of the art, with hand-painted picture of a court scene for the frontispiece," instead of a newspaper. By the way, what is the sense of "hand-painted"? We did see an armless artist painting with a brush held in his toes, at the Plantin Museum in Antwerp; but the thing is so extremely unusual that no one would for a moment have suspected that the scene in question was painted with any member but the hand. We hereby give notice that we shall celebrate no more of these banquets after the event unless we are invited. No more of this empty exhibition of bygone victuals for us! We are no Sancho Panza to be put off with a passing whiff of dainties on the pretence that our stomach is delicate. We prefer the Pauline prescription of "a little wine now and then."

LEGAL TRIFLERS. — Our estimable, even if at times rather peppery, contemporary, the "Indian Jurist," regrets that Sir Frederick Pollock should have published a volume of "trifles," consisting of law cases in verse, some other poems, and translations and versions in Greek, Latin, French, and German, and undertakes to crush the learned baronet with the remark that although Horace commends the practice of desipping in loco, yet the baronet does not desip in the right loco. This smacks rather too much of pedantry. Sir Frederick, we believe, has never indulged in pleasantry in any of the grave and weighty treatises with which he has obliged our learned profession, and it seems to us that he has become entertaining in precisely the right place. If the "Jurist" means to insinuate that it is wrong for a lawyer to write verses, let him peruse Mr. Chaney's "Judicial Anthology" in the last "Bag," and tell us whether it was wrong for John Scott to write those famous three stanzas on his beloved "Bessie," or whether Sir Matthew Hale or Bacon or Denman or Thurlow or York is blamable for having made his grave legal quill occasionally write in metre. Perhaps the "Jurist" would frown on Chief-Justice Bleckley's verses entitled "Rest," written on his resignation from the bench, and constituting one of the most exquisite lyrics in our language. He is a wit and a wise man; but if we could have but one, we would prefer his poem to any of his opinions. The truth is that law and lawyers are essentially dry enough to warrant the profession in consenting to an occasional irrigation of pleasantry and scholarship, such as Sir Frederick bestows upon us, and such as the "Green Bag" by precept and practice has always recommended. By the way, if the learned Brahmin thinks that Sir Frederick's Greek and Latin verses are "trifles," let him turn us out a few specimens just to rest himself. Let us free our minds from cant. It is not best always to be as solemn as we can. Does our good brother deem that the saints never smile in heaven? If they do not, we cannot say that we are in any hurry to get there.

Although life is hard and solemn,
Gravity is not its goal;
Better bend the spinal column,
Lay aside the stoic stole.

NOTES OF CASES.

IDEM SONANS. — The Supreme Court of Illinois, in Gonzalia *v.* Bartelsman, 32 N. E. Rep. 534, held that "Meyer" and "Myers" are not *idem sonans*. This seems a little too precise. There is a considerable collection of examples of this doctrine in Browne's "Humorous Phases of the Law," in the chapter "De Minimis non curat Lex," in which it appears that the following have been held *idem sonans:* Michael and Michaels; Petrie and Petris; Matthews and Mather; William and Williams; Rennoll and Rennolls. So it has been held of Biglow and Bigelow. On the other hand Franks and Frank have been held not *idem sonans*, and so of Jeffery and Jeffries.

THE WIFE'S HOUSE. — Vice-Chancellor Bird, according to his official syllabus in Shinn *v.* Shinn, 24 Atl. Rep. 1022, has decided that every husband is bound to set his wife up in housekeeping if she demands it, and that it will not do to offer to board her even at a first-class hotel furnished with all the luxury of Monte Christo's grotto She is not bound to come under the dominion of any landlord, much less a landlady! Here is the syllabus: —

1. Every wife is entitled to a house corresponding to the circumstances and condition of her husband, over which she shall be permitted to preside as such wife, and it is the duty of the husband to furnish such home. 2. A house over which others have entire control, and in which the husband and wife reside as boarders simply, is not such house.

This is really startling, and would seem to saddle a new burden on the patient back of the common-law husband We do not believe that Judge Bird, for example, would be bound at all hazards to provide such a luxurious nest for his mate and their young; and fortunately his syllabus is not the law, and indeed the facts of the case and the opinion itself do not warrant the syllabus. It was simply *decided* that the husband had not provided the wife with any home corresponding to his means and his station in society, and had treated her in a cruel and niggard manner with the evident design of driving her away. So long as one person must have the right to dictate whether the pair shall keep house or board, it is difficult to see why it should be the wife rather than the husband. The wife is bound to follow the husband when he "moves" or changes his town; and that being so, it cannot be that he is bound to follow her to a house of their own rather than a suitable boarding-house or hotel or apartment. If it were otherwise, she would have the power to bind him for house-rent as a necessary, when he offered to board her suitably, which is absurd on its face. A different view of the husband's liability in respect to providing a home, and we think the correct one, may be found in Luter *v.* Shelley, 40 Hun, 197, in which it is held as follows: —

"On June 28, 1884, the defendant Shelley was convicted as a disorderly person on the charge of abandoning his wife. The defendant, although not cohabiting with his wife, had, up to that time, furnished her with means for her support. She occupied rooms in the city of Rochester, and on the day of the conviction and the following day the defendant called at the rooms to see her and was refused admittance. On the evening of the latter day he wrote a letter to her in which he said that he had provided a place for her support and maintenance, with necessary medical attendance, in the family of one Aldrich, at Kenyonville, Orleans County, and offered to go with her whenever she was ready; he stated that he was not able to support her in any other place, and that he trusted it would not be long before he could do better. This invitation the wife refused to accept on the ground that she was in poor health, and had lived in the city for many years; that she had no relatives or acquaintances at Kenyonville, and that no physician resided there. It appeared that the Aldrich house, though not large, was comfortable and respectable, and the physical comforts of the wife could be there fairly provided for. *Held*, that the evidence did not warrant the conviction of the defendant; that the husband has a right to select a home for his wife, and his judgment, when fairly exercised, must govern in so far as to relieve him from the charge of being a disorderly person." The court said: —

"It does not appear that their condition in life has been such heretofore, or that the means of the defendant are such now, as to characterize the place the husband offered to provide as unreasonable, or such as to shock the sense of propriety, or that to require the wife to live there would be harsh or cruel treatment in the sense which is applied to those terms in such relation. If they had resided at the place in question, it will hardly be contended, from what appears here, that a mere desire not to live there would have permitted her to leave the place and charge him for her support elsewhere.

"And while it must be conceded that he ought to have respected her tastes and wishes in that respect, if his circumstances fairly permitted, yet the home for him to provide for her is so much the matter of his judgment and control that his action in doing so is not the subject of review by the court unless it evinces bad faith in view of all the circumstances.[1] A place offered as a home might be such as he might suppose she would not accept, and thus indicate a purpose on his part not to furnish her support; but to so characterize it the place designated must be an unreasonable one for her residence and home, or such that the wife would be justified in leaving the place if she resided there, and as a consequence charge him with liability for her necessary support at such other place as she might obtain it. The home provided is neither so remote nor so situated as to render its selection an unreasonable exercise of his discretion. It was in the locality where the defendant was acquainted and had friends re-

1 Babbitt *v.* Babbitt, 69 Ill. 277; Hair *v.* Hair, 10 Rich. Eq. 163.

siding. The rule by which the failure of duty of the husband to the wife in the respect in question is measured, is that which permits the wife to sever her relations from him and his home and seek support elsewhere at his expense. And no less reason must exist to justify her refusal to accept a home and support provided for and offered to her by him. And such is the doctrine applicable to a case of this character."[1]

THE AEROLITE CASE. — An extremely novel case, probably the first one of the kind, is Goodard *v.* Minchell, decided last October by the Supreme Court of Iowa, to the point that an aerolite weighing sixty-six pounds, which falls from the sky and is imbedded in the soil to a depth of three feet, is the property of the owner of the land on which it falls, rather than of the first person who finds it and digs it up. It would seem that as one owns all above his land as well as below the surface, this right includes the stone in question, and that its ownership should not be prejudiced simply because the article had changed its position. But the court did not put the decision on that ground. They observed: —

"Through the action of the elements, wind and water, the soil of one man is taken and deposited in the field of another; and thus all over the country, we may say, changes are constantly going on. By these natural causes the owners of the soil are giving and taking, as the wisdom of the controlling forces shall determine. By these operations one may be affected with a substantial gain, and another by a similar loss. These gains are of accretion, and the deposit becomes the property of the owner of the soil on which it is made.

"A scientist of note has said that from six to seven hundred of these stones fall to our earth annually. If they are, as indicated in argument, departures from other planets, and if among the planets of the solar system there is this interchange, bearing evidence of their material composition, upon what principle of reason or authority can we say that a deposit thus made shall not be of that class of property that it would be if originally of this planet and in the same situation? If these exchanges have been going on through the countless ages of our planetary system, who shall attempt to determine what part of the rocks and formations of especial value to the scientist, resting in and upon the earth, are of meteoric acquisition, and a part of that class of property designated in argument as 'unowned things,' to be the property of the fortunate finder, instead of the owner of the soil, if the rule contended for is to obtain? It is not easy to understand why stones or balls of metallic iron, deposited as this was, should be governed by a different rule than obtains from the deposit of boulders, stones, and drift upon our prairies by glacier action, and who would contend that these deposits from floating bodies of ice belong, not to the owner of the soil, but to the finder? Their origin or source may be less mysterious, but they too are 'tell-tale messengers' from far-off lands, and have value for historic and scientific investigation.

"It is said that the aerolite is without adaptation to the soil, and only valuable for scientific purposes. Nothing in the facts of the case will warrant us in saying that it was not well adapted for use by the owner of the soil as any stone, or, as appellant is pleased to denominate it, 'ball of metallic iron' That it may be of greater value for scientific or other purposes may be admitted, but that fact has little weight in determining who should be its owner. We cannot say that the owner of the soil is not as interested in, and would not as readily contribute to the great cause of scientific advancement as the finder, by chance or otherwise, of these silent messengers. . . .

"The subject of this controversy was never lost or abandoned. Whence it came is not known: but under the natural law of its government it became a part of this earth, and we think should be treated as such It is said by appellant that this case is unique; that no exact precedent can be found, and that the conclusion must be based largely upon new considerations. No similar question has, to our knowledge, been determined in a court of last resort. In the American and English Encyclopedia of Law (vol. 15, p. 388) is the following language: 'An aerolite is the property of the owner of the fee upon which it falls. Hence a pedestrian on the highway, who is first to discover such a stone, is not the owner of it, the highway being a mere easement for travel.' It cites the case of Maas *v* Amana Soc, 16 Alb L. J. 76, and 13 Ir. L. T 381, each of which periodicals contains an editorial notice of such a case having been decided in Illinois, but no reported case is to be found. Anderson's Law Dictionary states the same rule of law, with the same references, under the subject of 'Accretions.' In 20 Albany Law Journal, 299, is a letter to the editor from a correspondent, calling attention to a case determined in France, where an aerolite found by a peasant was held not to be the property of the 'proprietor of the field,' but that of the finder. These references are entitled of course to slight if any consideration, the information as to them being too meagre to indicate the trend of legal thought Our conclusions are announced with some doubts as to their correctness; but they arise not so much from the application of known rules of law to proper facts as from the absence of defined rules for these particular cases. The interest manifested has induced us to give the case careful thought. Our conclusions seem to us nearest analogous to the generally accepted rules of law bearing on kindred questions, and to subserve the ends of substantial justice."

It would have been no more impudent in the finder to cut and claim the ice on Goodard's pond simply because the latter did not choose to avail himself of it. He will be claiming the "gentle rain from heaven" next.

[1] People *v.* Pettit, 74 N. Y. 320: People ex rel. Douglass *v.* Naehr, 1 N. Y. Cr. R. 513.

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.

BEGINNING with the present number, a new department is added to the "Green Bag," in which "Current Legal Topics" (including Novel Cases) will be fully discussed. This department is to be under the able editorship of IRVING BROWNE, Esq., whose long connection with the "Albany Law Journal" has made his name a household word among the profession. It is needless to say that Mr. Browne wields a fearless, trenchant pen; and this new feature will prove of great interest and practical value to the readers of the "Green Bag."

We shall also present *each year* to our subscribers a *valuable portrait* (suitable for framing) of some eminent American or English lawyer. The portrait issued this year is a striking likeness of DANIEL WEBSTER, size 19 × 23, from a rare engraving. No expense will be spared to make these portraits worthy of any lawyer's office.

In view of the increased outlay necessary to carry out our designs, we have decided to increase slightly the subscription price of the "Green Bag" to *Four Dollars* a year; *allowing, however, to old subscribers who remit before Feb.* 1, 1893, *a discount of* $1 *from this price.* This discount is offered only as an inducement to prompt remittance, and to all such subscribers we will give the old rate of *Three Dollars* for 1893.

We believe these new and attractive features will more than compensate for the slight increase in price, and we trust that our subscribers will coincide with our views.

THE portrait of DANIEL WEBSTER offered to our subscribers for 1893 seems to give great satisfaction to those who have already received it. We have words of praise for it from all quarters.

LEGAL ANTIQUITIES.

IN ancient Rome, the great and powerful judge called the Prætor, at the commencement of his prætorship, used to hang up, for the information of his suitors, in a conspicuous situation in some public place, a table of the rules by which he proposed to govern himself during the year.

WHEN Littleton prayed judgment in a *quare impedit*, Year Book, Mich., 35 Hen. VI., Prisot, Chief-Justice, protested: "I marvel mightily that you are so hasty in this matter, for it is a weighty matter; and I have seen similar matters pending for twelve years; and this matter has been pending only three quarters of a year."

IN the report of a case in the "State Trials," is this passage: "First came the execution, then the investigation, and last of all, or rather not at all, the accusation."

AN old English statute commenced by an enactment relating to the admission of attorneys, and finished by prohibiting the importation of horned cattle.

FACETIÆ.

ONE evening at a convivial party, Daniel Webster and other distinguished lawyers were present, and the conversation happened to turn on the legal profession.

"When I was a young practitioner," said Mr. Webster, "there was but one man at the New Hampshire bar of whom I was afraid, and that was old Barnaby. There were but few men who dared to enter the lists with him. On one occasion Barnaby was employed to defend the title of a piece of land, brought by a little, mean, cunning

lawyer named Bruce. Bruce's case was looked upon as good as lost when it was ascertained that Barnaby was retained against him.

"The suit came on for trial, and Barnaby found that Bruce had worked hard, and left no stone unturned to gain the victory. The testimony for the plaintiff was very strong, and unless it could be impeached the case of the defendant was lost. The principal witness introduced by the plaintiff wore a red coat.

"In summing up for the defence, old Barnaby commenced a furious attack on the witness, pulling his testimony all to pieces, and appealing to the jury if a man who wore a red coat was under any circumstances to be believed.

"'And who is this red-coated witness," exclaimed Barnaby, "but a descendant of our common enemy, who has striven to take from us our liberty, and would not hesitate now to deprive any poor man of his land by making any sort of a red-coated statement!'

"During this speech Bruce was walking up and down the bar greatly excited, and convinced that his case was gone, — knowing as he did the prejudice of the jury against anything British. While, however, Barnaby was gesticulating and leaning forward to the jury in his eloquent appeal, his shirt-bosom opened slightly, and Bruce accidentally discovered that Barnaby wore a red undershirt.

"Bruce's countenance brightened up. Putting both hands in his coat-pockets, he walked to the bar with great confidence, to the astonishment of his client and all lookers-on.

"Just as Barnaby concluded, Bruce whispered in the ear of his client, 'I've got him, — your case is safe!' and approaching the jury, he commenced his reply to the slaughtering argument of his adversary. Bruce gave a regular history of the ancestry of his red-coated witness, proving his patriotism and devotion to the country, and his character for truth and veracity.

"'But what, gentlemen of the jury,' broke forth Bruce, in a loud strain of eloquence, while his eye flashed fire, 'what are you to expect of a man who stands here to defend a cause based on no foundation of right or justice whatever; of a man who undertakes to destroy our testimony on the ground that my witness wears a red coat, when, gentlemen of the jury, — when — when, gentlemen of the jury,' — here Bruce made a spring, and catching Barnaby by the bosom of his shirt, tore it open, displaying his red flannel, — 'when Mr. Barnaby himself wears a red flannel coat concealed under a blue one?'

"The effect was electrical. Barnaby was beaten at his own game, and Bruce gained the case."

LORD CAMPBELL tells a good story of an incident which occurred in the opening period of his professional career, soon after the publication of his "Nisi Prius Reports." He had successfully defended a prisoner charged with a criminal offence; and while elated with the victory achieved by his advocacy, he discovered that his late client, with whom he had held a confidential conversation, had contrived to relieve him of his pocket-book full of bank-notes. As soon as the presiding judge, Lord Chief Baron Macdonald, heard of the mishap of the reporting barrister, he exclaimed: "What! does Mr. Campbell think that no one is entitled to *take notes* in court except himself?"

THE following was the title of a Virginia act: "Supplementary to an Act to amend an Act making it penal to alter the mark of an unmarked dog."

JUDGE PETERS, upon being told that Congress had passed a law increasing the salary of *certain* judges, replied: "That law will not affect me, for I am an *uncertain* judge."

A SUIT for rent, predicated upon a lease which contained, among other clauses, one providing for the payment of the rent on the first day of each month, and another providing for the termination of the lease *ipse facto* upon the death of the lessee, came up for trial before a justice of the peace of Hibernian extract, in the city of St. Louis.

The attorney for the defendant made the point that rent was supposed and intended to be compensation; and that therefore there was a direct conflict between the two clauses of the lease, for the reason that the lessee might die before the expiration of the term, and as this would terminate the lease, no recovery should be had until the end of the month, when it could only then and for the first time be known to a certainty that the

premises had been occupied for the full term for which the rent was claimed. Consequently he urged that the suit, having been brought before the end of the month, should be dismissed.

Drawing himself up to his full length, and stroking an elegant pair of side-whiskers of which he is justly proud, the judge replied in the elegant brogue so natural to one of his race: —

"Gintlemen, this seams to me to be a very simple question. On the one part, the diffindent has gone into persession under the terms of a lace which contains two clauses, — one, that she shall pay rint in advance; the other, that if she dies before the ind of the term, the lace is to ind.

"By dalivering the persession of the primeses and demanding the rint in advance, the landlord has complied with his portion of the contract. On the other hand, the lady who is the lessee has not complied with her portion of it at all."

Attorney for defendant: "In what respect, your honor, has she not complied with her portion of the lease?"

The Court: "Why, be dying, av course! Judgment for the plaintiff for the full amount and cost."

NOTES.

THE remark of the Supreme Court of Minnesota in Steffenson *v.* Chicago, Milwaukee, & St. Paul Railway Company, 51 N. W. Rep. 610, that "the practice of reading from the law-books is an exceedingly dangerous one, and should not be indulged in," was perhaps not intended to be humorous. But unless read closely, with the subject-matter before the court, it has that sound. We know from experience that law-books are often dangerous, for many a practitioner has been hoisted by his own petard.

Even Lord Coke did not think everything in the "books" was law; for to his treatise on (Littleton's) Laws of England he appends the following: —

"Epilogus — And know, my son, that I would not have thee beleeve that all which I have said in these bookes is law, for I will not presume to take this upon me. But of those things that are not law, inquire and learne of my wise masters learned in the law." — *Ex.*

ONE of the peculiar products of Washington is the colored lawyer who hangs around the police court. A big majority of the people who are brought to the bar of that tribunal are colored, says a correspondent of the St. Louis "Republic." The colored lawyer promptly offers to go to the rescue of the colored person upon whom the hand of the law has been laid. He will do so for a sum ranging in amount from ten cents to ten dollars. His note of exchange depends upon the state of the unfortunate one's exchequer. Sometimes the colored lawyers have quarrels among themselves about the possession of clients. Then it is likely that they will make charges against each other. To-day, for instance, John Young, who has figured not infrequently as an advocate, was on trial himself. He was up for vagrancy. Two other colored lawyers were the witnesses against him. They gave him a very picturesque reputation, and said that he knew nothing of law whatever. They said he was a "voudoo" doctor. His legal lore, according to their testimony, consisted of a coon-foot and a rabbit-foot. These "authorities" he carried in his pocket. He claims that by rubbing one or the other on a prisoner's neck, he can generally secure acquittal. If, however, the offence is a pretty serious one, he calls to his aid his whole law "library." He then rubs the neck of his client with both the rabbit-foot and the coon-foot. He says that it must be murder in the first degree to withstand the potency of the argument of the combined rabbit-foot and coon-foot. He has been enjoying a very lucrative practice. He was ordered to keep away from the court.

WIVES in England can hardly be said to be "worth their weight in gold," judging from the following transactions in that kind of property reported in "All the Year Round": —

"In 1877 a wife was sold for £40; and what is more remarkable, the articles of sale were drawn up and signed at a solicitor's office, the money paid, and the chattel handed over with all the gravity of law.

"In the course of a county court case at Sheffield, in May, 1881, a man named Moore stated that he was living with the wife of one of his friends, and that he had purchased her for a quart of beer. This transaction was brought under the notice of the Government by Mr. A. M. Sullivan, who requested the Home Secretary to take measures for preventing such reprehensible transactions. This had no effect,

evidently, for since that time many sales have been recorded.

"During the hearing of a school board case in the course of 1881, at Ripon, a woman informed the bench that she had been bought for twenty-five shillings, and had assumed the name of the purchaser.

"At Alfreton, in 1882, a husband sold his rib for a glass of beer in a public house, and the rib gladly deserted her legal lord. One cannot expect a wife for less than twopence halfpenny.

"Two years after this a bricklayer at Peasholme Green, Yorkshire, sold his wife for one shilling sixpence, — a 'legal' document being drawn up to make the bargain binding on all sides.

"In the 'Globe' of May 6, 1887, there appeared an account of a well-to-do weaver at Burnley, who was charged with having deserted his wife and three children. He admitted the soft impeachment at once, but urged that, inasmuch as he had sold the whole family to another man before the alleged desertion, he be acquitted of all responsibility for their maintenance. It was nothing to him whether their purchaser provided for their wants, — the law had better see to that; for himself, he had duly received three halfpence, the amount of the purchase-money, and there his interest in the affair began and ended.

"During 1889 a paragraph went the round of the papers, to the effect that a man connected with a religious body in a village in the midland counties had disposed of his wife for the small sum of one shilling."

WHAT 's in a name?

From a catalogue of law-books advertised to be sold at auction in a neighboring town, we make the following extracts of titles given to some of the publications offered: Story on Equite Juris Prudence, Black on Tacts Titles, Bigelow's on Forts, Schouler's Personal, Pichering's Report, Stephen on Digest, Ken's Injuntions Equity.

ONE of the daily papers lately stated that a law was passed in 1750 to the effect that at parties "ladies must not get drunk on any pretext whatever, and gentlemen not before nine o'clock." We think we have heard or read of this statute before. It is damaging circumstantial evidence against our forefathers and foremothers. — *Law Notes.*

SIR JOHN THOMPSON, Minister of Justice of Canada, has become Prime Minister of that country, in succession to Sir John Abbott, who has retired on account of ill health. (A portrait and sketch of the distinguished Canadian statesman appeared in the "Green Bag" for March, 1891.)

CONTENTS OF THE DECEMBER MAGAZINES.

The Arena.

Whittier and Tennyson: William J. Fowler. In the Tribunal of Literary Criticism: Rev. A. Nicholson, D.D. Compulsory Arbitration: Rev. Lyman Abbott, D.D. Occultism in Paris: Napoleon Ney. Why the World's Fair should be opened on Sunday: Bishop J. L. Spalding. Evictions in New York Tenement Houses: W. P. McLoughlin. Government Ownership of Railways: T. V. Powderly. Religious Thought as Mirrored in Poetry and Song of Colonial Days: B. O. Flower. A Chinese Mystic: Prof. James F. Bixby. Are we Socialists? Thomas B. Preston. Christmas Eve at the Corner Grocery: Will Allen Dromgoole.

The Atlantic.

Don Orsino, XXVII.-XXIX.: F. Marion Crawford. A Few of Lowell's Letters: W. J. Stillman. Alone on Chocorua at Night: Frank Bolles. At Night: Lilla Cabot Perry. A New England Boyhood, VI., VII.: Edward Everett Hale. A Morning at Sermione: Ellen Olney Kirk. The Withrow Water Right, in Two Parts, Part Second: Margaret Collier Graham. December: John Vance Cheney. Wit and Humor: Agnes Repplier. An American at Home in Europe, IV.: William Henry Bishop. Mississippi and the Negro Question: Andrew C. McLaughlin.

The Century.

Picturesque New York (illustrated): Mrs. Schuyler van Rensselaer. My Cousin, Fanny: Thomas Nelson Page. The New Cashier: Edward Eggleston. Seeming Failure: Thomas Bailey Aldrich. Benefits Forgot, I. (with portrait of the author): Wolcott Balestier. Jenny Lind (with portrait): Ronald J. McNeill. Noël: Richard Watson Gilder. Cid Ruy the Campeador (illustrated): John Malone. Sweet Bells out of Tune, II. (begun in November): Mrs. Burton Harrison. Compensation: John Hay. A Knight of the Legion of Honor: F. Hopkinson Smith. Leaves from the Autobiography of Tommaso Salvini (with portraits). Impressions of Browning and his Art (with portraits): Stopford A. Brooke. Present-Day Papers, — The Problem of Poverty: Washington Gladden. To Gipsyland, II. (Pictures by Joseph Pennell): Elizabeth Robins Pennell. After the Rain: Mary E. Wilkins. The Effect of Scientific

Study upon Religious Beliefs: H. S. Williams. The Gipsy Trail: Rudyard Kipling. Balcony Stories: Grace King. Serene's Religious Experience, an Inland Story: Cornelia Atwood Pratt. War Correspondence as a Fine Art (with portraits): Archibald Forbes. Their Christmas Meeting: Florence Watters Snedeker.

The Cosmopolitan.

A Japanese Watering-place (illustrated): Sir Edwin Arnold. The Silent Monks of Oka (illustrated): Thomas P. Gorman. French Journalists and Journalism (illustrated): Arthur Hornblow. Alfred, Lord Tennyson: George Stewart. Louisville, a Sketch (illustrated): George H. Yenowine. A Day with Chivalry (illustrated): John B. Osborne. Where the Mocking-bird Sings (illustrated): Maurice Thompson. The Varieties of Journalism: Murat Halstead. Light on the Black Art (illustrated): A. Herrmann. The Wheel of Time (illustrated): Henry James. A Colonial Survival: Theodore Roosevelt. My Son Absalom (illustrated): Judith Laird. A Tent in Agony (illustrated): Stephen Crane. Duck-Shooting in Australia (illustrated): M. M. O'Leary. A Traveller from Altruria: W. D. Howells.

Harper's.

A New Light on the Chinese (illustrated): Henry B. McDowell. Giles Corey, Yeoman (illustrated): Mary E. Wilkins. A Christmas Party (illustrated): Constance Fenimore Woolson. Some Types of the Virgin (illustrated): Theodore Child. Fan's Mammy (illustrated): A. B. Frost. Le Réveillon (illustrated): Ferdinand Fabre. Crazy Wife's Ship: H. C. Bunner. A Cameo and a Pastel: Brander Matthews. Pastels in Prose: Mary E. Wilkins.

Lippincott's.

Pearce Amerson's Will: Richard Malcolm Johnston. A Special Correspondent's Story, — The Surrender of the Virginius (Journalist Series): Moses P. Handy. An Old American China Manufactory (illustrated): Edwin AtLee Barber. In the French Champagne Country (illustrated): Floyd B. Wilson. An Honest Heathen, a Study (illustrated): Ella Sterling Cummins. Paul H. Hayne's Methods of Composition (portraits): William H. Hayne. A Life: Henry Russell Wray. Keely's Present Position: Mrs. Bloomfield Moore. The Statue of Liberty (illustrated): D. P. Heap, U. S. A. Men of the Day: M. Crofton. Frémont in California: Francis Preston Frémont, U. S. A.

New England Magazine.

The Builders of the Cathedrals (illustrated): Marshall S. Snow. One of a Thousand: Eben E. Rexford. The Republic of Peru (illustrated): Major Alfred F. Sears. A Birdseye View of the Sahara: Hilarion Michel. Can Religion be Taught in the Schools? Charles Lewis Slattery. Music in Chicago (illustrated): George P. Upton. A Spur of Circumstance: Grace Blanchard. How Civil Government is taught in a New England High School: Arthur May Mowry. The Outlook for Sculpture in America (illustrated): William Ordway Partridge. Pretty Miss Barneveld: Willis Boyd Allen.

Political Science Quarterly.

A New Canon of Taxation: Prof. E. A. Ross. Railway Accounting: Thomas L. Greene. The Origin of Written Constitutions: Charles Borgeaud. The Commercial Policy of Europe: W. Z. Ripley. Early History of the Coroner: Prof. Charles Gross. The Russian Judiciary: Isaac A. Hourwich. Bastables Public Finance: Prof. E. R. A. Seligman. Record of Political Events: Prof. William A. Dunning.

The Review of Reviews.

American State Legislation in 1892: William B. Shaw. How to Abolish the Gerrymander: Prof. John B. Commons. Physical Culture at Wellesley (illustrated): Albert Shaw. A Heidelberg Home and its Master. Richard Jones. The Influence of Tennyson in America: Hamilton W. Mabie. Tennyson the Man (illustrated): William T. Stead. Lord Tennyson as a Religious Teacher: Archdeacon F. W. Farrar.

Scribner's.

The Mural Paintings in the Panthéon and Hôtel-de-Ville of Paris (illustrated): Will H. Low. A Shadow of the Night: Thomas Bailey Aldrich. Stories of a Western Town, V.: Octave Thanet. The Decoration of the Exposition (illustrated): F. D. Millet. A West Indian Slave Insurrection: George W. Cable. Eben Pynchot's Repentance: Edward S. Martin. Miss Latymer: George A. Hibbard. The Nude in Art (illustrated): Will H. Low and Kenyon Cox. One, Two, Three: H. C. Bunner. Norwegian Painters (illustrated): H. H. Boyesen. Under Police Protection: Sophie Radford de Meissner. Historic Moments: The Triumphal Entry into Berlin: Archibald Forbes.

LEADING ARTICLES IN THE LAW JOURNALS

Harvard Law Review (Nov. '92).

A New View of the Dartmouth College Case, I.: Charles Doe. Novation: J. B. Ames.

(Dec. '92)

A New View of the Dartmouth College Case, II.: Charles Doe. Waiver of Tort: Wm. A. Keener. The Borderland of Larceny: Joseph H. Beale.

Yale Law Journal (Dec. '92).

The Moral Right to Defend the Guilty: Geo. D. Watrous. The London Police Courts: Geo. P. Ingersoll. Needed Reforms in Municipal Charters and Government: Francis W. Treadway.

The Criminal Law Magazine (Nov. '92).

The Criminal Liability of a Principal for the Acts of an Agent, I.: Ardemus Stewart.

Columbia Law Times (Nov. '92).

Dictum and Decision: Christopher G. Tiedeman.

Central Law Journal (Dec. 2, '92).

Public Corporation Bonds: Recitals thereon and their Legal Effect, I.: George A. Sanders.

The Counsellor (Nov.).

Riparian Rights on the Shore of Navigable Rivers: James Richards. The Rule in Hadley *v.* Baxendale: Frank S. Angell.

Michigan Law Journal (Dec.).

Protection of Naturalized Citizens: Prof. Henry A. Chaney. Policy of Japan towards Portugal: Gingiro Yoshimura.

Recent Deaths.

Ex-Chancellor Benjamin Williamson, a distinguished New Jersey lawyer, died in Elizabeth, N. J., December 2. He was born in 1808, and came of a famous Jersey family, — his father, Isaac H. Williamson, having been Federalist Governor of New Jersey from 1817 to 1829, and also Chancellor. The ex-Chancellor began his studies at Old Nassau Hall, now Princeton College, and graduated with high honors in 1827. He decided to enter the legal profession, and was admitted to the bar in 1830, and was made a counsellor in 1833. He rapidly rose in his profession, and was appointed Prosecutor of the Pleas for Essex County, which position he held with marked ability for several years. In 1852 he was made State Chancellor, and held this office until 1860, when he resumed the practice of law. He had been chief counsel for the Central Railroad Company since its inception, and was also counsel for the Lehigh Valley Company and the Southern New Jersey Railroad. As a constitutional or corporation lawyer he had no superior in New Jersey. In politics he was a strong Jeffersonian Democrat, and was a delegate-at-large to the Charleston Convention of 1860. He was also a delegate to the Peace Convention at Washington in 1861, and was a strong Union man during the Civil War. He came within a few votes of being elected United States Senator in 1863.

Justice John R. Sharpstein, of the California Supreme Court, died December 28. He was born in Ontario County, N. Y., in 1823, and went to Wisconsin in 1847. After practising law for several years in Sheboygan, he removed to Kenosha, then known as Southport, where he was elected District Attorney in 1850, and member of the Wisconsin State Senate in 1851. President Pierce appointed him United States District Attorney in 1853. This necessitated his moving to Milwaukee, where he continued to reside until 1864. He was appointed postmaster of Milwaukee in 1857, and was a delegate to the National Democratic Convention of 1860, which met in Baltimore. He removed to San Francisco in 1874, and practised law until elected to the California Supreme Court in 1880.

BOOK NOTICES.

American Railroad and Corporation Reports. Being a collection of the current decisions of the courts of last resort in the United States pertaining to the law of Railroads, Private and Municipal Corporations, including the law of Insurance, Banking, Carriers, Telegraph and Telephone Companies, Building and Loan Associations, etc. Edited and annotated by John Lewis. Vol. V. E. B. Myers & Co., Chicago, 1892. Law sheep. $4.50.

This series of "Reports" is of especial interest and value to corporation lawyers, and to them we recommend it as containing very full reports of cases supplemented by numerous and exhaustive annotations by Mr. Lewis. In the present volume one hundred and fifty cases, covering decisions in almost every State, are reported.

American Statute Law. Vol. II. An analytical and compound Digest of the Statutes of all the States and Territories relating to Gen-

eral and Business and Private Corporations in force July 1, 1892. By FREDERIC JESSUP STIMSON. The Boston Book Company, Boston, 1892. Law sheep. $6.50 net.

Some six years ago Mr. Stimson gave us the first volume of "American Statute Law," which covered those statutes of all the States and Territories relating to constitutions, persons, and property. The work was at once recognized by the profession as of the greatest value to the practitioner, and one which deserved to rank among the most important contributions to legal literature.

The present volume, which treats of corporations, is in some respects of even greater value and importance than that which preceded it. The corporation interests of this country are enormous, and the litigation concerning them occupies a great portion of the attention of our courts. A work therefore giving a clear, concise, and reliable synopsis of the public statutes of this country bearing upon this important interest must be of incalculable value and convenience to the practising lawyer and to the general public as well. The task of compilation and the digesting of the laws of all our States and Territories is a herculean one; but if Mr. Stimson has been as successful in this present volume as he was in the first, and we have no doubt that he has, his work will long stand as a monument of careful, painstaking, and discriminating labor.

BENCH AND BAR OF CALIFORNIA. History, Anecdotes, and Reminiscences. By OSCAR T. SHUCK, of the San Francisco Bar, 1892. M. Reuben, San Francisco, Cal. Cloth. $5.00.

The Bench and Bar of California have contained many distinguished men. Such names as E. D. Baker, Hall McAllister, Ogden Hoffman, and Stephen J. Field have a national reputation, and the profession throughout the country feels an interest in the history of their career. In the work before us Mr. Shuck has gathered a vast amount of interesting material concerning the leaders of the California Bench and Bar, and in his biographical sketches has interspersed many amusing anecdotes. The result is a remarkably entertaining book, and one which every lover of this kind of legal literature will desire to possess. We are tempted to give extracts from the many good things the work contains, but we do not wish to mar the pleasure the reader will experience when he peruses this work

THE SECRETARY'S MANUAL: A Compendium of Forms, Instruction, and Legal Information for Secretaries of Corporations, with extracts from, and references to, the judicial decisions of the Courts of Last Resort as to the qualifications, rights, and duties of stockholders, directors, officers, etc. Second edition, revised and enlarged. By W. A. CARNEY. Published by W. A. Carney, Santa Paula, California, 1892. Cloth. $1.50.

This little volume contains a deal of valuable information for all persons connected with corporations, whether as officers or stockholders. To secretaries of corporations, to whom it is especially addressed, it will prove of great assistance. The numerous forms given will save the experienced much time and labor. The book is tastefully gotten up, and should meet with a welcome from those for whom it is particularly designed.

THE AMERICAN STATE REPORTS, containing the cases of general value and authority decided in the courts of last resort of the several States. Selected, reported, and annotated by A. C. Freeman. Vol. XXVII. Bancroft-Whitney Company, San Francisco, 1892. Law sheep. $4.00, net.

We cannot add anything to what we have heretofore said of this excellent series of Reports. Admirable selections and exhaustive annotations make these volumes of great value to the practising lawyer. The present volume contains cases decided in the courts of California, Georgia, Kansas, Missouri, Nebraska, New Jersey, New York, Pennsylvania, Rhode Island, South Carolina, Texas, and Wisconsin.

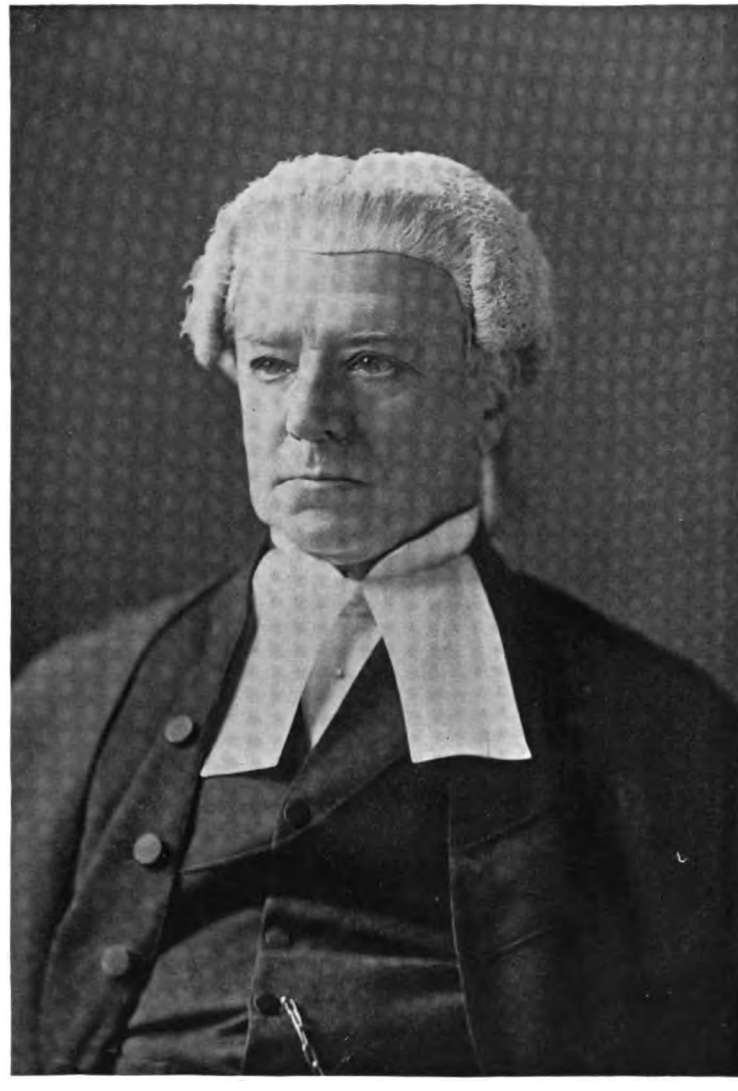
THE MISSING MAN. By MARY R. P. HATCH. Lee & Shepard, Boston, 1892. Paper. 50 cts.

The lover of mystery will find all that he can desire in this extraordinary tale. Hypnotism, mistaken identity, a woman with *emerald* hair and another woman with a remarkable olfactory sense, are called into play in the working out of the plot: and it is certainly a great relief to the reader when the mystery is finally solved, and it is really determined who is who.

THE INNS OF COURT AND CHANCERY. By W. J. LOFTIE, B. A., F. S. A. With illustrations by Herbert Railton. Macmillan & Co., New York, 1893. $7.50.

In this superb volume Mr. Loftie gives a most interesting account of the origin, the architecture,

and the reminiscences of these world-famed abiding-places of the legal profession. The Inns of Court! What memories and associations cluster around these ancient structures, some of which date back seven centuries! To the American as well as to the English lawyer they possess a charm belonging to no other architectural monuments. This volume is beautiful in every respect, and as a specimen of the book-maker's art is a perfect gem. The illustrations are notable for their fine execution, and many of the full-page plates are alone worth the price of the book. The general reader as well as the lawyer will find much to delight him in this work. No more acceptable or appropriate gift for a practitioner or student at law could be found than this noble volume, and happy indeed will be the possessor thereof.



SIR HENRY HAWKINS.

The Green Bag.

VOL. V. No. 2. BOSTON. FEBRUARY, 1893.

THE ENGLISH BENCH AND BAR OF TO-DAY.

VII.

SIR HENRY HAWKINS.

"ANGING Arry," as the criminal classes feelingly describe the subject of the present sketch, was born at Hitchin in 1817, and was educated at Bedford School. He was called to the bar of the Middle Temple in 1843, and joined the Home Circuit. The embryo stage of his advocacy was soon over, and he entered upon a career more varied in its incidents and more striking in its victories than that of any contemporary lawyer. In 1847 we find him acting as junior to Sir Frederick Thesiger in the successful prosecution of Richard Dunn, a briefless and impecunious barrister who had pestered the wealthy Miss Burdett Coutts with love, poetry, and demands for money, for a number of years, and had at length brought himself within the meshes of the criminal law by committing perjury in an affidavit. In 1855 Sir John Dean Paul, William Strahan, and William Makin Bates were indicted for having illegally converted to their own use certain securities belonging to their clients. Hawkins, in conjunction with Serjeant Byles, defended Paul; but his efforts were fruitless, and all the prisoners were convicted. In 1858 he took silk. Three of his best briefs were political: he was engaged in the defence of Pollard, indicted for having defrauded Prince Louis Napoleon, but had to content himself with the honor of having cross-examined the coming Emperor of France; he was counsel for Mr. W. H. Smith when his seat was contested by the Liberals of Westminster; and he shared in the triumph of Edwin James in securing the acquittal of Simon Bernard, who was tried for participation in the plot of Orsini. In 1863 Hawkins was counsel along with Bovill — afterwards Chief-Justice — in the abortive proceedings that arose out of the forgeries committed by Mr. Roupell, M. P. for Lambeth. In 1865 he stood for Barnstaple in the Liberal interest, but without success. Four years later he was matched against Coleridge, Q. C., in the famous Saurin *v.* Starr case, already noticed in our sketch of the Lord Chief-Justice, — and displayed his wonderful gifts of cross-examination at the expense of Miss Saurin. It was, however, in the notorious Tichborne trials that Mr. Hawkins firmly established his reputation as the foremost cross-examiner in the world. From the point of view of legal biography there are only four features of permanent interest and importance in those *causes célèbres*, — Dr. Kenealy's unhappy breakdown; Mr. Coleridge's conspicuous failure to crush the claimant in the long struggle that took place between them; Lord Cockburn's summing up, which it is now superfluous to praise; and the cross-examinations of Baigent and Carter by Mr. Hawkins. The Reports of the Tichborne Trials are accessible to all students, and we refer to their pages in justification of the place that we have assigned to the cross-examinations of Mr. Hawkins, — justice cannot be done to them in a *précis*. In 1874 Hawkins appeared for the petitioner in the Frederick Legitimacy

suit, and won his case against a singularly strong and numerous array of opposing advocates. In the following year he was equally successful as counsel for Miss Sugden in the suit that she brought for the purpose of establishing by secondary evidence the great Lord Chancellor's will. In November, 1876, Mr. Justice Blackburn was elevated to the House of Lords, and Mr. Hawkins succeeded him in the Queen's Bench. A few days later he was transferred to the Court of Exchequer. As a matter of course, knighthood followed his promotion. Sir Henry Hawkins is now a Justice of the Queen's Bench Division. He is not a great lawyer, — a facetious counsel once observed that he always found it an effective argument in opening an appeal case before the Lords Justices to say, "My Lords, this is an appeal from a judgment of Mr. Justice Hawkins." But Sir Henry Hawkins has a variety of mental gifts which great lawyers do not always possess. He sees through a case at once. He can read the character of a witness almost before a word of his evidence has been uttered. He keeps his cause list habitually under control. His power of exposition — especially at *nisi prius* — is now, since the death of Baron Huddleston, unique; and he never either wastes or permits any officer of his court to waste a moment of the public time. Sir Henry Hawkins loves the Turf, — he was for many years standing counsel to the Jockey Club, — and he may be seen, after the labors of the day are over, walking in the Park, with a favorite terrier as his companion.

THE MASTER OF THE ROLLS.

LORD ESHER.

William Baliol Brett, Lord Esher, the Master of the Rolls, is the son of the Rev. Joseph George Brett, of Ranelagh, Chelsea. He was called to the Bar of Lincoln's Inn in 1846. Partly through powerful family influence, but chiefly by his own inherent ability, he rapidly acquired a large practice both in London and on the Northern Circuit. From 1866 to 1868 he sat in the House of Commons as Conservative M. P. for Helston. In 1868 he was appointed Solicitor-General. Shortly afterwards, he was made a Justice of the Court of Common Pleas, where he remained for seven years. In 1876 he became a Lord Justice of the Court of Appeal, and in 1883 he succeeded the famous Jessel as Master of the Rolls. When Lord Salisbury first became Prime Minister of England in 1885, it was confidently believed in legal circles that Sir Baliol Brett would be made Chancellor, and he was openly congratulated in the Middle Temple Hall on his coming promotion. But the coveted prize went to Sir Hardinge Giffard, and the Master of the Rolls was raised to the peerage instead of to the woolsack.

Lord Esher's judicial characteristics may be summed up as follows. His mind is singularly detached and independent, and he not unfrequently dissents from the judgment of the majority of the Court of Appeal. American lawyers are no doubt familiar with two recent instances of this, — Thomas *v.* Quatermaine (18 Q. B. D. 685) and Vagliano *v.* The Bank of England (23 Q. B. D. 243). He never allows an argument with which he disagrees to proceed without interruption, but keeps up a running and caustic commentary on the observations of the counsel supporting it. He abhors prolixity or any-

thing that smacks of pedantry with his whole heart; he very seldom lets fall any *obiter dicta*, and his decisions are never unduly expanded by any historical retrospects or philosophical discussions. This will be evident to any one who compares his judgment in Finlay *v.* Chirney (20 Q. B. D. 494) with that of Lord Justice Bowen in the same case. The Master of the Rolls is, by virtue of these idiosyncrasies, a pillar of strength to the High Court of Justice, and an ornament to the House of Peers.

LORD JUSTICE BOWEN.

LORD JUSTICE BOWEN.

Sir Charles Synge Christopher Bowen is the eldest son of the Rev. Christopher Bowen of Winchester, Hants. He was born in 1835, was educated at Rugby, and at Balliol College, Oxford, where he carried off the Hertford Scholarship, the Ireland Scholarship, and the Arnold Prize Essay, and was admitted to the Bar of Lincoln's Inn on Jan. 26, 1861. In 1870 he was appointed Junior Truck Commissioner. From 1871 to 1879 he held the office of Recorder of Penzance, and also the more lucrative post of Treasury Common Law "devil." He was Junior to Hawkins in the Tichborne prosecution, but speedily surpassed his leader in the race for promotion. From 1879 to 1882 he was a Justice of the Queen's Bench Division. In May, 1882, he was made a Lord Justice of the Court of Appeal. His health is somewhat precarious, and it is possible that he may never accept the preferment which would be so readily accorded to him, and of which he is so eminently worthy. Every educated Englishman is proud of the name of Lord Justice Bowen; and the legal profession glory in his comparative youthfulness, his splendid culture, his courtesy, his dignity, and his perfect mastery of the history, the theory, and the practice of the law. Sometimes, when the puisne judges are away on circuit, he returns to his old seat in the Queen's Bench Division and hears common law actions once again. How the cause list melts in his experienced hands! Speculative actions are dismissed; family quarrels are compromised; questions of account are promptly sent to the Official Referee. Lord Justice Bowen must be studied in the Law Reports. His judgments are a veritable Field of the Cloth of Gold. He has written a brochure on the Alabama case, a translation of Virgil into English verse, and an admirable chapter on the progress of the law in "The Victorian Era."

PRACTICAL TESTS IN EVIDENCE.

IV.

By Irving Browne.

PHOTOGRAPHS — *Continued.*

A PHOTOGRAPH of a defendant, taken shortly before his arrest, is admissible to show his appearance then as compared with his appearance at the time of the trial, he having grown a mustache and otherwise changed his appearance in the mean time. State *v.* Ellwood (R. I.), 24 Atl. Rep. 782.

The Supreme Court of Illinois, in Cleveland, etc. Ry. Co. *v.* Monaghan, 30 N. E. Rep. 871, observed: —

"It is also urged, as a ground of reversal, that the trial court refused to admit in evidence certain photographic views of the locality where the accident occurred, and its surroundings. There are authorities which hold that photographs may be received in evidence, under certain circumstances, to assist the jury in understanding the case, provided they are verified by proof as being true representations of the subject. In the present case each photograph was taken two months after the accident occurred, by a merchant, who was a mere amateur photographer, and had never visited the scene of the occurrence before he took the photographs. One of the material questions was whether or not the view of the train which killed the deceased was obstructed by box cars then standing on a side track, and by other objects near the crossing. The pictures taken were not of the situation as it existed on the day of the injury, but as it was two months after the injury. At the latter date other box cars had been placed upon the track, and the leaves had fallen from the trees. The party taking the pictures did not know whether the objects arranged for his inspection were of the same size, dimensions, height, etc., as those which were there two months before, or whether they occupied the same position. Under these circumstances, we cannot say that the court below acted arbitrarily in refusing to receive the photographs in evidence. The preliminary questions of fact as to the verification of the pictures is addressed to the discretion of the trial judge, and his decision thereon is not subject to exception. Blair *v.* Pelham, 118 Mass. 420; Hollenbeck *v.* Rowley, 8 Allen, 473; Randall *v.* Chase, 133 Mass. 210; Locke *v.* Railroad Co., 46 Iowa, 109; Ruloff *v.* People, 45 N. Y. 213. The exclusion of the photographs could not have done the defendant any injury, as the court permitted it to introduce a colored plat or diagram, which showed the situation of the main and side tracks, of the highway and crossing, of the ditches on the sides of the highway, and of the buildings and other objects at the place where the accident happened."

The Supreme Court of Florida, in Ortiz *v.* State, 11 S. W. Rep. 613, observed: —

"The admissibility of a map or diagram or picture, proved to be a correct representation of the physical objects as to which testimony is offered, or to the extent that it is so proved, for the use of witnesses in explaining their testimony and to enable the jury to understand the case more perfectly, whether such map, diagram, or picture be made solely by the hand of man or through the agency of photography, is affirmed in Adams *v.* State, 28 Fla. 511, and authorities there cited. See also 2 Rice, Ev. c. 52. Conceding that counsel's purpose was to use the photograph not as independent evidence, but for auxiliary purposes indicated above, or in other words, in connection with other evidence to enable the jury to understand and apply it, still we are satisfied that no error was committed by the judge in excluding this picture. Whether or not these pictures are proved to be true representations are questions to be decided, at least primarily, by the trial judge, (Blair *v.* Pelham, 118 Mass. 420); and it is certainly not shown that he has erred in this case. The misrepresentation as to the tree affects the very spot of the homicide, bringing the limbs of the tree against the house or veranda, right where it occurred. We are, moreover, entirely satisfied that this picture could have been of no assistance

to the jury in the case, but would have served rather as an agency of confusion. The correctness of the diagram introduced by the State, as explained by the draughtsman, is undisputed, and afforded as full aid as could be deemed necessary to a clear understanding of the oral testimony."

That photography can lie in respect to landscape as well as portraiture, is evident from an incident on the Tichborne trial. A photograph was exhibited of a place called "the grotto," the scene of alleged misconduct between the claimant and his cousin, Miss Doughty. As the Chief-Justice said, it represented the grotto to be a *spelunca* or cave, a most retired and private spot, whereas in fact it was nothing but a path, about one hundred feet long, shadowed by trees, with a public way on one side and a public towing-path on the other. The Chief-Justice and Justice Lush both visited the place, and the former said: "I never was more astonished in my life, after having seen the photograph which was exhibited to us;" and the latter said, "I never supposed a photograph would have so disguised a place." It turned out that the picture had been executed under the direction of a member of Parliament who had bet £600 on the claimant's identity with Roger Tichborne, and figured as one of his most prominent supporters. See More's "Famous Trials," p. 166.

In People *v.* Muller, 32 Hun, 209, an indictment for selling an obscene photograph, the photograph in question was exhibited to the jury; but other similar photographs, offered to show the extent to which the business of selling photographs of nude females had been tolerated by the public authorities, were excluded.

Photographs of the putative father and the illegitimate child are not inadmissible, but are of but little weight. *Re* Jessup's Estate, 6 L. R. A.

In People *v.* Jackson, 11 N. Y. 362, by consent of defendant, a photograph of the scene of the homicide was put in evidence. A witness who was present when the photograph was taken, and who saw part of the affray from a neighboring window, placed three persons in the highway to represent the positions of the defendant and two others at the time of the affray. His testimony as to that fact was held admissible.

In Cowley *v.* People, 83 N. Y. 464; 38 Am. Rep. 464, an indictment against the clerical superintendent of an asylum called "Shepherd's Fold," for starving one of the lambs, photographs were held admissible showing the appearance of the lamb when rescued from the ungentle shepherd's hands and his appearance in his normal condition of avoirdupois on entering the fold. And so to show the appearance of the plaintiff's back three days after an assault and battery. Reddin *v.* Gates, 52 Iowa, 213.

In his brief in Corcoran *v.* Village of Peekskill, 108 N. Y. 151, commenting on the admission in evidence of a photograph showing a repair of defective premises made after an accident, Mr. J. D. McMahon said it "was far more suggestive and forcible than the oral testimony which the court declared to be incompetent, and it illustrates the lines of Horace:—

> 'Segnius irritant animos demissa per aurem,
> Quam quæ sunt oculis subjecta fidelibus.'"

Which being literally interpreted means:—

> "A donkey's eyes are sharper than his ears."

The whole passage was quoted by the court in Warlick *v.* White, 76 N. Y. 179. Mr. Conington's translation may perhaps be considered more elegant than mine:—

> "A thing when heard, remember, strikes less keen
> On the spectator's mind than when 't is seen."

Unreliability of Photographs. — In his brief in Walsh *v.* People, 88 N. Y. 458, Mr. A. H. Dailey thus protested against the district attorney's exhibiting to the jury, in his opening, a photograph of the young woman, the victim of the homicide for which the prisoner was on trial:—

"The poorest observer of human nature will tell us that the most exalted mind is the constant subject of impressions, made at the instant that the

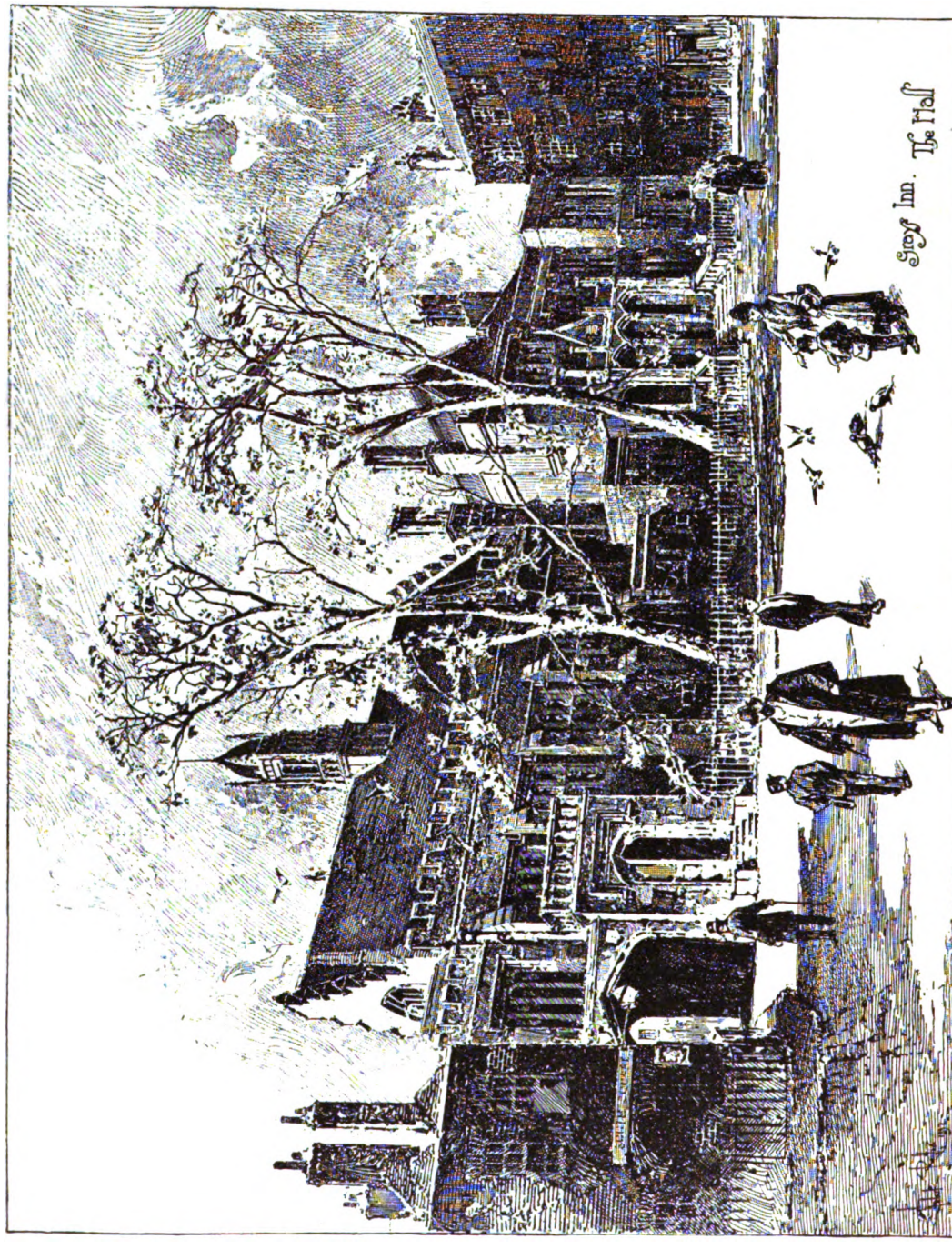
eye catches a glimpse or the ear a sound. No man looks at the face of another without immediate impressions, either favorable or unfavorable, being formed. It is a part of our nature to read character from the form of the head and the facial expression. It is a gift possessed by the brute creation as well as by mankind. A dog will take to a kindly face, and show his teeth at, or fly from, a vicious one. He will often fight a tramp, but fawn at the feet of a man who carries in his person an air of respectability. We instinctively turn away from human deformity, and are ill at ease in the presence of a face brazened by vice. We shun the presence of a man whose face denotes that brutal passion controls his actions. And it is not until man's better nature has been corrupted by sin that he feels at home in the habitations of the wicked. The reverse of the preceding remarks is also true when the impressions are pleasing. Take a face that indicates refinement, purity, and virtue, and impressions come like sunlight to the heart, and we carry them away and dwell upon them with benefit to ourselves; for whatever a man sees that impresses him as pure and noble, purifies and ennobles his whole nature. Pictures are the representations of reality, but seldom convey so correct an impression of the characteristics of the original as the original would if present. Photographs of persons adorn our homes and grace places of the highest art. The subject, particularly if a lady, adorns herself with whatever she can obtain that may tend to add a charm to her natural attractions. She arranges her toilet with consummate skill, and puts on her sweetest smile to increase the beauty of her person. The artist himself, by long experience, has learned to place his subject in the exact position where deformities, if any, will be concealed, and the most harmonious expression will be obtained. When the first impression appears the sitter is astonished to find that the camera has reproduced every freckle, every wrinkle around the eye, and every furrow upon the brow. She is displeased. 'But wait,' says the artist, 'until it is finished; those will all come out in the dressing.' And they *do come out.* He carefully expunges the freckles, wrinkles, and furrows. He darkens the hair and pencils the eyebrows, and traces eyelashes where they never grew. From this negative he now reprints and glosses up the picture. His sitter is delighted. She did not know she was so good-looking, nor did any one else. It may look something like the original, but it flatters, and hence is pleasing, and is distributed among friends and admirers, to produce a pleasing effect and favorable impression upon whomsoever shall see it. The picture in question most undoubtedly was not an exception to the general class of photographs. The picture was thrust in the faces of the jury because it would impress them that a beautiful, innocent young girl had been ruthlessly stabbed to the heart by the defendant; and this at the very outset of the trial roused a dangerous prejudice in the minds of the jury against him. They looked upon a picture of youth, innocence, and loveliness, and as it were, gazed upon the very bosom into which was plunged a wicked knife. They were roused from the very depths of their souls with indignation. They could not forget that picture if they would. It mattered little after that what evidence was produced to show that the prisoner's mind was unbalanced and crazed until he was an unfeeling madman. That face and form roused their feelings, pity, and vengeance at one and the same time, and they could not, would not, and did not stop to consider the question whether one so beautiful and young could have been so inhumanly killed by any but a madman. If it was a competent and proper thing for the prosecutor to present this picture to the jury, he could with the same propriety have embalmed her body, encased it in a box, and at the opening of his address have exposed the corpse to the jury," etc.

Then follows Antony's speech over Cæsar's body. Mr. Walsh labored under the misfortune of having killed too good-looking a girl or one who had too adroit a photographer.

The misrepresenting capabilities of photographs have been vividly set forth in *London Tit-Bits*, as follows: —

"The writer has often been asked whether photography can lie. The fact that it now plays an important part in life renders the question rather a serious one, and one that I am certain many would like to have answered. Well, then, photography can lie and be bad enough to bring a blush to the cheek of the worthiest disciple of Ananias. The wonderful strides made by photography during the past few years have not only

enabled men to achieve great things by its aid, but it has also unfortunately assisted others to deceive and defraud their fellow-creatures. Photography assists the forger in so closely imitating bank-notes as to deceive the most experienced; but it also assists the scientist to detect these forgeries, and in some cases has aided justice to discover the offender. An amusing case appeared some time ago in one of the law courts. It was a dispute between two persons about a wall. The plaintiff complained that the defendant's wall obstructed the light to which he had a right. Defendant denied the charge. The most amusing part of the case, however, was when the complainant handed the judge some photographs of the obstructing wall, and the judge observed that it was evident from them that the wall certainly did obstruct the light and was apparently of unnecessary height and size. Then up rose the counsel for the defendant, and with a smile handed the learned judge his photograph of the same wall. In the first set of photographs the wall was of immense size, towering above all the winds; in the second, however, it was of liliputian dimensions, a most insignificant thing, unworthy of any dispute. Now these different effects can all be brought about by using lenses of different angles,—that is to say, lenses which collect or throw a more or less amount of view on a plate of given dimensions. A wide-angle lens is one that includes a lot of view in a picture, and as the angle is a long way different to that of the human eye, the picture in no way gives a correct representation of the scene. Readers should beware of house agents' photographs of the houses and property they have for disposal. They are nearly all taken with a wide-angle lens. With such an instrument it is possible to make a small London back garden resemble a large open park. The reason is that it causes all objects near at hand to appear large, and those a little distance away to recede far away in the background. The writer had in his possession a photograph of a man playing chess with himself and looking on at the game. There were of course three figures in the picture, but all of the same person, in different positions. The writer used to do something similar to this in making long panoramic views. A little slit runs along the sensitive plate and makes the exposure, and it was quite possible to include the same person in the picture in a dozen different places and in different attitudes. By photographing three persons arranged between two mirrors placed in a position thus (A), a photograph will be produced of thousands and thousands of persons crowded together. Spirit photography is another form of deception. Photographs are made of a sitter with a figure leaning over him. The figure retires when half the exposure is over, and thus has a misty, weird appearance in the picture. By composite photography almost anything can be done. This is accomplished by cutting out different parts of several photographs, arranging them together and rephotographing them. The society lady, when she goes to her photographer, would be horrified if she were to see her portrait as it is first produced by photography. The negative is, however, placed in the hands of the retouching artist, whose duty it is to take out all the wrinkles, spots, and blotches in the face, make the mouth a little smaller, the eyes brighter, and perhaps the eyebrows a bit darker, and the nose a bit shorter. Large lumps are then carved out of the waist, and the figure otherwise improved. When the finished portrait is handed over to her ladyship, she is charmed with it. Perhaps the appearance is not exactly the same as that shown by her looking-glass; but she consoles herself with the reflection that photography cannot lie, — oh, dear no; impossible!"



(Reproduced from "The Inns of Court and Chancery," published by Messrs. Macmillan & Co., New York.)

GRAY'S INN.

By Dennis W. Douthwaite.

DURING the five centuries of its existence as an Inn of Court, Gray's Inn has contrived to gather no small store of local history. The gates which guard it on all sides from the city life without have done more than preserve its quietude and repose. They have kept within them customs centuries old, while outside every year brought its change of fashion. The step from Holborn under the old gateway (where once stood the shop of Jacob Tonson, Pope's publisher), takes us at once into a world full of quaint habit and ancient custom. Here the sixteenth century treads hard on the heels of the nineteenth, and in many ways still holds its pride of place.

SOUTH SQUARE.

Gray's Inn was originally the manor of the Greys of Wilton, from whom it takes its name. The exact date of its foundation as an Inn of Court is not known. But we can at once step back to 1311, at which time the Inn can boast of a Bencher — one Ralphe Andrew — whose pedigree is preserved in the Harleian Manuscript. This brings the foundation back to at most 1300, for even in those days it took time to make a Bencher. Having achieved such a respectable antiquity, and having satisfied ourselves that no other Inn can establish a longer pedigree, we can afford to rest content.

It is worth noticing that the same doubt hangs over the date of foundation of all four Inns of Court. Now and again some writer whose zeal on behalf of his Inn outran his love of strict accuracy has proved to his own satisfaction the priority of one or other of them. But the jealous eye of a sister has always found a flaw in the pedigree; and the Inns are to-day, as they were in the time of Elizabeth, "the four equal and honourable Societies of the Inns of Court."

Much the same doubt exists as to the exact date at which the various buildings were erected. Dugdale tells us that in 1551 the old "Hall was seiled with fifty-four yards of wainscoat at 2*s.* a yard;" and in 1556 every fellow of the House was mulcted according to his standing to pay for the cost of its restoration. Mr. Douthwaite,[1] the modern chronicler of the Inn, puts the building of the hall in the reign of Mary; and certainly it could be no later than this.

It is a handsome building, the interior richly panelled, and with a finely carved screen at one end said to be the gift of Queen Elizabeth to the Society. Above this is a gallery from which the same Queen witnessed many of the Masques performed in Hall during her reign. But its chief interest as a shrine for the literary pilgrim lies in the fact that it is one of the two buildings now re-

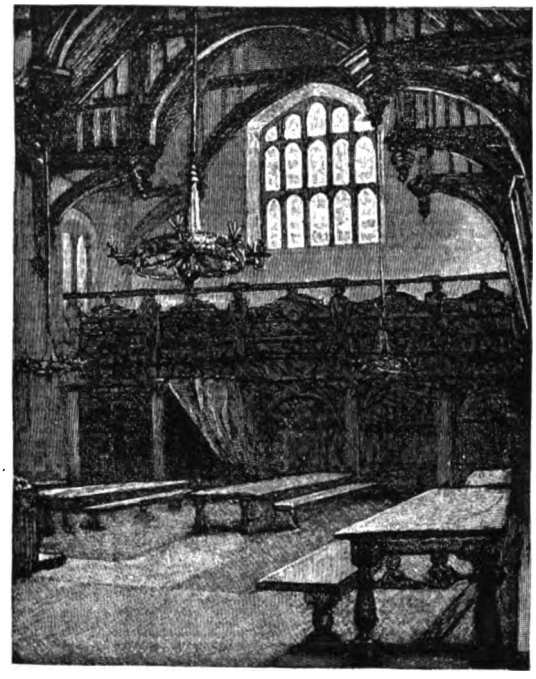
[1] Gray's Inn: its History and Associations. London: Reeves & Turner, 1886.

maining in which plays of Shakspeare were performed during his lifetime, the other being the Middle Temple Hall.

In early days the life of a law student entailed a much closer attendance at an Inn of Court than is necessary to-day. His Inn was to the "apprentice" a resident University, where his manners were to be formed, his morals strengthened, and his youth preserved (to quote Fortescue) "from every contagion of Vice." It is to be presumed that he was also to be taught a little law, though the fact is not emphasized.

The intending student had first to prove himself "a gentleman of blood and of perfect descent." He had then to serve a novitiate of two years in one of the Inns of Chancery, of which Gray's Inn had two attached to itself, — Staple Inn and Barnard's Inn.

Once admitted, students were under the absolute control of the governing body of Benchers. They ordered their incomings and their outgoings, forbade them to be out of their houses after six o'clock at night, and issued many other orders which must have vexed grievously the hearts of the lighter spirits of the community. Dandyism would seem to have been held in special abhorrence. In 1557 it was ordered that henceforth no student should "wear in his doublet or hose any light colours except scarlets or crimsons." Double cuffs, white jerkyns, velvet shoes, and other vanities were laid under a like ban; and the ukase ended with the command that "under penalty of forty shillings should any student wear a beard of above three weeks' growing."



THE HALL.

One can picture the heart-burnings with which this order was received. How sadly must many a gallant whose beard had been the delight of his "ladye" and the despair of his companions view once again his hairless chin! Bacon was admitted as a student but one year after the issue of this fiat. Was it any memory of his own evil case that inspired Cressida's lament for Troilus, —

> "Alas, poor chin! Many a wart is richer"?

We commend the idea to the Baconian controversialist seeking a sign. Moreover, some mediæval Esau might in three weeks raise a really creditable covering, while smoother Jacobs, even with the most assiduous attention, could only show "a little wool, as much as an unripe peach doth wear." Verily, those were hard times and rigorous!

For other rules there may have been more reason. "No laundresses or women called victualers under forty years of age, shall after this time come into the chambers of the gentlemen of this House," said the Benchers in 1610, evidently fearing the influence of more youthful Hebes on the hearts of their young charges. The climax seems to have been reached in 1667, when we learn from Pepys that the worm turned, and that the Barristers and Students of Gray's Inn rose in rebellion against the Benchers. Why they did so, history telleth not; but we love them the better for it, and may trust that they gained their end.

HOLBORN GATE.

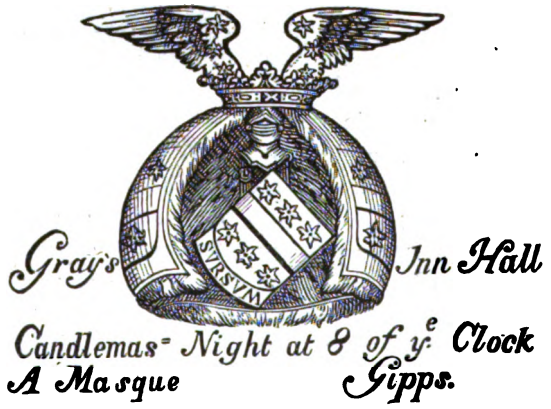
But we cannot deny the Benchers the merit of consistency. The old Knights Templars used, in a spirit of false economy, to make one horse carry two of their number, and were supposed to prove their humility by so doing. Either for an example to their younger brethren, or by reason of the very limited accommodation, the Benchers of Gray's Inn went a step farther, and were wont to "sleep double." Dugdale is our witness that in 1530 Sir Thomas Nevill wrote to the Benchers that he "would accept of Mr. Attorney-General [Sir Christopher Hales] to be his Bedfellow." And Mr. Attorney was graciously pleased to accept the invitation and his share of bed.

Their imitation of Templarian abstinence did not end here. The Reader in Divinity (an office recruited from among the Benchers) was not allowed to marry, and for some years this self-denying ordinance extended to every rank save that of Steward, Chief Butler, and Cook.

The reason for it is not given. Possibly it may have been the same as that given for the enforced celibacy of the vergers of St. Paul's Cathedral; namely, "because having a wife is a troublesome and disturbing affair, . . . and because no man can serve two masters, the vergers are to be either bachelors or to give up their wives." It may be well to add that the Gray's Inn Reader was not allowed this lax alternative.

In spite of all these stringent rules the students had their diversions. During the reigns of Elizabeth and James the Masques and Revels held by the Inns of Court were amongst the most fashionable entertainments of London. Great sums of money were spent on their production, schools of dancing were established in the Inn to perfect the performers, and the most ingenious wits of the Society were engaged for months beforehand to devise "new and startling effects."

The intrinsic worth of these productions is, as a rule, small. But occasionally, when a master-hand such as Beaumont was used, or when a budding genius rose from among the students, the compositions reach a high standard of merit. It is believed that Bacon himself was sole or joint author of more than one of these. As a young student he, with



Fac-simile of a Ticket of Admission to the Masque at Gray's Inn on Feb. 2, 1682.

two others, designed the dumb shows in an entertainment called "The Misfortunes of

Arthur" which was performed before the Queen. He is said to "have spared no time in setting forth and furnishing" a Masque which Beaumont wrote for the Inn in 1613; and more than one libretto is dedicated to his name. But the authorship of most of these Masques is shrouded in mystery, and much has to be left to conjecture. Not once but often one catches a line, a thought, or an epigram that would seem to have strayed from the famous Essays. Many times the characters speak Bacon's thoughts in Bacon's way. But such intrinsic evidence is too slender to stand alone; and, alas! plagiarism was not unknown even then.

On one occasion Gray's Inn kept up their revels for three weeks. They elected a Prince of Purpoole, and gave him a most portentous list of additional titles, a court, an army, and (it is to be hoped) an exchequer fitted to his needs and dignity. The Prince held his mimic court each day, at which speeches were delivered by his counsellors, containing an amount of hard logic and common-sense most unfitted to the occasion. "Grand Nights" were also held in Hall, and at the first of these was performed "the Comedy of Errors (like to Plautus his Menechmus)." Here we have the earliest mention of Shakspeare's play on which rests the claim mentioned above. The Prince of Purpoole afterwards took his court to Queen Elizabeth at Greenwich, and held a tournament for the amusement of his "Sister-Sovereign."

BARNARD'S INN.

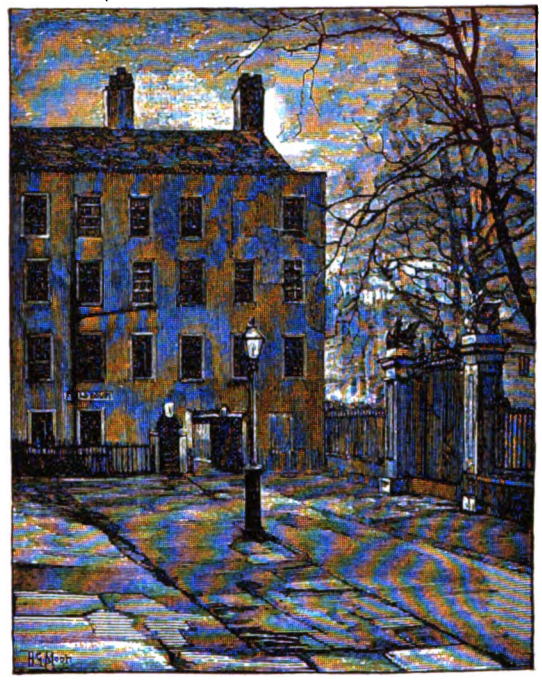
In 1614 the Gentlemen of Gray's Inn performed the Masque of Flowers at Whitehall before King James I. The occasion was the marriage of the famous (or rather infamous) Countess of Somerset. The Masque was again performed in 1887 in Gray's Inn Hall to celebrate the Queen's Jubilee. It was a very happy idea, — this of doing homage to Victoria in the fashion of Elizabeth. A few interpolations were made, but the performance was virtually the same as that of three hundred years ago. One change must be noticed. The Benchers, in whose eyes celibacy was the highest ornament, and who had forbidden the presence of the fair sex in their chapel, would be hardly likely to suffer it in the green room, and the Jacobean students had themselves to take the parts of the ladies of the cast. *Tempora mutantur!* The Victorian student is wiser in his generation, and enlisted a bevy of his fair friends, who lent to the representation much of its beauty and grace.

Nowadays these junketings have disappeared. A Masque is a thing only to be thought of on so special an occasion as a Jubilee. The passion for dancing and posturing is gone with "the dancing chancellor," the doublets and the hose, the rapiers and ribbons. The age of broadcloth is come; and the modern student has the mien of a Lord Chancellor, and takes his pleasures as sadly as any Saxon of them all.

It may be, of course, that in the seclusion

of his own chambers he may unbend and emulate the genial "Traddles" himself. Like "Traddles" he may vary the monotony of reading law by playing "Puss in the Corner" with such ladies of his acquaintance as he can induce to join him. But among his kind, and at the functions of his Inn, he is far better-behaved and by that, perhaps, less interesting than his Elizabethan predecessor.

It is on Grand Days, especially, that one sees traces of the old customs lingering in the lap of the present era. Now, as then, the grace-cup before the meal, and the loving-cup at its conclusion, are passed from hand to hand, from the senior Bencher to the junior student. Still do they drink the single toast to "the glorious, pious, and immortal memory of good Queen Bess;" and still, we suppose, when the tables are cleared and the Benchers discreetly withdrawn, do the members, in some sort, atone for the melancholy lack of excitement and romance in a student's life to-day.



FIELD COURT — GRAY'S INN GARDEN.

Gibbon tells us that he sought inspiration for his awe-inspiring history under a broken column of the Capitol. Surely, if old associations count for anything at all, Macaulay's New Zealander (if he be of a literary bent) would do well to write his "Decline and Fall" within the ruins of the old Inn. Gascoigne and Thomas Cromwell, Burleigh and Bacon, are among its old alumni. The last, especially, had an affection for the place which only ended at his death. To him was entrusted the task of laying out the gardens which are still in existence,— an oasis of trees and flowers in a desert of dismal brick. Here Bacon talked with Raleigh just before that hopeless, visionary voyage in search of El Dorado. Here he spent many an hour in the heyday of his fame, and here he returned, in the winter of his life, a lonely, disappointed man.

In the days of Charles II. all fashionable London flocked to Gray's Inn Gardens to see and be seen. Gossipy Pepys, that prince of small-beer chroniclers, came on Sundays with his wife "to observe the fashions of the ladies, because of my wife's making some clothes." Here, too, the old reprobate came "all alone, and with great pleasure seeing the fine ladies walk." It was to Gray's Inn walks that Sir Roger de Coverley repaired "to clear his pipes in good air," and to deliver his opinions on Church and State and Prince Eugene.

There is a certain literary halo hanging round the dingy staircases and gloomy chambers. Dr. Johnson had rooms in the Inn, — probably in South Square. Thence, doubtless, he emerged to do battle with the luckless Osborne, who had his bookseller's shop under Gray's Inn gateway. Goldsmith stayed in the Inn for a time, while away from the care of Mrs. Fleming, that best of landladies. At No. 8 South Square, Macaulay stayed for fifteen years while in the zenith of his fame.

Poets the Inn has had galore. Chapman,

Samuel Butler, and Southey are among the best of them. Even the bookseller's shop under Holborn Gateway has had an eventful history. Bacon's publisher occupied it for a time. Osborne, chiefly notable for the thrashing he received at the hands of Dr. Johnson, is its next famous tenant. Lastly, Jacob Tonson — Pope's "left-legged Jacob" and Dryden's worst enemy — lived and thrived there, and brought an army of literary giants to his little back-shop.

Not every one is agreed as to the present attractions of the Inn. Dickens calls it "one of the most depressing institutions known to the children of men." But we prefer to end with Hawthorne's words in mind. Strange it is, he says, "to pass under one of these archways, and find yourself transported from the jumble, rush, tumult, uproar, as of an age of week-days condensed into the present hour, into what seems an eternal Sabbath. It is very strange to find so much of ancient quietude right in the monster city's very jaws, . . . which, yet in all these ages, it shall not digest and convert into the same substance as the rest of its busy streets."

STAPLE INN.

FEEDERS OF CRIME.

By Albert Clayton Applegarth, *of the Baltimore Bar.*

AMONG the many tendencies that our age is developing, possibly none is more deplorable or alarming than the familiarity with crime in all its protean forms that characterizes the people of our time. The schoolboy on the corner can generally give a more lucid description of the circumstances connected with the latest murder than he can of the position of Brazil. The girls keep themselves equally well informed concerning all the social scandals of the day. If an illicit amour of Lady Dunraven with Lord Dinsmore has been exposed by some inadvertence, nine times out of ten, the pupils of the various female schools will be in possession of the minutiæ. When such facts obtrude themselves upon popular attention, the extremely serious question presents itself, What shall be done to abate this already great and growing evil? Disclaiming any idea of a catholicon, and without making pretensions to exhaustive treatment, it might be remarked that the object in question would be immensely promoted by the introduction of at least two reforms.

Possibly, of all institutions in a city, none brings the inhabitants thereof into more direct contact with criminality of all sorts than does its criminal tribunal. Here assemble the youth as well as adults, and all alike drink in tales of the most disgusting vileness with apparent avidity. Now, in the large majority of our municipalities the greatest precautions are exercised, and properly so, against physical contagion. If a person has smallpox or other infectious disease, he is immediately despatched to the isolated ward in some pest hospital. No words, indeed, could express the condemnation that would be visited upon the officials, were these functionaries to parade such patients among persons, who might be inoculated with this malady. The public are always and rigidly excluded from such places. While thus recognizing the propriety of the conduct adopted in regard to physical disease, is it, therefore, the part of wisdom to adopt just the opposite policy in regard to moral (the worst of all) contagion? No matter what may be our opinion on the query as thus propounded, a moment's reflection will demonstrate that the conduct ordinarily approved justifies the accusation herein made. A concrete illustration will make this evident. A gambler, let us say, forms an attachment for some scarlet woman of his acquaintance. The pair begin to live together. A third party intervenes, and this brief tragedy closes with a homicide. Now the case is ready to be placed on the boards for the edification of the populace. The law of the land guarantees the accused a trial. The time is fixed. When the day arrives, the murderer is produced in court. On the bench sits the judge. There are the necessary court *attachés*. Yonder are the jury in their box. At the trial-table are the attorneys. Beside them is seated the prisoner, and possibly the members of his family, if they still cling to him. But these individuals are not all. Outside of the rail, and frequently inside of it, is a large audience, who are in no way interested or connected with the trial except by idle curiosity. How large this constituency is, only persons compelled to attend this tribunal know. And as a rule, it should be further stated that the viler, the more obscene, the matters offered in evidence, the more popular the case becomes. Now, it certainly requires no effort of the imagination to be convinced what an irreparable injury such proceedings inflict upon any community. When the professional duty of the writer has compelled him to attend the sessions of this court, he has frequently noticed mere children, sometimes

of both sexes, drinking with the greatest eagerness at this exhaustless river of contamination. Such then is the evil, such the problem that confronts us. Concerning the remedy, of course, different minds will differ as to details. But as to the main point, no latitude exists for difference of opinion among well-disposed persons. Certain it is, that this court was never intended to supply the place of the Roman circus or the gladiatorial shows. With little or no hesitation, therefore, the writer contends that all such tribunals should be closed to the public. Only those directly interested in the prisoner at bar should be admitted, and these only on the presentation of a ticket to be procured from the office of the State's Attorney, or from some reputable, responsible person.

Having thus deprived this hydra of one of his many heads, we devote our attention to another, — the report of criminal proceedings in the secular press. The detrimental influence upon the reader of these detailed statements of the most revolting offences can scarcely be calculated. Those dailies that offend in this particular attempt to justify their conduct on the ground, however, that these items make a paper spicy, and they further allege that people like a paper containing "newsy" articles of this description. That such assertion is partially true, cannot be successfully denied; that it is absolutely veracious, few will admit, for all right-thinking persons agree in expressing intense disgust and disapprobation when this vile stuff is spread before them as news. The press has been inhibited by law from publishing details of executions, and it seems that this prohibition might be extended in many other respects to the pronounced advantage of the populace. It is a matter of common notoriety that the reading of many persons is confined exclusively to the newspaper. Its opinions, therefore, become their opinions. Their memories are simply storehouses for its statements. And if the welfare of a state really depend upon the moral qualities of its citizens, then it surely behooves the public authorities and lawmakers to be very careful what is spread before the public, for now, as always, 'as a man thinketh, so he is.' Reference is made at this time to papers usually styled reputable. For journals, papers, and magazines of the Police Gazette stamp, which contain nothing except unadulterated vileness, there seems to be no excuse whatever for tolerating either their existence or sale. On the other hand, reasons, both valid and cogent, exist for their absolute suppression under suitable penalties.

Another count in the indictment against such publications is that they constitute an even more effective educator in crime than does the criminal tribunal itself. The number of persons who can crowd into a courtroom is, of course, restricted by the space available. But no such limitations are imposed upon the press. Newspapers find their way into thousands of homes, — the best in common with the most degraded. In the columns of such, the embryonic criminal often finds a competent instructor. Here he frequently reads of the commission of atrocious crimes. He instantly perceives what errors caused the detection of the culprit. He sees also the weak points in the efforts of the perpetrator to escape the just punishment of his deed. When he is in a similar position, he determines, therefore, to avoid such fatal mistakes. At last, his time does come. Then the designs thus formed are carried into execution, and frequently, in consequence, the efforts of the police to apprehend the offender are utterly futile. A corrupt press and public criminal proceedings have produced their legitimate progeny, — a race of criminals, a frustration of justice. And thus is fulfilled in our day and generation the saying that is written, "He that soweth to the wind shall for a harvest reap the whirlwind."

SOME JERSEY JURISTIC JIBES.

"HOW would you obtain possession of an estate when the tenant for life holds over?" is a question often put to law students about Jersey City. The usual answer given is, "By ejectment."

A popular Jersey City lawyer, until recently a State official, was the attorney for the plaintiff some years ago in a "false arrest" action against James A. Bradley, "the founder" of Asbury Park. The founder's counsel made an eloquent address to the jury, dwelling with great emphasis upon the wonders that his client had worked at Asbury Park; stating that he had transformed the sandy and marshy wastes into a city of paradise, and concluding with the honorable chestnut, "made the barren wilderness to blossom like the rose." The effect upon the rustic jurymen was quite indescribable. They were inclined to favor the defendant anyhow; and only by great difficulty were they restrained from tumultuous applause. When the excitement from this glowing peroration had somewhat subsided, up rose "Charlie," shaking his shaggy mane with its eleven cowlicks rampant, nine couchant, and five dormant. His reply was short but very fetching, and concluded with: "It is true, gentlemen, that Mr. Bradley came into the wilderness, and the wilderness at Mr. Bradley's touch brought forth a rose. But, gentlemen of the jury, I ask you to honestly tell me who plucked that rose?"

Verdict for plaintiff on first ballot.

In what was formerly called "East New Jersey" the quick-witted and shrewd exploits of a certain county prosecutor with a military handle to his name have for years been stock in trade for the story-tellers of the bar. The General was noted for pursuing his favorite sport, hunting, in season and out of season. One day when but a few miles from his home he had bagged several fine quail and rabbits, he was pounced upon by an old and exceedingly irate farmer, who demanded the game and damages. The General offered him a good sum for the trespassing, but positively refused to surrender his booty. Fully expecting to recover both the game and the money, the farmer marched the General to the office of a justice of the peace and made his complaint. But to the farmer's horror, his prisoner emphatically declared that he had not been trespassing, and that he himself and none other was the owner of that farm. Then he made a counter-charge against the farmer for disorderly conduct. The justice was about to proceed further with the hearing, when the General declared that since the title to the land was in question, a justice's court would have no jurisdiction, and that he must send it up to the court of common pleas. Amazed beyond expression at the peculiar turn of affairs, the unhappy farmer engaged a lawyer, and learned that it might cost him $500 to conduct his suit; and that even if successful, it might throw a cloud on the title. That the title to the farm he had owned and worked for fifty years should be disputed by any one, least of all a disreputable hunter, was a mystery to the yeoman. He quickly sought out the General, and compromised. Nor was his astonishment lessened when he found his opponent in the person of the County Prosecutor of the Pleas.

There is something really remarkable in the diversity of talent in the profession down in "Old Monmouth;" and of "natural ability," whatever that means, there is a superabundance. While a student in the office of an ex-judge, a bright young Irishman, now a leading practitioner, was suddenly called upon for the first time to conduct, before a jury, a defence in which a counter-claim of damages was set up. The counsel for the plaintiff was just out of a law-school, and

presumably in possession of all the tricks of logic and graces of rhetoric of which a country practitioner can make use. Both the justice of the peace and the jury settled down convinced that they were to be spell-bound with the beautiful figures and powerful arguments of the learned advocate; and he was not inclined to disappoint them. In his address he said the defence knew very well that they had no case, and so the "Judge," instead of attending to his business personally as usual, had sent up his ignorant, clumsy clerk to let him see what a lawsuit was like. And such a thing, argued the counsel, was an insult to the gentlemen of the jury. The case, he said, was one in which the rule of *damnum absque injuria* held throughout; and that *damnum absque injuria* was a statement which could be successfully refuted by no man. In brief, there never had been, and possibly never would be again, a case in which *damnum absque injuria* was more perfectly illustrated. So he rang the changes on his pet phrase, repeating it some twenty times, much to the liking of the jury, which nodded intelligently each time the sonorous words were uttered, and was much inclined to favor the college-bred lawyer.

Then Rusticus Plebius had his innings. Timidly and yet winningly he began his tale to the jury. He admitted the charge against him that he was a plain, simple, honest man like themselves, and that again, like many of the jury, his opportunities for acquiring a polished education had been very meagre; and that therefore he would talk to them plainly and simply in the language of honest men and as man to man. He explained his presence by stating that the "Judge" was unexpectedly called away, and, believing that the plaintiff had no case anyhow, he had been asked to appear for the defendant. Now, while he had not spent many days in a schoolhouse and never had been to college, yet he had by chance learned "a little French" in some books he had been looking at. And his surprise and indignation were boundless when he heard his opponent take advantage of his superior education and the jury's ignorance of the French language to insult them to their faces in a language they could not be expected to understand.

"Now, gentlemen of the jury, he has kept up a constant cry of *damnum absque injuria* without attempting, for he did not dare, to tell you what those insulting words mean. By a lucky accident, gentlemen, I do know what he means, and will show you how basely he has insulted you. Take the first word, gentlemen, *damnum*. That is not so hard to translate from the French into English. Our word meaning the same thing is much like it. Gentlemen, I know, and the man, if he be a man, who said it knows full well, that *damnum* means Damn! Now the last word, gentlemen, the word *injuria*, — that, too, is easily understood and remembered, though not so clear as the first. *Injuria*, gentlemen, in the language of honest men, means Jury. Now the other word, *absque*, is very hard to translate; but, gentlemen, I happen to know, and will tell you that it means Bad. And this cheeky cuss has been calling you a Damn Bad Jury all through this trial, and you did n't know it. He has taken a foul advantage of you and me alike, and now I ask that you show him that so far as he and his plaintiff are concerned, you are just the kind of a jury that he has called you." And it did.

One of the prettiest cottages and the finest site in Ocean Grove, that eminently religious and strict camp-meeting resort along the Jersey coast, are owned and occupied by a lawyer who is openly and professedly an infidel. Singularly enough, this man's is the only property within the gates of the famous old watering-place which is held in fee simple; and singularly again he was one of the early purchasers and settlers. The remainder of the lots were conveyed as leaseholds. It seems that the lawyer was told, when about paying for his lots, that the camp-meeting association were just out of

blank deeds, which are drawn up with restrictions innumerable. A supply was expected in a few days. "Very well, you take this money and give me a receipt for it." This was done by the President; and the Vice-President and Treasurer being at hand, their signatures were also obtained. This receipt was immediately recorded in the County Clerk's office as a deed. A little while after the purchaser was notified that his deed was ready at the association office. He replied that he was satisfied with the receipt. He refused to accept or have anything to do with the association deed; and, much to the horror and consternation of the twelve clergymen and twelve laymen comprising the association, persists that he has and holds a perfect fee simple.

New Jersey retains the common law in much of its primeval simplicity. "Blackstone and the statutes" govern the courts, and many a lawyer will consult no other books. Notwithstanding this, there is the following well-authenticated case. This was a *cause célèbre* before a justice of the peace, spectacled, precise, cautious. The plaintiff's attorney talked, but made no argument, as before a "J. P." such a thing would be considered wholly superfluous. The defendant supported his argument by a quotation from Coke's Littleton, and produced the book. That decided the question in the justice's opinion, but he asked the plaintiff's counsel what he had to say. He took the book. "Who is Mr. Cokes Littleton?" The other briefly replied. "When was this book written?" He was informed. "Where was it written and published?" This also was answered by the too learned counsel.

Then the opposing attorney stormed and raved, and asked why in Heaven's name the book of a dead man who lived in a foreign land three thousand miles away should be brought out of a garret into a court-room in the State of New Jersey; and the justice promptly ruled the book out of court and of no account in this sovereign State which makes laws for itself.

LLADNYT.

THE LAMBETH POISONING CASE.

BY A LEGAL SPECTATOR.

FROM the 17th to the 21st of October, 1892, the Central Criminal Court, better known as the "Old Bailey," in London, was occupied with the trial of Thomas Mill, or Mill Cream, for the murder of an "unfortunate" girl named Matilda Clover. Mr. Justice Hawkins, the greatest cross-examiner in his day that the English Bar has ever produced, was the presiding judge; Sir Charles Russell, the new Attorney-General, prosecuted for the Crown; while Mr. Geoghegan, one of the principal lights of the criminal bar, was leading counsel for the defence.

The prisoner was a man of about forty years of age, tall, stout, and broad-shouldered; he was almost entirely bald; had a heavy cast in his eyes, which a pair of old gold-rimmed spectacles imperfectly concealed; and wore a mustache and short bristly beard. He had a decidedly strong but singularly unpleasant mouth, which kept in almost constant motion; and his appearance, as a whole, was powerfully suggestive of that of a trapped and caged tiger.

The case for the prosecution was opened by Sir Charles Russell with ability and moderation. Sir Charles is no orator, as Cockburn was; and his mastery over the mind of the average juryman is due entirely to his logical force, and his impressive, deliberate

utterance,— he never leaves a point without waiting to see whether it has had the precise effect upon the constitutional tribunal which he intends. The general impression in court was that the opening speech for the prosecution was a great effort of forensic acumen; and the learned counsel for the prisoner was heard to observe that it would tell with deadly if not fatal effect on his client's chances of escape.

The first witnesses were two girls, Eliza Masters and Eliza May, who were brought to prove that Mill was in the company of Clover some days before her death. Their testimony, however, was not altogether satisfactory. Mill had made an appointment to visit them at their lodgings at a certain hour on a certain afternoon. They were on the outlook for him at the time appointed, and swore that they saw him pass beneath their window along with the girl, Matilda Clover. The window, however, was shut; Clover's companion was walking on the inside of the pathway; the glimpse which the girls caught of him was momentary at the best; and Masters at least failed to identify him, when she saw him subsequently with his hat on at Bow Street Police Court. Then came the girl, Lucy Rose, who was servant in the house where Clover lodged. But she, too, refused to identify the prisoner with the man whom Clover had brought home with her on the night of her death. There was clear evidence that this unfortunate girl was poisoned with strychnine, and died from its effects. No trained eye can mistake the symptoms produced by that cruel and deadly drug; and although the ignorant witnesses who saw Clover die were unaware of its presence, their artless description of her death-bed agony enabled the well-known expert to the Home Office, Dr. Thomas Stevenson, to say at once that strychnia, and strychnia alone, was the cause of death. There was no evidence, however, that Mill had administered anything to her; and if the case had stopped here, he would certainly have been entitled to an acquittal.

But with the fatal maladroitness which criminals of his class invariably display, he proceeded to weave the rope of circumstantial evidence which ultimately hanged him. It was proved — and one could not fail to observe in the faces of the jurymen the telling effect of the testimony — that at a time when no living soul had dreamed that the girl Clover had been murdered, much less murdered by strychnine, Mill was writing to Dr. Broadbent, the physician to the Prince of Wales and one of the most honored and honorable members of the medical profession, explicitly stating that Clover had been poisoned with strychnine, and threatening to accuse him of the murder unless he was prepared to pay handsomely for the blackmailer's silence. It was proved that Mill was in possession of large quantities of strychnine; that he had attempted to administer pills to another girl named Loo Harvey of the same class as Matilda Clover, had then circulated a report that she too had fallen a victim to strychnia, and had endeavored to levy fresh blackmail out of the circumstance. Loo Harvey told her story well, and no one present had any doubt that she was speaking the truth. Then it was demonstrated that two other girls in the same unfortunate rank in life, Marsh and Shrivell, had died mysteriously from strychnine poisoning, and that a man whom the police positively identified with Mill had been in their company a short time before. Finally, there was found in Mill's possession memoranda containing the initials of all the murdered girls, and the precise dates when their deaths occurred.

This closed the case for the crown. No witnesses were called for the defence; but Mr. Geoghegan most ably contended that the proof of identity was too defective to entitle the jury to bring in a verdict which would deprive a fellow-creature of his life. Sir Charles Russell replied with the same deadly moderation that he had exhibited in his opening speech; and then the court adjourned for the day, in order to enable Mr.

Justice Hawkins to prepare his charge. Up to this time Mill confidently expected an acquittal. He expressed the most unbounded admiration for his counsel, and said that he thought very little of Sir Charles Russell, and was surprised that such a feeble advocate should ever have been made Attorney-General of England. But Mill's hopes of escape visibly disappeared, when on the following day Sir Henry Hawkins summed up the case to the jury. His lordship was evidently determined to make a great effort; he had carefully arranged his materials; he spoke for three hours in that clear, incisive, beautiful voice with which the Tichborne claimant was painfully familiar, and — principally because there was no defence — his charge was a speech for the prosecution far abler and more effective than that which Sir Charles Russell had delivered on the previous day.

Then comes the closing scene. The jury retire; the prisoner is led downstairs to spend the awful interval in which his life is hanging in the balance out of sight of the eager eyes and away from the hum of the hushed voices of the great crowd with which the court is thronged. Mr. Justice Hawkins leaves the bench for a few minutes' rest. Suddenly and within a quarter of an hour after the judge has finished his charge, it is whispered that the jury are coming back. Man by man they file into the box; and one glance at their grave, resolute faces suffices to tell the most casual observer what their verdict will be. Sir Henry Hawkins returns to the bench. The prisoner is brought to the bar; he leans his right arm upon it and gazes intently, but hopelessly, at the faces of those on whose word his fate depends.

"Gentlemen, are you agreed on your verdict?" says the clerk of court.

"We are," replies the foreman.

"Do you find the prisoner guilty or not guilty?"

"Guilty," is the answer.

"Thomas Mill," the clerk of court goes on, "you stand convicted of the crime of wilful murder. What have you to say why the court should not pass judgment of death upon you according to law?"

Mill had privately, I believe, expressed the intention to "give it to Hawkins," but had evidently thought better of this useless resolve, and now he merely shakes his head without saying a word. The judge assumes the black cap, and passes sentence of death in those old dread words which have sounded the knell of so many generations of criminals. The warders close around the condemned man as the chaplain says, "Amen." The chief warder touches him lightly on the shoulder, and the Lambeth poisoner turns and descends the steps toward the condemned cell. The pomp and circumstance of the trial are over; the spectators disperse to their several duties or pleasures; the voices of the outer world die away; and the wretched convict is left alone, to reflect on his life of forlorn makeshifts, infamy, and crime. No one deplores his fate. Indeed, the existence of such monsters as Mill is the standing and unanswerable argument for the punishment of death.

LEGAL EDUCATION IN MODERN JAPAN.

II.

By Professor John H. Wigmore.

III.

THE Law School year begins (except at the Imperial University) about the middle of September, and ends in the middle of July, being equally divided into two terms. In the excepted instance the year begins and ends a few weeks later and earlier respectively. At Keiogijuku the school year is the calendar year, and there are three terms; but the sessions seldom open at any school until after the time appointed, and practically close a week or two before the schedule date; so that, reckoning all the holidays, the total "rest," as the Japanese call it, is seldom less than four months in each year.

It will have been noticed that the full course in all the schools occupies at least three years. In this respect the Japanese set us a good example. It is true that a larger number of subjects are taken up, but each one necessarily receives a less detailed treatment than with us. From our point of view, to be sure, the crowding of so many subjects into the curriculum is accomplished at the expense of thoroughness and careful work. It is certainly contrary to our ideas of the best education to find the average school requiring fifteen and twenty hours a week of attendance at lectures. The mere multiplicity of courses is in itself not without reason; for experience teaches that the Japanese want from abroad only the broad principles of law, and will never make use of the detailed development of our jurisprudence (except by way of illustration in teaching); and a much shorter time suffices for covering the ground of a given subject; but the number of lectures per week is excessive. It is, however, the natural outgrowth of the existing ideals of education among teachers as well as among students. To this a reference will presently be made.

Just who are the responsible persons in the arrangement of courses, choice of methods, etc., it is difficult to say. In the private schools we find at the head of the list a number of distinguished patrons; but these merely lend their names. Then comes a president, who takes a more or less active part in the administration. Below is a director, perhaps two or three, who may or may not be teachers, and usually are the real persons in control. In a few schools — notably the Semmon and the Keiogijuku — there is a council of twenty or so, elected by the alumni and the donors of funds from among themselves; and the decision of the Council is required in certain measures, — such as the fixing of salaries, the employment and dismissal of instructors, etc. But Japan proceeds on the Confucian principle, which we, in our politics at least, would do well to follow more closely: Rules count for little; find a good man, put him in office, and trust his discretion. In most associated undertakings, including the schools, the Councils and Boards are generally satisfied to register their approval of whatever measures the trusted man may propose. If things do not go well, they have him turned out (that is to say, his ill health obliges him to ask for a vacation, which he prolongs indefinitely), and find another. So that the conduct of the school is usually in the hands of one man, or a few men, somewhere on the staff, but not always in a conspicuous position, and not usually in possession of nominal control. In no school, as far as I am aware, is the corps of instructors, or a part of them, invested as a faculty with that general supervision of the school methods which they usually possess in our own country. This arrangement is, I think, often a source of disappointment to instructors engaged from abroad. They come

here expecting a free hand in their own departments, or at least an equal vote in the decisions of a managing faculty. They find themselves as a rule in the position only of hired specialists, without a voice in the control. Their work is generally cut out for them, and changed at the discretion of their employers. But they are in this respect treated no differently from some of their Japanese colleagues; and there are many reasons why it is natural and justifiable on the part of the Japanese to maintain such a relation with their foreign employees. If it deprives the foreigner of certain privileges, it has also the result of freeing him from some of the responsibilities and anxieties which attend freedom of discretion.

The plan of putting instructors on the footing of hired lecturers, and the consequent absence of an organized and co-operating faculty, is in part merely one result of the system, generally followed, of taking as instructors men who are already employed in other positions, — usually as lawyers and government officials. This in turn is due partly to the fact that the schools cannot pay salaries suitable for resident professors; but chiefly to the fact that the younger experts in legal science have almost all received their education abroad at government expense, and are now in prime demand as judicial and administrative officials. If all such persons were to withdraw from the school staffs, perhaps less than one fifth would remain. This condition of affairs must continue for some time to come; but there are these unsatisfactory results, that instruction in law is with such persons a subsidiary pursuit, and can never receive systematic attention as a life-vocation, and that no steady and permanent interest is taken in the institution or the students, to whom they give a mere hour or two a week. Among the private schools I do not know of one which employs (apart from its director) a resident Japanese professor of law.

The hours of lectures vary greatly. In the Japan Law School lectures are given always in the evening, from five to nine; in the Imperial, from eight to twelve, and from one to four; in the German, in the morning, from eight to twelve; in the Law Institute, usually from three to six in the afternoon; in the Meiji, from eight to eleven, and from three to six; and in Keiogijuku, between eight and three. Early morning and late afternoon hours are the most frequent, because so many of the instructors must be in court or at their government desks between nine or ten and three; but the time of day is in Japan one of the most immaterial of considerations. In summer there are funerals at four in the morning; one may receive a call at daybreak; the postman jogs in at ten o'clock at night; and I know of a law course given last year by a Japanese instructor three times a week from half-past six till half-past seven in the morning.

I have said "lectures;" for a recitation is almost a thing unknown. The styles vary, of course. Many Japanese lecturers dictate from a prepared text. To this plan the foreigner in the end finds himself obliged to come; though oral explanations usually precede the dictation of the general principle. The students' acquirements in foreign languages do not permit them to reduce an oral discourse to summarized notes in the course of delivery; and they write down nothing that is not dictated. So that the only way in which the retention of the matter by the students can be insured is to dictate, which, indeed, they usually insist upon. Many Japanese, of course, are able to lecture rapidly in their own language, and require the students to make their own notes. Where the course is upon a part of the Code, the articles are sometimes taken consecutively as the basis of comment; but the lecturer often follows his own arrangement, referring, upon occasion, to the Code sections. In the Law Institute, the students in the English law courses are usually assigned beforehand a number of pages; and in the class these are gone over with careful exposition. I am told that progress is slow,

and that a text-book is seldom finished during the allotted time. In the Imperial University a class has been taken through Langdell's Cases on Sales and through a few others of the Harvard collections of cases; and at Keiogijuku use is made of them from time to time, and cases re-stated from our precedents are generally employed to stimulate discussion and generalization on the part of the student, and lead him up to a self-discovery of the principle in hand. But these practical methods are difficult to put into force. In the first place, the slender linguistic accomplishments of the student make it impossible for him to do more than a very small stint of reading in foreign literature. In the next place, and chiefly, the ideal of the Japanese student is radically opposed to such methods of training. Education for him means the absorption of a certain amount of information. Intellectual effort, the thinking out of a principle for himself, is unnatural and repellent. There are some who enjoy discussion and the solution of inconsistencies, as cake or candy titillates our palates. But the substantial diet which their nature craves and expects is the knowledge, the conclusions of the instructor. Just as the material aim of the average American law student, after no matter how long a flight of reasoning upon principle and public policy, always brings him down ultimately to the practical question, "Reasonable or unreasonable, which way is the law?" so the Japanese student, after no matter how many attempts by the instructor to stimulate his powers of decision, inevitably finishes with the flattering but passive question, "But what is *your* opinion?" Judged from our standpoint, this is the reverse of desirable. But the traditions of Japan furnish a different standard. Suppose that certain young lawyers in an American city heard of a sojourn which Professor von Ihering or Professor de Boutmy was about to make in the United States, and conceived the idea of forming a class and inviting the eminent foreign jurist to give a dozen private subscription lectures embodying some yet unpublished researches and speculations. On the first evening the foreigner, after a sketch of the subject, names a chapter in a printed volume, and calls upon them to prepare themselves upon it. On the second evening he calls the roll, asks questions, tries to start discussion, refrains from communicating his own views, talks of stimulating thought, and then sets another lesson in the book, with no word of his looked-for original material. Should we think it unnatural if the members of the class felt defrauded of their just expectations, and either informed the visitor of his misapprehension or ceased to attend? I do not mean to draw an exact parallel between the cases; but one who can understand how the lawyers would feel in the last instance will comprehend something of the feelings of the students in Japan. They do not come to be catechised or trained, but to obtain the information of which the lecturer is supposed to be uniquely possessed. The classic traditions of Japanese higher education differ from our notions. The student sits at the feet of the sage, and reverently receives the words of wisdom that wing themselves from his lips. He who has most faithfully committed these utterances to memory is the most meritorious. The most approved Chinese and Japanese treatises are those that marshal the greatest number of citations, and "Thus said the sage" introduces every paragraph. Grown up in such an atmosphere, what student of this generation can accommodate himself to the inverted methods of Western learning?

In the face of this disposition it is sometimes extremely difficult to carry out plans for the practical and exercitative study of the law. Here is an instance from the experience of a friend. Desiring to make his work as beneficial as possible to the students in a practical way, he ordered for the library a set of the Supreme Court decisions,— they had not been thought necessary by the authorities, — of which some four volumes had then appeared, — in Japanese, of course.

He set apart one hour a week, assigned a case (they are all reported briefly) to each student, and asked him to be ready with a statement of it at the hour set. The intention was at once to apply to actual Japanese cases the principles acquired in the courses, comparing the results under English law with the results of the court, and also to familiarize the students with their own jurisprudence and with the handling of cases. On the first occasion two or three only were ready; and as the requirement of a brief written syllabus-translation seemed irksome, it was announced that an oral statement would suffice. There followed for five weeks a continuous course of non-preparation on the part of the students. During that time some half-dozen cases in all were prepared, and at its end the class went to the manager and requested that this feature of the course be discontinued; and the instructor was so notified. The reason given by the students was that they could just as well study the cases after they had graduated. This is simply one of dozens of instances.

In one respect this ideal is worthy of our notice, for it elevates the process of education to a high plane. Legal education in Japan is not regarded merely as the necessary preparation for earning a livelihood. It is the devotion of one's time to the acquisition of knowledge for its own sake. To become a student is to abandon the sordid career of one who seeks gain in commerce or industry, and to place oneself in the noble ranks of those who prefer wisdom to gold. The traditions of feudalism and Chinese philosophy have made this the pervading idea in all classes, — gradually losing its hold, to be sure, but still dominant. Comparisons are dangerous; but while I will not say that the proportion of youths pursuing a liberal education is greater, contrasting the families who can afford it, than in our own country, it may be asserted that a liberal education is in higher conventional esteem by all classes, and that greater sacrifices are made by family and friends to secure it for those who desire it. Records of extreme devotion to this object of respect and ambition are innumerable. I happen to think at this moment of a young man, the second son of a family in Western Japan, who manages to get along with his monthly salary of fifteen yen in a petty government clerkship and also to support entirely his youngest brother in a private collegiate school in Tokyo.

One curious effect of this ideal is the aversion of students to text-books in the hands of an instructor. What they desire is his individual wisdom. They do not object to using a text-book for the preliminary perusal of a topic (though they elude most attempts to test their familiarity with its chapters), but in the class-room a text-book in any shape is an abomination. A bulging note-book of loose sheets is the passport to their esteem. In law teaching this notion usually coincides with the methods of the instructor. But in other branches it is often inconsistent with practical convenience and the needs of the subject, and the expedients to which instructors sometimes feel obliged to resort to elude the wary prejudices of their classes have an amusing side to them. For instance, a gentleman suddenly called to take a course of ethics during the temporary absence of the regular instructor, not having prepared notes of his own, decided to take Martineau's "Types of Ethical Theory" as the basis of the course. But he knew that all the respect and confidence of the students would be forfeited if he took the volumes into class. So he kept them religiously in his library; but nevertheless he carried the class, unknown to themselves, through the subject on substantially the lines of Martineau. Another instructor (not now in the country), a teacher of long experience here, was once, by the miscarriage of some trunks, left temporarily without his notes at the opening of the term. There was a text-book which would do for a while; but he knew that his fate was sealed if the class discovered him using it. So he had the first two or three chapters copied out in script by an amanuensis; and

with the written sheets he went boldly into the class-room, and maintained appearances until his own notes arrived. Another foreign instructor in Economics, of less experience in student ways, once had his notes printed (printing is cheap in Japan), for convenience sake, in a small pamphlet, half syllabus, half notes. This he used as the basis of his class-work. But the students objected to this, rebelled, and finally went on a strike. The manager (an exceptional one) gave the instructor *carte blanche* in settling the difficulty; but the latter, not wishing to see the school injured by the withdrawal of a whole class, concluded to alter the method of instruction.

It is another corollary of the ideal I have spoken of, that the method which most suits the Japanese student is the one which throws no work upon him, but makes him merely the passive receptacle of the thoughts of the instructor. Work, in our sense of the word, is unknown among students. There are, of course, shining exceptions, but these are few. It is not that there is any objection to work in itself. It is merely that the traditions of education do not assume it to be a necessary element in the student's duty. Knowledge is regarded as a thing already in material existence, and capable of being received and stored away, as a curio or a painting is. Education as a process of rigid training is not a part of their notion. Thus the student's work is practically measured by the number of hours in the lecture-room. The (to us) excessive number of hours per week in the curricula is on this understanding not unnatural, since otherwise the student would not have enough to do. It will easily be understood, moreover, that French and German law is on the whole more acceptable to the students, so far as the process of mastering it is concerned; for the tempting form in which it is offered to them — that of ready-made abstractions, requiring, apparently, merely the intellectual apprehension of the formula — satisfies their desire for a minimum of mental effort. When a principle is presented to them in a plain, straightforward formula, they ask for nothing more. Of the existence of difficulties, inconsistencies, complications, that are involved in its deduction or its application, they have little apprehension, unless these are forced upon their notice. I do not know of the continental methods by personal experience. But if we may judge from the published criticisms of Professor von Ihering, the great practical jurist of Germany, German legal education is to-day recognized to be extreme in its abstractness and unpracticalness. The study of the continental law is certainly for Japanese students at once the most congenial and the most unhealthy. What they need is something to stimulate intellectual effort. To be content with receiving broad generalizations is not merely to be deceived into thinking that one has a practical knowledge of law; it is to lose the mental training which is with us a chief object of all education.

I have alluded to the slender ability of students to employ English. This, too, has in part for its cause the general method of education here. In the traditional ideal, memory is everything, ratiocinative facility is nothing; and the influence of this is not yet shaken off. The result is that where sight-memory is involved, as in spelling, one finds surprising accomplishments. But in the constructive work of grammar and syntax and in the power of expressing thought freely in a foreign tongue there is a certain backwardness. It is needless to say that the work of the foreign instructor of law is greatly hampered.

The imaginary case put above, of a club of American lawyers, will partly convey some idea also of the way in which Japanese students expect to control the policy of a school and to arrange the methods and material of instruction to suit themselves. Practically, it may be said, the students have their own way — that is, whenever it occurs to them to have a special way — in every-

thing. How this state of affairs has come about is not very clear. But it exists universally,—with less emphasis, perhaps, in the Imperial University, because of the competition for the government prizes which there are to be gained. In an institution now in mind four instructors have been dismissed in two years because the students did not like their methods. In case the authorities presume to be obstinate, the screw is applied, and there follows a strike,—a word which has been thoroughly acclimatized in the Japanese language, and is applied by the students themselves to the process. Some two years ago a strike of four hundred strong took place in a certain private institution, because of some new regulation; and although the manager was ultimately dismissed as a part of the resulting compromise, the strike had lasted so long that many never returned, and the school is only just recovering from the blow.[1] In the private law schools, which (except Keiogijuku) depend largely on the patronage of the students, the result is that the authorities practically follow every command of the latter. Another effect is that the marks of an examination seldom represent the actual merit of the student. The authorities do not care to reduce the attendance any more than can be helped, or to drive away students by getting a reputation for severe marking. But in the Imperial University and Keiogijuku this tendency is less apparent. Another consequence is that a teacher who finds his methods unsatisfactory to the students must, if it is to them an essential matter, choose between forfeiting his convictions or his position. Sooner or later he becomes tired of kicking against the pricks, and falls into the habit of following what he discerns that the students desire. To be *yakamashii*—that is, to be a disturber of peace or the cause of trouble—is to commit a signal breach of Japanese morals. A righteous cause is not a complete excuse, for no one can be quite innocent who has voluntarily entered into strife. The managers of a school, in the slang of the day, have no use for an instructor who cannot get along harmoniously with his students. The instructor knows this, and guides himself accordingly. I am speaking now chiefly of Japanese instructors; for the foreigner, trained amid different traditions, usually does not easily succumb to the harness. But after a time his struggles become gradually fainter; and the lapse of several years usually leaves him as tractable

[1] As I write, the newspaper brings a report which will illustrate in an extreme manner what I have said.

JAPAN MAIL, JAN. 9, 1892.

THE HIGHER COMMERCIAL SCHOOL.

The *Hochi Shimbun* reports another disturbance in the above school. It took place on Saturday last. The account of what occurred is thus described by our contemporary: "As has been reported in these columns from time to time, a bad feeling exists between the Director and the students of the Higher Commercial School. It had been decided that certain of the second year pupils must be expelled from the school. The Director, considering that this measure would, if unexplained, cause a great stir among the students, ordered them to be summoned to the Lecture Hall on the 9th instant, and deputed a member of the school staff, Mr. Imamura, to make clear to them that the step to be taken was absolutely essential to the maintenance of discipline in the establishment. Mr. Imamura ascended the platform and was about to commence a speech when, in excited tones, a student asked him in what capacity he was going to address the school, and what he purposed saying. Mr. Imamura replied that he was acting in the capacity of a member of the school staff, and represented the Director. The subject on which he proposed to address them was the policy of the school. To this the student rejoined, 'In that case we are unwilling to listen to you. We do not wish to hear about the policy of the school from any one but the Director. Let us have an interview with the Director.' Here the whole school commenced to stand on the forms and shout. Mr. Imamura, in order to pacify the students, said that the Director was unwell and could not be seen. To this one of their number replied, 'He is not unwell;' another added, 'I saw him enter the school compound this morning;' and a third shouted, 'If he is unwell, we will go in a body to his house in Azabu.' Perceiving that his efforts were fruitless, Mr. Imamura dismissed the school. Whereupon a number of the second year students went off in search of the Director, and eventually succeeded in entering his room and plying him with a string of questions. Mr. Yano made no reply whatever, and without delay despatched an officer to the Department of Education to report the occurrence to the Minister." We are informed that the students demand the resignation of the Director.

JAPAN MAIL, JAN. 10, 1892.

Mr. Yano Jiro, Director of the Tokyo Higher Commercial School, has resigned his post.

This School is a Government Institution, ranking with the Higher Middle Schools. The Director in question is one of the most experienced educators in Japan, and is well known to some of the Bostonians who have resided in Japan.

and accommodating as a Japanese student can desire.

The educational community is in reality a market, the desires of the students being the demand which the school authorities seek to supply. How nearly this term applies to it, in virtue of the mobility of student patronage and the conditions of fluctuation in attendance, and how sensitive a market it is, may be inferred from some figures showing the attendance at one of the large institutions: —

	1884	1885	1886	1887	1888	1889	1890
New students during the year	223	271	435	514	571	653	675
Total number at beginning of year . . .	807	891	970	1058	1059	1108	1160
Net gain over previous year		84	79	88	1	49	52

It appears from this table that in 1889, for instance, some 650 students entered, but during the same time more than 600 left. These figures show the students as they are, drifting about from school to school, absolved from the control of the parents at home in the country, studying where they find the greatest attraction, and masters of the educational situation.

Space does not suffice to take up here the relation between legal study and the future professional career of the student. But as a specimen of the test to which the student must look forward on entering the bar or taking a subordinate place on the judicial staff, I append the questions given at the last examinations. On this occasion, as in the past few years, the candidates numbered over 1000. Some 200 passed. I am told that it is a great distinction to pass at the first trial, and that most candidates try two or three times before succeeding. Something of this is probably due to the peculiarities of the examiners; and it was considered a good joke upon them that Mr. Hatoyama (lately Dean of the Imperial University Law School), on his return from America, failed to pass at the first trial.

A. Examination for Advocates.

1. *Criminal Law.*

(*a*) What is the difference between continuing crimes (*keizoku-han*) and instantaneous crimes (*sokuji-han*), and the importance of this distinction in the application of the law?

(*b*) What is the difference between embezzlement (*jukizaisan hishozai*) and property-falsification (*boninzai, escroquerie*)?

2. *Criminal Procedure.*

(*a*) Explain the nature of public and private suits, and the points in which they resemble and differ from each other.

(*b*) May a Court of Second Instance annul a decision of a Court of First Instance for not allowing a mitigation of sentence as prescribed by law?

3. *Civil Procedure.*

(*a*) A sues B, and C moves to be made a party in the case. The Court, after examining C, dismisses the motion. C appeals; but the Court of Second Instance dismisses the appeal on the ground that the statutory period for appeal had elapsed. May C appeal to the Court of Last Instance, and show that the period had not expired before he entered the appeal?

(*b*) The defendant in a suit requests the Court, on decision in his favor with costs, to issue an attachment against the plaintiff pending appeal. May the Court do so?

(*c*) If a defendant fails to appear at the trial of a case, must the Court give judgment by default, or may it take some other course?

4. *Commercial Law.*

(*a*) How do you distinguish between a contract of insurance and a contract of wager or gambling (*bakuchi*)?

(*b*) Discuss the question whether an ordinary partnership should be regarded as a legal person or not, and the significance of the distinction.

(*c*) What is the difference between a bill of exchange and a promissory note?

5. *Civil Law.*

(*a*) Explain the difference, if any, between the effect of mistake, compulsion, and illegality of object upon the element of consent in contracts.

(*b*) Distinguish between the cases when a principal is responsible and when he is not for acts of an agent in excess of his powers, and give the reasons.

(*c*) When, if ever, is a person not bound by a judgment where the period for appeal has lapsed?

(*d*) Where one or more sureties become insolvent, what effect has this upon the obligations of the other sureties?

B. Examination for Judicial Assistants.

1. *Civil Law.*

(*a*) Explain the distinction between personal and real rights, and its advantages.
(*b*) What is the effect of fraud upon consent in contracts?
(*c*) Does the contract of sale always transfer the property in a thing?
(*d*) To whose benefit should result the acts of an agent in excess of powers?

2. *Commercial Law.*

(*a*) Where the directors of a corporation make a contract in regard to an enterprise not included in the articles of association, and the shareholders afterwards ratify the contract, is the corporation bound to perform?
(*b*) What is the obligation of joint signers of a negotiable instrument?
(*c*) May the valuation in a contract of marine insurance exceed the real value of the thing insured, and is such a contract entirely without effect?

3. *Criminal Law.*

(*a*) What is the difference between acts done in the reasonable protection of self (*setoboyei*), and acts done to protect self or relatives in the presence of impending danger resulting from *vis major*?
(*b*) What is the difference between acts done without a criminal intent and acts done without knowledge of facts which are essential to the crime? Give examples of each class.

4. *Criminal Procedure.*

(*a*) Why are the rules of Proof in criminal cases different from those in civil cases?
(*b*) May the Public Prosecutor appeal against a judgment rendered by default? If he may, what is to be done when the defendant, pending this appeal, himself enters an appeal against the judgment?

5. *Civil Procedure.*

(*a*) Explain the nature and effect of the distinction between judgments in Courts of Lower Instance and judgments in Courts of Last Instance.
(*b*) What are the facts constituting a cause of action? Why is it necessary to affirm them in the declaration?

It is difficult in describing briefly a phase of life, especially of foreign life, that is unfamiliar to one's readers, to convey exactly the impression one desires. Certain major traits, to which the minor ones must be sacrificed, become too prominent, and the shadings are lost. One can endeavor, of course, merely to rehearse one's own experience, and let it tell its story. But all experience is personal, and the full title, by the law of nature, untransferable. He who takes it from another obtains only an imperfect and precarious interest. The difficulty of evading this law is greater where we are dealing with Japan, for the spirit of the life is one which can never be put upon paper. It is not difficult to find fault with the ways of its people, in legal education or in other activities; but the doubt always remains whether it is really a fault that we find. By our standards something may fall short; but there is a constant residuum of doubt whether we have any right to apply those standards. In the formation of our judgments there is a continual conflict between the artistic sense and the practical sense. The former sees and is satisfied with the unity and the charm of Japanese life as it is in itself; the latter sees and wishes to readjust its incompleteness and unsuitableness as it stands in comparison with our own ideals. We wonder whether, after all, the life that we find here worked out is not the best for this land, and whether the sum of our criticism is not merely that our ways are different. With most of us, to predicate a difference from our own standards is to predicate an inferiority; and this is the error, dangerous because unwitting, for which so constant allowance has to be made in all our thoughts of Japan.

THE LAW OF THE LAND.

VI.

NEGOTIABLE PAPER.

By Wm. Arch. McClean.

IT has come to be considered in the commercial world that a purchaser of negotiable paper *bona fide* for value, before maturity, without notice, can collect the face value thereof, in spite of everything under the sun. Let us see how far right the world is in this opinion.

An eminent jurist in reviewing the law of negotiable paper gave a history of it, from which is gleaned the following.

The law of bills of exchange owes much of its scientific and liberal character to the wisdom of the great jurist, Lord Mansfield. Sixteen years before the American Revolution, he held that bank-notes, though stolen, become the property of the person to whom they are *bona fide* delivered for value without knowledge of the larceny. This principle is later affirmed again and again as necessary to the preservation of the circulation of all the paper in the country, and with it all its commerce.

Later there was a departure from this principle in the noted English case of Gill *v.* Cubitt, in which it was held that if the holder for value took it under circumstances which ought to have excited the suspicion of a prudent and careful man, he could not recover. This case annoyed courts and innocent holders for years, until it was sat upon, kicked, cuffed, and overruled, and the old doctrine of 1760 re-established, which is now the undisputed and settled law of England and this country.

Fully expressed, it is that the holder of negotiable paper *bona fide* for value, before maturity, without notice, can recover it, notwithstanding what may be the antecedent equities of the original parties, — the maker and payee, — and notwithstanding the holder took it under circumstances which ought to excite the suspicion of a prudent man. In order to destroy the holder's title, it must be shown that he took the note *mala fide.*

Upon the strength of the many decisions establishing the above law, we will scatter broadcast some free advice. You can buy commercial paper that is stolen. You can buy it from the thief, but do be careful not to be so inquisitive as to learn that it is stolen before you buy and pay for it. The more inquiries you make about such paper, if you want it, the more you are hurting your subsequent title to it. The least you know about negotiable paper that comes into your hands, the better. Some court has said commercial paper may be stolen; yet it is good when it has come into the hands of *bona fide* holders, although received from the thief; the holder is not bound to inquire how and by what means the paper came into the possession of the party transferring it to him. This may be encouraging to thieves, but it cannot be helped. It is the fault of the holders of negotiable paper, letting it lie around where it may be stolen.

You may buy any negotiable note made by an intoxicated man without the least danger of losing your money, provided, of course, you have no knowledge of that fact or of the character of the note or how given. The maker may have been made drunk by the payee, may have been filled with liquor for the very purpose of obtaining a note. The innocent holder for value will collect such a note. The maker had no business to get drunk and sign the paper.

There may have been no consideration

for the note you buy. The maker may be a farmer who has been tricked into signing a note about some worthless patent fence or lightning-rod or new farming implement. He gave the note, you are an innocent holder for value, and he will have to pay it.

The farmer may have given the note for value received; the payee may have returned a few days afterward and told the maker he desired a slightly different note. He succeeds in persuading the farmer to give him a second note upon the promise that he will return the original note early the following morning. You may be the innocent holder of one of these notes, some one else of the other, and the farmer will have to pay both of them.

The maker may have had opportunities and power to ascertain with certainty the exact obligation he is assuming, yet chooses to rely upon the statement of the persons with whom he is dealing, and executes a negotiable instrument without reading or examining it. You become a *bona fide* holder for value of this paper. The maker is bound by his act, and will be estopped from claiming that he intended to sign an entirely different obligation, and that the statements upon which he relied were false. He could have found it out for himself before it was too late, but did not do it. He may be an old and feeble man, yet it will not help him if he had sense enough to know what he was doing when he signed the paper.

You may discount negotiable paper very severely, but this of itself will not be evidence of bad faith and affect your title to the paper. However, there is more or less risk about a tremendous shave; the court may submit this circumstance in connection with all the other facts to the jury for their determination as to your good faith. A two hundred and fifty dollar note bought for one hundred dollars stood fire. It has been said that from thirty to fifty per cent discount may go through without question, if there are no other evidences of bad faith. But if you happen to be a gambler and on intimate terms with the payee, travelled with him, knew that the payee could not possibly come honestly by a $2,500 note, which you pay him $1,850 for, you will likely have all these circumstances developed before a jury to try your bad faith.

You are a *bona fide* holder of a paper without knowledge or notice of its character, and pay part of the agreed upon purchase money for it and promise the balance next week. Meanwhile you meet the maker, and unwittingly remark that you have bought his note and suppose it is all right. He tells you it is all wrong, it was obtained by fraudulent methods. You hurry up to pay the balance, and claim you are an innocent holder without notice or knowledge of the character of the paper. Yes, only partly so; and you will learn to your sorrow, that you will be restricted to the recovery of the amount paid before your conversation with the maker, before notice of the character of the paper.

All kinds of paper have been thrown on the commercial world beside tons of good, genuine, honest, value-received paper. A maker has signed that which he presumed to be a contract for an agency, on paper as large as a half sheet; and the part he signed is so that it could be detached, and when so detached is a note. Perfect promissory notes have been given with conditions, on margin or underneath, that destroyed their negotiability, but which could be easily separated, leaving the notes perfect, and no one could have any reason to suspect that any condition ever was a part of them. A maker buys Michigan wheat at fifteen dollars a bushel, and gives his note for it, and receives a highly embellished, gilded contract that the note is not negotiable, and that the crop of wheat from seed sold is to be unloaded on some brother farmer at the same price. A maker signs negotiable notes in blank, and they are filled up afterward for larger amounts than he intended. All these had to pay for their experience when the

notes came into the hands of innocent holders for value.

A maker signs a note by which the amount may be increased without guarding against such an alteration. The note is written for "One Hundred Dollars." The blank space is filled in with the words "and fifty." There is nothing to raise a suspicion that it is not all right. The maker is liable for the face of the note to the *bona fide* holder for value. If the blank space had been scored with a ——— or the alteration in any wise perceptible, the purchaser would have taken it at his own risk.

The law declares it is the duty of the maker of the note to guard, not only himself, but the public, against frauds and alterations, by refusing to sign negotiable paper made in such a form as to admit of fraudulent practices upon them with ease and without ready detection. When the alteration is apparent on the face of the paper, the holder either takes it at his risk to lose it all, or to be governed by the original unaltered note as to the amount to be recovered.

There seem to be but few doors of escape from payment for negotiable paper in the hands of innocent holders for value. Before you send negotiable paper into the commercial world, on the wings of the wind, that you do not want to pay, either don't sign the paper or sign and write across its face "non-negotiable." Of course, *mala fides* on the part of the holder is open for proof at all times. However, we do not propose now to enlarge upon the subject of bad faith, fraudulent blindness, circumstantial evidence of knowledge, and so forth; all or any of which may be sufficient excuse for the jury to relieve the maker from the payment of the note.

Side by side with these almost innumerable cases preservative of commercial paper in the hands of *bona fide* holders for value, before maturity and without notice, there is a small class of cases distinctly separate from them, which may defeat the recovery by innocent holders of genuine negotiable paper as virtual forgeries. The maker, to avoid liability, must prove to the satisfaction of a jury that he has been guilty of no laches or negligence in signing the negotiable instrument. He must show that it did not get into circulation by any fault of his. Here are three cases:—

In the first, the alteration consisted in adding a single letter "y" to the word "eight" so as to make the note read "eighty" instead of "eight." The instrument was a printed blank with an open space for the insertion of the amount, the word "dollars" being printed at the end of the space. The word "eight" was filled in at the beginning of the space, and all the rest of the blank to the word "dollars" was filled with an elongated scroll. It happened that a very slight space, about an eighth of an inch, was left between the end of the word "eight" and the beginning of the scroll. In that diminutive spot the letter "y" was inserted in such a way as to appear quite natural, and in the handwriting of the person who filled up the rest of the note. A cipher was added to the figures.

The court said that it would be monstrous and contrary to every legal principle to hold that the maker of a negotiable instrument must so execute it as to prevent the possibility of alteration in any event. The maker, having used ordinary care and precaution and not having been negligent, would be no more responsible upon such an altered instrument than he would upon a skilful forgery of his handwriting. The question of negligence is for the jury; and it generally finds, when given full opportunity, that the maker was not negligent.

In a second case the farmer agreed to be an agent for a fence after repeated importunities. It was necessary, in order to become such, that he sign an agreement, which he read over and over. It was a half page of printed matter, and not in the nature of a note. The farmer produced his copy on the trial. When in the act of

signing, the payee arranged the papers for the maker to sign. The maker looked at them to see whether they were the agreements he had read; but by some sleight of hand or confusion of papers a note was signed. It passed into the hands of an innocent holder. The court left the question of the maker's negligence to the jury. Had he examined what he signed? Was he negligent in the signing of the papers, so that by some trick he was made to utter negotiable paper, when in fact he believed he was completing an entirely different contract? Could a man of ordinary care and precaution have guarded himself and the public against such an imposition? Was he any more responsible for the negotiable paper than upon a forged note? The jury answered, Certainly not.

The last case was a more skilful trick than either of the above. The note signed was as follows:—

NORTH EAST, April 3. 1877.

Six months after date I promise to pay J. B. Smith, or bearer Fifty Dollars when I sell by order Two Hundred and fifty Dollars worth of Hay and Harvest Grinders for value received with legal interest without appeal and also without defalcation or stay of execution.

T. H. BROWN Agent for Hay and Harvest Grinders.

The dotted line was not in the original; the paper was separated at this point. The court held it was a case for the jury, saying it was so cunningly framed that it might be cut in two parts, one of which, with the maker's name, would then be a perfect negotiable note. If there was no negligence in the maker, the good faith and absence of negligence on the part of the holder cannot avail him. The alteration was a forgery, and there was nothing to estop the maker from alleging and proving it. The ink of a writing may be extracted by a chemical process so that it is impossible for any one but an expert to detect it; but surely in such a case it cannot be pretended that the holder can rely upon his good faith and diligence.

The drunken maker, he who wrote his note, One Hundred Dollars, the one signing a promissory note with condition on margin that could be removed, had not done everything prudent and careful men could do, to guard the public and themselves. In the three latter cases everything in the power of the makers as prudent and careful men had been done; they had not been negligent in the least degree. At any rate, so the jury found; and their findings were approved by courts.

LONDON LEGAL LETTER.

LONDON, Jan. 11, 1893.

THE courts re-opened to-day after the Christmas recess. Heavy cause-lists await disposal, — there are as many as nine hundred actions down for trial in the Queen's Bench division alone; and as usual the Divorce Court records promise some curious revelations. The will of the late Duke of Sutherland is to be disputed in the Probate Court; and if a tithe of the rumors one hears is true, the Sutherland Will case should be the most celebrated cause of the season. The House of Lords will occupy its legal moments with hearing twenty appeals, of which twelve come from the English Court of Appeal, five from the Scottish Court of Sessions, and three from Ireland.

The whole country is awaiting with the utmost expectancy Mr. Gladstone's new Home Rule Bill. Parliament re-assembles in the beginning of February, and the measure will in all likelihood be introduced at once. The general impression is that

the Liberal Government has prepared a bill of a moderate and conciliatory character; by conciliatory I mean one calculated to allay the doubts of many of their English supporters, for of course Mr. Redmond and his followers will not be satisfied with, and might even refuse to vote for, a scheme which in their opinion would be inadequate. You may remember that according to the provisions of the old Home Rule Bill the Irish members were for the future to be excluded from Westminster, Mr. Gladstone in his historic oration affirming that it passed the wit of man to contrive their dual position as at once English and Irish legislators. This, too, was the strongly held opinion of the present Irish Secretary, Mr. John Morley, the oldest convert to Home Rule among our public men; but so powerful was the agitation which ensued for the retention of the Irishmen at St. Stephen's that the Liberal leader finally was induced to promise that exclusion would cease to form a feature of his programme. English Home Rule opinion is, however, by no means unanimous on this point. Mr. Labouchere, the editor of "Truth," has been conducting in his paper for some weeks past a vigorous controversial campaign on this very subject. He exclaims loudly against allowing Irishmen to legislate for themselves and also for England; and he warmly applauds Mr. Gladstone's original scheme, urging him to revert to it in this particular, at any rate. Every serious politician here is agreed that we are privileged to live during one of the most interesting epochs of English history.

Not nearly so many young men are entering at the Inns of Court just now as was the case a year or two ago. It is really very difficult to say what regulates a matter of this kind; I think, however, it has at last filtered down to the mind of the aspiring University graduate that success at the bar is not a matter of course, even to the habitual prize-winners at school and college. An ever-increasing number of University men are attracted towards the ranks of journalism; and not a few of those who some years ago would have looked forward to a forensic career now eagerly engage in the occupation of the press. Gray's Inn has succeeded in again asserting its position as a vigorous Inn of Court; more students are entering on its books than has been the case in recent years. The Benchers are doing everything in their power to make the old Inn attractive; they have opened a Common Room to the members free of charge. There are successful Common Rooms in all the other Inns, but the members have to pay a small annual subscription for the privilege. It is a good example which the Benchers of Gray's Inn have shown, and the other wealthy legal corporations might very well follow suit.

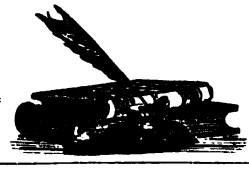
The Scottish Bar is very prosperous this year; the cause lists at Edinburgh have been well stocked with cases, and I do not hear so many complaints of litigious destitution as formerly. Some members of the Faculty of Advocates have been not a little piqued at a recent proceeding of the Edinburgh Town Council. The latter are engaged in an arbitration with the Edinburgh Tramways Company, and instead of relying solely on the professional aid of Scottish counsel, the Corporation retained the services of Mr. Cripps, Q. C., a well-known member of the London Parliamentary Bar. Mr. Cripps has published a book on "Compensation," and is much in request for cases of the kind. I understand that Mr. Cripps will be duly welcomed by his Northern rivals, but that some of them will hope to score off him when the arbitration proceedings commence.

The new Lord Chancellor, Lord Herschell, is credited with a very revolutionary proposal. They say he contemplates the creation of stipendiary magistrates for the counties. At present, of course, county magistrates receive no remuneration whatever, the duties being performed by gentlemen without technical professional qualifications. Sometimes miscarriages of justice take place, but with quite remarkable infrequency. It is common knowledge with what efficiency the "Great Unpaid" discharge their functions. I have no doubt we shall some day or other see this change in the administration of the Criminal Law carried out, but not just at present; public opinion does not demand it, and the expense would be very considerable.

During the recess we had the finest Christmas weather experienced for years, — cold crisp weather, with plenty of ice, and opportunity for recreating exhausted professional faculties.

* * *

The Lawyer's Easy Chair.



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

∴ ∴ ∴ ∴ ∴ BY IRVING BROWNE. ∴ ∴ ∴ ∴ ∴

CURRENT TOPICS.

A STUBBORN COURT. — Some time ago Judge Phillips, of the United States Circuit Court, imprisoned the three judges of Cass County, Missouri, for contempt in refusing to obey the order of his court that they should levy a tax to pay certain railroad-aid bonds of the county. There had been a hot litigation over the bonds, the citizens contending that they were illegal and fraudulent; but they had passed into the hands of innocent holders, and the United States Supreme Court had pronounced them binding. On one occasion a judge and the district attorney were on their way to St. Louis to sell some of the bonds, and were dragged from a train at a way station and lynched. Another member of the party killed himself to avoid their fate. Nobody was ever punished for the murder, but several were convicted of stopping a mail-train. A good many of the bonds were compromised. The three county judges in question, having a wholesome fear of lynch law, refused to levy the necessary tax, and went to jail in Kansas City, where they have lain ever since last March. The jailer treated them well, allowing them to eat in the jail kitchen and occasionally to take a stroll around the city in his company. Meantime their court was still open, as no one but themselves could close it, and they have been drawing $5 a day apiece therefor. Judge Phillips has now released them all, two of them because their term of office has expired, and the third because the grateful public have elected him to the legislature. They are still under a fine of $500, but probably their friends will pay it. Such is the reward of virtue and obstinacy. The other two judges will probably run for Congress. Perhaps on the whole it is safer, if not more honorable, to run for office than to run from a mob; but we should need to be dreadfully scared before we would do either.

NOVEL CRUELTY.— Not many months ago a widower of Allegany County, New York, married a widow of his own township. She had three children by her former marriage; he, two by his. Recently his wife upbraided him for praying for his own children, at family prayers, to the exclusion of hers. Discussion became warm, and the wife ordered the husband to repeat the service and make special mention of her children in his petitions. He refused, and thereupon she seized him by the hair by both hands, forced him down on his knees, and refused to let him up until he had prayed according to her instructions. The aggrieved husband has crossed the State line into Pennsylvania, and put up a petition there to be released from the marriage. He probably winds up with, "And your petitioner will ever pray."

IDEM SONANS. — In our last number we made some remarks on the doctrine of *idem sonans*. Two cases in Texas now offer themselves for remark, in one of which it was held that a verdict is not bad because "aggravated" is spelled "aggrevated," and in the other that a verdict is not bad because "theft" is spelled "theift" and "penitentiary" is spelled "penitenture." The court in the latter case say: "It is well settled, where the sense is clear, that neither incorrect orthography nor ungrammatical language will render a verdict illegal or void, and that it is to be reasonably construed, and in such manner as to give it the meaning intended to be conveyed by the jury." This is much better than the holding by the same court, some years ago, that "fist" will not answer for "first" in a verdict of murder, it not being a case of homicide in a prize-fight. The same court had once held that "penitentilery" was good for "penitentiary," but that "penty" would not answer therefor. The silliest decision on this doctrine ever made was in Colorado, that "Fitz Patrick" would not answer for "Fitzpatrick," "Fitz" literally meaning "son."

NO PRACTICAL JOKING. — A very remarkable incident occurred on the trial of a case recently in Chicago. The action was by a mother for damages by the death of her young daughter, caused by the defendant's negligence. Nine of the jury, after retiring, signed and sent in to the court the following communication: —

CHICAGO, ILL., Dec. 15.

To the Honorable Court: We, the undersigned, jurors on the Brown-Linquist-Ryan case, most respectfully request you to furnish us the following: One case export beer, one quart McBrayer whiskey, one dozen Bass' ale, three decks of cards, one quart Old Pepper whiskey, one box Figaro cigars, dinner for twelve from the Sherman House."

The request was of course denied, and then the jury returned a verdict of one cent damages. The judge thereupon very properly set aside the verdict, fined the offenders ten dollars apiece for contempt, and discharged them from the panel. "What their verdict would have been," said the court, "had their requisition been honored, can only be conjectured." The court further observed: —

"A court of law is not the place for facetiousness, and however genuine may have been the spirit of sportiveness of these jurors, or however serious they were in addressing such a request to the court, the court cannot regard it but as an affront and impertinence which cannot pass unrebuked and unpunished, for to do so would surely result in the dangerous weakening of public confidence in one of the most cherished of our institutions. . . . The nine jurors are discharged from the panel, as they have demonstrated their entire unfitness and unworthiness to serve as jurors in any case whatever.

"L. S." — It would seem that now that most people can write, there is no longer any sense in the practice of requiring a seal to any legal instrument. The reason of the requirement is as obsolete as the doctrine of benefit of clergy. The chief argument in favor of retaining it is that the abolition of it would render inapplicable a good deal of law-learning about the doctrine of covenants. Really it would seem that if a man means a covenant he can and should express that meaning in words, without relying on the affixing of a wafer or scrap of paper with "gum-stickum" on the under side. A number of communities have recognized the absurdity of the seal-doctrine, and have made enactments for equivalents, such as the word "seal," or a scroll, or the letters "L. S." The only advantage of the equivalents is that they are less likely to disappear than the seal, and thereby deprive the language of a covenant from operating as a covenant because the paper has dropped off or been removed. But the substitution of the letters "L. S." is entirely inappropriate, because they do not mean "seal," but only "place of the seal," and if the place of the seal is vacant there is no seal. It only shows how enslaved the lawyers are to forms. It would be just as appropriate to write "Alaska." The truth is that we have outlived this seal business just as much as the "indenture" business, and everybody will admit that a deed is not an indenture, and that in the language "this indenture witnesseth" the paper lieth. And so we have outlived the "Ss." business, in affidavits, the real meaning of which never was exactly known, but which has been supposed to be *scilicet*, to wit; and a silly set we are for continuing to employ it, especially in communities which pretend to have abolished Latin phrases. But it is hard indeed for the old lawyers to give up the old lies.

BABY THOMPSON. — In the Publisher's Department, of the current number of the "American Law Review" is a poem about "Sailing around Iceland," evidently from the pen of the St. Louis editor. It is accompanied by reproductions of photographic views. One of the views is "Valla," the "Little Traveller," presumably the baby daughter of the said editor (not granddaughter surely?). We are not going to be outdone. We shall immediately order up our infant grandson to be photographed, and reproduce him with verses, *ad infinitum*, written in his praise in a "Publisher's Department" supplied for the exigency. Professor Thompson's poem is good, and the baby looks good; but so good a poet should not be so jealous of our poet, Frank J. Parmenter, as his recent criticism indicates. The learned editor, in the same department, pleads guilty to former carelessness, which he should embody in the next edition of his great work on negligence, in the following important particular: —

"These really sweet and beautiful faces put to shame the ungallant statement carelessly made by me — partly echoed from English travellers — of the lack of female beauty in Iceland; and, being a lawyer, I would now most humbly enter a *retraxit*." Of one of these ladies he says: "I am bound to say that she will compare in comeliness, grace, intelligence, and all the qualities that adorn a wife, mother, and leader of society, with her sisters of the United States." These statements he accompanies with corroborative photographic exhibits. We shall expect soon some love-poetry from our legal traveller.

THE MISSING CHANCELLOR. — In undertaking to correct Mr. Coudert, last month, for confusing Brockholst Livingston with Robert R. Livingston, we carelessly fell into an equal error by confusing Chancellor Livingston with Chancellor Lansing. It was the latter who disappeared mysteriously in his old age, and of whom it may correctly be said that "it never was known what became of him." He was not a very distinguished man, and it was surmised that he was murdered. Chancellor Livingston was one of the most eminent and useful citizens of his State, the friend and patron of Fulton, a distinguished diplomatist, who as minister to France negotiated the Louisiana treaty, the introducer of merino sheep into this country, whose statue in bronze adorns the Capitol at Washington and that at Albany. In respect to Mr. Coudert's slips of memory he (Mr. Coudert, not Chancellor Livingston) jocosely writes us: "When it comes to the fame founded on the argument of cases, who knows or cares whether it was Andrew or Alexander? Indeed, I am inclined to swell with pride that I got half the name right. Besides, what would be the use of you literary fellows acting as detectives, if we did not occasionally slip and give

you a chance to show what you can do? If good old Homer nods at times, why may not a hard-worked lawyer doze when he is tired?" We sincerely congratulate our witty friend that he did not confuse Alexander with Ray Hamilton.

NOTES OF CASES.

DYING DECLARATIONS. — It is well settled that the dying declarations of the victim of murder or manslaughter are receivable in evidence against his assailant. It would seem that they should also be receivable in favor of the assailant, and such is undoubtedly the better doctrine. It was however held to the contrary in Moeck *v.* People, 100 Ill. 242; s. c. 39 Am. Rep. 38, in which the court approved the exclusion of the following declarations: "He did not wish accused hurt for what he had done, and said accused had done nearly right," observing that this "affords no evidence of anything more than a truly Christian spirit on the part of one who had been unjustly done to death, and who in his dying agonies was willing to forgive the malefactor." But in Mattox *v.* United States, 13 Sup. Ct. Rep. 50, it was held that on a trial for murder, when there is admitted without objection, as a dying declaration, a statement by deceased that he did not know who shot him, it is error to exclude evidence of a further statement, made immediately afterwards, that he saw the parties who shot him, and that defendant was not among them. The court, by the chief-justice, observed: "Dying declarations are admissible on a trial for murder, as to the fact of the homicide and the person by whom it was committed, in favor of the defendant as well as against him. 1 East, P. C. 353; Rex *v.* Scaife, 1 Moody & R. 551; United States *v.* Taylor, 4 Cranch C. C. 338; Moore *v.* State, 12 Ala. 764; Com. *v.* Matthews, 89 Ky. 287, 12 S. W. Rep. 333." To the same effect is People *v.* Knapp, 26 Mich. 112; Moore *v.* State, 12 Ala. 764; Bish. Cr. Law, § 1207; Browne Cr. Law, 21.

MARY WASHINGTON'S TOMB. — A very irreverent speculator down in Virginia has been trying to corner the last resting-place of the honored grandmother of our country. Although, as we understand, the Mother of Presidents had not taken the most pious care of that ground, and had never completed a projected monument in memory of the good woman, — in which inattention, however, she was by no means so remiss as is the city of New York in respect to General Grant, — yet this sacrilege was more than the Virginians could stand, and the interference of the Supreme Court having been implored on the ground of fraud, that tribunal sat down very heavily on the transgressors, and read them some good morals and some wholesome denunciation. We extract the following choice passages from the report in the "Virginia Law Journal": —

"The record in this case presents for review by this court the sacrilegious and shockingly shameful spectacle of a controversy and traffic over the grave and sacred ashes of Mrs. Mary Washington, the honored and revered mother of the transcendent man of all the ages, who in the annals of the world is without a prototype, a peer, or a parallel. Mary, the mother of Washington, — a deeply pious, intellectual, resolute woman, — refused to surrender her supremacy by residing with any of her children, and chose to live by herself on her farm in Stafford County, opposite Fredericksburgh, surrounded by her slaves and domestics, in the exercise of her systematic and beneficent authority, until her illustrious son urged upon her his solicitude for her personal safety, and his apprehension that the capture of her person by the enemies of her country, to be held as a hostage, might some time constrain him, as the commander-in-chief of the Revolutionary patriots, to elect between public duty and filial affection. She removed to the village of Fredericksburgh, on the south side of the Rappahannock River, and resided there from 1776 to 1789 in a plain wooden structure, framed and weatherboarded, within three squares of the 'Kenmore' residence of Col. Fielding Lewis, the husband of her daughter Betty. There, at the age of 83 years, on the 25th day of August, 1789, she died, and was buried on the apex of a hill which overlooks the valley of a little stream of water, which, on the western side of Fredericksburgh, winds its way to the Rappahannock River. There, tradition says, she resorted frequently, during her fourteen years of solitary life, for meditation and prayer, and sat often for hours upon the ledge of rocks that crops out on the top of the hill; and that she gave directions to be buried there, on the land then the property of her son-in-law, Col. Fielding Lewis. About the year 1831 — forty-two years after Mrs. Washington was buried — an association was organized to erect a monument to her memory over her grave; and Gen. Andrew Jackson, the renowned President of the United States, who had been compatriot in arms with her great son, and whose youthful blood had been shed in the Revolutionary War for the independence of their common country, was invited to lay the corner-stone. And on the 7th day of May, 1833, with civic ceremonies and military pageant worthy of the occasion, the venerated chief-magistrate of the United States, who, the illustrious Thomas Jefferson said, 'had filled the measure of his country's glory,' in the name and in behalf of all the people of this great country, performed the signal act of public gratitude and affection, and laid the corner-stone of the monument which marks the grave of the mother of the 'Father of his Country,' and thus, in the most solemn and impressive manner, dedicated to public and pious uses forever the consecrated spot where the remains of this honored woman had reposed for forty-five years in the grave where the pious duty and reverence of her children had laid her. From that day to this no right or claim of private ownership has ever been exercised over it or made to it. In

Beatty *v.* Kurtz, Judge Story said: 'It [the lot] was originally consecrated for a religious purpose. It has become a repository of the dead, and it cannot now be resumed by the heirs of Charles Beatty.' In Cincinnati *v.* White, the court said: 'There is no particular form or ceremony necessary in dedication to public use. All that is required is the assent of the owner of the land, and the fact of its being used for public purposes.' Beatty *v.* Kurtz, 2 Pet. 566; Cincinnati *v.* White, 6 Pet. 431.

"In the appropriate and elegant address made by Mr. Bassett, chairman of the monumental committee, to the President of the United States, at the laying of the corner-stone of the monument, he said: 'In looking upon this monument the citizens of these States will remember that they are brothers. They will remember that here lie the ashes of the "Mother of the Father of his Country." They will acknowledge too this just tribute to the merits of her who, early deprived of the support of her consort, encouraged and fostered, by precept and example, the dawning virtues of her illustrious son, and nurtured into maturity those nobler faculties which were the ornament and glory of her waning years. They will acknowledge the hallowed character of this romantic spot, ever to be remembered as the place chosen for her private devotions. Here she asked, as a dying request, that her mortal remains might rest. Hallowed be this wish! Sacred this spot! Lasting as Time this monument! Let us cherish the remembrance of this hour. Let us carry with us hence, engraved on our hearts, the memory of her who is here interred. Her fortitude, her piety, her every grace of life, her sweet peace in death, through her sure hope of a blessed immortality.' To this, President Jackson responded in an address exquisitely beautiful and justly proportioned to the great occasion and the mighty theme, in the conclusion of which he said: 'It is to me a source of high gratification that I can speak of him from personal knowledge and observation. I witnessed the public conduct and private virtues of Washington, and I saw and participated in the confidence which he inspired when probably the stability of our institutions depended upon his personal influence. In the grave before us lie the remains of his mother. Long has it been unmarked by any monumental tablet, but not unhonored. You have undertaken the pious duty of erecting a column to her memory, and of inscribing upon it the simple but affecting words: "Mary, the Mother of Washington." No eulogy could be higher, and it appeals to the heart of every American. Fellow-citizens, at your request and in your name, I now deposit this plate in the spot destined for it; and when the American pilgrim shall in after ages come up to this high and holy place, and lay his hand upon this sacred column, may he recall the virtues of her who sleeps beneath, and depart with his affections purified and his piety strengthened, while he invokes blessings upon the memory of the mother of Washington.'

"This proud history has been recited *arguendo* to show that the hallowed tomb of her who gave to the country and to humanity the foremost man on the files of time has been consecrated by private dedication and by public ceremonial as the *peculium* of patriotic pride and protection, and could not be made the subject of legitimate contract, much less of venal and vulgar traffic. . . .

"On the 28th day of February — the very next day after the paper sued upon was signed and delivered to them — there was published in the 'Free Lance' newspaper in Fredericksburgh an interview had with Messrs. Colbert and Kirtley, in which they said: 'Yes, sir, we have the property in hand for sale, and will offer it at public outcry in the city of Washington, on the 5th of this month [March]. There being no disposition on the part of either Congress or people to finish the monument or to care for the grave of Mrs. Washington, and feeling the general depression of all kinds of business, and to enliven up things, we have determined to sell graves, if, by so doing, we can attract the attention of the country to this locality, and bring money here from other sections. We have ordered the "Post," at Washington to insert the following advertisement for us; and if parties will purchase, we mean to sell. The title to the land and all there is on it — above and below — will be made perfect to the purchaser. We think it would be better than Libby prison to some Northern relic-hunter; and thinking the opportunity a favorable one to offer the property, we have decided to do so in the manner described. As real-estate agents, we mean business in this and in all other matters. The property is in our hands for sale, and we mean to sell it, if possible, at the time and place designated.' The advertisement: 'The grave of Mary, the mother of General George Washington, to be sold at public auction.' To the ladies attending the inauguration of President-Elect Harrison: On Tuesday, the 5th of March, 1889, at 4 o'clock P. M., we will offer for sale at public outcry at the Capitol of the United States of America, twelve acres of land, embracing the grave and the material of the unfinished monument of Mary, the mother of General George Washington. Colbert & Kirtley, Real-Estate Agents and Auctioneers, Fredericksburgh, Va.' On Saturday morning, the 2d day of March, 1889, Hampton Merchant said to Mr. Kirtley: 'I notice that you have advertised to sell the Mary Washington monument. You can't do it. I have examined the records, and find that the monument is reserved in the deeds; and neither Mr. Shepherd nor you have any right to sell it.' Mr. Kirtley answered: 'I propose to sell it;' to which Merchant replied: 'The hell you do! You can't do it;' to which Mr. Kirtley rejoined: 'I propose to sell according to the option.' After 2 o'clock P. M., on Saturday, the 2d day of March, after Kirtley had had the interview with Merchant above detailed, and information of the recorded deeds, which showed the express reservation and exclusion of the monument from the title to the lot conveyed to G. W. Shepherd, Messrs. Colbert & Kirtley had printed, at the office of the 'Free Lance,' 2,000 copies of a handbill as follows: 'General George Washington. The Tomb and Unfinished Monument of Mary, His Sainted Mother! On Tuesday, the 5th instant, at 4 o'clock P. M., at the Capitol of the United States of America, under authority vested in us by the "real" owners of the property, we will offer for sale, at public outcry, about twelve acres of land, situate within the corporation of Fredericksburgh, embracing the grave of Mary, the mother of General George Washington, and also the material of her unfinished monument. At the same time and place we will offer to the highest bidder the house in which she lived and died, and within eight

squares of the tomb. Colbert & Kirtley, Real-Estate Agents, Fredericksburgh, Va.' The plaintiffs, Colbert & Kirtley, had printed and circulated in 2,000 atrocious handbills, a false statement, known to them to be absolutely and positively false, obviously as a part of their predication for their suit against Shepherd for damages for his refusal to sell and convey to them (his agents), with warranty of title, what he did not own and had never claimed, and what the record and common fame of the country explicitly informed them he had no title whatever to. . . .

"The record shows the indignant outburst of reprobation with which the citizens of Fredericksburgh, in public meeting, denounced the outrage upon public sensibility by advertising to sell at public outcry the grave of Mrs. Washington, and the action of the City Council, declaring the proposal to be 'a scandalous reflection upon a civilized Christian community. . . .

"Without a further recital of the details of this horrid transaction, — stamped all over with the fraud, false pretense, and deceit of the plaintiffs in error, — we are of opinion that upon the pleadings and evidence in the record, the verdict of the jury is plainly right, and that the Circuit Court of Fredericksburgh did not err in refusing to set the verdict aside, and in entering judgment thereon."

THE CASE OF POLYPHEMUS. — Bawden *v.* London, etc. Assurance Company, English Court of Appeal, 2 Q. B. Div. (1892) 534, is a very amusing case. The headnote is as follows: —

"B. effected an insurance with the defendant company through their agent against accidental injury. The proposal for the insurance contained a statement by the assured that he had no physical infirmity, and that there were no circumstances that rendered him peculiarly liable to accidents, and it was agreed that the proposal should form the basis of the contract between him and the company. By the terms of the policy the company agreed to pay the insured £500 on permanent total disablement, and £250 on permanent partial disablement, — the policy stating that by permanent total disablement was meant, *inter alia*, 'the complete and irrecoverable loss of sight to both eyes,' and by permanent partial disablement was meant, *inter alia*, 'the complete and irrecoverable loss of sight in one eye.' At the time when he signed the proposal for the insurance the insured had lost the sight of one eye, a fact of which the defendants' agent was aware, though he did not communicate it to the defendants. The assured during the currency of the policy met with an accident which resulted in the complete loss of sight in his other eye, so that he became permanently blind. *Held*, that it must be taken, first, that the assured had sustained a complete loss of sight to both eyes within the meaning of the policy; secondly, that the knowledge of the defendants' agent was, under the circumstances, the knowledge of the defendants, and that they were liable on the policy for £500."

Lord Esher, M. R., after laying it down that the knowledge of the agent was imputable to the company, observed: —

"Quin then having authority to negotiate and settle the terms of a proposal, what happened? He went to a man who had only one eye, and persuaded him to make a proposal to the company, which the company might then either accept or reject. He negotiated and settled the terms of the proposal. He saw that the man had only one eye. The proposal must be construed as having been negotiated and settled by the agent with a one-eyed man. In that sense the knowledge of the agent was the knowledge of the company. The policy was upon a printed form which contained general words applicable to more than one state of circumstances, and we have to apply those words to the particular circumstances of this case. When the policy says that permanent total disablement means 'the complete and irrecoverable loss of sight in both eyes,' it must mean that the assured is to lose the sight of both eyes by an accident after the policy has been granted. The contract was entered into with a one-eyed man, and in such case the words must mean that he is to be rendered totally blind by the accident. That indeed would be the meaning in the case of a man who had two eyes. If the accident renders the man totally blind, he is to be paid £500 for permanent total disablement. Quin, being the agent of the company to negotiate and settle the terms of the proposal, did so with a one-eyed man. The company accepted the proposal, knowing through their agent that it was made by a one-eyed man, and they issued to him a policy which is binding upon them, as made with a one-eyed man, that they would pay him £500 if he by accident totally lost his sight, *i. e.*, the sight of the only eye he had. In my opinion the plaintiff is entitled to recover £500 for the total loss of sight by the assured as the direct effect of the accident."

Lindley, L. J., said: —

"The policy must, in my opinion, be treated as if it contained a recital that the assured was a one-eyed man. The £500 is to be payable in case of the 'complete and irrecoverable loss of sight in both eyes' by the assured. If the assured has only one eye to be injured, this must mean the total loss of sight. Within the true meaning of the policy, as applicable to a one-eyed man, I think the plaintiff is entitled to recover £500."

Kay, L. J., said: —

"Then it is said that the plaintiff can recover only for partial, not for total, permanent disablement. But, treating the company as knowing that Bawden had only one eye, how ought the policy to be construed? The material words are, 'complete and irrecoverable loss of sight in both eyes;' and in my opinion, they ought to be construed as meaning that the company are to pay £500 in case the assured completely loses his sight by means of an accident. This is what has happened in the present case, and therefore, in my opinion, the plaintiff is entitled to recover £500."

LOSS OF A FOOT. — In Stever *v.* People's Mut. Acc. Ins. Ass'n of Pittsburgh, Supreme Court of Pennsylvania, July 13, 1892, it was held that one cannot, under an accident policy, recover as for the loss of a foot, where by reason of an injury to his back he

is deprived of the use of his leg, except when wearing an artificial support for his body. The court said: —

"It will be perceived therefore that the policy in suinsures only against involuntary, external, violent, and accidental injuries, and not against disease of any kind, nor against disabilities which are the result, wholly or in part, of disease or bodily infirmities; and, for the purposes of the present case, the only injury for which there can be any recovery, within the terms of the policy, is the loss of one foot. Now, in point of fact, as has been already stated, the plaintiff has not lost a foot. So far as the evidence goes, both his feet are in perfect natural condition. His left foot is the only one in question, and in reality it has received no injury of any kind, external or internal. So far as all its physical functions are concerned as a member of his body, it is entirely capable of use, if the other parts of his body which can or may affect its use are in proper condition. It is not proved, or even alleged, that any of the muscles, tendons, or nerves of the foot are injured in any manner. The source of the difficulty does not lie in the foot nor in the leg. It is in another part of the body, to wit, the back. Just what the actual physical injury or difficulty was is not precisely stated in the medical testimony. It is uncertain. It is supposed to be some injury to a muscle or ligament or nerve or nerve centre, or to the vertebræ of the spinal column. The physicians have different theories regarding this subject, and none of them claims to know with certainty. . . . In such circumstances we do not see how he can be considered to have suffered the loss of a foot. He has neither lost a foot nor the use of it. He has it, and he constantly uses it, and therefore it cannot be said that because he is deprived of its use he is entitled to be considered as having lost the foot itself. If he had suffered an attack of permanent paralysis in the leg, and been thus deprived of the use of his foot, he could not have recovered, as the cause of his disability would have been disease. If when he removes the jacket a paralytic condition ensues, is it not due to a diseased condition of the nerves of the back, and does that help his legal standing under the fifth clause of the conditions of the policy? We think not; but aside from that he has received surgical treatment for his injury which has been successful, and has enabled him to preserve the use of his foot, and the position is not tenable that he has lost his foot, within the meaning of the policy, because he has lost its use. Of course, if the foot had been cut off by the accident or by amputation, and he had been provided with an artificial substitute which he could use, he could recover; but that would be because he had literally brought himself within the terms of the policy by actually losing his foot. But where, as here, he has not lost his foot, and it has not even been injured, and he is enabled to use it constantly by means of an appliance which prevents an injury in another part of his body from affecting the use of the foot, we are quite clear that there can be no recovery under the contract of the parties as for the loss of a foot."

So it appears that one cannot at once have his foot and lose his foot.

NEGLIGENCE — INJURY TO BATHER. — **Boyce** *v.* Union Pac. Ry. Co., Supreme Court of Utah, 31 Pac. Rep. 450, raised a singular question of negligence. It was an action against the proprietor of a lake bathing-resort, for injuries sustained by a bather, from broken glass on the bottom of the lake. There was testimony that though defendant employed men for the purpose of examining the bottom and removing dangerous substances, there had been no examination made by them on the day of the accident nor on the day before, and that if such examination had been made, the glass might have been discovered. It was held that a verdict for the plaintiff was warranted. This seems reasonable, inasmuch as the proprietor of a wharf has been held liable for an injury to a vessel by an object on the ground under water in the slip. The court, however, seem to place as little value on a leg as did Captain Polwarth, in Cooper's "Lionel Lincoln," who said: "One can be a very good waterman as you see without legs, — a good fiddler, a first-rate tailor, a lawyer, a doctor, a parson, a very tolerable cook, and in short, anything but a dancing-master. I see no use in a leg unless it be to have the gout."

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 "Green Bag" will be issued on the 20th of each month. We make this announcement to allay the anxiety of certain subscribers, who evidently expect its coming at an earlier date, and feel it necessary to inquire as to the cause of its non-arrival.

THE Editor once more requests his readers to aid him in keeping the columns of the "Green Bag" filled with interesting matter, by sending in short contributions upon subjects of general interest to the profession, anecdotes, bits of facetiæ, etc.

THE following "entertaining" specimen of letters sometimes received by lawyers comes from a Tennessee subscriber. It is given *verbatim et literatim*, as received by him: —

Oct 2th, 192

DEAR SIER as you aire the Agnt for the herblit lands I give you thes idums your manger down hare has Bin giv away the Bord timber of land he has got mad wit me caus would hold him out in it when I com to this plase he agreed to bill the house if I cut the logs an hald railes to fens A good lout I got him hall the lougs after so long A time I never cood git him do eney thing more I finesd house and have clend up an fends 5 or 6 ackers and has got A good lout hogs I have him takine of the rit he wants to mak me move I wood like A showin from you to stay on an if I dont do what is rit I will Pay all Damig Saelss never has done eney thing he proms I drive my mul an waigin don thaire to far A fue Plank to line the larg cricks of the house he wood not let me have it said it want thare and afterwards give gim lenat Sealss loumber to flour an louft his house an let John Simmons A bout 4 or 5 thousand feet an none of it A gouing to be put on farme I hop to hear from you son now if you dont bleve this ask all the nabers hear if you will a showin I will stay on yours trulery

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A Drees me at Pikvill

A MINNESOTA correspondent sends us the following: —

MINNEAPOLIS, MINN., Nov. 15, 1892.

Editor of the "Green Bag":

DEAR SIR, — I hand you herewith the copy of a notice I found in the records of the office of the Register of Deeds of this (Hennepin) county while examining the conveyances relating to a certain piece of land a few days ago. This specimen from Minnesota may interest your readers, so I enclose you the same. Yours very truly,

---

NOTICE.

Hereby I notify, this 4th day of August, 1892. whoever it may concern, describing the parcel of land, Town 117. Range 23, Section 11, and lot 1, containing 10¾ acres, all lying in Hennepin County, Minnesota, belonging to Flora Fowler, give a bond for a deed, in February, 1889, consideration $5000.00. to Henry W Kryger, that Henry H. Kryger is ready to fulfil the condition of the bond, as filed at the present time; that Flora Fowler refuses to turn over the 10¾ acres, that Flora Fowler agreed to do as the bond required The bond requires to turn over 10¾ acres; if not, that she forfeit the $5000 under her bond.

I, Henry H. Kryger, was ready five months ago to fulfil the conditions of the bond, or, in other words, $5000; but I will not pay the $5000 until I get my 10¾ acres.

That hereby I notify the owner, or any other purchaser who may purchase the land, if they purchase the land they purchase with the conditions to pay Henry W. Kryger the damages in the sum of $10,000, as filed with the County Commissioners, and also all liabilities it may incur on this property, as described. If Flora Fowle sells this property, that the purchaser will have to stand all the damages it incurs; that they all had notice here given to Flora Fowler at Cincinnati, Ohio, and also file a *lis pendens* for a suit against Flora Fowler and the County Commissioners.

HENRY H. KRYGER.

LEGAL ANTIQUITIES.

In 1643 Roger Scott, for repeated sleeping in meeting on the Lord's Day, and for striking the person who waked him, was, at Salem, Mass., sentenced to be severely whipped.

The "Columbian Centinel" for December, 1789, contains the following interesting information concerning the "Father of his Country," who appears in the rôle of a "Sabbath-breaker": —

"The President, on his return to New York from his late tour through Connecticut, having missed his way on Saturday, was obliged to ride a few miles one Sunday morning, in order to gain the town at which he had previously proposed to have attended divine service. — Before he arrived, however, he was met by a Tythingman, who, commanding him to stop, demanded the occasion of his riding; and it was not until the President had informed him of every circumstance and promised to go no further than the town intended, that the Tythingman would permit him to proceed on his journey."

FACETIÆ.

The following true incident occurred in Marshall County, Indiana: —

A portly and pompous justice of the peace of Marshall County, erstwhile village blacksmith, undertook to reconcile the domestic difficulties between a man and his wife who had separated, gone together, and again separated. To do this he wrote a ponderous document setting forth that they had quarrelled and abused each other, but now they were "to forgive and forget" the past, and strive to live in peace. In conclusion this descendant of Vulcan said: "And the parties hereto do solemnly pledge themselves to keep this agreement in the presence of Almighty God and David Hull."

An amusing incident occurred recently at the trial of a breach of promise case, in which a police constable was the defendant. During the impanelling of the jury, defendant's counsel examined each of the jurymen on his *voir dire*, to ascertain if he had any prejudice against policemen as such. He pressed his examination a little more closely than is usual in the examination of jurymen, and brought forth a protest and objection from the plaintiff's counsel.

"Many people look upon policemen as Ishmaelites," explained the defendant's counsel.

"Have you not made a mistake in the tribe?" quickly interposed the plaintiff's counsel. "You probably mean Hittites."

This took place in New York City; and although Gothamites habitually call their police force "the finest," the retort lost none of its pungency on that account.

When Judge Bond of the U. S. Circuit Court was holding a term once at Raleigh, N. C., he was invited to meet several members of the bar at a dinner, — among them the late Hon. Henry A. Gilliam, with whom the judge was very sociable, but who was just then rather out of humor at some rulings his honor had made against him. In a sportive humor the judge placed a hog's head which happened to be in front of him, and of which Gilliam was known to be very fond, on a plate and sent it to Gilliam with his compliments. Gilliam received it with great complacency, and taking it by one ear while he went to work on it with his knife, remarked with a bow, "I am glad that I have at last got the ear of the court."

Mr. P. H. Winston and Hon. H. A. Gilliam were for years leaders at the Bertie County (N. C.) Bar, and had each a full appreciation, from experience, of the skill of the other. At one term Mr. Winston was suddenly called away, and placed his business in the hands of his nephew Duncan Winston, a recent acquisition to the bar. "Now," said he, "Duncan, if Gilliam makes you any offer of a compromise, decline it. If you make him one, and you find he is about to accept it, *withdraw it immediately.*"

There was a suit tried in the U. S. Circuit Court at Raleigh, N. C., some years ago, in which a Baltimore commission house was plaintiff, and Gen. Bryan Grimes, who led the last charge at Appomattox, was defendant. Judge Bond, who presided, was strongly anti-Southern during the war, and a citizen of Baltimore. The late Governor Fowle, who was a very eloquent lawyer, represented

General Grimes, and in his appeal to the jury laid full stress on the character and record of his client, and dwelt eloquently on the "last charge at Appomattox." Coming out of the court, he said to the opposing counsel (now Judge Fuller of the U. S. Land Claims Court), "Fuller, that last charge at Appomattox has got me the jury." "Yes," said Fuller, very quietly; "and that last charge of Judge Bond has got me the verdict." And so it proved.

SOME years ago Hon. George E. Badger was called to Halifax, N. C., by B. F. Moore, Esq., as associate in a desperate murder case he was defending. After the jury was empanelled, court took a recess for dinner; and as they were going to the hotel, some one walking behind them overheard the following conversation: —

"Moore," said Badger, "this is a bad case. I hope you have got a good jury. As you live here, I have trusted its selection to you."

"Yes, sir," said Moore; "we have a tolerably good jury."

Badger became excited. "A *tolerably* good jury, Mr. Moore, in such a case as *this?*"

"Well," coolly replied his friend, "the two leading men on the jury are sureties for our fee of a thousand dollars; and if the man hangs they will have it to pay."

"Ah!" said Badger, slapping him on the back; "I call that a d——d good jury."

WHEN the late Hon. P. H. Winston first attended court in Tyrrell County, North Carolina, after beginning practice, he stopped on his way thither to spend the night with a brother lawyer, then in full practice, who in Reconstruction days obtained a judgeship and the title of "Jaybird" Jones. To entertain his young friend, Jones on said occasion discoursed largely of law, and among other inquiries put this question to young Winston: —

"I have," said he, marking the lines on the floor as he proceeded, "this land case. Beginning at A and running to B, my course and poleage [distance] is all right, and the same from B to C and from C to D; but in running from D to the beginning at A, my course is all right, but my poleage overruns. Now, why can't I *bend out* and get my poleage?"

"Well," said Winston, looking intently at the diagram, "no reason at all, except this fellow out here, a miserable sinner, might say, 'Why don't you *bend in* and get your poleage?'"

"Ah!" said Jones, in a passion; "that is *preposterous*, sir, — *perfectly* preposterous!"

NOTES.

ONE day, upon removing some books at the chambers of Sir William Jones, a large spider dropped upon the floor, upon which Sir William, with some warmth, said, "Kill that spider, Day! Kill that spider!" "No," said Mr. Day, with that coolness for which he was so conspicuous, "I will not kill that spider, Jones; I do not know that I have a right to do so. Suppose, when you are going in your carriage to Westminster Hall, a superior being, who may perhaps have as much power over you as you have over this insect, should say to his companion, 'Kill that lawyer! Kill that lawyer!' How should you like that? I am sure to most people a lawyer is a more noxious insect than a spider." — *Slater on Book Collecting.*

No matter how learned, grave, and dignified the court, it seems impossible entirely to bar out the occasional occurrence in its presence of things amusing or ridiculous.

On one occasion, when Hon. John. F. Dillon was judge of the Federal Court for the Eighth Circuit, he was holding court at Leavenworth, Kan.; and a referee having been appointed in an important and complicated case, the question of the amount of his fee as such referee came up on the hearing of the report. The fee taxed was five hundred dollars; but G., an enthusiastic attorney on all occasions, and especially so on this, — as he was for the winning party under the report, and could afford to be generous, — moved that, in view of the time required and the skill and ability displayed in making the report, the referee's fee be fixed at eight hundred dollars.

To this proposition Judge Dillon gravely shook his head and said: "I am myself compelled to do so much work of a similar nature, for so much less a compensation than even the fee fixed in this

case, that I cannot find it in my conscience to grant the increase."

"But," said the enthusiastic G., "your honor should remember that you *have a steady job!*"

Evidently the judge did remember, for he did not grant the motion.

MR. JULIUS STERN of the Chicago Bar, says the "Chicago Legal News," upon a recent visit to Joliet (not under guard), in searching the musty records of Will County, discovered and brought to light the following poetic effusion. It having afforded so much pleasure to Mr. Stern, he felt that it would be productive of amusement to others, and therefore sent it for publication in the "Legal News." The author's name is withheld under penalty. We believe it is Horace.

DIVORCE — POETIC EFFUSION.

Illinois State, Will County, ss.,
Whose people may God continue to bless.
The sheriff thereof we loyally greet;
In the name of that people to him and his suite
We command you to summon one Barney Budge
To be and appear before our circuit judge
At the next term of court, to be held in October
(And whisper to Barney he 'd better keep sober),
To answer to Bridget directly and fully
All the matters and things which she claims are truly
Charged and alleged in her bill for divorce,
Filed on the chancery side, of course,
And abide and perform for justice's sake
Whatever order the court shall make.
Hereof fail not, or a solemn decree,
As Bridget prays in her bill should be,
Will be entered against you as if by confession,
All of which will be done at the October session;
And have there this writ with a statement on,
Of the manner in which your work has been done;
Attest Richard Roe, of said court the clerk,
With the seal here affixed to show it 's his work.
Humbly complaining unto the judge,
Comes your oratrix, Bridget Budge,
And shows that she lives in the Prairie State,
And has for a year just prior to date;
That until May first, seventy-one,
She went by the name of Bridget Dunn;
That she got that name from her father and mother,
And up to that time had wished for no other;
That then Mr. Budge, whose front name is Barney,
Who had sure kissed the stone whose front name is Blarney
Began his attentions. His elegant style,
His quick, ready wit, and bewildering smile
Bewitched her entirely, and so she consented
To become Mrs. Budge; which she never repented
Until seventy-five, when your oratrix thinks
That Barney commenced taking too many drinks,
And instead of protecting his own lawful wife,
He got drunk and abused her each day of his life.
With patience she bore it two long, weary years,
And tried with entreaties, indorsed by her tears,
To induce Mr. Barney to alter his course.
But these having failed, she reverted to force;
So she tried with the poker and broomstick to aid her.
Either one in her hands she believed a persuader
That would conquer her Barney and make him a man;
At least, she proceeded to try the new plan.
But alas for your oratrix! it worked very ill;
And her nose, which was pug, is puggier still;
And her eyes are now black, — a color that 's new,
For once they were light and a beautiful blue;
And her hair, which was thick, is decidedly thin;
And Barney still sticks to his whiskey and gin.
And so, having failed with entreaty and force,
She will see what virtue there is in divorce.
So she solemnly charges the truth to be,
That she and Barney can no longer agree;
That he is a drunkard, habitually so;
And she further intends the court shall know
He 's extremely cruel, and repeatedly so;
There 's nothing too bad for Barney to do.
To the end, therefore, that justice be done,
Though the heavens fall with the stars, moon, and sun,
She asks for a writ to be made by the clerk,
With the seal of the court to show it 's his work,
Telling Barney to come, will he or nil,
And answer the charges she 's made in this bill, —
The oath being waived, as it 's your oratrix's care
To give Mr. Budge no occasion to swear;
And your oratrix says that henceforth from this day,
In obedience to duty, she ever will pray
That Barney and she may *each* be made one, —
He, Barney Budge; and she,

BRIDGET DUNN.

Recent Deaths.

JUDGE WILLIAM WIRT VIRGIN, of the Supreme Court of Maine, died at his home in Portland, on January 23.

He was born in Rumford in 1822, and received his preliminary education in the Academy at North Bridgeton and Bethel. He graduated at Bowdoin in 1844. He studied law with his father, a noted barrister, and was admitted to the bar in 1847. Then he removed to Norway, where he practised law until 1871. He was County Attorney for Oxford County three years, and a member of the State Senate in 1865–66. During the latter year

he served as President of the Senate. Resigning his position, he was then appointed reporter of decisions, which office he held until 1872, when he was appointed Justice of the Supreme Bench by Governor Perham.

As a reporter of decisions in the court in which he later became Associate Justice, he laid the foundation which gradually raised him to a position in the legal firmament that commanded the respect of all. One of his most notable efforts was in connection with the Coburn will case, when ex-Gov. Abner Coburn left some $3,000,000, one-half of which was bequeathed to charitable institutions. Relatives fought for years to contest the will; but Judge Virgin triumphed.

During the war Judge Virgin became a Major-General. He recruited the Twenty-third Maine Regiment, and with it guarded Washington during the Rebellion.

RUTHERFORD BIRCHARD HAYES, who was the nineteenth person to hold the office of President of the United States, died on January 17. He was born on Oct. 4, 1822, in Delaware, Ohio, his father having died a few months previous, leaving his mother in moderate circumstances. He was of Scottish ancestry on his mother's side, and of English on that of his father. Both of his parents were natives of Vermont, whence they emigrated in 1817.

After a careful preparatory course he was graduated from Kenyon College, at Gambier, Ohio, in 1842, at the head of his class, although he was its youngest member. He at once began the study of law, and was graduated from the Harvard Law School in 1845.

He began practice at Fremont, Ohio, but removed to Cincinnati in 1849. His reputation as a lawyer was soon established, and he was employed in some of the most noted cases ever tried there. His personal popularity, too, was great, and in 1856 he was nominated for Judge of the Court of Common Pleas in Cincinnati, but he declined the nomination. In 1856 the Common Council of that city elected him to fill a vacancy in the office of City Solicitor, and three years later he was re-elected to the office by the people, running ahead of his ticket. This office he held until 1861, to the satisfaction of men of both parties.

His career in the army began with the war and ended with it. He enlisted originally as a private soldier, and was appointed Major of the Twenty-third Ohio Infantry by Governor Dennison, who requested him to accept that position.

After the war he returned to civil life, and took his seat in Congress Dec. 4, 1865. In August, 1866, he was re-nominated for Congress by acclamation. In June, 1867, the Republican Convention of Ohio nominated him for Governor, and he defeated Judge Sherman.

He was nominated for President by the National Republican Convention on June 14, 1876, and was elected over Samuel J. Tilden; the result having been decided by a special commission. He was inaugurated March 5, 1877.

The deceased was married to Lucy Ware Webb in 1852; and eight children were born, four of whom died in early life.

As President, Mr. Hayes conducted the affairs of the nation with great wisdom and to the satisfaction of the country.

BENJAMIN F. BUTLER died in Washington on January 13. He was born in Deerfield, N. H., on the 5th of November, 1818, and was the son of Capt. John Butler, who served under General Jackson at New Orleans. He was graduated at Waterville College (now Colby University), Maine, in 1838, was admitted to the bar in 1840, began practice at Lowell in 1841, and has since had a high reputation as a lawyer, especially in criminal cases. He early took a prominent part in politics on the Democratic side, and was elected a member of the Massachusetts House of Representatives in 1853, where he was prominent in forwarding the bill to reduce the hours of labor in factories from thirteen to eleven. He was a member of the Constitutional Convention in the same year, and in 1859 was a member of the State Senate. In the last National Democratic Convention held prior to the War of the Rebellion, General Butler took part as a delegate from Massachusetts, the session being held at Charleston. When a portion of the delegates re-assembled at Baltimore, Mr. Butler, after taking part in the opening debates and votes, announced that a majority of the delegates would not further participate in the deliberations of the convention on the ground that there had been a withdrawal in part of the majority of the States; and, further, he added, "upon the ground that I would not sit in a convention

where the African slave-trade, which is piracy by the laws of my country, is approvingly advocated."

When the war broke out and the first call for troops was issued, he was commander of a brigade of the State militia, and at once issued orders for the mustering of his command. The call was made April 15, 1861, and on the next day the Sixth Regiment left Boston, General Butler starting on the 18th with the Eighth Regiment under orders to proceed to Washington by way of Baltimore. Two regiments of the brigade were sent by another route to Fortress Monroe, which they garrisoned. By the burning of bridges, General Butler was rendered unable to reach Washington by way of Baltimore, and therefore seized Annapolis, repaired the railroad between that point and Washington, and reached the capital in time to prevent its falling into the hands of the hostile forces.

On May 13 he entered Baltimore at the head of 900 men, meeting with no opposition; and May 22, having been commissioned a Major-General in the United States service, he was assigned the command of Fortress Monroe. It was while at that fort that he made his famous point in regard to runaway slaves, refusing to send such slaves back to their owners, on the ground that they were "property contraband of war."

Having taken part with Admiral Farragut in the movement on New Orleans, he entered that city May 1, 1862, and remained there until December 16 of the same year, when he was relieved by General Banks. His government of the city was vigorous and successful.

In November, 1863, he was placed in command of the Department of Virginia and North Carolina, and in the winter conceived the project of attacking Richmond from City Point and Bermuda Hundred, — a plan which he entered upon by occupying that peninsula in May, 1864. Here he aided the movement of General Grant upon Petersburg. He was ordered to New York during the Presidential election of 1864, and in December of that year he was sent against Fort Fisher, his expedition proving unsuccessful. He was subsequently relieved of his command, and at the close of the war was mustered out of the United States service. He served in the State militia some years after the war, holding at one time the position of Major-General, — an office which was abolished on the reorganization of the militia in 1878.

General Butler was elected to Congress from the Fifth Massachusetts District in 1866 as a Republican, receiving a re-election for three successive terms, and serving from March 4, 1867, to March 3, 1875. In the election of 1876 he was defeated by Charles P. Thompson, but two years later was again chosen. He ran as an Independent and Democratic candidate for governor in 1878, and was defeated by Hon. Thomas Talbot. Running the next year on a Democratic and Independent ticket, he was defeated by Hon. John D. Long.

In 1882 the Democrats united upon him as their candidate and he was elected, though the rest of the State ticket was defeated.

In 1884 he was the candidate of the Greenback and Anti-monopolist parties for the Presidency, and received 133,825 votes.

Since his retirement from the Governorship the General had devoted himself with his accustomed assiduity to his law practice, flitting between Boston, New York, and Washington, with the activity of a man far younger. His last case — that is, his last appearance in public — was in the Sawyer will case, which occupied the last two weeks of 1892 at Salem, Mass.

At the time of his death General Butler was the only surviving volunteer general officer who had served in the war.

Lucius Q. C. Lamar, Associate Justice of the United States Supreme Court, died at Macon, Ga., January 23. He had been in failing health for some time, and his demise will cause the public no surprise. He was born in Putnam County, Georgia, in 1825, and graduated from Emory College in 1845. For a time after his graduation he taught mathematics in the University of Mississippi.

Then he returned to Georgia to practise law, but soon drifted into politics, serving in the legislature for a term or two. Subsequently he became a resident of Mississippi, a district of which sent him to the Thirty-fifth and Thirty-sixth Congresses of the United States.

In 1860 Mr. Lamar resigned to take his seat in the Secession convention of the State. On the outbreak of the war he entered the Confederate army as Lieutenant-Colonel of the Nineteenth Regiment, and was promoted to the Colonelcy. In 1863 he was intrusted by Jefferson Davis with an

important diplomatic mission to Russia, and at the close of the war he was elected professor of political economy and social science in the University of Mississippi, but a year later was transferred to the law professorship.

He was elected to the Forty-third and Forty-fourth Congresses of the United States, and was elected to the United States Senate in 1876, and re-elected in 1882.

President Cleveland made him Secretary of the Interior, and at the close of his administration appointed him to the Supreme Court Bench.

REVIEWS.

OWING to the great amount of space required for our obituary notices, we are compelled to omit our usual Reviews of Magazines.

BOOK NOTICES.

NEW COMMENTARIES ON THE CRIMINAL LAW upon a new system of Legal Exposition. By JOEL PRENTISS BISHOP. Eighth Edition (being a new work based on former editions). In two volumes. T. H. Flood and Company, Chicago, 1892. Law sheep. $12.00 net.

Mr. Bishop's work on Criminal Law has been long and favorably known by the profession; and while the present edition has been largely rewritten and in various ways improved, the arrangement has not been radically changed. In its present form the two volumes are really almost independent of each other. Volume I. is complete in itself, and constructed and indexed to be sold separately to purchasers who do not wish also the second volume; the latter consisting, as the author says in his preface, "of the minuter expositions of forty-nine specific crimes, whereof a general view, with the leading principles governing them, appears in the first volume." To the preparation of this last edition Mr. Bishop has brought to bear that careful discrimination and thorough research which have gained him his enviable reputation as a law-writer, and the result is an admirable and exhaustive treatise. It is a work indispensable to the criminal lawyer, and to the general practitioner as well.

The treatise Mr. Bishop claims to be the culmination of his "new system of legal exposition," which he so fully explained in the preface to the last edition of his "Marriage, Divorce, and Separation." Whether or not the profession appreciate fully the "new faith" as laid down by this great lawgiver, he will receive its unqualified commendation for the sound, reliable, and praiseworthy character of his contributions to legal literature. Not, however, until the millennium comes shall we look for the carrying out of Mr. Bishop's suggestion of "*The establishment by the National Bar Association, or some other association or individual able and willing to bear the expense, of a bureau to investigate, by the help of trained experts, every book relating to the law, and especially every new one, and report in writing to the profession, simply and only as to its bona fides. If it is a reprint of a foreign work, is it correctly done, with the name of author, dates, and the like, true to the fact? If it professes to be original, how far is it so? Are due credits given? Are the rules of our written language concerning quotation marks followed? Are there concealed piracies? Did the writer alter from other books any part of what he put forth as his own? Was the work done personally by the ostensible author? If a book of reported cases, did the judges in their opinions deal fairly with counsel, text-writers, and one another?*"

LAWYERS' REPORTS ANNOTATED, Book XVI. All current cases of general value and importance decided in the United States, State, and Territorial Courts, with full annotation. By BURDETT A. RICH, editor, and HENRY P. FARNHAM, assistant editor. Lawyers' Co-operative Publishing Company, Rochester, N. Y. $5.00 net.

We regret that we no longer see the name of Robert Desty appearing as editor of this series of reports. We have no doubt that his successors are competent to carry on his work, but his services have been so valuable that it will be difficult to fill his place. The annotations in the present volume are very full, and their quality is apparently good. An unusually large number of cases are reported and cited.

GENERAL DIGEST OF THE DECISIONS OF THE PRINCIPAL COURTS IN THE UNITED STATES, ENGLAND, AND CANADA. Refers to all reports, official and unofficial, first published during the year ending September, 1892. Annual, being Volume VII. of the series. Lawyers' Co-operative Publishing Company, Rochester, N. Y. $6.00.

We have had occasion, more than once, to express our appreciation of this series of Digests; and the present volume maintains the high standard of excellence which distinguished its predecessors. This

vast work covers nearly 2,500 pages, and digests nearly 20,000 cases. The editorial work has been done thoroughly and conscientiously, and the law of each case is given tersely and succinctly. Its classification is admirable, and the lawyer can find without the slightest difficulty any matter that he may desire. We do not propose to institute any comparison between the "General Digest" and its bulky rival the "American Digest" as to the general merits of the two works; but one feature in the "General Digest" strikes us as being far superior, and that is the typographical work. It is a real pleasure to find a volume of this nature which can be read with perfect ease and comfort; and on behalf of the eyes of the legal profession we thank the publishers for the thoughtfulness displayed for them.

THE RAILROADS AND THE COMMERCE CLAUSE. By FRANCIS COPE HARTSHORNE, Esq., of the Philadelphia Bar. University of Pennsylvania Press, Philadelphia, 1893. $1.50.

This is a timely little book in view of the uncertainty which still seems to surround the relations of the railroads to the National Government under the Commerce Clause of the Constitution.

The purpose of this work is to throw light on the Commerce Clause under the various rulings to which it has been subjected; and in order that this may be the more effectually done, it has been divided into three parts.

PART I. treats of the Power of Congress, under the Commerce Clause, to Regulate Railroads.

PART II. of the Commerce Clause and State Railroad Legislation.

PART III. of the Commerce Clause as affecting State Taxation of Railroads.

The author's aim is, first, to present the actual state of the law as defined by the decisions of the Supreme Court; second, from a careful study of the decisions already made, to endeavor to deduce the principles upon which, and the directions in which, the development of the law is likely to proceed; in other words, explain the present, and predict the future attitude of the Supreme Court upon questions of railroad legislation, which have already arisen or are likely to arise.

THE LAW OF MARRIAGE AND FAMILY RELATIONS. A Manual of Practical Law. By NEVIL GEARY, M.A. Adam and Charles Black, London and Edinburgh; Macmillan & Co., New York, 1892. Cloth. $3.00.

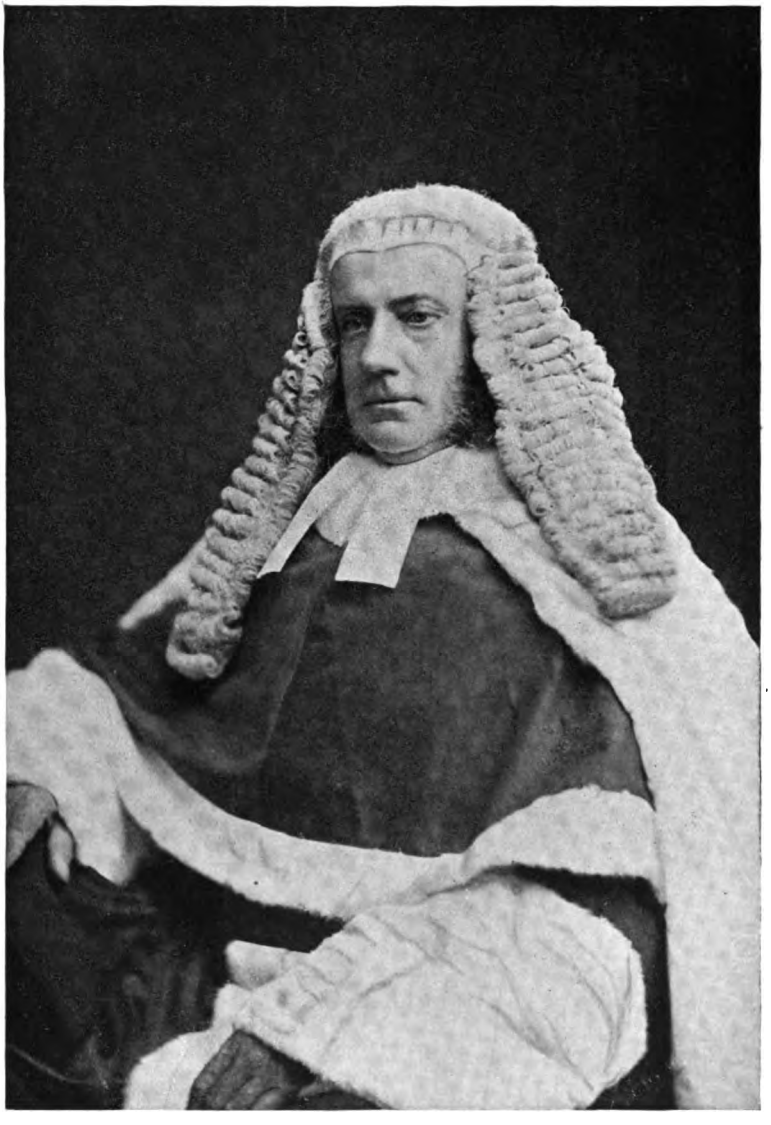
This volume is intended by the author not only as a legal treatise for the profession, but also as a practical work for the layman. The subject of marriage is treated very fully, and the relations of husband and wife clearly defined. The canonical and religious obligations are constantly referred to, beside those actually imposed by law. In an appendix is given an interesting collection of the opinions of the Fathers, of the Reformers, and of Bishops of the Church of England, and of the Inquisition and Nonconformists of the present day, as to the re-marriage of divorced persons. The book is an exceedingly readable one, and contains much information not to be found in other treatises upon the subject. Mr. Geary's citations of cases are numerous, and the profession will find the work of much real value.

A TREATISE ON HOMESTEAD AND EXEMPTIONS. By RUFUS WAPLES, LL.D. T. H. Flood & Co., Chicago, 1893. Law sheep. $6.00, net.

This is a comprehensive and thorough treatise upon a subject of the greatest importance. The work covers the United States Homestead Laws as well as those of the several States. All the Statutes with decisions bearing upon them are cited, and a synopsis of the Statutes is given in an appendix. As it is many years since any work on this branch of the law has been published, the number of new decisions bearing upon the subject has been very large, and several States have enacted Homestead Statutes which had none before. Chattel exemption as well as Homestead is fully treated by Mr. Waples. The work meets a real want on the part of the profession, and should be heartily welcomed.

ALL AROUND THE YEAR, 1893. Entirely new design in colors. By J. PAULINE SUNTER. Printed on heavy cardboard, gilt edges, with chain, tassels, and ring. Size, 4¼ x 5½ inches. Boxed. 50 cents. Lee & Shepard, Boston.

The "All around the Year" calendar which Mrs. Sunter sends out this year is as charming a piece of work as anything she has done. Like its predecessors, it is printed on heavy cardboard, gilt-edged, with chain, tassels, and ring, and is of convenient size. The designs are fresh and delightful, quaint and picturesque little lads and lasses issuing in each month with just the right words and in the most charming attitudes, while the lines on the cards combine to form a very pleasing love-story. Done in several colors, one can scarcely imagine anything more graceful than the twelve cards, each bearing the dainty design which includes the month's calendar as a part of the picture. The cover shows a pretty little Miss watching a Cupid "warming his pretty little toes" at an open fireplace, while on the last page this same Cupid (or his fellow) is playing sweetly "Good-by, my lover, good-by."



BARON HUDDLESTON.

The Green Bag.

Vol. V. No. 3. BOSTON. March, 1893.

THE LATE MR. BARON HUDDLESTON.

MR. BARON HUDDLESTON, who died last year, was at once the best liked and the most grossly underrated judge upon the English Bench. It fell to his lot to try a large number of cases upon the merits of which public opinion was acutely divided, and a certain section of the English press systematically held him up before its readers as a partial, pretentious, and incompetent man. This view has no correspondence with the facts, and was at variance with the settled judgment of the legal profession. Even a superficial study of the career and character of this "old man eloquent" will suffice to clear away from his judicial memory the undeserved and absurd reproaches with which it has been loaded, and the dust and heat of which can hardly have failed to prejudice his reputation in America.

John Walter Huddleston was an Irishman by birth. His father served his generation in the Royal Navy. Huddleston had no academic name, and his biographer is not therefore called upon to count over a long and wearisome bead-roll of prizes and honors which too often serve first as objects of exclusive worship to their unreasoning devotees, and then as garlands wherewith to deck a shattered constitution and an enfeebled brain. In due time Mr. Huddleston took to the law and became a member of the Honorable Society of Gray's Inn, which still attracts by its accessible scholarships, its excellent cuisine, and its part in the glories of Bacon, Holt, and Romilly, a considerable number of students. He was called to the bar in 1839, and joined the Oxford Circuit. The following story, for the truth of which we are unable to vouch, still passes current at the Circuit mess. An important case was proceeding, in which one of the witnesses was a Frenchman. The official interpreter was nowhere to be found, and neither his "Ludship" nor the examining counsel had a sufficient knowledge of the Gallic tongue to take his place. Mr. Huddleston volunteered his services, displayed an accurate acquaintance with the French language, was praised by the judge, and as a necessary consequence was at once courted by the attorneys.

No such explanation of Mr. Baron Huddleston's phenomenal success is required. Nature had given him a fine, honest face, a singularly charming manner, and a vigorous and acute mind; the rest he did for himself. Too many men come to London, without either connection or means, take no pains to form a circle of acquaintances, join the bar, and then sink into despair, because the work which they have never cultivated is not forthcoming. Huddleston made no such mistake. He studied law, indeed, but he was a far more zealous student of the art of making himself agreeable in society. Erelong Society rewarded her votary, and briefs were left at Mr. Huddleston's chambers. Sir Charles Russell is reported to have said to an officious interviewer that there are three prerequisites for success at the bar,— ready money, good health, and the power to array facts in order of time. No one can overestimate the importance of the last of the three. Cases are constantly presented before the tribunals, in a manner which does murderous violence to literary taste, to logic, and to grammar. "Let me have the facts in alphabetical order," said a

learned judge in bitter jest to a counsel who was floundering hopelessly in the midst of a mass of dates; and every one who has attended the law courts must have witnessed judicial bewilderment quite as painful, if less emphatically and sarcastically expressed. Mr. Huddleston possessed the gift of exposition in larger measure than any of his contemporaries with the exception of Sir Alexander Cockburn; and he rose rapidly into wide and highly lucrative practice. He was marvellously successful in defending prisoners. Those cases in the law reports which commence with "Huddleston for the accused" usually close with the words "conviction quashed." His advocacy vindicated the character of Mrs. Firebrace, and helped Cockburn to secure the condemnation of Palmer. In 1857 he took silk.

We may pause here conveniently to consider Mr. Huddleston's parliamentary career, which was extremely checkered. He stood in the Conservative interest unsuccessfully for the following constituencies: Worcester (1852), Shrewsbury (1857), Kidderminster (1859 and 1861). In 1865 he was returned for Canterbury, which rejected him at the general election of 1868. Two years later he was defeated at Norwich. In February, 1874, he was elected M. P. for the last-named constituency by a majority of 47 over the Liberal candidate Mr. Tillett. In the beginning of 1875 Sir John Karslake resigned the Attorney-Generalship in favor of Sir Richard Baggallay, and Mr. Huddleston received the offer of the Solicitor-Generalship. But he remembered the majority of 47; and loyalty to his party, and possibly a pious determination like that of King Charles II. "not to set out on his travels again," induced him to decline the tempting prize. The Conservative Government did not forget Mr. Huddleston's self-denial. He was appointed a puisne judge of the Court of Common Pleas, and in May, 1875, became a Baron of the Court of Exchequer.

Mr. Baron Huddleston, perhaps unconsciously, but none the less certainly, introduced into English law a new theory as to the mutual relations of judge and jury. According to the old legal tradition which Charles Dickens caricatured in the person of Mr. Justice Stareleigh, the judge presiding at a trial had simply to present to the jury a clear but perfectly colorless summary of the evidence. "If you believe so and so, you will find for the defendant; if not, your verdict will be for the plaintiff." Lord Campbell, Lord Cockburn, and many other judges who might easily be named, had modified this rule to a certain extent. They seem to have believed that in complex cases it may be the duty of the judge, not only to assist but practically to advise the jury. Mr. Baron Huddleston held this belief without limitation. In his opinion the legal expert who sits upon the bench is not paid £5,000 a year simply to do for the jury what they can do for themselves, or to apply the musty rules of evidence, or to act the chairman at a public debate who preserves silence, and calls an angry disputant to order. Very different in his Lordship's view were the purposes of such appointments. He deemed it to be the bounden duty of a judge not only to form an opinion, but to express it; and he acted throughout upon this theory with a boldness and an ability of which contemporary legal history can furnish no parallel.

To sit in Queen's Bench Court No. 4, and hear Baron Huddleston try a libel action with a special jury of the City of London was an intellectual banquet of the highest quality. Let us try to picture the scene. Before his lordship entered the court, the temperature was raised to 68°; one of the two doors was locked, and heavy curtains were drawn round the judge's chair so as to banish the very possibility of a draught. Counsel took their seats, the well of the court was filled with witnesses, the passages were crammed with spectators, and in half an hour the thermometer stood at 75° in the shade. Then the ushers called, "Silence!" and pulled back the curtains. The judge entered, bowed to the bar, and took his seat on the bench. The curtains were re-

placed, the jury were sworn, and the trial began. While the counsel for the plaintiff was opening his case, one could not but note his lordship's appearance and demeanor. Mr. Baron Huddleston was then an old man and an invalid, as the precautions against cold which we have just described sufficiently prove. His features were impressive and at times almost fascinating. He had the comfortable, settled appearance of a successful man of the world, in spite of the evident twinges of pain which attacked him ever and anon. The wig, the robes, and the curtains prevented one from forming at this stage of the proceedings a more accurate diagnosis. But when the first witness stepped into the box, his lordship's attitude underwent an entire change. He pushed back the curtains, threw his eyeglass with a peculiar facial movement, the precise physiological character of which was a standing mystery to the bar, from his nose to his desk, and fixed upon the trembling talebearer that searching glance which only a *nisi prius* lawyer can command.

The charge of partiality, so often brought against Baron Huddleston by ill-disposed persons, derived its plausibility solely from the fact that he saw into the heart of a case from the very outset, formed his opinion with amazing rapidity, did not change it in the course of the trial without "cause shown," and avowedly did his best to impress his views upon the jury. We are not prepared to affirm that his lordship's conception of the relative position of judge and jury was an erroneous one; and we do say without hesitation that it was found consistent with the able and righteous discharge of his public duties. While the case was proceeding, the "constitutional tribunal" received little of Mr. Baron Huddleston's attention. But he took care that they noticed all the points which required consideration at their hands. At last the evidence on both sides was completed; the speeches of counsel were delivered, and it was the judge's turn.

Now commenced the finest exhibition of forensic talent which the Law Courts can display. The curtains were thrown back once more. The judicial chair was wheeled half-way round, so that his lordship might directly face "the twelve men in the box" whom he intended to persuade. He began with a sensible statement of his juridical theory. The jury must decide on the facts, — that was their province,— but he was entitled and bound to give them the benefit of his experience and training. Then he played with the fringes of the case. The inquiry had been somewhat unduly prolonged. Counsel on both sides ought to have remembered what an exceedingly uncomfortable thing it was to sit for hours in these dingy and ill-ventilated courts, with their ridiculously insufficient accommodation. As long as he had breath, he would protest against the inconvenience to which jurymen were put by the incompetence of those who were responsible for the construction of the Law Courts. Why, in the *Palais de Justice* in Brussels,— the poorest capital in Europe,— every juryman sat in an armchair! The comfort of those who exercised important judicial functions ought to be attended to. So much for the exordium. His lordship then proceeded to deal with the merits of the case, laid down the law of libel from Campbell *v.* Spottiswoode, with a passing tribute to Cockburn, reviewed the facts, drawing them up in a long and luminous array which captivated at once the imagination and the judgment of his audience, and reiterating his former statement that the jury are absolute judges upon all questions of fact, concluded with a pretty strong indication of where, in his own opinion, the truth may be found. The verdict of the jury usually coincided with Mr. Baron Huddleston's judgment. His lordship was a good judge; but if he had resumed his old calling, he would have been the unchallenged leader of the *nisi prius* bar.

LEX.

UNMARRIED LADIES.

By R. Vashon Rogers.

THIS article is intended for the delectation, edification, warning, and instruction of those of the fair sex who never have been joined to any one in holy wedlock, — for this, according to Mr. Vice-Chancellor Hall, is the ordinary or primary meaning of the expression, "unmarried" ladies.[1] So widows are not interested herein, any more than are *femes coverts*, and need not read these pages.

"Spinster" is the addition in law proceedings usually given to all unmarried women, and it is a good addition for the estate and degree of a woman; but it is said a gentlewoman is to be named *generosa*, and not spinster, or it will be ill.[2]

Unmarried women often possess to a remarkable degree the Christian grace of perseverance. See, for instance, how they will cut a lot of holes in a piece of muslin, and then spend hours in sewing them up; how they will spend almost whole days buying a yard of ribbon of some particular hue. Miss Mary C. Felton, of Syracuse, N. Y., had this trait to an extraordinary degree; and Mr. W. Teal, the postmaster of that city, had full experience of her powers of holding on. The trouble between them came about in this way: A friend — whether male or female seems immaterial — sent Miss Mary a newspaper through the post. On the wrapper was a single letter or initial (suggestive, this, of a lady correspondent); the Argus-eyed official espied this, and true to his ideas of his duty as a collector of revenues for the Republic, demanded postage at letter rates. Miss F. considered Mr. T. was in the wrong, and tendered the sum payable for a newspaper; and as the postmaster would not accept this, she brought an action against him to recover her paper. The justice of the peace, who had the pleasure of trying this action, considered that the mark or letter was not such a "writing or memorandum" as was forbidden by the Act of March 3, 1825,[1] and that instructions from the Postal Department imposing a penalty for placing any "mark or sign" upon the newspaper wrapper were illegal, and did not warrant the detention of the paper, and so gave the fair claimant six cents damages and $2.89 costs. The postmaster, dissatisfied, went further and fared worse; for the Court of Common Pleas decided against him, with $22.95 additional costs. Then up the case went to the Supreme Court of the State; here the judges also sat on the poor official, and added to his costs $37.05. "Higher! still higher!" cried the postmaster. The Court of Appeals replied: "All right below, and $75.64 more to pay, Mr. P. M." (Full particulars of their other remarks are to be found in 1 Comst. 537.) "Never say die," moaned Mr. Teal, and retained Mr. Seward to argue his case before that august tribunal, the Supreme Court of the United States; after the argument came the judgment, which varied not from the utterances of the courts below, except in adding far more costs to the already not inconsiderable bill.[2] Here, to the satisfaction of Miss Mary C. Felton, the regret of the lawyers on both sides, and the utter discomfiture of the Postmaster, the matter ended. This case has been cited before now to show that the legal maxim, "De Minnie mis(s) non curat lex," is not to be depended upon; and also to disprove the culinary notion that the higher a wild duck gets, the better it is.

It is of course impossible to treat of this subject without getting into that which most young ladies strive for, — matrimony; or at

[1] Dalrymple *v.* Hall, 16 Ch. Div. 715.
[2] Dyer, 46, 88.

[1] 4 Stat. at Large, 105, 111.
[2] 19 Curt. 136; 12 How. 284.

least, into its usual antecedent. In Pennsylvania, some ten years ago, the courts considered the question of "courtship from which a promise of marriage may be inferred." The judge who tried the case considered that attentions paid to the lady in a quiet way — the world unseeing — were sufficient. He told the jury that although it was contended that to raise such a presumption the making of presents, the writing of love-letters, and all such things as pass between young people were essential, "we have," said he, "long passed that day, so far as courtship is concerned. . . . One man may desire to court the girl he desires to make his wife in a secluded place, or he may desire to keep it quiet; another may be in the habit of keeping company with a young lady, and appear in the public highway from time to time, that all may see him. Hence there is no standard; each case must stand on its own four legs, as the parties build it up." The court above him, however, gave him to understand that they had not "passed the day," that he was a little too previous, and left him not a solitary leg to stand on. They held that the charge was not only inadequate, but misleading and erroneous. The gentleman in the case, Rice by name, had been at the young lady's home on only four occasions, and then but for a short time; true, he had met her out in the evenings, — sometimes at church, — walked her home, and left her at the gate (we are not told that he ever helped her to hold up the gate, as genuine nineteenth-century lovers generally do). The court remarked that that was not the kind of intercourse that usually takes place between persons engaged to be married. Circumstantial evidence of an engagement of marriage is to be found in the proof of such facts as usually accompany that relation, — such as letters, presents, social attentions of various kinds, visiting together in company, preparations for housekeeping, and the like. These and similar circumstances, especially when the attentions are exclusive and continued for a long time, may well justify a jury in finding a promise of marriage. The court would not assent to the proposition that attentions paid in a secluded place are quite as satisfactory evidence of engagements.[1]

The Illinois courts have decided that an article in a newspaper may be a formal proposal of marriage, such as will bind the unfortunate giver of the same to a young lady, if he adds thereto the marginal note, "Read this." The learned judges said: "The article, 'Love, the Conqueror,' may be regarded as the defendant's own letter; it doubtless contained sentiments which he sanctioned, couched in language more choice than he could compose. It was his appeal for marriage, — it foretold in clear and emphatic language his object and intent in his courtship with her. She doubtless placed this construction upon it, as she might well do, and laid it aside, as a rare treasure, with his other letters." This certainly does not say much for his other letters, of which thirty-one were put in evidence. The lady was "the conqueror," — the article and the letters brought her six thousand dollars, and the court did not think the amount too much for the poor man of letters to pay for his change of feelings.[2] This unfortunate probably understood why the artists in Abyssinia, when depicting Saint George, their patron saint, represent him not as doing battle with a dragon, but as spearing the graceful, undulating form of a long-tongued woman.[3] Serjeant Buzfuz, when he held in his hand the world-renowned letter containing the words, "Chops and tomato sauce," was on solid ground, compared with those who tried to build a proposal of marriage upon "Read this."

If a young lady under twenty-one gets into a breach of promise case, or any other suit, she cannot be compelled to produce letters, billets-doux, or other papers in her possession, — she may keep them to herself to

[1] Rice *v.* Commonwealth, 100 Pa. St. 28.
[2] Richmond *v.* Roberts, 98 Ill. 472.
[3] The Century, July, 1892, p. 450.

line a box or curl her maiden locks;[1] while she can make her antagonist exhibit to the keen eye of the cold world whatever correspondence he may chance to have. However, not infrequently the fair lady produces only too readily the epistles of her quondam admirer.

Fortunately, the publication of letters will often be restrained by the courts at the suggestion of the writer, when they are not connected with actual litigation; otherwise, in these days of the making of many books and of thirst after realism, we would be having the society belles publishing the correspondence received by them from their lovelorn swains, under the title of "The Complete Love-Letter Writer." (How such a volume would sell, if the genuine names of the writers were given!)

"The general property, and general rights incident to property, remain in the writer." In England, at one time, it was thought that this rule only applied when the letters "are stamped with the character of literary compositions;" and under that category love-letters are not very likely to fall.[2] The receiver of a letter, although she may not publish it, may destroy it.[3]

Ladies who have never experienced the delights of matrimony sometimes complain that those who have had spouses but have failed to keep them in this mundane sphere, have unfair advantages in the race for nuptial prizes. In 1733 a number of maids in Charleston presented the following petition to the Governor of South Carolina: —

To His Excellency Governor Johnson.

The humble petition of all the maids whose names are underwritten.

Whereas, we the humble petitioners are in a very melancholy disposition of mind, considering how all the bachelors are blindly captivated by widows, and our more youthful charms thereby neglected: the consequence of this our request is, that your Excellency will for the future order that no widow shall presume to marry any young man till the maids are provided for; or else to pay each of them a fine for satisfaction, for invading our liberties; and likewise a fine to be laid on all such bachelors as shall be married to widows. The great disadvantage it is to us maids is, that the widows, by their forward carriages, do snap up the young men, and have the vanity to think their merits beyond ours; which is a great imposition upon us, who ought to have the preference.

"This is humbly recommended to your Excellency's consideration, and hope you will prevent any further insults.

"And we poor maids, as in duty bound, will ever pray.

"P. S. I, being the oldest maid, and therefore most concerned, do think it proper to be the messenger to your Excellency in behalf of my fellow-subscribers."

We cannot say if the legislature passed any act for the relief of these poor, neglected wall-flowers. In England, for the purpose of assisting "to carry on the war with vigor," about 1695 Parliament placed a tax upon all bachelors and widowers over twenty-five years of age, who did not marry anybody, of one shilling a year; if the man was a marquis, he had to pay ten pounds; if a duke, twelve pounds ten.

It is a common impression among men that unmarried ladies are sometimes exceedingly loath to give their correct ages; sometimes, we are informed, they will equivocate, prevaricate, or even lie on this point. Fraulein Catherine Mahl went still farther, and committed forgery to deceive the very desirable partner to whom she was engaged. The circumstances were in this wise: She had imprudently declared to her lover that she was six years younger than she was. "As soon as the moment arrived for producing the certificate of birth, she was aware that her little deception would be discovered, and she feared the match would be broken off. She therefore took the liberty of altering the official document, so as to make it correspond with the statement she had already made. The ceremony took place, and the

[1] Curtis *v.* Mundy (1892), 2 Q. B. 178.

[2] Rice *v.* Williams, 32 Fed. Rep. 437; Percival *v.* Phipps, 2 Ves. & B. 19; Pope *v.* Curl, 2 Atk. 342.

[3] Kerr on Injunctions, 499.

husband was duly united to a lady whom he believed to be quite a *jeune ingénue.* Unfortunately the certificate, in passing through some office, happened to be minutely examined by one of the clerks. The bride was charged with falsifying a public document, and condemned to spend, if not her honeymoon, at least three of the first months of her married life, in prison. She had the courage to appeal from the sentence, and cause the case to be argued out before the court at Metz, which reversed the appeal of the inferior tribunal, and acquitted the lady on the ground that she did not intend to commit an illegal act, but had been actuated only by "female vanity." [1]

Taylor, in his well-known work on "Evidence," asserts that proneness to exaggerate is a feminine weakness; [2] he should have pointed out that it is not so when their own ages are in question. In Siam unmarried women are not allowed to give evidence at all.[3] Young ladies will find a well-established example of this feminine weakness exhibited by a very much married woman in the first part of verse 29, John iv.

From the records of the courts we learn that ladies sometimes exaggerate the value of their beauty. Mr. Forepaugh — a gentleman well known in the circus circles — advertised for the most beautiful woman in the world to ride as Lalla Rookh on an elephant in his street parade. Miss Keyser responded to his advertisement. It was arranged that she should do the elephantine riding for $100 a week, and her board and travelling expenses; but the *profanum vulgus* was to be told that a bonus of five figures was given her for thus exhibiting herself, and she was to be placarded as the Ten Thousand Dollar Beauty. The ten thousand dollar arrangement was but a myth, but its mythical nature was to be kept secret. The fair rider was thrown from the elephant, and was injured. Thereupon she sued Forepaugh for damages, alleging that he had wrongfully furnished her with a beast which he knew to be vicious. The defendant contended that the young lady had been twice before thrown by the same elephant, and that she was guilty of contributory negligence in getting on an animal that had proved fractious, and that this result was one of the risks incident to the employment. Miss Keyser denied this, and averred that the previous pitchings-off were from another pachyderm. The jury were told that although it was the duty f the circus man to furnish a proper elephant, yet if the one in question had before dislodged the Beauty, she had no remedy for her injuries; also if this one had not been the sinner on the previous occasions, it was not negligence in the defendant to furnish an untried elephant, unless he knew it to be vicious. The jury gave the Beauty $500 as a salve, and this verdict was affirmed by the Pennsylvania Common Pleas.

Old Dame Law is often a prude, and is most decidedly a busybody; it is hard to say where she may not interfere. Not long since the courts intervened to prevent some young ladies combing their hair! Ages ago, Philip II. of Spain forbade ladies wearing veils, and as bathing was a heathenish custom, washing in public or private baths was by that most Christian monarch prohibited; but it was left for the judges of the Empire State to object to hair-dressing. The "Seven Sutherland Sisters" had locks of their own which outvied those of the much lamented Absalom. They were in the habit of combing these tresses of theirs in the window of a shop in New York; it was alleged that they did so as an advertisement of a certain hair restorative. Crowds amounting almost to mobs, gathered in the street to witness this interesting toilet performance. After a time Mr. Elias (not the original one of fiery chariot renown, but a neighboring shopkeeper) complained to the

[1] Irish Law Times, quoted in 21 Alb. L. Jour. 460.
[2] Vol. i. sec. 54.
[3] Bowring's Siam, p. 177.

[1] March 24, 1883; 40 Leg. Int. 130; 27 Alb. L. Journ. 261.

court that these gaping crowds of Peeping Toms obstructed the access to his store. Thereupon the court, while considering that tradesmen had a right to make their windows as attractive as possible, even though thereby they drew crowds and created a bustle, yet held that such use of their windows must be decent and reasonable, and that highly sensational exhibitions must be tabooed; so they very ungallantly ordered the young ladies to finish their dressing in some less exposed position.[1] It is difficult to comprehend how this decision was given by a New York court, as none of the judges in that State are over sixty. Perhaps the counsel for the defence neglected to request the court to take "a view;" if he had, we think he would have secured a verdict for his fair clients as easily as did the Athenian Hyperides when he rent the robe of the lovely Phryne and exposed her beautiful bosom to her judges.

Talking about dress, which we are told "has a moral effect upon the conduct of mankind," — for, as dear old Goldsmith saith, "an emperor in his nightcap would not meet with half the respect of an emperor with a crown," — an English judge, not long ago, had to consider the proper way of putting on a sash, when it was used in helping to eke out the scantiness of the other garments. Miss Fay Templeton, of the Gaiety Theatre, London, obtained an interim injunction restraining the manager and lessee of the theatre from preventing her playing Fernand in "Monte Christo," and keeping him from employing any one else to take that part. There was a contract that she should act as Fernand; but the manager attempted to justify his refusal on the ground that Miss Fay wore her dress improperly. The lady denied the charge, and said she wore the dress with which the manager had supplied her, that when the Lord Chamberlain (the highty and mighty official who gets $10,000 a year for looking after these and divers other matters) objected to the costume as being rather loud, she had asked for another, but had not got it. Sashes, however, were provided, and she insisted that she had always worn one. The management replied that she did not wear the sash properly; the fair plaintiff rejoined she did, and this was the important question for the learned judge to decide.[1] The judge could easily have settled the point by requesting Miss Templeton to put on the dress and the scarf, so that the court could see how she looked. This was done in the Brighton (Eng.) County Court a decade or so ago, when a dressmaker sued a lady for work done. Mrs. Taylor had refused to pay, alleging that the dressmaker had spoiled her garment. The reporters record the following passage-at-arms during the trial: —

"INDIGNANT PLAINTIFF. I did make the dress properly, but the lady has no natural figure whatever. She said she was suffering with her liver, and could not be squeezed; and how could I make her look like a Venus when it was all wadding?

"IRATE DEFENDANT. I did not want you to make it tight; I like my dresses loose.

"PLAINTIFF. You should say how very deformed your arms are.

"DEFENDANT (*excitedly*). I am not deformed, I am a better figure than you. I have no deformity. My husband is in court; ask him.

"PLAINTIFF. Will you allow me to try the dress on in court?

"DEFENDANT. Yes: before all these gentlemen.

"HIS HONOR. You must put the dress on, and I must see it."

The parties retired to the solicitor's robing-room (solicitors *exeunt omnes*, we hope). After the plaintiff had put on the dress, the judge was informed by a bailiff that she refused to come into court. His Honor therefore went into the robing-room, and on his return said the work was very indifferently done, and gave a verdict for the defendant.

These cases bring up sad thoughts of the

[1] Elias *v.* Sutherland, 18 Abb. (N. Y.) N. Cas. 126.

[1] 35 Alb. L. Journ. 262.

amounts poor paterfamilias has to pay the dressmaker. Well says the poet, —

"We sacrifice to Dress, till household joys
And comforts cease. Dress drains our cellars dry,
And keeps our larder lean, puts out our fire,
And introduces Hunger, Frost, and Woe."

It seems to be clear that if a girl is attending school — even though she be of the full age of twenty-one years — and misbehaves, the schoolmaster has a right to chastise her moderately. The reasonableness or unreasonableness is a question for the jury to decide, if the young lady objects and goes a-courting. It has been settled that the punishment of a girl with a rod which leaves marks or welts on the person for two months afterwards (or even for a much less time) is immoderate and excessive. Mr. Mizner, out in Iowa, after he had chastised his interesting pupil, had the pleasure of having the court decide that he had no right to whip her for failure in her lessons or for irregularity in attendance, but only for a definite offence which the pupil has committed, so as to maintain order and discipline, and that the scholar must understand and know, or at lèast have the means of knowing, for what she is punished.[1] *Per contra*, it is equally dangerous for a pedagogue to go to the other extreme, and kiss a scholar well up in her teens: this might be held to be an assault.[1]

It is not well for a parent to send a girl of eight to school with her hair done up in curl-papers, notwithstanding the Laureate's dictum about books and locks. A ratepayer of Hammersmith, London, did this, and his child was sent home to him; the parent, indignant, refused to allow her to attend school again, whereupon he was summoned before the magistrate for neglecting to send his child to school, and was fined five shillings, with the option of going to jail for three days. The magistrate did not decide the general question as to whether children can go to school dressed as the whim of the progenitors may dictate, or whether the teachers are to be the judges of their adornment, but merely held that if curl-papers were objected to at one temple of learning, and the parent considered them a *sine qua non*, then he must find a school where they were admitted and permitted.

That celebrated legal luminary, Sir Thomas More, used to correct his daughters with a peacock-feather fan; but the historian does not say whether it was the handle or the other part that was brought into sharp and sudden contact with the young ladies.

[1] State *v.* Mizner, 45 Iowa, 248; Id. 50 Iowa, 145; Stewart *v.* Fassett, 27 Me. 266, 287.

[1] Cracker *v.* C. & N. W. Ry., 36 Wis. 657.

HIS FIRST OFFENCE.

By Francis Dana.

[PEOPLE *ex rel.* HOGAN *v.* FRENCH *et al.*, POLICE COMMISSIONERS (Reversing of N. Y. Supp. 460), Court of Appeals of New York, March 11, 1890. Reported in N. E. Reporter, Vol. XXXIII. No. 14.

Appeal from Supreme Court general term, first department. "The Police Commissioners of New York City dismissed the relator from the police force for 'conduct unbecoming an officer.' That order was affirmed by the Superior Court general term on *certiorari*, and relator appealed."

The evidence showed that the appellant had been an officer for fifteen years, and by his excellent record it appeared that during all that time he had touched nothing intoxicating till one day, having been engaged for five days in quelling a strike and having arisen too early for comfort and been without food during the day in question, he had indulged in peppermint and brandy, which produced the effect objected to by the Commissioners.]

STOUT HOGAN, pillar of the Force,
For fifteen years had no recourse
To vinous draughts that breed remorse
And drown the soul within.
He never came 'neath alehouse roof
But saw the stamp of cloven hoof
On bottle, keg, and cask, and proof
Against their charms, he stood aloof
From alcoholic sin.
He drank not beer, he supped not ale,
Nor blushing port, nor brandy pale,
Nor dry champagne, nor moist cocktail,
Nor foot-entangling gin.

The car-men struck. For many a day
Directors sat in blank dismay, —
The Knights of Labor barred the way,
And as the cars came by
Expressed their knightly sentiments
With paving-stones and bits of fence
Projected with a vehemence
That showed their chivalry intense,
And made the splinters fly.

A horse-car strike had blocked the street
Right upon gallant Hogan's beat.
From morn till eve on weary feet
He stood and bade the foe retreat,
And had no time to stop and eat
Or sip his bowl of tea.
He drove the drivers on before,
Conducted the conductors o'er
Unto the Black Maria's door;
Then turned him to the fray once more
With dauntless energy.

The morn was cold, the noon was hot;
Hogan was both, and mourned his lot.
At early dawn he 'd left his cot
And had not had his breakfast.
He felt that if he froze and sweat,
And neither slept nor drank nor ate,
He must become a wreck fast.

Ah me! the spotless soul, they say,
That ne'er hath strayed from out the way
As hen to falcon falls a prey
To powers of ill pursuing.
His faithful abstinence, alas!
Had brought his head to such a pass,
For lack of practice, that *one glass*
Sufficed for his undoing.

A *demi-tasse* of peppermint,
With just the least intensive hint
Of mind-perverting Cognac in 't,—
A nip of eau-de-vie:
Of eau-de-*vie?* Ah! Eau-de-*mort!*
Oh! *what* did Hogan take it for?
An altered wight was he!

Meanwhile the tumult waxeth large.
The puissant Force is at the charge,
And loudly peals the slogan, —

When, lo! a shocked policeman sees
A man who holds by posts and trees,
Approach by devious degrees
With nose aflame and shaky knees —
  Good heavens! it is Hogan.

Alas for Hogan! His arrest
Is not deferred. With chin on breast,
And dinted helm, and drooping crest,
  They help him to the wagon.
The stern tribunal won't relent, —
Poor Hogan from the force was sent.
'Twas all in vain to represent
The years that he'd been abstinent;
In vain he promised to repent,
And pleaded lack of wrong intent,
And took his oath he 'd "never meant
  To go and get a jag on."

There be on earth some blessed few
(And mortals call them lawyers) who
Ever the paths of right pursue
And look about for good to do,
  Like angels (unaware)
Of kindly heart, and soul erect,
They save the widow and protect
The orphan, and the debts collect
Of hapless merchants who expect
  To see their money ne'er,
And rescue them whose barks are wrecked
By social tempests, and effect
  A blessing everywhere.
One of these men of lofty mind
Seeking as usual to find
Some means to benefit mankind
  The hapless Hogan saw,
And came and raised his fainting form,
And held betwixt him and the storm
Of unjust punishment the warm
  Umbrella of the Law.

Where sacred Justice sits on high
To judge the rights of men who cry
  For succor in distress,
The lawyer came, and for her grace
Besought the court in Hogan's case
  For judgment and redress.

(FINCH, J., *delivered the opinion of the court,*)
That the appellant, as appears
In evidence, for fifteen years
Had no intoxicants nor beers,
  But lived on milk and tea,
Hath a most creditable savour,
And militates in Hogan's favour
  To a pronounced degree.

Held: Where, in vulgar phrase, a "*cop*"
For fifteen years has had no drop
Of alcohol or juice of hop,
Nor aught so strong as ginger pop,
  And *thirst* is *thus produced* —
And he desire *said thirst* to *slake*,
'T is not unlawful if he take
A little for the stomach's sake —
Nor shall he be adjudged a rake
If he become — by sheer mistake —
  In common parlance "*sluiced.*"

(ANDREWS, EARL, PECKHAM, *and* O'BRIEN,
  J.J., *concur;* GRAY, J., *dis.*)

Gray, J., dissenting says, — says he,
"I 'm sorry — but I can't agree
On principle, it seems to me,
  With what has just been stated;
For when a man for years fifteen
Hath stubbornly eschewed potheen
Or aught whereby he might have been
  Fuddled, intoxicated,
Or otherwise confused, I think
He should not first attempt to drink
  In public place, — but *clam*
Atque secrete teach his brain
By slow degrees to bear the strain,
And his abdomen to contain
  The unaccustomed dram.

"He should drink *molliter* at first,
Et molli situ, — with light thirst
  Measure each dose, and trim it,
Till by experience he knows
How far how much refreshment *goes*,
  And *where* to 'gag his limit.'"

(RUGER, J., *concurs; Judgment reversed.*)

LYNCH LAW.

By Alexander Brown.

THE "Green Bag" of December, 1892, gives an account of "The Lynch-law Tree" from the "Philadelphia Times," which is quite correct so far as it goes; but the following particulars, I believe, will make several points clearer.

During the Revolution many Tories lived in the Blue Ridge section of southwestern Virginia. In 1780 they formed a conspiracy, organized companies, "and did actually attempt to levy war against the Commonwealth;" but Col. William Preston, the county lieutenant of the *then* county of Montgomery on the west side of the Blue Ridge, and Col. James (not Capt. Thomas, as the "Philadelphia Times" has it) Callaway, the county lieutenant of the *then* county of Bedford on the eastern side, aided by Col. Charles Lynch and Capt. Robert Adams, Jr. (army officers), and other faithful citizens, "did by timely and effectual measures suppress said conspiracy." Whenever a conspirator, or Tory, was captured he was tried before a sort of drumhead court-martial, and Colonel Lynch, acting as judge, condemned them to receive various punishments, — generally so many lashes. After the war many suits were instituted by citizens of this region for this infliction (without due form of law) of "Lynch's Law," as it was called; and the General Assembly of the State, in October, 1782, found it necessary to pass the following Act for the protection of the old Whigs, or Patriots: —

"I. Whereas divers evil disposed persons in the year 1780 formed a conspiracy and did actually attempt to levy war against the Commonwealth; and it is represented to the present General Assembly, that William Preston, Robert Adams, Jr., James Callaway, and Charles Lynch, and other faithful citizens, aided by detachments of volunteers from different parts of the State, did by timely and effectual measures suppress such conspiracy; and whereas the measures taken for that purpose may *not be strictly warranted by law, although justified from the imminence of the danger:*

II. Be it therefore enacted, that the said William Preston, Robert Adams, Jr., James Callaway and Charles Lynch, and all other persons whatsoever concerned in suppressing the said conspiracy, or in advising, issuing, or executing any orders or measures taken for that purpose, stand indemnified and exonerated of and from all pains, penalties, prosecutions, actions, suits, and damages on account thereof, etc."

Lynch law has been traced back into the misty past; but so far as our statutes are concerned, we have here the origin in 1780, and the definition by Act of 1782. — "*not strictly warranted by law, but justifiable from the imminence of the danger.*"

The refrain of the old patriot song, as I have it, is, —

"Hurrah for Captain Bob,
Colonels Lynch and Callaway!
Who never let a Tory off
Until he cried out, 'Liberty!'"

The counties in the colony of Virginia were governed as the shires in England, and the same system obtained for some time after the separation from the mother country. And the authority of the county lieutenants, Colonels Preston and Callaway, was similar to that of the Lord-Lieutenant of an English shire. They were the local representatives of the government, the head of the magistracy, and Chief-Commanders of the militia in their counties, and were responsible in cases of emergency (invasion, rebellion, etc.) for the preservation of public tranquillity, etc.

THE LAW AND PRACTICE OF TORTURE.

WHEN Dr. Johnson set out, in 1763, to convoy Boswell to Harwich, whence the Scotsman was to sail to Holland, they lay one night at Colchester, and there had much excellent converse with a Dutchman. "He spake English tolerably well," says Boswell, "and, thinking to recommend himself to us by expatiating on the superiority of the criminal jurisprudence of this country over that of Holland, he inveighed against the barbarity of putting an accused person to the torture in order to force a confession." But Johnson was ready for this as for the Inquisition (which he had been defending, to the astonishment of his fellow-travellers by coach). "Why, sir, you do not, I find, understand the law of your own country. To torture, in Holland, is considered as a favor to an accused person; for no man is put to the torture there unless there is as much evidence against him as would amount to conviction in England. An accused person among you therefore has one chance more to escape punishment than those who are tried among us." No doubt Johnson, as usual, routed his enemy. It were vain to guess what Johnson had not read; but one wonders whether he was one of the few English readers of the treatise of Sebastian Guazzini, the great authority upon Torture and its Laws. His treatise, "Tractatus ad Defensam Inquisitorum, Carceratorum, Reorum et Condemnatorum super Quocunque Crimine" (or, in other words, a handbook to the practice of criminal law), was written in 1612, and rapidly became an authority over Europe. Guazzini was a very celebrated lawyer in his day, and for more than a century most continental judges might have said of him, —

> "My voice shall sound as you do prompt mine ear;
> And I will stoop and humble my intents
> To your well-practised wise directions."

The authors of the day plied Guazzini with classic compliment, as was their pretty way, and told the world that the bees of Hybla had shed honey on his lips, and that Minerva had whispered in his ear. Alas for this noble judge! He seems likely to go down to posterity, chiefly famous for the admirable condensation of the law of torture, which is buried in the "Tractatus," and which a learned American has disinterred and presented to the world in the pages of the "Journal of the Anthropological Society of Washington." Guazzini was not, of course, the only writer on torture, but he has the merit of having been one of its most lucid expositors.

Torture, Guazzini defines as "distress of body devised for extracting truth." It is a legal remedy, but not one to be hastily or carelessly used; it is rather a subsidiary remedy only to be resorted to when truth — i. e., the guilt of the party accused — cannot be discovered otherwise. This is exactly what Dr. Johnson said over his coal-fire in the Colchester inn. Torture, as understood in mediæval law, was a process for ensuring, by confession from the accused, that a legal presumption of guilt, already established to the satisfaction of the judge, was in fact absolutely true. Nor could it be resorted to in every case; it was not available in actions where money damages were claimed, or indeed in any case arising from contract, express or implied. It was to be administered in cases which involved a penalty like banishment or death. The torture could not precede the trial; all must be done in order. If the prosecutor shall say, "I have no presumption of *fact* and no proof against the accused; but I wish to stand with him in torture, and in this way prove the crime imputed to him; such a prosecutor shall not be heard, and the accused shall not be tortured on this plea. . . . It is otherwise where presumptions of *law* are concerned, and where any indication shall have been proved, whether by confession made out of

court, or by the testimony of a single witness, because in such cases it will not reside in the discretion of the judge to decide whether the indication is sufficient for torture or not. He will be bound to torture the accused without demur." Guazzini then refers the anxious inquirer to Campegius' "Tractatus de Testibus regulandis" and Menochius' "Tractatus de Presumptionibus" for indications for guidance in allowing torture, the latter learned writer being good enough to furnish no less than forty-three indications, which must, one would think, have formed a useful digest of precedent for any nervous Sheriff-Substitute of the Middle Ages when called upon by a too learned prosecutor to apply the torture summarily. Happily no law student of to-day need dread the Board of Examiners posing him with conundrums from Minochius. He and his colleagues, Campegius and Cavalcanus, are as forgotten as their precedents. Old Double is, indeed, dead. Before the torture was applied (except in summary cases) the accused's advocate had a right of appeal, and a copy of the indications and of the whole process had to be furnished him; but this tenderness of the law seems to have led to somewhat sharp practice on the part of both judge and bar. Thus, — "Many judges, when they wish to torture and do not want to have their hands tied (i. e., by appeal) are accustomed to pass the decree of torture secretly, and do not interpose it until it is too late for the accused to take an appeal. But this surprise action on the part of judges may be countermined by wary attorneys, who are wont to obtain in advance an inhibition from the superior court against the menace of torture; and the instant that the judge shows a disposition to proceed to torture, they present the inhibition to him, and thus compel him to stay his hand and to consign the case to the court above."

It is a pity we have no reports of the decisions of those merry days. Where was the mediæval predecessor of the reporter of the New Journalism? "Interesting Discussion *re* Torture between Bench and Bar" would have been a standard heading, one thinks.

In all there were nineteen requisites to torture, but we have no space to enumerate them all here. Suffice it that the person of the accused was examined, to ascertain if he was a privileged person; that he must not have eaten for nine or ten hours before torture begins, — "if accident happen and suffering ensue to the accused from a failure to observe this rule, the judge will be liable to public impeachment;" if the accused be under twenty-five years, the judge must appoint a curator to watch him while being tortured, particularly if he be under fourteen years; the torture must be varied to different persons and differing presumptions of guilt; certain diseases exempt from torture; neither the prosecutor nor the counsel of the accused may be present at the torture; there can be no torture on a Feast day of the Church except in grave cases. Again, when a culprit confesses one crime he cannot be tortured to procure admissions of other crimes without competent presumption of guilt. It is gratifying to know that lawyers and town councillors, like bishops, noblemen, and doctors, were exempt from torture; the inferior clergy seem to have been liable to this form of judicial inquiry. "Torture must be suspended so soon as the victim falls into a faint under its effects, and unless the judge, in the act of such suspension, is careful to reserve a right of renewing torture, the right lapses. The notary is bound to make a minute of all proceedings in torture, with its effect on the subject, and the measures taken to recover him from a faint. The prisoner's counsel" (who seems to have been entitled to enter when his client fainted), "in such moments, must watch for his rights and protect him from the renewal of the torture, if the judge, in his alarm at the fainting space, forgets to reserve the right of renewing the torture." When a number of people were to be tortured at the same time, the etiquette of the matter was to begin with the weaker and

more timid, and the younger, but not always women before men, "because women are less afraid of torture than men, and will longer persist in a negative."

Known criminals, or men with criminal family names, will have a preference in torture; and, wisest hint of all, "some hold that it is proper to begin with *the man who has a bad physiognomy*, provided he labors under other presumptions." It is a curious commentary upon Guazzini's idea of the fatal gift of ugliness, that the composite photograph of thirty-eight criminals at Elmira, given in Mr. Havelock Ellis's book, "The Criminal," represents a very pleasing face indeed."

Within the limits of this article we can scarcely follow Guazzini further, fascinating though this curious chapter of law undoubtedly is. Strange as it may appear, the object of judicial torture was undoubtedly kindly, but it was a strange and savage kindness. If the accused remained firm, serious though the presumptions against him were, he escaped. It should be understood that we have written solely of torture under legal conditions. The torture applied by the Crown, or by lords in their castles, was a very different matter; so also was the torture of the Spanish Inquisition. But torture in law was a delicate and well-guarded system. "Trial by *ordeal*," as Mr. Welling, to whom we owe this interesting study of legal antiquities, says, "wrought a purely formal decision of the questions put in issue. Trial by *torture* wrought with the processes of a purely formal decision to the end only of the prisoner's acquittal. If he endured the torture, he was to be adjudged innocent. For purposes of conviction the formal confession extorted under torture must be eliminated by a so-called free confession made outside of torture. This professed elimination of terrorism and constraint was required in theory to be complete before judgment of guilt could be pronounced; and, hypocritical as the pretence of observing the rule may have often been in practice, it was still a homage which the vice of even this irrational institute felt itself called to pay to the virtues of truth and reason. It was at least an advance on the régime of pure negation and of pure unreason.

Mr. George Neilson has dealt with admirable learning and literary ability with the trial by combat; here is another subject which none is more fit than he to write upon. Will he not give us a second instalment of the history of legal institutions in the form of a treatise on the Law and Practice of Torture? — *Scottish Law Review.*

THE SUPREME COURT OF TENNESSEE.

I.

UNDER THE CONSTITUTION OF 1796.

By Albert D. Marks.

At the time of the admission of the State of Tennessee into the Union in 1796, the now general division of the governmental functions in three co-ordinate departments was not fully developed. The Constitution then adopted (Art. V. Sec. 1) provided that "the judicial power of the State shall be invested in such superior and inferior courts of law and equity as the Legislature shall from time to time direct and establish."

Under this authority the first act passed by the Legislature of the new State provided for Superior Courts of Law and Equity, empowered to finally decide cases. There were to be three judges, to be elected by the Legislature. Among its judges are to be found the names of many men who afterwards were illustrious in the history of both the State and nation. Archibald Roane and Willie Blount were thereafter Governors of Tennessee. Gen. Andrew Jackson served for six years, resigning in 1804. Judge John Overton succeeded General Jackson, and sat until the abolition of the court. Judge Roane, having been elected Governor, resigned in 1801 to accept that office. Hugh Lawson White was appointed in his stead, and continued to act until his resignation in 1807.

This system proved unsatisfactory, because of the lack of harmony in the rulings of the several judges throughout the State. The evil of having the same questions decided differently according to the county in which the suit happened to be was prominently brought to the attention of the people and the Legislature by a series of articles contributed to the press by Thomas H. Benton, then a citizen of Tennessee practising law at Nashville. As the result of this agitation, the Act of Nov. 16, 1809, was passed.

By that act the Superior Courts of Law and Equity were abolished, and circuit courts substituted. There was created by the same act a Supreme Court of Errors and Appeals, composed of two judges in error to be elected by the Legislature, with whom a circuit judge was to sit.

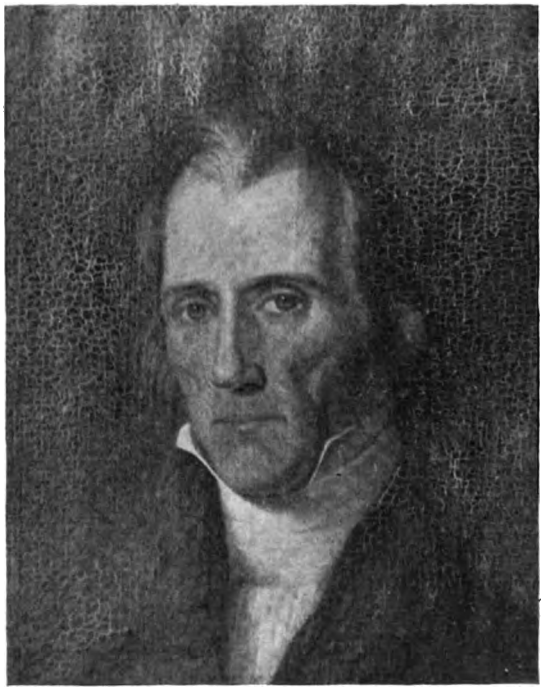
Hugh Lawson White was elected as a judge of the new court, and George W. Campbell was chosen as his colleague. Judge Campbell, who was afterwards Secretary of the Treasury under President Madison, and Minister to Russia, resigned in 1811, John Overton succeeding him.

Hugh Lawson White, whose term of judicial service began as a judge of the Superior Court in 1801, and who was one of the judges of the newly created Supreme Court, was a most remarkable man. He was doubtless called to fill more positions of trust than any man in the history of the country, though he never made a canvas for an office. Born in Iredell County, N. C., Oct. 30, 1773, he came to East Tennessee in 1781 with his father, Gen. James White, who there founded the town of Knoxville.

At twenty he became the private secretary of William Blount, then territorial governor, and was made a judge of the Superior Court, at the early age of twenty-eight, in 1801. The period of his judicial service extended down to 1814. He served as a judge of the Supreme Court after its creation in 1809. He was twice a State Senator, afterwards United States District Attorney, a Commissioner on the part of the United States under the Florida treaty with Spain, and President of the Bank of

Tennessee for fifteen years. He was thrice unanimously elected United States Senator, without solicitation on his part. He died just after his retirement from that body in 1840.

As State Senator he had made a compilation of the confused land laws of the State, reducing them to an orderly whole as nearly as possible, and had it enacted into a statute. His greatest service as a judge was in expounding and giving shape to these laws, as a very large number of the cases coming before the court involved titles to land. His opinions were usually short, stating the controversy clearly, and deciding the question without great elaboration. Not alone his career on the bench, but his whole life won him the name of Hugh L. White, "The Just," as his epitaph styles him. His conduct was characterized by great high-mindedness. After the massacre of Fort Mimms in 1812, brought about by the machinations of the Shawnee chief Tecumseh, had called out all the available men in the service of the State, General Jackson, who was in charge of the troops of the State, was sorely pressed. Judge White left the bench; and the force he was instrumental in bringing to the aid of General Jackson enabled him to deliver battle at the Horse-Shoe and annihilate the Indian power. The Legislature directed that his salary as judge, covering the time of his military service, should be paid him, but he declined to receive it. Through his long life of public service, his fair name was stainless; and he so resolved every doubt as to the propriety of an official or personal act that he never "felt his honor grip."



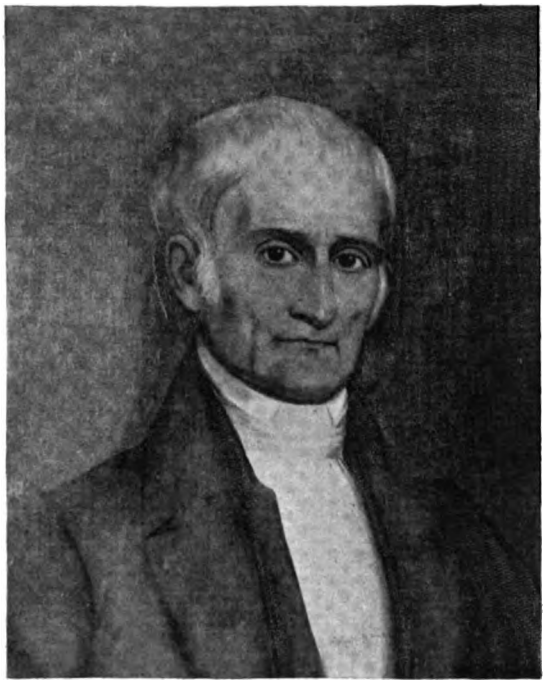
HUGH LAWSON WHITE.

John Overton was born in Louisa County, Va., April 9, 1766, of good English stock, adherents of the Commonwealth, who found a safer residence in America after the Restoration.

He was too young to bear arms in the Revolution, in which all his brothers fought; but while caring for the family thus left in his charge, by arduous study, unaided by teachers, he fitted himself for the practice of law.

He sought the new State of Kentucky as his place of opening. In the fall of 1789 he removed to Nashville, Tenn. In the same month Andrew Jackson came from North Carolina. The two young lawyers became friends, occupied the same office, and were associated in their business ventures. Mr. Overton's training in Kentucky had peculiarly fitted him for the practice of the land law, then an inexact science more intricate than the law of contingent remainders or executory devises. A lucrative practice was his reward, and there was laid the foundation of a fortune which in the hands of his descendants is to-day the largest in Tennessee. He was appointed Supervisor of the Revenue of the United States by President Washington; but the discharge of the duties of the office did not interfere with his practice. In 1803 he was the commissioner on the part of Tennessee to adjust with North Carolina the

differences as to rights of the two States in the public lands. In 1804 he succeeded Andrew Jackson as Judge of the Superior Court,—a position he held until the court ceased to exist on Jan. 1, 1810. He was elected in 1811 to succeed Judge Campbell, who then resigned as Judge of the Supreme Court. He continued on that court until 1816, resigning April 11. He soon after devoted himself to the developing of the town of Memphis, the site of which he and General Jackson had owned in common since 1794. Aside from his labors as judge, he did a great work in reporting the important decisions of the Supreme Courts down to 1816. The court had no reporter, and no official report of its opinions was provided for. With the sanction of his associates, Judge Overton entered on this undertaking, and published two volumes of reports which bear his name and are known as 1 and 2 Tennessee. They also embraced the more important opinions of the Superior Court. The first opinion reported delivered by himself (1 Overton, 22) is in the case of Ingram *vs.* Cocke, wherein he upheld as valid the acts and proceedings of the courts of the State of Franklin, which the early settlers of East Tennessee had erected. His greatest work as a judge was in cases involving the construction of the land laws. In the leading case of Philips, Lessee, *vs.* Robertson, 2 Overton, 398, he blazed out a clear path through the intricate mazes of a composite system of entries and grants drawn alike from Virginia, North Carolina, and Kentucky, yet materially different from them all. He there laid down the rule that for an entry to be special so that a grant issued under it would relate to the time it was made and confer a title superior to that of a later enterer, but to whom a grant had first issued, its calls must be of such notoriety as would enable the subsequent enterer to identify the land meant to be entered.



JOHN OVERTON.

The language of his opinions clearly expresses his ideas, without effort at ornamentation, though he often fortified his conclusions by references to the teachings of ancient and modern moralists.

Judge Overton took a very profound interest in all public affairs. He was, in fact, the chief promoter of the election of General Jackson to the Presidency. They had been bosom friends from the time they met in Nashville in the autumn of 1789. At the time General Jackson took charge of the forces of the United States which were to be directed against the hostile Seminole Indians who were making incursions into the territory of the United States out of Florida, then the territory of Spain, Judge Overton alone was shown the letter coming indirectly from the War Department, giving General Jackson the authority to pursue the Indians into Spanish territory. General Jackson was most bitterly assailed for this breach of the law of nations. Judge Overton persistently defended him through a number of articles published in various parts of the Union under the name of "Aristides." He de-

termined to avail himself of the opportunity afforded by reason of these vicious attacks that attracted the attention of the whole country, to push his friend for the Presidency. In 1821 he had introduced in the Tennessee Legislature a resolution which was passed, recommending General Jackson to the other States as a suitable candidate. He prepared this resolution as well as the speech of the member introducing it. He drew the resolution adopted by a popular meeting at Nashville. These were followed by resolutions in Pennsylvania and Maryland; and the movement was fairly started that landed General Jackson in the Presidency seven years later. Judge Overton died in 1833, just after the inauguration of President Jackson for his second term.

JOHN HAYWOOD.

Judge White and Judge Overton were the two great pioneers of the Supreme Court. Their families were united by marriage, the sister of Judge White becoming the wife of Judge Overton.

William Wilcox Cooke, an eminent practitioner, who had shortly before taken up the work of reporting the decisions of the Supreme Court, where it had been left off by Judge Overton, on Jan. 1, 1815, succeeded Judge White; but his judicial career was cut short by his untimely death, July 20, 1816. The vacancy made an opening for a most unique character, John Haywood, whose strong personality was to dominate the bench for the next ten years, and earn for him the name of the "Mansfield of the Southwest."

John Haywood was born in Halifax County, N. C., in 1753. He was the son of Egbert Haywood, a gallant officer in the Revolution. The young Haywood likewise served in that conflict. Beginning the practice of law in his native State, he made such a reputation as an advocate that in 1791 he was elected Attorney-General of North Carolina. In 1794 he was elevated to the bench of the Superior Court of that State, on which he served for twelve years. Chief-Justice Henderson afterwards wrote of him: "I disparage neither the living nor the dead when I say that an abler man than Judge Haywood never appeared at the bar or sat on the bench of North Carolina." He resigned his judgeship to defend an old friend charged with forging land warrants. So high was public prejudice against his client that odium attached to his lawyer as well; and this determined Judge Haywood to remove to the rapidly growing State of Tennessee. He settled at Nashville. In 1816 he was put on the Supreme Bench, where he sat until his death in December, 1826. Aside from his very arduous labor as judge, he found time for a great deal of other work. In 1801 he published a "Manual of the Laws of North Carolina" and "Haywood's Justice," which he followed with a report of the opinions of the Superior Court of North Carolina from 1789 to 1806. He continued this work of reporting after he became a Supreme Judge of Tennessee, publishing three volumes of reports. He did in addition a

great deal of purely literary writing. His greatest work was "The Civil and Political History of Tennessee," lately republished by one of his descendants, giving a full history of the settlement of the State and the many Indian wars and treaties down to the admission of the State into the Union. He also wrote a "Natural and Aboriginal History of Tennessee," a very curious book in which he undertook to prove the descent of the Indians from ancient Eastern tribes. He wrote, besides, a work called the "Christian Advocate." These last two works show a wonderful fund of knowledge on matters scientific and historical on the part of a man whose time was much taken up by official duties. In the "Christian Advocate" he went deep into occult matters, and ventured many predictions which are now the accepted truths of hypnotism, though the book has much in it bordering on the superstitious. At the time of his death he was just finishing a compilation of the Statute Laws of Tennessee, which he had undertaken in conjunction with Robert L. Cobbs, under the direction of the Legislature.

As a judge he was without pride of opinion. On one occasion Mr. Spencer Jarnigan was arguing a case before him, when Judge Haywood interrupted him with the question, "Have you any authority for that proposition of law?" "A very excellent authority," was the response. "I have a decision of an eminent judge of North Carolina, Judge Haywood." "Yes," replied the judge, "I knew that young man; he was put on the bench of North Carolina when he was quite young, and he made many mistakes. Judge Haywood of Tennessee overrules Judge Haywood of North Carolina."

In 1815 a third judge was added to the court. Ex-Gov. Archibald Roane, also theretofore a Judge of the Superior Court and afterward a Circuit Judge, was chosen as the new judge. He served until his death, in 1818, when he was succeeded by Thomas Emmerson, who had for a while been a member of the Superior Court. Judge Emmerson resigned in 1822.

Robert Whyte had succeeded Judge Overton in May, 1816. He served until 1834, for eighteen years, — a term of greater length than any judge before him, and surpassed only by two that came after him, Judge Green and Chief-Justice Turney. Judge Whyte was born in Wigtonshire, Scotland, on Jan. 6, 1767. His parents designed for him to enter the ministry, and with that end in view he was highly educated at Edinburgh. The bent of his inclination was away from that vocation, however, and he sought the permission of his parents to adopt one of the learned professions. On this being refused, he emigrated to America. He became professor of languages in William and Mary College, where he was for several years. Studying law, he went to North Carolina to practise, and thence to Nashville in 1804. As Supreme Judge he sustained himself well during his long term of service with many able men, and his opinions commanded great respect, though he was a literalist and laid great stress on technicalities. He was highly esteemed for his strict sense of honor and great integrity. On the reorganization of the court after the adoption of the Constitution of 1834, advancing years and the possession of what was then a large fortune disinclined him to further judicial work; and he retired, dying in 1844. The entry on the minutes of the Supreme Court on the announcement of his death bears testimony as to the high regard of his successors for "his integrity, his firmness, his legal erudition, his eminent ability, and his conscientious discharge of his duties."

In 1822 Jacob Peck became the associate of Judge Whyte, and the two were to remain together until the new Constitution of 1834.

Judge Peck was born in Virginia in 1779, and lived to the extreme age of ninety, dying in Jefferson County, Tenn., June 11, 1869, after seeing peace restored to his distracted country. He was a brother of Judge Peck of Missouri. At the age of twenty-one he was licensed to practise law, and soon after removed to East Tennessee. Elected Senator

in the General Assembly of 1821 from Jefferson and Greene Counties, he was chosen by that body to succeed Judge Emmerson, who resigned in 1822. He was a man of culture, and paid much attention to painting and music. Zoölogy and mineralogy were passions with him. He was widely read and a most entertaining talker. His strongly marked features accurately portrayed his characteristics. His opinions were always forcibly written, often with a touch of humor. Judge Catron, in the case of State *vs.* Smith & Lane, 2 Yerger, 271, had, in holding that the selling or buying of a ticket in a private lottery was gaming within the meaning of the statutes of Tennessee, written a fierce philippic against gambling of all kinds, rehearsing its direful results, and describing vividly the scenes at games of faro, hustle-cap, loo, the thimble, grandmother's trick, and other games, and finally instituting a critical comparison by analogy between faro and a lottery. His vigorous personality often led Judge Peck to dissent. He could not concur in the conclusion reached by Judge Catron, and he closed his dissent with this sly allusion: —

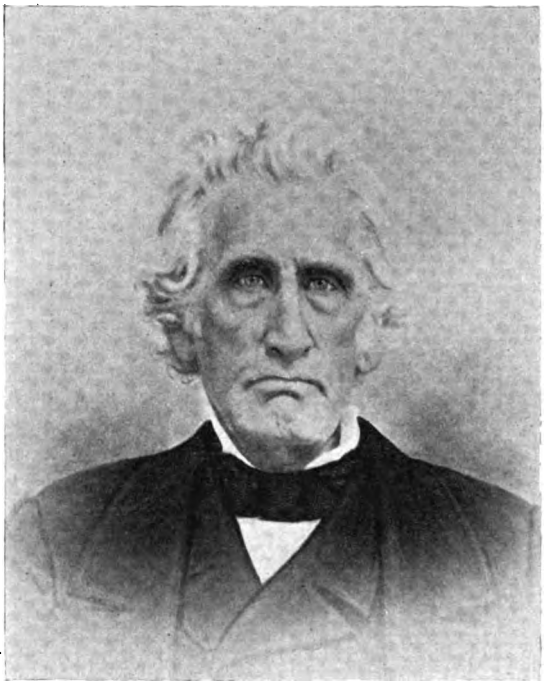
ROBERT WHYTE.

"It is said that a similarity may be traced between lotteries and some of the methods or plans pursued in gaming: that it depends on hazard and chance. . . . I speak of the subject of gaming with diffidence. My habits have never led me into it, even so far as to learn a single game beyond the backgammon board; and even on that I have never attained so much skill as to venture the smallest sum, though sometimes I may have purchased lottery tickets."

Before the appointment of an official reporter, Judge Peck had supplemented the labors of Judges Overton, Cooke, and Haywood by publishing a volume of the decisions of the court.

In 1823 the number of judges of the court was increased to four; and William L. Brown, then one of the leading lawyers of the State, was elected as the additional judge. He resigned, however, in July, 1824. At that time the number of judges was increased to five. John Catron was elected in the stead of Judge Brown; and Hugh Lawson White, who had just finished his labors as Commissioner under the Spanish treaty, and was shortly to become United States Senator, was elected to fill the newly created office, but declined it. Governor Carroll appointed Thomas L. Williams to the vacancy, but he likewise refused to accept the office. The Legislature then declined to elect any one to fill the place, and the bench remained with only four members. On the death of Judge Haywood in December, 1826, Henry Crabb was appointed in his stead, but he died during the year 1827. The Legislature then reduced the number of judges to three, but increased it again to four in 1831, when Nathan Green was made an associate justice, and John Catron made Chief-Justice. The court was constituted until 1834 of Judges Catron, Whyte, Peck, and Green.

John Catron was born in Wythe County, Va., in 1779. At an early age he emigrated to Kentucky, thence to Tennessee in 1812. He served under General Jackson in the War of 1812, taking part in the battle of New Orleans. In 1815 he was admitted to the bar, commencing the practice in Overton County, Tenn. He removed to Nashville in 1818. After a residence of six years in Nashville, he was elected a Supreme Judge. He served on the State Supreme Bench only eight years. His great judicial work was done as an associate justice of the United States Supreme Court for twenty-eight years. He was appointed to the position by President Jackson on the last day of his term, in 1837. Judge Catron was a warm personal friend of the President, and had very ably supported him and his measures. His services had been particularly valuable in antagonizing the movement in favor of Senator Hugh Lawson White for President. The active part that he took in the acrimonious controversies of that time led his enemies to say of him that he was elevated to the Supreme Bench of the State for the purpose of deciding in a particular way what was then a mooted question with the court. Under the leadership of Judge Haywood, the court after a lengthy contest had held that before a title to land was perfected under the statutes of limitations by a seven years' adverse possession with color of title, the claimant in possession must connect his title with a grant from the State. This holding unsettled many titles, and when Judge Catron was put on the bench and with his vote the contrary was held, his detractors were quick to make the charge against him that he had agreed to so decide the question before his election. No substantial basis for the charge was ever shown. Judge Catron was not an educated man. He broadened very much after he was made a judge, and by diligent application acquired a very wide learning. His partisan nature constantly appeared in his opinions. The statement of the reasons leading him to a conclusion was often vehement. One of his strongest opinions was in the proceeding to disbar Calvin M. Smith (1 Yerger, 228), an attorney, for having killed a man in a duel in Kentucky, to which State the parties had gone after the quarrel. Duelling was common in Tennessee; and Judge Catron himself, when a lawyer riding the circuit, carried a brace of duelling-pistols as a part of his outfit, and never declined a challenge to use them. But he thoroughly reprehended the practice, and struck it a terrific blow in that opinion in which he denounced duelling with a greater vigor than he afterwards did gambling in the Smith & Lane case. He warned the bar that every lawyer violating the laws to suppress duelling would be disbarred. The Constitutional Convention of 1834 followed in his footsteps, and deprived a participant in a duel of the right to hold any office of profit or trust in the State. And this may



JACOB PECK.

be said to have practically put an end to the "Code" in Tennessee.

Judge Catron was on the United States Supreme Bench at the time of the breaking out of the war between the States. He sided with the Union when his State seceded. During the possession of Nashville by the Confederates he was forced to leave the State, but returned and continued to hold his courts after the occupation of the city by the Federal forces. He died May 30, 1865.

JOHN CATRON.

With the adoption of the Constitution of 1834, ended what might be called the first period of the court. Under the new order the composition of the court was almost entirely changed; Judge Green, who had been on the bench for only three years, alone being continued as a judge of the new Supreme Court, then for the first time recognized in the Constitution of the State. From 1810 to 1834 the court existed only by the sufferance of the Legislature, which had the power to abolish it at any time its rulings did not meet its pleasure.

Notwithstanding its precarious tenure, the court did not hesitate courageously to set aside acts of the Legislature as invalid. At the time of the great financial depression of 1819, the Legislature enacted a statute staying all executions for two years unless the judgment creditor should endorse on the execution a direction to the sheriff to accept in payment notes of the Bank of Tennessee at their par value. In the case of Townsend *v.* Townsend, Peck, 1, the act was held unconstitutional as impairing the obligation of contracts, in an elaborate opinion by Judge Haywood, which gave incidentally a complete history of the various colonial paper issues. The action of the Supreme Court of Kentucky in declaring unconstitutional a like stay law passed to meet the same emergency resulted in an attempted removal of the judges through a reorganization of the court, and in a long struggle between the judges and claimants elected to the positions by the Legislature which had attempted to oust the old court. The effort to remove the judges in Kentucky failed only because the court was intrenched behind the Constitution creating it. In Tennessee the court had no such protection; but its decision was acquiesced in, and no attempt was made to disturb it.

While not hesitating to declare the enactments of the Legislature void, when their duty required it, the judges of that period were much slower to annul them than some of their successors have been. Most of the acts whose constitutionality was drawn in question before them, were sustained.

The larger part of the litigation before the court down to 1834 consisted of cases involving titles to land, and in that field the judges made their greatest reputation. They created an orderly system out of a chaotic mass of conflicting laws and adverse claims. Tennessee was won by conquest from its Indian possessors gradually. Years after it had become a State they still had sufficient power

to be a constant menace. In the early days of its settlement the wars with the different tribes followed fast on the heels of one another. The hostile Indians made it impossible to have a survey of the whole State, as was done with most of the other States settled in the piping times of peace, and under the protection of the United States. So when the State devised a plan for the granting of public lands, each enterer was permitted to make his entry as he pleased, and in advance of a survey. It resulted that grants interlapped and covered each other. There was scarcely an acre of desirable land which was not covered by more than one grant, and to some land there were scores of claimants. As a further complication, North Carolina had issued a number of grants before the cession of the territory to the United States; and even after Tennessee had become a State, land warrants issued by North Carolina to her Revolutionary soldiers served as the basis of grants. When the Legislature came to devise the laws for the granting of land in the new State, the plan had features drawn from the laws of North Carolina, Virginia, and Kentucky, yet it was widely variant from any of the three. In addition, the different portions of the State were not settled at the same time; and as each part was thrown open to entry, it was made a separate land district, with a new procedure prescribed for that district. This patchwork of incongruous legislation made the labor of the judges a most arduous one; but with the repose of society always in view, they laid down the rules to decide conflicting claims that govern to-day. The judges who followed them had but to apply the principles they had worked out.

The system of common-law pleading was then in vogue, and decisions as to its nicety took up a good deal of the attention of the court.

The criminal cases then appealed reflected well the state of society at the time. There were very few convictions for larceny, or any of the infamous crimes. The convictions were largely for murder, but they never grew out of assassinations. The killing was nearly always the result of an affray. The constant wars had brought personal courage to be considered a virtue, and caused anything savoring of cowardice to be despised. This spirit has descended to the children and grandchildren of those fearless men as a rightful part of their inheritance. The judges on the bench did not hold themselves exempt by reason of their office from exposure to bodily danger. It has been related how Judge White left the bench to take part in an Indian war then in progress. In his younger days he had killed the chief King Fisher with his own hand.

Neither did the judges consider themselves debarred from taking part in matters political. Archibald Roane resigned as judge to become Governor, and afterwards was again put on the bench. Hugh Lawson White was continually before the public, though it was not of his own seeking. John Overton was the Warwick of General Jackson; and no man ever took a keener interest in the affairs of State, though he never sought political office. Judge Catron was a most intense partisan, and was one of the best-hated men of his day.

When the lives of these pioneers of the State of Tennessee, and the great work they accomplished in what was a wilderness of forest and a stronghold of savages when they came to it, are considered, it must be said of them, "There were giants in those days."

PRACTICAL TESTS IN EVIDENCE.

V.

By Irving Browne.

DIAGRAMS AND MODELS.

MODELS are universally admitted in patent cases and many other cases on mechanical questions, and it seems are preferable to the introduction of ponderous machinery or other articles. In Earl *v.* Lefler, 46 Hun, 9, an action for breach of warranty of a horse, an impression of his mouth in wax or plaster was held competent. On a question of surveying, a witness may illustrate his testimony by a diagram made by another. Peters, C. J., said: "Even savages resort to it, in lieu of words, in describing the course of rivers and the lines of seashores." Shook *v.* Pate, 50 Ala. 91. A diagram of the locality of a homicide is admissible (Moon *v.* State, 68 Ga. 687); and the Court did not "see any objection to the diagram 'because part of it was drawn in red ink, as suggestive of the bloody deed, and as calculated to inflame the minds of the jury.' The scene and circumstances attending this terrible tragedy in the simple recital of the eyewitnesses is presented in colors of deeper stain than the mere sketches of red lines or other figures upon the diagram exhibited."

Merchandise and Materials.

In some modern cases specimens or samples of merchandise or materials in dispute have been admitted in evidence. Thus in People *v.* Buddensieck, 103 N. Y. 487; s. c. 57 Am. Rep. 766, an indictment for manslaughter by negligence in using bad materials in a building, specimens of brick and mortar taken from the ruins, and of brick and mortar properly made, were held to be competent in evidence. In Evarts *v.* Middlebury, 53 Vt. 626, on the question whether a horse was properly shod for winter travel, his shoes were allowed to be exhibited.

So in City of Philadelphia *v.* Rule, 93 Penn. St. 15, a proceeding to recover pay for paving, the defence being that the paving was bad, the plaintiff offered samples of the stone from the quarry; but this was rejected by the trial court, which held that he must produce samples of the very stone put down in the street. The appellate court pronounced this error, saying he was not bound to tear up his finished work to furnish samples to the jury. In Morton *v.* Fairbanks, 11 Pick. 368, an action for fraud in making shingles, a parcel of the shingles was allowed to be shown.

In King *v.* Railroad Co., 72 N. Y. 607, an action for injury by the breaking of a hook, part of the broken hook was held to have been properly exhibited to the jury, to point evidence of experts. Folger, J., said: "The eyes of the jury were as good to see . . . as the eyes of a witness, and the testimony of their eyes would be as satisfactory to them as that given by a witness. . . . Common observation is allowed in these matters of common occurrence to give and have its judgment, etc."

On the other hand, in Hood *v.* Bloch, 29 W. Va. 244, such a practical test was refused. The action was in regard to the quality of cheese sold. The court said: "I do not think, however, the court erred in refusing to permit the defendants to produce one of the cheese to the jury on the trial. No matter how bad the cheese may have been in February, when it was delivered, it would certainly have been much worse three months thereafter, when the case was tried. Then, if the defendants were allowed to produce one of the worst cheese, as they no doubt would have done, the plaintiff would have the

right to produce one of the best; and so the process might be continued until the entire lot of cheese had been brought into the court-room. In all cases of this kind a large discretion must be confided to the trial court as to exhibitions of articles of a bulky nature before the jury, and I do not think that discretion was abused in this particular matter in question." And on the trial of an indictment for carrying on a boxing-match, it was held no error to exclude the gloves offered in evidence (State *v.* Burnham, 56 Vt. 445; s. c. 48 Am. Rep. 801), the court saying that they furnished no criterion of the character or manner of the contest.

In an action for breach of warranty of a watch, the court may refuse to compel the plaintiff to produce it for inspection, although he testifies that he has it in his pocket (Hunter *v.* Allen, 35 Barb. 42).

On an indictment for burglary the burglar's tools may be inspected (People *v.* Larned, 7 N. Y. 445). So of surgical tools and a speculum chair on a trial for abortion (Com. *v.* Brown, 121 Mass. 69). So of clothing found on the deceased, in a murder trial (Gardiner *v.* People, 6 Parker Cr. 157), even if blood-stained (People *v.* Gonzalez, 35 N. Y. 64), in order to show the position of the slayer (King *v.* State, 13 Tex. Ct. App. 277). So of a valise, supposed to have contained weights fastened to the body of a person supposed to have been murdered by drowning (Com. *v.* Costley, 118 Mass. 1); and a wallet and bank-notes stolen from the person (Com. *v.* Burke, 12 Allen, 182); and decanters, jugs, etc., in a liquor case (Com. *v.* Blood, 11 Gray); and a piece of burnt plank in arson (Com. *v.* Betton, 5 Cush. 427); and bullets from the body of the murdered deceased (Moon *v.* State, 68 Ga. 687), the court observing, "they were the voiceless yet nevertheless significant evidences of the intent that prompted the slayer when he fired the fatal shot" (!). Also the pistol and cartridges in a murder case (Wynne *v.* State, 56 Ga. 113).

But in an action of breach of promise of marriage the plaintiff's possession and production of the defendant's signet-ring is no evidence (Weideman *v.* Walpole, Eng. Ct. App. July, 1891). Kay, J., said: "With respect to the ring, it is, to my mind, impossible to treat the possession by the plaintiff of the defendant's signet-ring as corroboration of the promise. A man does not usually give his signet-ring in such cases." Possibly it might be different in the case of a wedding-ring on a question of marriage.

Animals.

In Line *v.* Taylor, 3 Fost. & Fin. 731, an action for damages by the bite of a dog alleged to be fierce and mischievous, the dog was allowed to be brought into court by his keeper, led with a chain; and the jury inspected him, and gave a verdict for the defendant.

In the Crewe County Court, in Powell *v.* Parker, a fox terrier was in dispute. The dog was brought into court; and as the evidence was conflicting, his honor toward the end of the case had the animal placed beside him on the bench, and the plaintiff went to the far end of the court and called out, "Sam, Sam." No sooner did it hear the voice than it found its way through a crowded court to the plaintiff, and began to gambol around him. The defendant had described the dog as partly deaf. The judge said he believed the dog belonged to the plaintiff, and gave a decision accordingly.

In Thurman *v.* Bertram, at *nisi prius*, before Baron Pollock, an action brought by a young lady to recover damages for personal injuries received through the alleged negligence of the defendant's servants, it appeared that she had gone in a wagonette to the Alexandra Palace, where the Nubian encampment, with camels, elephants, etc., was then attracting crowds; and at the conclusion of the performance a certain quadruped, to wit, a baby-elephant, came out with his keeper, and frightened the plaintiff's pony. The pony bolted, and the plaintiff was thrown out of the wagonette, and fractured her

collar-bone. On the trial the defendant's counsel made profert of the animal; and he came into court, with bells on his head, without injury to anybody, but with manifest benefit to his side of the case, for an "arrangement" was immediately had. The judge observed in the happiest manner that "the elephant had come to offer his apology in person;" whereupon there was laughter among the bar, as there always is in England at any attempt at a judicial joke, which in this country would make the lawyers look funereal. In the chapter on Inspection, in the new edition of his work on Evidence, Dr. Wharton tells of a case of Mrs. Wolfe, a widow, who sued one Jones, a butcher, for £5 damages, for killing a cockatoo parrot belonging to her. The defendant insisted that he mistook it for an owl. On the trial the mate of the deceased was brought into court, and afforded great amusement by strongly recommending the parties to "shake hands," "shut up," and asking for "sugar." Wicked men would doubtless say that the parrot with its garrulity felt more at home among the lawyers than the elephant with his sagacity.

Experiments.

Experiments may be tried, out of court or in court, to illustrate certain scientific matters. Thus in Sullivan *v.* Commonwealth, 93 Penn. St. 284, evidence was admitted of experiments by shooting at short range with the pistol in question, at substances like the clothing which the deceased wore when killed. So in Dillard *v.* State, 58 Miss. 368, a case of homicide, the jury were permitted to inspect the horse which the deceased was riding at the time of his death, and to experiment with a view of ascertaining whether the wounds could have been inflicted by a man on the ground. So in Lincoln *v.* Taunton Manuf. Co., 9 Allen, 191, evidence was allowed of experiments by expert chemists, out of court, as to the effect of copper on grass, disapproving Ingelow *v.* North R. Co., 7 Gray, 91, where such evidence was excluded in respect to the freezing of milk.

Locksmiths have been permitted to give exhibitions of lock-picking in open court. In a case in the United States Supreme Court, on the question whether in a photograph of several persons, sitting in a row, the outer images would be as vivid and correct as those in the centre, the experiment was tried on the judges sitting on the bench in open court, by their own direction.

In recent English cases, Kay, J., tolerated an exhibition of dancing-dolls, and on a question of patent right between two rival manufacturers of hand-organs, Kekewich, J., ordered both organs played in court. James Payn, in a recent letter to "The Independent," says: —

> "There is a well-known classical story of a gentleman boasting of a leap he had once made at Rome, which seemed to be a little incredible. 'Here is Rome, here is the leap,' observed a bystander, — a practical suggestion which put the boaster to shame. A similar attempt was made the other day in a county court to throw doubt upon an athletic performance, but by no means with the same success. A young lady, whose profession was that of raising heavy weights by her teeth, sued for money owed by her employer, whose defence was that she was incompetent to perform her feats. She showed her shining teeth, and looked round at the shrinking counsel and solicitors; she would probably have had one of them by the nape of the neck, had not his honor hastily suggested that an inanimate object would be equally suitable for the experiment. A cannon was brought weighing one hundred and twenty pounds, which the young lady lifted with her teeth and held suspended for ever so long; then she let it fall to the ground with a thud, to prove that it was no 'property' cannon. It is hardly necessary to say that the jury, treated to this successful and gratuitous performance, gave her a verdict at once, not 'in the teeth of the evidence,' but on the evidence of her teeth."

In the recent English case of Belt *v.* Lawes, the plaintiff, a sculptor, sued the "Vanity Fair" newspaper for libel in alleging

that he is no artist, and that his pretended works are made by talented subordinates. The "Law Times" says: —

"This case is probably the first in which it has been suggested that an artist whose skill is impugned should prove it by practical operations in court. The inconvenient results which would probably flow from such a practice are obvious. The practical operation would not be recorded, although it might produce different impressions upon different minds. The operator and his friends might consider the test conclusive in his favor; another view might be taken by the other side. How move against a verdict based on this operation on the ground that it was against the weight of the evidence? If the test is to be applied to a sculptor, why not to a *prima donna?* We have known of a case in which an *artiste* sought damages for wrongful dismissal, and the justification was that she could not sing. Would a judge have allowed her to sing to the jury? If so, the rule might be extended without limit, with consequences terrible to contemplate."

The "suggestion" in the case in question came from the plaintiff on cross-examination, with the observation, "that will end the case." Hereupon the following dialogue ensued: —

"Mr. RUSSELL. No, indeed, Mr. Belt, it will not. Baron HUDDLESTON. If the jury express a wish to see Mr. Belt put to the test, I shall certainly not prevent it. (Applause in court, which was at once checked.) Sir H. GIFFARD. I shall certainly ask for it, my lord. Mr. RUSSELL. And I shall not object at the proper stage of these proceedings."

Subsequently, at Carnarvon, in an action for personal injuries against a railway company, the plaintiff's counsel asked the court to allow the plaintiff to walk across the court before the jury, with a view to convince them that his lameness was not assumed. The same learned judge declined to allow this test, and said "that ever since he had been reported to have said, during the hearing of the case of Belt *v.* Lawes, that he should allow the plaintiff to make a bust of himself (Baron Huddleston) in court, he had been pestered to allow all kinds of tests to be gone through in court before the jury; and he wished it to be known that the press had entirely misrepresented him in this matter, and that he had never indicated that he should allow such a course to be taken." The difference between this test of skill, and the offer in the railway case is manifest; for the jury could not tell but that the plaintiff then was shamming lameness, while there could be no question if he made a bust.

The "London Law Journal" says: —

"The practice of experimenting before judges is likely to receive a check, if it is often followed by such results as happened in a case before Mr. Justice Pearson last week. Two German firms were disputing the exclusive right in certain patents for improvements 'in the production of coloring matters suitable for dyeing and printing.' The contention of the defendants was that the chemical means described in the specifications were impossible, because if the 'oxyazo naphthalinoine' were to be united with the 'fuming sulphuric acid' of the strength therein described, it would be dangerous to human life; and an experiment *coram judice* was proposed. In an unguarded moment the judge consented, and adjourned to an empty room, where the baleful mixture was concocted by adding a teaspoonful of the unpronounceable liquid to an ounce of fuming sulphuric acid. The result was terrific. 'So dense and poisonous' were the effects of the fumes which arose, that judge, counsel, witnesses, and bystanders fled, 'with the utmost precipitancy, to avoid being asphyxiated on the spot.' Her Majesty's judges are brave men, but even in the search for truth they ought not to be exposed to dangers hitherto reserved for combatants in China; and the smoking out of the Royal Courts of Justice, as if it were a nest of hornets, is a contempt of court for which none of the penalties provided by the Lord Chancellor's Bill is adequate."

The London "Law Times" says of the same transaction: —

"We see no advantage in this kind of exhibition; the conditions under which such an experiment has to be made must tend to make it misleading,

and a court should be, as a bygone judge described it, 'a machine put in motion by evidence' of witnesses, not by the exhibition of experiments."

In Stockwell *v.* Railroad Co., 43 Iowa, 470, the court declined to set aside the verdict in an action for injury by fire communicated by a locomotive, because on a view of the premises by the jury the railroad employes ran a locomotive over the portion of the track in question, in order to show that it could be done without using steam and so without emitting sparks. This was put on the ground that the experiment did no harm; but the court said: —

"Why not employ the experiment to reach the truth, the end and aim of all trials at law? . . . Suppose experts should differ as to the effect of the union of two chemical bodies; what objection could exist to an experiment before the jury to determine the true result? Suppose a question arose in a case as to the weight of a gold coin, the witnesses of the parties giving conflicting evidence on the subject. Why not weigh it in the presence of the jury?"

But it seems that the jury, in a murder case, on a question of footprints, may not experiment out of court in making tracks with an old shoe worn away like the prisoner's (State *v.* Sanders, 68 Mo. 202; s. c. 30 Am. 782). So in Smith *v.* St. Paul City Ry. Co., 32 Minn. 1, it was held not error for the trial court to refuse to allow the jury to witness experiments with cars upon a railway-track outside the court-room, on the question of the possibility of an alleged collision. The court pronounced the matter one of discretion. The same ruling was made in People *v.* Sevine (Cal.), where it was held that the trial judge is not bound to stop proceedings in order to try an experiment in open court as to the length of time it would take a candle to burn down to the point of those discovered in defendant's saloon after a fire, for setting which he is indicted. "It was a matter resting entirely in the discretion of the court. It would probably have admitted similar proof on the part of the defendant, if any had been offered; but the court was not bound to stop the proceedings in the court, and try the experiment in open court, as proposed.

In Reg. *v.* Heseltine, 12 Cox Cr. Cas. 404, an indictment for arson, evidence was allowed of experiments made by members of the fire brigade, out of court, with candles of different lengths, prepared similarly to the candle-ends found in the debris of the fire.

In Ulrich *v.* People, 39 Mich. 245, an indictment for rape, charged to have been committed in a wheat-field, the girl having testified that the defendant dragged her over the fence, the defendant's counsel offered evidence of experiments made in attempting to lift girls over the same fence, in order to contradict her! The court rather curtly held the exclusion proper. In Com. *v.* Twitchell, 1 Brewster (Penn.), 551, a case of murder by blows with a poker on a skull, the prisoner was not permitted to prove experiments made out of court with other pokers on other skulls. But in the Billings murder case, in Saratoga County, N. Y., in 1880, panes of glass and skulls on which the effect of bullets had been tried out of court were used in evidence to point the testimony of experts.

In a very recent English case at the Bromsgrove Petty Sessions, where a woman was charged with stealing some apples, it was alleged against her that the stems of the fruit "fitted" the trees from which they were said to have been stolen.

In State *v.* Smith, 49 Conn. 376, it was held discretionary to refuse to allow an expert to carry out of court and experiment with the pistol of the deceased and that of the defendant, in order to determine which caused the fatal wound in question. And in Polin *v.* State, 14 Neb. 540, it was held that the court did not err in refusing to order the sheriff to discharge some of the cartridges remaining in the defendant's revolver with which the deceased was killed, with a view of its liability to go off at half-cock. The court said the experiment could be just as well tried after the chambers of the revolver had been emptied.

THE VEHMGERICHTE.

THE absence of established laws, or of competent authority to enforce them, has at times given rise to anomalous institutions, which have sought to secure the public tranquillity by means themselves scarcely reconcilable with sound ideas of civil subordination. The Corsican Vendetta and the American Vigilance Societies alike derived their origin from social anarchy and from the inability of the recognized authority to maintain order or to exact retribution for crime.

During the Middle Ages most of the countries of Europe passed through a crisis when the authority of the monarch and of his judges fell into such contempt that the law was entirely without force, and no better protection was afforded by the city than by the open country. Every man's hand was raised against his fellow-man, the most holy sanctuaries were profaned, property was plundered, persons were violated, and the various fortresses scattered throughout the country, so far from sheltering the weak, were converted into dens of robbers, where knightly freebooters levied blackmail from the territories around their strongholds. England passed through such a period of internal chaos in the troubled reign of Stephen, when during nineteen years, according to the "Saxon Chronicle," "the rich men generally oppressed the wretched people by making them work at their castles; and when the castles were finished, they filled them with devils and evil men. Then they took those whom they suspected to have any goods, putting both men and women in prison for their gold and silver, and torturing them with pains unspeakable; for never were any martyrs tormented as they were. Many were starved; many lived on alms who had previously been rich; others fled from the country. Neither church nor churchyard was spared by the plunderers; they robbed the monks and the clergy; and every man plundered his neighbor as much as he could. Such, indeed, was the misery that it was said openly that Christ and his saints slept."

This state of affairs gave rise in several countries of Europe to popular confederacies, and even to secret tribunals, formed expressly to check such unbounded license, and to secure the ends of justice when its legitimate administrators were feeble or corrupt. The most terrible of those secret tribunals were the well-known "Vehmgerichte,"—or "Fehmgerichte," as the word is sometimes written,—which existed in some parts of Germany, and especially in Westphalia. The exact significance of the title is disputed, but it is usually supposed to be derived from "fehm," punishment, and "gericht," court, meaning a court of justice. Others imagine, on inferior grounds, the term is obtained from the Latin "fama," as the tribunals too frequently acted on common fame or report. The origin of the courts has been ascribed to the age of Charlemagne; but there is no authentic record of their existence prior to the middle of the thirteenth century. It is certain that at that time a number of individuals were secretly associated together in Germany to punish crimes and offenders; to put an efficient check upon the lawlessness of the powerful barons, who defied the authority of the sovereign; and to redress cases of grievous wrong perpetrated by any member of the community.

The tribunals were divided into local sections, but recognized a central authority. Nominally, the Emperor was the chief officer; but in Westphalia the actual President was the Archbishop of Cologne. A person of position presided over each branch of the central court, and was known as a "free count." The other members were divided into the two classes of "schoppen," or ignorant, and "wissende," or knowing, the latter class including all those who were initiated into the hidden secrets of the Order. The most

solemn oaths bound every one to secrecy as to the proceedings; and there is no evidence that these vows were ever broken, although it is supposed that at one time one hundred thousand persons were members of these societies. For the determination of civil disputes, the meetings of the tribunals were held in a public place and in the full light of day; but such offences as robbery and murder were usually dealt with secretly. If common rumor ascribed the commission of a crime to any person, or if a charge were brought against him, he was cited to answer the accusation before the court of his district. The summons bore the seal of the Vehmgerichte, and was generally fastened to the door of the supposed criminal during the night. If he refused to attend, the citation was repeated; and disobedience to the second summons was considered as conclusive evidence of guilt. The members of the tribunal were bound by their oaths to put such an individual to death wherever they could find him. If, on the contrary, he attended the court, he was allowed to call witnesses, and to clear himself, if he could, by their evidence. Upon his failing to prove his innocence, he was punished, according to the nature of his crime, by fine or summary execution. No one was exempt by virtue of his rank, and the highest noble was as liable to citation as the poorest peasant in the land.

When capital punishment was inflicted, it was customary to leave a knife by the body, to show that the act was not one of a private murderer, but was due to the sentence of the Vehmgerichte. The "wild kind of justice" of these irregular courts was long a terror to evil-doers; and as the tribunals were countenanced by the highest powers in the land, those obeying their decrees were independent of the regular authorities, while the large number of the members and their wide dispersion rendered any sentence passed almost certain of execution.

Such rude administration of justice is, however, peculiarly liable to abuse, and in course of time the inevitable deterioration set in. A Diet of the Empire was held at Trier in 1512, when it was declared that "by the Westphalian tribunals many an honest man had lost his life, honor, body, and property;" and even the Archbishop of Cologne, their nominal chief officer, admitted that "by very many they were shunned and regarded as seminaries of villains." As the power of the State gradually consolidated, the irregular courts were suppressed, although they were never abolished by any formal enactment; and it is said that the last remnant of the old tribunals was found in operation in Westphalia when Jerome Bonaparte was king of that country, in the early part of the present century. — *Chambers' Journal.*

SOME REMARKABLE JURIES.

ONE of the most sacred and cherished of our institutions is that of trial by jury, but in connection therewith many curious and amusing incidents can be recorded. Early in the present century an attorney who filled the high office of sheriff, and who was somewhat of a wit, brought together a petit jury of twelve of the fattest men he could find. When they came to the Book to be sworn, it appeared that only nine jurors could sit comfortably in the box. The court was puzzled what to do; but after a good deal of laughing, and not a little squeezing and protesting on the part of the twelve "good men and true," they managed to wedge themselves in. Literally they were a "packed jury."

The learned recorder who presided requested that there should be no more "fat panels" summoned to his court. The facetious high sheriff bowed acquiescence; but, determined to have his little joke, summoned on the next occasion twelve of the leanest and tallest men that the country could produce. The droll effect — there being room in the box for twelve more jurors of the same dimensions — moved the court to mirth, and it was some time before the administration of justice could be proceeded with.

At another time the same humorous official impanelled a jury of barbers; but the crowning joke occurred at the summoning of his fourth and last jury. For that term of the court the high sheriff, not having the fear of the recorder before his eyes, actually brought together a squinting jury. When these twelve queer-looking jurors came to be sworn, the court could no longer maintain its gravity; and recorder, mayor, aldermen, and barristers gave themselves up to uncontrollable laughter.

At the Huntingdon Assizes in 1619, Judge Dodderidge reproved the sheriff for not returning jurors of sufficient respectability. At the next assizes the following list was read out with peculiar emphasis, import, and pause: Max King of Torland, Henry Prince of Godmanchester, George Duke of Somersham, William Marquis of Stukeley, Edward Earl of Hertford, Richard Lord of Worsley, Richard Baron of Bythorpe, Edmund Knight of St. Neots, Peter Esquire of Easton, George Gentleman of Spaldock, Robert Yeoman of Barham, Stephen Pope of Weston, Humphrey Cardinal of Kimbolton, William Bishop of Bugden, John Abbot of Stukeley, Richard Friar of Ellington, Henry Monk of Stukeley, Edward Priest of Graffham, Richard Deacon of Chatsworth. The jury thus summoned was "illustrious" enough even for his lordship, who commented upon the ingenious industry of the high sheriff.

In Brome's "Travels over England" an account is given of a curious jury return at Rye. The author remarks that by the Christian names then in fashion could be discovered the superstitious vanity of the puritanical precisions of the age. The following is a list of the jurors: Accepted Trevor of Norsham, Redeemed Compton of Battel, Faint-Not Hewet of Heathfield, Make Peace Heaton of Hare, God Reward Smart of Tiseshurst, Stand-Fast-on-High Stringer of Crowhurst, Earth Adams of Warbleton, Called Lower of the same, Kill-Sin Pimple of Witham, Return Spelman of Watling, Be Faithful Joiner of Britling, Fly Debate Roberts of the same, Fight-the-Good-Fight-of-Faith White of Emer, More Fruit Fowler of East Hodley, Hope for Bending of the same, Graceful Harding of Lewes, Weep-Not Billing of the same, Meek Brewer of Okeham. Surely a godly jury, and one more likely to err on the side of justice than mercy. — *Tit-Bits.*

LONDON LEGAL LETTER.

LONDON, Feb. 8, 1893.

THERE has been no lack of legal incident since I penned my last letter, but politics at present overshadow everything. Parliament opened on the 31st of January, and we are still in the midst of the Debate on the Address; but this preliminary skirmish will shortly close, and the engagement become general all along the line, when the government disclose their Home Rule Scheme. On politics pure and simple, however, I may not enter. Rather an interesting question in constitutional law has arisen in connection with the demand of the Radical party for payment of members of Parliament. The friends of the proposal are well aware that the fate of a bill dealing with the subject even in the present House of Commons would be most uncertain, and so they have been urging the Chancellor of the Exchequer, Sir William Harcourt, to make the innovation indirectly and quietly by simply inserting a provision in his next budget by which a draft from the public purse should be appropriated for the purpose. This idea has fairly bewitched the advanced politicians, who have been clamoring for what they style a democratic budget. One of their number, eager to bring the matter to a point, addressed a letter to the Chancellor of the Exchequer inquiring as to his hidden purposes. The reply which this interrogation elicited was a sad discomfiture. Sir William Harcourt was of opinion that the measure was of so serious a character that it would be unwise and unconstitutional to seek to attain it in the manner proposed.

A most successful dinner was given the other evening by the recently formed Association of Solicitors' Managing Clerks at the Court's Restaurant in the Strand. Sir Horace Davey, Q. C., leader of the Chancery Bar, was in the chair, and many eminent barristers and solicitors were present. The association was started when solicitors' clerks were threatened with exclusion from audience at Judges' Chambers and before the Chief Clerks in Chancery. There are 1,000 managing clerks in London, and the association hopes soon to ramify in the provinces. The ordinary qualification for membership is that the applicant should be a managing clerk of five years' standing. The association will in any case form a pleasant social centre, and bring men together who might not otherwise meet one another.

In Morley *v.* Loughnan we have had a case of absorbing public interest. It is seldom that a Chancery Court is the scene for trial of a sensational cause, but for more than a week Mr. Justice Wright was engaged in presiding over the developments of as curious a drama as has lately seen the light of day. The plaintiffs were the Right Hon. Arnold Morley, M.P., Postmaster-General, and his brother, Mr. Samuel Hope Morley, executors under the will of the late Mr. Henry Hope Morley; the defendants Messrs. W. H. Loughnan, Alexander Loughnan, and their brother-in-law, Mr. Charles Sleeman. The action was brought to recover large sums of money amounting to £140,000, alleged to have been obtained by the defendants from the late Mr. Henry Morley under circumstances which rendered the advances invalid. The testator, Mr. Henry Morley, was a son of one of our best-known public men, Samuel Morley. The lad in his early years showed signs of physical and mental weakness, and was subject to epileptic seizures. His father, being minded to secure a companion for his son, chanced to light on one W. H. Loughnan, who, with his brother Alexander, one of the other defendants, had formerly been a clergyman of the Church of England, but was then and afterwards connected with the Close sect of the religious persuasion known as Plymouth Brethren. It was an express condition of Loughnan's employment that he should engage in no discussions as to his own peculiar views with his charge. Religious hysteria, so frequently associated with epileptic symptoms, was one of Henry Morley's besetting weaknesses, and his companion was not slow to avail himself of the opportunity thus afforded to gain a complete ascendancy over the enfeebled mind of the docile patient. To cut a long story short, during the years of their connection Loughnan succeeded in diverting into his own pocket and those of his friends immense sums of young Morley's money, which in large part at any rate the latter was weak and foolish enough to think was well bestowed. Latterly the patient was absolutely controlled in all his movements by the wily companion, who with such ample funds at his disposal acquired valuable

properties, invested in carriages and horses for his own comfort and convenience, and generally lived up to the luxurious standard of life which his astute hypocrisy enabled him to do. All the circumstances of the case contributed to the public curiosity, — the large sum in issue, the high social position of the aggrieved parties, and the atmosphere of devoted religious feeling with which Loughnan had contrived to surround his misdoings. Very bitter feelings have been aroused among the Plymouth Brethren; they apprehend that the charges of unctuous hypocrisy so conclusively established against a prominent figure in the inner circle of Close Brethren may unfairly be extended to the body as a whole. Sir Charles Russell's cross-examination of Loughnan was a most effective and amusing performance. The conclusion was a foregone one; the judge had no hesitation in finding for the plaintiffs, and ordering a restitution of the amounts advanced by the deceased to his "companion," — the only difficulty being that probably a very considerable part of the large total is spent and gone beyond recall.

A very acute controversy is being conducted on the subject of the law officers' remuneration. When the Gladstonian government came into power it was grandly announced that for the future the Attorney and Solicitor-General would abstain from engaging in private practice, and would dedicate all their time and energies to the service of the State. These eminent men, Sir Charles Russell and Sir John Bigley, however, continued to engage in an apparently extensive private practice, as before; curiosity being aroused, it was then explained that the law officers had not been entirely prohibited from ordinary practice, that it had been arranged they should take cases in the House of Lords and before the Judicial Committee of the Privy Council as well as be at liberty to appear in any cases in which they were actually engaged, or for which they had been retained prior to accepting office; the latter proviso of course explained Sir Charles Russell's constant appearances in the teeth of the authoritative announcement. The liberty thus conceded to the law officers cuts away entirely the logical standpoint of those who initiated the agitation while the late government was in office. Their argument was twofold: it was urged that a law officer's position as a public servant must from time to time be interfered with by his interests as a private practitioner, and that his official salary was amply sufficient to compensate him pecuniarily, and in fact could not be properly earned unless his entire mind was devoted to the cares of office. I need not point out how this specious reasoning is equally applicable to the new arrangement. But a still more ludicrous feature of the matter has developed. Under the old plan the law officers never appeared personally in treasury prosecutions unless the cases were of great importance, the duty being in ordinary circumstances discharged by counsel employed by the Crown for the purpose, who received fees adequate no doubt but of quite moderate proportions. Now we have changed all this, and Sir Charles Russell as Attorney-General prosecutes in treasury cases that once were thought beneath such exalted attention. But mark what has happened; his briefs are marked with a fee as high, or almost so, as he would have received from a private client, to recoup him as far as possible for his sacrifice of income. Thus the law officers forfeit their claims to our compassion as well as to our reverence. What every one objects to is that so much credit should have been taken for a proceeding which is as broad as it is long. There never was any real and genuine demand that the Attorney-General and Solicitor-General should abstain from private practice while in office; on the contrary, professional feeling is all the other way, unless in isolated cases of unrepresentative opinion. However, the Gladstonian party made so much political capital out of Sir Richard Webster's connection with the "Times" during the sessions of the Parnell Commission, and Sir Charles Russell then so committed himself to some opinions which one fears must be regarded as in advance of his real sentiments, that for very shame some reconciliation of practice with profession had to be attempted.

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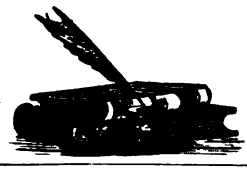
The Lawyer's Easy Chair.

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

BY IRVING BROWNE.

CURRENT TOPICS.

THE KING'S HIGHWAY. — In an article in the last number of this magazine, entitled "An Episode in Lord Coleridge's Court," the law laid down by the Lord Chief-Justice in the recent case of Harrison *v.* Duke of Rutland was pronounced "sound." We venture the contrary opinion, and according to the "Solicitors' Journal," "the Court of Appeal have had to correct the Lord Chief-Justice in his law." That journal states the facts as follows: —

"The Duke of Rutland was shooting over his moor, across which ran a public highway, the soil of the road being in the duke, who was apparently also in possession. Harrison came on the road, not to travel to any place, but solely to remain upon the road and interfere with the sport of the duke. The duke, after repeated expostulations, — though that is not material, — had him seized and held upon the ground until a particular driving of grouse was over. That this was done with no unnecessary force seems clear. A sufficient number of men were employed to prevent any chance of a struggle, and while the assault was in progress the parties appear to have remained on pretty good terms. 'Sing us a song,' said Harrison from his recumbent position on the ground; 'I am fast enough.' 'I hope I am not hurting you,' replied the keeper who was holding him down."

Notwithstanding the Chief-Justice read the duke a very severe lesson on his unlawful and high-handed conduct, and instructed the jury in substance that Harrison had a right to be upon the road without interference from the duke, the jury awarded only five shillings damages. Even this was five shillings too much; for as the "Solicitors' Journal" clearly shows, there was no cause of action. (See 47 Albany Law Journal, 58.) Harrison had no right to be upon the road for any purpose except passage in a reasonable manner. His remaining on the road to annoy the duke was illegal; and in laying down bad law to the jury the Chief-Justice did not even gain the cheap reputation of an advocate of equal rights, as between noble and commoner. Harrison was a trespasser on the duke's land, and the duke had a clear right to use reasonable force to restrain the trespass on his lawful employment on his own land. All this is well enough settled in Dovaston *v.* Payne, 2 Sur. Lead. Cas. 157, and Queen *v.* Pratt, 4 E. & B. 460. The former case is euphoniously summed up by Sir Frederick Pollock as follows: —

"The right is to pass and repass alone,
Free and fair is the king's highway;
And that your pleader should well have known,
Whose fault hath lost you this cause to-day.

"And now the case is exceeding plain,
Free and fair is the king's highway.
He shews how your kine he might well distrain,
And ye shew us nothing to say him nay."

In the latter case Pratt was convicted of trespass in standing on a public road, sending his dog into the adjoining cover of the owner of the land, and firing at a pheasant thus raised. Erle, J., said: —

"I take it to be clear law that if in fact a man be on land where the public have the right to pass and repass, not for the purpose of passing and repassing, but for other and different purposes, he is in law a trespasser, like the cattle in Dovaston *v.* Payne."

It would be singular if the owner of the soil in a street had not the right to eject from the sidewalk in front of his house an organ-grinder who should persist in remaining there and murdering music, after being implored to move on. In fact, this right was substantially adjudged in Adams *v.* Rivers, 11 Barb. 390, in which it was held that a man has no right to stand on the sidewalk in front of a house five minutes and use abusive language toward the owner; and the court asks: "Suppose a strolling musician stops in front of a gentleman's house, and plays a tune or sings an obscene song under his window, can there be a doubt that he is liable in trespass?" So in Fairbanks *v.* Kerr, 70 Pa. St. 86; S. C. 10 Am. Rep. 644, it was held that one has no right to make a stump speech in the highway. The court observed: "A pavement before another's house may not be occupied to annoy him." One has no right to occupy or obstruct a street or highway continuously and unreasonably, even for the transaction of lawful business, as for the delivery of distillery slops through pipes (People *v.* Cunningham, 1 Denio, 324), or for wagons to receive goods (King *v.* Russell, 6 East, 427), or for sawing timber (Rex *v.* Jones, 3 Camp. 230), or for receiving barrels from a cider-press (Dennis *v.* Cipperley, 17 Hun, 69), or for loading wagons by skids across a sidewalk (Callanan *v.* Gilman, 107 N. Y. 360; see

also Flynn *v.* Taylor, 127 N. Y. 596); much less for an unlawful and malicious purpose. We sympathize with the Chief-Justice in his views on the folly and cruelty of killing game as practised by the duke and his retainers; but Mr. Harrison had no right to use the highway in his effort to obstruct the hunting-party. The Chief-Justice's humanity, democracy and laudable notion of equality ran away with his law.

LEGAL PORTRAITS. — The readers of the "Green Bag" will have observed that every month in the advertising pages is given a portrait of some ancient legal worthy, generally a law reporter. We can suggest a very good use for these. Buy a copy of that most delightful book, Wallace on the Law Reporters, and lay these portraits in at the proper places. It greatly adds to the interest of the book, and preserves the portraits.

AMATEUR THEATRICALS. — We read with great glee that a sheriff out West had seized upon a troupe of amateur theatrical performers and immured them in a dungeon. We are not quite confident about the dungeon part, but we hope it was so. Good Jane Austen had the correct idea of this instrumentality of the foul fiend; for she makes her novel, "Mansfield Park," turn upon the base attempt of some young people to get up some private theatricals at a great country-house in the absence of the proprietor. But an overruling Providence blew favoringly upon the ship that was bringing him home, and he walked into the hall just in time to prevent the desecration. Major André deserved his fate all the more because he was an amateur actor. It is no wonder that the Supreme Court of Pennsylvania have just decided (Collins *v.* Dispatch Pub. Co., 25 Atl. Rep. 456) that a printed charge that an employee in the post-office department had been accused of "intimacy with a well-known young local elocutionist" is libellous in itself. We speak remorsefully, like a reformed sinner, on this subject; for we once uttered an alleged comedy for amateurs (copies of which we fear are still for sale by Samuel French & Son, of New York City; price, ten cents; title, "Our Best Society"). The foregoing, however, is without prejudice or offence to a recent enactment, at Elmira, N. Y., by amateurs, for charitable purposes, of the trial scene in "Pickwick Papers." This seems to have been a resource of the Hon. J. Sloat Fassett to soothe his spirit so recently perturbed by his defeat in the contest for the Governorship by Mr. Flower. Sundry other lawyers took part, and were aided and abetted by other citizens and by influential citizenesses. Mr. Fassett personated Mr. Justice Stareleigh; and when the jury disagreed, against the form of the novel in that case made and provided, he set aside the verdict, and fined them $15 apiece for contempt of court. To our surprise Mr. Pickwick was not personated by Senator Hill, who has a certain physical qualification for the part; but perhaps he is not in a playful mood of late.

BLASPHEMY. — It is reported in the newspapers that in 1881 the late Judge Comegys of Delaware charged a grand jury at Wilmington in respect to a lecture delivered there by Colonel Ingersoll, as follows: —

> "I say to you that the law of this State is against the insulting of God by reproachful or derogatory language or expressions, and exciting the passions of the people by treating their religion with contempt."

This is taking "Bob" too seriously. His infidelity is part of his stock-in-trade. We should as soon think of advising the spanking of our three-year-old grandson for saying, "Gosh!" or "Bully!" (as he frequently says), as of punishing Bob for blasphemy. We predict, in all seriousness, that if he has his senses when he dies he will die a Christian. The age has outgrown the policy of punishing people for blasphemy; and if it is still punishable in Delaware, as we infer it is, it ought in consistency to be punished by whipping, or by setting in the stocks or standing in the pillory, with a popular accompaniment of overripe eggs.

REFRESHERS. — This is a term little understood among American lawyers, but we believe that it means pecuniary jogs to the professional intellect and action. We are reminded of it by a full-page advertisement in the London "Law Times," consisting of a huge picture of a wigged, banded, and gowned barrister, with a double eyeglass on his nose, and in his hands a smoking cup labelled "Cadbury's Pure Cocoa," from which he is in the act of drinking. The picture is inscribed, "A refresher." Whether this is a recommendation, or a representation of a professional habit, we are not informed. At all events, it is a clever appeal, and it will go far to disabuse the American public of the notion that the English barrister's recess-refresher is a mug of ale. By the way, we note that the wig in the picture has six curls. Is this indicative of age or standing, or is it the customary number? We gather no hint whether the picture is a portrait from life or a fancy picture. Although we have received no refresher nor even a retainer from Mr. Cadbury, we do not mind saying that we regard cocoa as decidedly a more wholesome refresher than whiskey, which we fear is in many instances too apt to be the American lawyer's refresher in strenuous trials.

BEN BUTLER. — Death has been busy among the busy B's of our country, — Blaine, the most brilliant

statesman; Brooks, the most beloved preacher; and Butler, the most blatant lawyer. The statesman and the preacher do not fall within our purview, but of Butler we may speak our mind. To us he stood for some of the most unpleasant traits of American character, — its "cheek," its vanity, its restlessness, its political versatility and self-seeking. He certainly was an extraordinary character. Nature had given him an unparalleled outfit. His brain was bigger, we believe, than Webster's or Cuvier's or Napoleon's. But the huge fruits and vegetables of California are not so fine as the smaller products of the east, and it may be that intellect is not to be measured by the size of the brain. He was, however, a person of remarkable energy, audacity, administrative ability, and fertility of resources. Nobody ever supposed him much of a lawyer, except in a persistent, undaunted, and executive way. He was no general. The powder-ship off Fort Fisher and the Dutch Gap canal rendered him ridiculous as a military man, and yet as the governor of a turbulent and conquered city he was extremely successful, although somewhat objectionable to the conquered. He was no statesman. Even his claim to the invention of the term "Contraband," to illustrate the *status* of runaway slaves during the war, has been disputed. He was a shifty and self-seeking politician, and yet he seems to have loved his country, — perhaps out of spite. His vanity was colossal, — riding behind four white horses and bowing to the newsboys and shoeblacks, when posing as a hopeless presidential candidate, was exactly his rôle. He was generally regarded with a sort of curious and amused wonder; so he was elected governor as a kind of joke by Republicans who were curious to see what queer things he would do. He loved a row and was always in one, and made rows to order with the politicians, the military authorities, and the courts, and died in a row with his publisher. The worst thing in his career was the way he got his money. When he was in command in New Orleans, his brother became enormously rich in trade in the great products, and dying left it all to Ben. We do not suppose he himself made much in "spoons" and the like; but his brother got very rich. We do not hear that Ben has left any of his millions to charity or religion or education. On the whole he was not a pleasing character, although it is said he could be very charming when he tried. It seems to us that his great defect was his lack of the moral sense. Men will not love to think of him, as they will of Blaine and Brooks, and he has left no works to praise him.

NOVEL LAW. — In the November number of "Harper's Magazine" is a clever law story by Richard Harding Davis, entitled "The Boy Orator of Zepata City," in which the scene is laid in Texas. Mr. Davis got two matters wrong. In the district attorney's speech to the jury he scores the prisoner unmercifully for other crimes notoriously committed by him. This line of address would not be tolerated in Texas, and if objected to by the prisoner's counsel, would be ground for a new trial. Again, in Texas the jury "assess the punishment" in all criminal cases, and the judge has nothing to do with it. So the prisoner's touching appeal for mercy was addressed to the wrong tribunal. It would seem quite worth while for an author to try to arrange these details correctly; but many authors, like Mr. Davis, know the law only by intuition.

SUMMER LAW SCHOOLS. — Summer law schools are a new invention, and are to be credited, if we are correctly informed, to the venerable Prof. John B. Minor, of the University of Virginia, the author of the well-known "Institutes." This untiring gentleman, among his institutes, runs a law school in the summer months, at which he is the sole instructor, charging a fee of $50. It has been stated that he has two hundred pupils, and thus he rakes in the snug sum of $10,000 for the haying-season, when most lawyers are loafing, hunting, fishing, yachting, playing cards, and drinking spring-waters. We are not informed whether he suspends instruction on the Fourth of July. Perhaps he condescends to adopt that as his vacation. We only wonder the old gentleman does not engage to fill a pulpit on Sundays in his vicinity; but perhaps he crams on that day for the labor of the ensuing six. Probably the young gentlemen get their money's worth. It has been intimated to us that the Cornell professors contemplate a similar course at Ithaca, N. Y., next summer. This would be an ideal place to study law in the warm weather, and the students would be sure of competent and varied teaching. Evening law schools, which are an established institution in the City of New York, have thus a rival in the art of "occupying the time." There is also one, the Sprague Law School, at Detroit, which teaches law by correspondence, and is a very flourishing and busy institution.

NOTES OF CASES.

A PRESIDENT'S TOMB. — Having considered the case of Mary Washington's tomb, we are at leisure to take up that of President Polk's tomb. This chief-magistrate cannot possibly be remembered for anything he did, — unless it was to defeat Henry Clay, — but only for the acquirement under his administration of a vast area of territory by the government. Probably feeling the danger of being forgotten, he provided by will that the remains of

himself and his wife should be interred on his homestead at Nashville, called the "Polk Place;" and to prevent the place from ever passing into the hands of strangers to his blood, he devised the same to the State of Tennessee in trust to permit the same to be occupied by the nearest of kin of the name of Polk, deemed worthy and proper, or in default thereof, by such other blood relation as the State may designate, such occupant to keep the house, premises, and tomb in repair, and preserve the tomb intact. The Polk family, says the "American Law Review," —

"were mean enough in the aggregate to join together in a suit in chancery to set aside his will, on the ground that it was void as being contrary to the provision of the Constitution of Tennessee against perpetuities. The names of these obscure persons, who could only become famous through this act of unmitigated littleness, will not be printed by us. Their names make a long column at the head of a bill in chancery. They claim various portions of the estate, some of them as small as a one three-hundred-and-thirty-seventh part. The infinitesimal meanness of a person who will join in a bill in chancery to recover a one three-hundred-and-thirty-seventh part of the estate of a deceased President of the United States, who disposed of it by his will in the vain hope of being able thereby to perpetuate his memory, which estate cannot on any estimate be worth more than fifty thousand dollars, and would probably not sell for half that sum, can be imagined, but can hardly be paralleled. Nevertheless the court, before whom this suit in equity was heard, found itself obliged to administer the law."

Chancellor Allison has set aside the trust. In his opinion he states the claims of the respective parties as follows: —

"The Polk family, descendants of the testator's brothers and sisters, maintain by their bill that the foregoing devise in trust to the State of Tennessee is void, because:

"(1) The State of Tennessee has no power to accept or execute the trust.

"(2) The trust is too vague and uncertain. There is no standard, nor are there any reliable means, whereby such persons as the testator desires to enjoy Polk Place can be designated or ascertained.

"(3) The devise creates a perpetuity by the provision that the trust shall be kept there, and kept in repair forever, and that no building shall ever be erected on that spot.

"(4) It establishes a perpetuity, in that it provides that Polk Place shall be held by the State in trust for such persons of the house of Polk as may be designated by the State from time to time forever, and thereby make said lands inalienable forever.

"(5) It establishes a house of nobility, and secures, through the instrumentality of the State, to a succession of persons related in blood, privileges and honors inconsistent with the laws of the State.

"(6) The said trust is personal and peculiar to the State, and plainly not committed for its execution to any private person; and as the State cannot accept and execute the same, it cannot be executed at all.

"The State of Tennessee affirms that the main object of the testator was to set apart a small lot of land for a tomb for himself and wife, as a charitable use, which he had the authority to do; and that the other matters of the devise were but incidents in the execution of this purpose, and cannot affect the lawfulness of his principal devise.

"This will was written by the testator with his own hand, in the executive mansion at Washington, at a time when he was President of the United States. He was a lawyer of recognized ability, had filled many high public offices with distinction, and reflected great honor upon his State. His will was witnessed by a law partner and a senator in Congress, and named as executor one of the justices of the Supreme Court of the United States. It comes to us with the impression of having been carefully thought out before it was formally put down and published as his last testament. Recently John Shakespeare made a bequest to establish a museum at Stratford-upon-Avon in the house where Shakespeare was born. The bequest was assailed as void, because it established a perpetuity. When the case reached the Court of Chancery Appeals, the Lord Chancellor said, in substance, that the inclination of Englishmen to give effect to everything that contributed to the honor of Shakespeare was so strong that it was necessary for the judges to enter into a covenant not to violate the fixed rules of law established for determining perpetuities."

The Chancellor considers the trust violative of the law against perpetuities, as it was not for public charity. On this he observes: —

"Mr. Polk has made no reference to the public in his will; it does not become a factor, whether we consider the will as a provision for his family, or to provide a tomb, or to establish a fund to keep up the tomb. Every essential feature is bounded by his own interests, or that of his family. Those interests are private; the public are not concerned in them."

And he concludes: —

"As no one of the different intentions of the testator could be carried out without maintaining a perpetuity, the whole will must be set aside so far as concerns Polk Place, and that property turned over to his heirs-at-law. Having reached this result for the reasons given in the foregoing opinion, it becomes unnecessary to review the other grounds upon which the heirs have placed their right of action. Although the judiciary have reached this conclusion by an adherence to well-established precedents, the other departments of the State government, it is to be hoped, may yet find some ways and means to preserve for all the people of Tennessee the tomb of her illustrious son."

It has always seemed to us a pretty hard rule that one cannot provide for the permanent preservation and care of the last resting-place of himself and his family. As for keeping up his earthly dwelling-house, we have no sympathy with that.

THE COLOR LINE. — A curious case upon the "color line" is Central Railroad, etc. Co. *v.* Strickland, in the Georgia Supreme Court, in which it was held that the damages of a passenger wrongfully expelled from a railroad train are not to be enhanced because ot the employment of a colored train-hand in the "bouncing." The court said: —

"It cannot be denied that a railroad company, or any other person, has the right to employ a colored servant, and may require of such servant the performance of all proper duties which fall within the scope of his employment. To establish the contrary of this proposition would lead to consequences utterly absurd and unreasonable, and would result in endless trouble and inconvenience. This is too plain for argument, and consequently there can be no wrong or impropriety in the employment by a railroad company of a colored train-hand; and it is equally apparent that this train-hand may, if necessary, be called upon by the conductor to assist in ejecting a passenger from the train who has no right to be upon it. If the passenger is lawfully and rightly ejected, he certainly would have no cause of action against the company merely because a colored employe assisted in putting him off. This being true, the wrongful ejection of a passenger is not aggravated by the fact that the conductor called upon a colored train-hand for assistance in making such ejection. . . . But we do rule distinctly and unequivocally that the race question is not properly involved in such transactions, and that it is unlawful to hold a railroad company liable for greater damages than the amount for which it would be justly liable were the employe aiding in the expulsion of the passenger a man of his own color. In our opinion, therefore, the court erred in refusing to charge the request contained in the tenth ground of the motion. Especially under the circumstances attending the trial of the present case do we think the defendant company was entitled to have the jury instructed as to the law governing its liability in this respect. Counsel for the plaintiff in arguing the case before the jury had insisted that his client was entitled to greater damages, because the conductor called upon a 'nigger' employe to aid in pulling him off. In fact, the 'nigger' did not touch the plaintiff; but the charge requested was specially pertinent in view of the argument, and the refusal of it not improbably worked a hardship on the company."

AN OBITER MULE. — In Marshall *v.* Dossett, Supreme Court of Arkansas, 20 S. W. Rep'r, 810, the court thus stated and decided the case, which was replevin by attorneys at law for a mule: —

"An attorney who had agreed to defend a prisoner confined in jail, for a stipulated fee, afterwards, and while the relation of attorney and client subsisted, accepted a promise from the client to confer upon him a gratuity, in the form of a mule, in case the attorney succeeded in restoring him to liberty. Such is the jealousy with which the courts guard transactions between attorney and client, while that relation exists, that the authorities agree that if the gift had been executed by delivery, when the promise was made under the case found, the client could have revoked it. Weeks Atty's, § 364; 1 Bigelow Frauds, 265; Lecatt *v.* Sallee, 3 Port. (Ala.) 115. But the promise to make the gift in this case was not executed. The promise to make a gift of chattels, irrespective of the relation of attorney and client, confers no title or right of possession to the property promised, and affords no ground for a remedy against the promisor, by replevin or otherwise."

The latter ground was clearly sufficient, and the former was *obiter*. We are inclined to think that the gift, if executed, would have been revocable on the ground that it was against public policy not to leave the prisoner a mule on which to get out of the State.

ROLLING HOOP. — The Supreme Court of Wisconsin, in Reed *v.* City of Madison, 53 N. W. Rep. 547, hold that a child injured by a defect in a sidewalk is not debarred from recovery because she was rolling hoop at the time. This was put on the ground that she is notwithstanding a "traveller." The court said: —

"A person passing from place to place on a sidewalk is a traveller thereon. He is going somewhere. It makes no difference whether it is for business or for pleasure, or merely to gratify an idle curiosity. Chicago *v.* Keefe, 114 Ill. 222. It is not unlawful, wrong, or negligent for children to play on the sidewalk. McGarry *v.* Loomis, 63 N. Y. 104; s. c. 20 Am. Rep. 510. The plaintiff was travelling on the sidewalk to go to a certain place to meet her playmates, and while so travelling she followed her hoop, which she guided before her. The hoop accelerated her travelling, and made it a pleasure. The following and guiding her hoop did not make her any the less a traveller. She did not stop to play with her hoop on the sidewalk, and the playing with her hoop did not divert her from going straight on toward her destination. She was a 'traveller' in the strictest sense of the word. The rolling of her hoop before her was not *per se* negligence; but the jury may consider that fact on the question, and as to whether it contributed to produce the injury. Sutton *v.* Wauwatosa, 29 Wis. 21; s. c. 9 Am. Rep. 534; Kunz *v.* City of Troy, 104 N. Y. 344; s. c. 58 Am. Rep. 508. See other cases cited in appellant's brief. Every case must be decided on its own facts. We hold only that in this case the rolling of the hoop was not inconsistent with the plaintiff being at the same time a traveller on the sidewalk. It is natural for a child to play, early and late, at home and abroad, going and coming, and everywhere. Because it plays on its travels on the sidewalk it should not be declared an outlaw, or excluded from the usual remedies of the law. This seems to be a very plain case, both by reason and authority, that this little girl was a traveller on the walk when injured by reason of its defective condition."

Whether this would apply if the child had been injured at a game of tag, or while selling newspapers, might be doubtful. How would it have been held if she had been skipping rope?

SUNDAY OBSERVANCE. — Two recent cases on this point are of interest. The Nebraska Supreme Court, in State *v.* O'Rourk, 46 Albany Law Journal, 534, hold that playing ball on Sunday is "sporting," rendering the player liable to punishment under the statute. Chief-Justice Maxwell preached an excellent sermon on Sunday observance, adorned with much historical learning, and with some eloquent praise of the teachings of Christ, which is none the less good because *obiter*. The only question was whether ball-playing is "sporting;" and that was easily solved in the affirmative. We commend the opinion to the perusal of our readers, for it is sensible and healthful, and its inculcations are much needed in these days, and might well be pondered in Brooklyn, "city of churches" and of Sunday ball-playing. The other case, Commonwealth *v.* Matthews, Pennsylvania Supreme Court, holds that selling newspapers on Sunday is not a work of "necessity or charity." We think the Chief-Justice is sounder in this view than in his views of "treason." A Sunday newspaper is not necessary, although very convenient; it is rather a luxury, like ice-cream and cigars. One thing is certain, — the bawling of newsboys on Sunday near churches during service is a crying nuisance, and should be choked off.

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.

A PHILADELPHIA lawyer is responsible for the following: —

Editor of the "Green Bag":

The following lines tell of an actual experience of mine in my practice. Owing to something that occurred I wrote my client, a German, to bring his wife to my office. It transpired that he had no wife; and when he came he really asked me if it would be necessary for him to get married.

Saw his Way out.

Ach! Vot is dis? Oh, mine Gott,
I vish dot my proberty
Vas gone to pot.

Mine liar says I must bring
My vife down to his office
To sign someding.

Und says, also, dot he von't
Go furter mit de matter,
If I yust don't.

Vell, now, dot makes me feel sad.
I have n't got me no vife,
Und never had.
But vaite; ha! I have it now.

Dot dere sale vill not bust for
Vant of a frou.
I 'll splice mit a gal, und I don't care who,
Dot sale of mine proberty must go trou.

Yours truly,

———.

WE are indebted to a Brooklyn subscriber for the following correction of an error in our obituary notice of Benjamin F. Butler: —

BROOKLYN, N. Y., Feb. 18, 1893.

Editor of the "Green Bag":

DEAR SIR, — I notice in your February number of the "Green Bag," on page 102, you state that "at the time of his death General Butler was the only surviving Volunteer General officer who had served in the war."

In this you made an error, for there are many Volunteer General officers who served in the war alive to-day, and hope to be alive a good many years hence.

To make a rough estimate, I should judge there are at least from fifty to one hundred such.

In this city there are now, to my knowledge, the following: Tracy (Secretary of Navy), Catlin, Fowler, Molineux, Cullen, Woodford, Pratt, and others I cannot now name. Generals Slocum and Howard were volunteers, but were educated at West Point.

In New York City I could also mention some names; but I have stated enough to call attention to the error.

A READER.

LEGAL ANTIQUITIES.

THE "Massachusetts Centinel" in April, 1788, calls attention to the following law of the town of Boston: —

To prevent Excess and vain Expense in Mourning, &c.

IT IS HEREBY ORDERED, That in future no scarfs, gloves or rings shall be given at any funeral in this town, nor shall any wine, rum, or other spirituous liquor, be allowed or given at, or immediately before or after, any funeral in this town, under pain that the person or persons giving, allowing or ordering the same shall respectively forfeit and pay the sum of *twenty shillings* for each offence. *And it is further ordered*, That whatever male person shall appear or walk in the procession of any funeral in this town with any new mourning or new black or other new mourning coat or waistcoat, or with any other new black apparel, save and except a black crape around one arm, or shall afterward on account of the decease of any relation, or other person or persons, put on and wear any other mourning than such piece

of black crape around one arm, shall forfeit and pay the sum of *twenty shillings* for every day he shall put on and wear or appear in the same. AND no female, of whatsoever degree, shall put on, wear or appear at any funeral in this town, in any other mourning or new black clothes whatever, other than a black hat or bonnet, black gloves, black ribbons and a black fan, on pain to forfeit and pay the sum of *twenty shillings;* and also forfeit and pay a like sum of *twenty shillings* for every day she shall at any time at, or after such funeral, put on wear or appear in such new black clothes, as or for mourning, other than black hat, bonnet, black gloves, black ribbons and a black fan as aforesaid.

FACETIÆ.

THE following is a true copy of an affidavit to obtain a warrant before a justice of the peace in a certain county in western North Carolina. The names alone are changed.

STATE OF NORTH CAROLINA, — — COUNTY. } Justices Court, Before — — — —

John Smith being duly sworn deposes and says that at and in said county and in — — Township Tom Jones and Will Brown did feloniously and willfully gether my Sund Jack and toted him to the River and throde him in and cursed him and told him dam him to waid contrary to law and against the peace and dignity of the State.

Sworn to & subscribed before me, &c., G. W. H., J. P.

(Signed) JOHN SMITH.

A warrant was issued, the parties were arraigned before the magistrate and bound over. It is needless to say that the prosecuting official was puzzled as to how to draw his bill; but finally he decided upon a bill for an assault. The grand jury failed to find a true bill, and the parties were discharged.

THE lawyer and the tailor are alike in one respect, — they both spend a great deal of time in pressing suits.

A COLORED attorney practising in a court not a thousand miles from Richmond, Va., animadverting very strongly upon the testimony of an adverse witness, used the following somewhat remarkable language: —

"Gentermens ob de Jury, yo dun heard all dat bal-haded conterband dun said. But, gentermens, he did n' tell de trufe. Ef he had er been swore lak he would er ben swore thirty yeahs ago, ef he had er ben tole that unless'n he tole de trufe his ears would er ben cut off smack up ter his hade, he would er tol de trufe. But stidder doin' dat he kim heah an fregerdis dis Jury gin de prisner at de bah, dat po' ignunt, discomposed, and eluded man."

SOME years ago, says a Milwaukee paper, Ephraim Mariner tried a case in the Circuit Court for an old Irishman. The suit was against the brother of Mr. Mariner's client. It was fought bitterly, and there was a great deal of feeling displayed during the course of the trial, as there always is when relatives get to fighting each other. Mr. Mariner won the case. His client was in a state of exultation. He thanked the lawyer again and again. When he reached the south door of the court-house, he paused before going down the steps, and, slapping his lawyer a vigorous blow on the back, he said, —

"We bate them, did n't we, Mister Mariner?"

"Yes, Andrew, it came out as I said it would," said Mr. Mariner, quietly.

"Mister Mariner," said the old man, his voice trembling with emotion, "you 're a gentleman — in disguise."

THE late Judge Thomas J. Devine, of San Antonio, Texas, was defending a case brought by a noted money-lender, whom we will call Paul Steiner, against a Texas cowboy, whom we will call Bill Brown. Col. Mac. Anderson was for the plaintiff.

The note bore interest at the usual rate in those days of five per cent per month, and provided for ten per cent attorney's fees.

In the course of his remarks to the jury, Judge Devine grew eloquent, and said, —

"Gentlemen of the jury, Paul Steiner, like his great prototype, Shylock, demands his 'pound of flesh,' etc., etc." In reply, Mac. Anderson, who knew more about the cattle-trade than he did about Shakspeare, became quite sarcastic and in eloquent tones said to the jury, —

"Gentlemen of the jury, Judge Devine says that my client wants a pound of flesh, but what does Bill Brown want? He wants meat, blood,

hair, hide, horns, hoofs, and all." The jury gave the plaintiff his pound of flesh.

ALTHOUGH the Canadian Bar incline to ape in court the heavy decorum of their English brethren, they are sometimes guilty of the crime of joking among themselves, as the following incident establishes beyond peradventure: —

During the recent trial of the Rideau Canal Case (Sparks' Heirs *v.* The Queen) before Mr. Justice Burlidge in the Exchequer Court at Ottawa, a professional wag remarked to a brother lawyer that "This Sparks matter seems to have emitted some *burning* questions." "Yes," was the prompt reply; "the case deserves to be placed among the *Scintillæ Juris.*"

NOTES.

IN Minnesota justices of the peace are required to report all criminal actions commenced before them to the county attorneys of their respective counties. The following are reports of justices of the peace to the County Attorney of Olmsted County for the year 1892: —

I am happy to inform you that since my appointment as Justice of the Peace of have had neither a criminal or a civil suit, and am in hopes that the same rush of business will continue through the term, as it is a class of business that I dislike, as I am not qualified, neither am I competent. Practical experience teaches me of this fact; for instance, I officiated two years as justice. In that time I issued two summons, got sued three times myself, married two couple, and neither of them stuck.

Respectfully,

——— ———, J. P.

STATE OF MINNESOTA } ss.
COUNTY OF OLMSTED. }

At a Justice's court, held at my office in said County, before me, , a justice of the peace in and for said county, for the trial of , for the offence hereinafter stated, the said was convicted of having on the 4th day of December, A.D. 1892, at Kalmar, in said county, did feloneously take a halter off from a horse at night, in the stable of & belonging too the said ——— & make off with the said halter, and upon such conviction, the said court did adjudge and determine that the said ——— should pay a fine of three dollars ($3) and cost, said cost amounted to $6.72, and the said fine has been paid to me.

Given under my hand, this 6th day of January, A.D. 1893.

——— ———

Justice of the Peace.

THE "Reconstruction" Constitution of 1868 abolished the different forms of action in the old North State, and reduced them all to one; but "befoah the wah" it was the easy practice of counsel to bring cases to an issue by a mere memorandum entered on the docket. Miss Margaret Patterson, of Cumberland County, was an elderly maiden lady of means, who found occasion to bring against William McKay an action of trespass on the case. McKay's counsel was a certain waggish Mr. Winslow, who observed, on looking over the appearance docket at the opening of term, that plaintiff's attorney, Mr. Troy, had not entered the usual memorandum. He thereupon entered defendant's appearance, and wrote this effusion upon the docket: —

"Billy McKay, for his satisfaction,
Demands of Miss Margaret the cause of her action,
And wants to know why, in this public place,
She has undertaken to sue him in case."

When Mr. Troy discovered this demand for a bill of particulars, he wrote beneath it as follows:

"Miss Margaret replies with a kind of a snigger:
'Why, Billy, you know you converted my nigger, —
Converted him, not to the God of the sinner,
But converted to cash, — and you are the winner;
So, having received, and failed to pay over,
You therefore are sued in an action of Trover.'"

IN a recent case in Massachusetts the evidence showed that a young gentleman of twenty and "a maid of seventeen" summers went to ride together in a buggy. "Their horse took fright, ran with them, and was stopped by turning into a yard, and against a barn belonging to a clergyman legally qualified to solemnize marriages" (a fact of which the horse, from his conduct, must be presumed to have been cognizant). The gentleman said casually, like Mr. Wemmick in "Great Expectations," "This would be a good time to be married;" and the lady readily assenting, it was done. It is needless, perhaps, to add that proceedings for a divorce were the natural and early result.

In Missouri the right of a husband to the presumption of being "head of the family" was sustained in Whitehead *v.* Tripp, 67 Mo. 415, where, under the homestead law, a man was so held, though his wife had deserted him and was living in another State with another man, and he was living in improper relations with another woman; "for," say the court, "the domicile of the husband drew after it that of the wife." In England, however, where a testator bequeathed £500 to his "dear wife Caroline" the court held that this did not belong to his wife (who was named Maria), but to a woman named Caroline, who was living with him as his mistress; and "dear wife" was rejected as surplusage; "for how," said Baron Maule, "could she be dear to him, when he would not live with her?" We cannot say, unless to suggest that perhaps she might have been regarded as "lost to sight, to memory dear."

Some months ago we drew attention to the sorrows of district judges who have to peruse a mass of very bad handwriting. One such sorely tried officer tells us that he was perusing the testimonials of an applicant, and he came upon one which said, "He is a scamp and lazy character." This seemed too good to be true, and on reference to the drawer it was found to be, "He is an exemplary character." Really, some men in this country seem to be of the opinion which Hamlet held in his youthful days: "I once did hold it, as our statists do, a baseness to write fair." — *Indian Jurist.*

In a paper on "County Jails as Reformatory Institutions," Mr. Edward B. Merrill, of New York, tells of a jail in that State, upon the outer walls of which "is an inscription, cut in stone, informing the curious passer-by, with a finer regard to the customary game played in the neighboring tavern than to the strict demands of a correct Latin version, that it was 'Erected Anno *Domino* 1853.'"

The vacancy on the bench of the Supreme Court of Canada, caused by the death of the late Chief-Justice, Sir Wm. J. Ritchie, has been filled by the appointment of Robert Sedgewick, Q. C., the late deputy minister of justice. Judge Sedgewick was born in Scotland in 1848, and came to Canada with his parents in the following year. He was educated at Halifax, N. S., and was called to the bar in 1873. Previously to his appointment as deputy minister in 1888, he practised his profession at Halifax. His early elevation to the bench is regarded as a fitting tribute to his eminent professional attainments.

The only case on record of a lawyer building an ark occurred in 1540. At that time Blaise D'Auriol, a professor of the canon law of Toulouse, became so terrified at the prediction of a deluge by a pretended prophet at that time, that he actually had a big ark constructed, in which, like Noah, he hoped to escape. But no flood came. He died soon after, and was henceforth spoken of as an Ark-angel.

Recent Deaths.

Hon. John Scholfield, a member of the Supreme Court of Illinois, died on February 13.

He was born in Marshall County, Ill., in 1834. His father, Thomas Scholfield, was of Pennsylvania Quaker stock, though born in Virginia, and came to Illinois in 1830. The wife of Thomas Scholfield was a Flood, and came from Muskingum County, Ohio. Their son worked on the farm and went to country school until he was sixteen, when his mother died.

He then went to live with his uncle, Jacob Anderson, at Martinsville, also going to school there. The old national road to St. Louis ran through Martinsville, and Anderson kept a tavern and stable. In this stable young Scholfield worked two years for his board, clothing, and schooling. He was a studious boy, and kept several books in the loft of the barn, it being his ambition to become a lawyer. Judge Scholfield used to tell how he once took a stable-tip from a man who afterward came before him to argue an important case in the Supreme Court of Illinois. From the stage barn young Scholfield went to Marshall, and entered an academy kept by a Congregational minister named Adams. To support himself while in school he did chores and odd jobs nights and mornings for Sheriff Thomas Handy.

It is said he never spent an idle hour in those days, joining the youngsters of his age only in

games of ball or other athletic sports, and returning immediately to his books. From 1851 to 1854 he taught a district school, continuing his studies incessantly, and then entering the Louisville law school, obtaining the money for this purpose by selling his interest in a small piece of land left him by his uncle Jacob. Graduating from the law school after a two years' course, he returned to Marshall, was admitted to the bar, and in 1856, when only twenty-two years old, was elected State's Attorney for the fourth judicial circuit.

In 1860 he was elected to the Legislature of Illinois. All this time he kept up a moderately large but constantly increasing law practice in five or six counties. In 1869 he was elected without opposition to represent the counties of Clark and Cumberland in the Constitutional Convention. In 1870 he was appointed general solicitor for Illinois of the Vandalia Railroad, a place which he resigned three years later to go on the Supreme Bench. In 1879 Judge Scholfield was re-elected without opposition, Republicans as well as Democrats casting their votes for him. He was again elected in 1888.

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The Canadian Law Times (Jan., '93).

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BOOK NOTICES.

A TREATISE ON THE ADMISSIBILITY OF PAROL EVIDENCE IN RESPECT TO WRITTEN INSTRUMENTS. By IRVING BROWNE. L. K. Strouse and Company, New York, 1893. Law sheep. $5.00 net.

Mr. Browne is one of the few legal writers who has the power to state clearly and succinctly principles of law in the fewest possible words. One may be sure, in his work, to find the wheat thoroughly sifted from the chaff. In the present volume, which is intended both as a book for busy practitioners, and as a text-book for scholars and teachers, the author gives a distinct, thorough, and comprehensive treatment of this important branch of the law of evidence, which, by the way, has never been fully treated by other writers. To the active practitioner the work cannot fail to prove of exceeding value, while the student will find it of the greatest aid and assistance. That it will receive a cordial welcome there can be no doubt, and we sincerely trust that Mr. Browne will follow this treatise up with similar works on other subordinate branches of the law of evidence.

A PRACTICAL TREATISE ON THE LAW OF CHATTEL MORTGAGES, AS ADMINISTERED BY THE COURTS OF THE UNITED STATES. Complete and exhaustive. By J. E. COBBEY. West Publishing Co., St. Paul, Minn., 1893. Two vols. Law sheep. $10.50.

This treatise, unlike that of Mr. Browne's (noticed above) is not succinct and terse, but two large volumes are required as a receptacle for matter which could easily have been condensed into one of moderate size. The law of Chattel Mortgages is so purely statutory that the work is of necessity made up principally of selections from State Statutes, with citations of decisions bearing upon those statutes. The treatise is certainly exhaustive in this respect. Of course the subject is one which is so entirely a "local issue" in each of the several States, that it is perhaps impossible to make a work upon it of general utility to the profession; and the fault is to be attributed to this fact rather than to the author. As we said before, its principal demerit in our eyes is the lack of condensation. Law books are too numerous and too ponderous, and the hard-worked lawyer wants conciseness and brevity.

A TREATISE ON WILLS. By THOMAS JARMAN, ESQ. The fifth edition, by Leopold George Gordon Robbins, Esq., of Lincoln's Inn, Barrister-at-Law. Sixth American Edition, by Melville M. Bigelow, Ph. D. Little, Brown, and Company, Boston, 1893. Two vols. Law sheep. $12.00 net.

For nearly fifty years this sterling work of Mr. Jarman's has easily maintained its position as the most complete and exhaustive authority upon the subject of which it treats. No other writers have undertaken to cover so broad a field; and it is no disparagement to the other excellent works upon the subject, to say that none of them have never equalled Mr. Jarman's treatise in exhaustiveness. The present edition is published under the new International Copyright Law of this country, and the publishers have been fortunate in again securing the services of Mr. Bigelow as American editor. The English text and notes are left intact, the notes of American law being kept entirely separate from the English work. Some change has been made by the English editor by the omission of some unimportant portions of the original text, and by breaking up the several chapters into sections and sub-sections. The result is a decided improvement, and one which will be appreciated by the profession. A vast amount of new matter has been introduced, and yet the bulk of the volumes has not been appreciably increased. The work is now brought down to a very recent date, and in its present form leaves nothing to be desired. We see no reason why for the next fifty years it should not continue to be, as it has been for the past half-century, *the* standard work upon the subject of Wills.

THE AMERICAN STATE REPORTS. Containing the cases of general value and authority decided in the Courts of Last Resort of the several States. Selected, Reported, and Annotated by A. C. FREEMAN. Vol. XXVIII. Bancroft-Whitney Company, San Francisco. 1893. $4.00 net.

This volume contains decisions of the Courts of California, Indiana, Maryland, Michigan, Minnesota, Missouri, Montana, Nebraska, New York, North Carolina, Oregon, Pennsylvania, South Carolina, Texas, and Washington. Mr. Freeman's annotations are as full and valuable as ever.

SUPERSTITION AND FORCE. Essays on THE WAGER OF LAW, THE WAGER OF BATTLE, THE ORDEAL, TORTURE. By HENRY CHARLES LEA, LL.D. Fourth edition, revised. Lea Brothers & Co., Philadelphia, 1892. Cloth. $2.75.

This work of Mr. Lea's is of absorbing interest and of great historical value. As the author says, "the history of jurisprudence is the history of civilization. The labors of the law-giver embody not only the manners and customs of his time, but also its innermost thoughts and beliefs, laid bare for our examina-

tion with a frankness that admits of no concealment." It is with a feeling of genuine relief that our lot is cast in more enlightened times, that one reads the fearful tale, as herein set forth, of the origin, growth, and decline of the spirit of superstition which has played so important a part in the jurisprudence of the past, and traces of which yet linger, to a certain extent, at the present day. Many important additions have been made by Mr. Lea in this last edition, and in its present form the work fully and exhaustively covers the subjects upon which it treats. We heartily commend it to the profession, who will be more than fully repaid by a careful perusal of the book.

THE CHILDREN OF THE KING. By F. MARION CRAWFORD. Macmillan & Co., New York, 1893. Cloth. $1.

This last book of Mr. Crawford's is certainly one of the very best which has come from his pen. In power it perhaps exceeds anything that he has done. The scene is laid in Italy, and the hero is a common sailor, who falls hopelessly in love with a girl, Beatrice, in every way far above him, and who, besides, is betrothed to a fortune-hunter, San Miniato. Wonderfully well drawn is the contrast between the intense loyal love of the sailor, and the cold calculating sentiment of San Miniato. The finale is a tragedy only possible in that land of real passion. We will not spoil the reader's pleasure by any further details of the plot, but will only say that the story is one well worthy of a careful reading.

SONGS FOR THE HOUR. By D. M. JONES. J. B. Lippincott Co., Philadelphia, 1893. Cloth. $2.00.

The greater part of the poems in this volume are of a national and patriotic character, several of them having been read before posts of the Grand Army of the Republic. A number are devoted to "Sweet Erin," while the remainder of the contents is made up of shorter poems upon various subjects. Mr. Jones writes with much vigor, and his style certainly possesses the charm of originality.

L. Q. C. Lamar

The Green Bag.

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L. Q. C. LAMAR.

BY WALTER B. HILL, *of the Macon (Ga.) Bar.*

LUCIUS QUINTUS CINCINNATUS LAMAR was born in Putnam County, near Eatonton, Ga., Sept. 1, 1825. The year of his birth witnessed the ratification of the treaty by which his native State ceded the territory which became the State of his adoption, — Mississippi. Georgia, in her early history, was the most obstreperous litigant over whom the Supreme Court had original jurisdiction.[1] Her resistance to its mandates led to the passage of the eleventh amendment; and her unconstitutional legislation first called into exercise the great powers of the Court announced in Fletcher *v.* Peck. Despite her recalcitrant behavior, she has had the honor of contributing to the Supreme Bench three members, Wayne, Campbell, and Lamar.

The father of Lamar was a Judge of the Superior Court of the Ocmulgee Circuit. He bore the name given to his son. A sketch of his life may be found in Miller's "Bench and Bar of Georgia." He died by his own hand at the early age of thirty-seven. His suicide was inexplicable. He occupied the highest judicial position in the State, — the Supreme Court not being then established. He was fortunate in all the relations of life. On the Fourth of July, after listening to an eloquent speech by a young kinsman, and after receiving with much pleasure the compliments bestowed on the oration, he went home, kissed his children, walked into the garden, and shot himself.

[1] See Chisolm's Ex'r's *v.* Georgia, 2 Dallas, 419; Worcester *v.* Georgia, 6 Peters, 515.

Lamar graduated at Emory College, at Oxford, Ga., in 1845. He did not distinguish himself in college life. His endowment was genius rather than talent. He was capable of sudden spurts of intense application, but had not that continuous energy which wins class honors. He had a wonderful memory, of which he gave a signal proof in an address delivered at the Commencement in 1890 of his Alma Mater. He took for his subject three speeches that he heard during his college career. One was the first Commencement oration at that college, delivered by George F. Pierce, afterwards a Bishop of the Methodist Church, and perhaps the greatest pulpit orator the South has produced, — who was pronounced by Robert Toombs "the most symmetrical great man in body, mind, and soul, he had ever known," — the Phillips Brooks of the South. One was a sermon by Bishop Soule; and the third was the first Commencement sermon preached at Emory College, by Alexander Speer, the grandfather of Hon. Emory Speer, now U. S. District Judge. In the address referred to, Lamar was able to repeat with entire precision, after a lapse of forty-five years, long passages from those discourses. Although in the main he was a genial young man, yet at times he was dreamy and often melancholy. A companion of his youth recalls one occasion when in a debating-society Lamar had made a brilliant speech. It had so far surpassed the expectations of his comrades that they crowded around him to extend congratulations; but the speech had

fallen so far below the young orator's ideal that he sank back in profound dejection.

In 1846 he studied law in Macon, and was admitted to the bar in 1847. He began the practice of his profession in Macon; but the absence of immediate success and a disappointment in love (of which more anon) caused him to remove to Oxford, Miss., where he accepted the position of adjunct Professor of Mathematics in the State University, — the principal in that department being Alfred Taylor Bledsoe, editor of the "Southern Review." The best brains of the South contributed to the pages of this periodical, Lamar among the number. Its volumes are a treasury of good literature. Being unknown to the general public, they are a mine of wealth to the plagiarists. I was amused to discover in a recent book on Wit and Humor by a voluminous author who writes LL.D. after his name (Mr. William Mathews), long paragraphs stolen bodily from an article in that review.

Having returned to Georgia and located at Covington for the practice of law, Lamar was, in 1853, elected a member of the Legislature. He was elected as a Democrat, although his county of Newton at that time had a Whig majority. Lamar had not been in the house more than a month before he came to the front as a leader. A contemporary gives this account of his first speech:

"During the session there were so many motions to suspend the rules to take up business out of its order that a resolution was adopted requiring a two thirds vote to suspend the rules. In a day or two thereafter a resolution was offered to suspend the rules to bring on some important election, probably that of a Senator, and fixing a day for it. The Democrats, having a majority, would be able to elect their candidate. The Whigs opposed the motion to suspend the rules; and Mr. Thomas Hardeman, the member from Bibb, led in the opposition. He made a speech against it; and on a vote being taken, the Democrats only having some twelve or fifteen majority, failed to carry it by two-thirds vote, — upon which there was consternation on the Democratic, and rejoicing on the Whig, side. The Democrats felt they were caught in the trap, and many were the anxious faces on the part of the majority. The next day, on a motion to reconsider, Mr. Lamar made his first speech. He was then young, not more than twenty-seven, — a handsome face, a full head of dark hair, with brilliant eyes, in figure rather below the medium height, handsomely dressed, with fine musical voice. He at once attracted the attention of the House. In a short speech of not more than thirty minutes he captured the whole assembly. I remember how he scathed the motives of those who would thus seek to defeat an election that under the law and constitution had been devolved upon the General Assembly.

"Such an excitement as was produced by his speech I never saw in that body. When he finished, no one sought to reply. A vote was taken, and a large majority reconsidered the action of the House of the preceding day, and the resolution passed with almost a unanimous vote.

"His speech was a remarkable exhibition of the power of the orator and logician, and his appeal to his opponents to step manfully and patriotically forward to discharge their duty was so overwhelming that all party spirit was subdued, even in the breast of the most bitter partisan, and none even ventured a reply."

In 1854 he returned to Mississippi and made his residence upon his plantation in La Fayette County. This was his final and permanent adoption of that State as his home. If any one wishes to see a picture "drawn out in living characters" of the times and the people with whom Lamar cast his fortune, let him read "A Southern Planter" by Mrs. Susan Dabney Smedes, — a book which elicited Mr. Gladstone's enthusiastic praise. A New England critic has declared that the real Thomas Dabney, who appears in its pages, is as beautiful a character as Thackeray's imagination conceived in Sir Thomas Newcome. The most unsympathetic reader cannot fail to see in the simple annals of this true gentleman's life that side of slavery which made such men as Lamar its defenders. The society of that time and section had conceptions of personal right and honor which are "to the Jews a stum-

bling-block and to the Greeks foolishness." Lamar did not escape the influence of his environment. In one of his letters he writes that he had resolved "never to be a *second* in a duel." He illustrated the Mississippi idea of the writ of habeas corpus later in life, when he knocked down a United States Marshal who he thought was about to arrest him wrongfully.

He was elected to Congress in 1857. Though he took the floor seldom, he became prominent as an advocate of States rights. In 1859 he uttered a prophecy which he fulfilled in 1860.

"For one," he said in a debate, "I am no disunionist *per se*. I am devoted to the Constitution of this Union; and so long as the Republic throws its long arms around both sections of the country, I for one will bestow every talent which God has given me for its preservation and its glory. . . . When the Constitution is violated, and when its spirit is no longer observed upon this floor, I war upon your government. I am against it. I raise then the banner of secession, and I will fight under it as long as the blood flows and ebbs in my veins."

He left Congress to take his seat in the Secession Convention of his State. Upon the breaking out of the war, he joined the Nineteenth Mississippi Regiment, of which he was made lieutenant-colonel and afterwards colonel. His method of fighting was described as "wildly brave."

"He told one story about himself in the battle of Williamstown. The brigade commander was disabled, and he 'somehow' found himself leading the brigade. His regiment charged clear through the enemy.

"'It seemed to me,' he quaintly said, 'that we were all likely to be taken prisoners; so I gave the only command I could think of, — to charge back again.'"

His health failing and compelling his retirement from the army, he was sent by Jefferson Davis on a diplomatic mission to Russia in 1863.

"It has always been understood that the prime object of his trip was to secure a cessation of hostilities for six months through the friendly mediation of Great Britain, France, and Russia. His visit no doubt added much to the friendliness which England showed toward the Southern States. While he assisted in negotiating the Southern loan, he could not secure the recognition of the Confederate States as an independent power. In Russia and in France, Lamar performed very delicate diplomatic work."

Gen. Alexander R. Lawton is authority for the statement that Lamar returned in 1864, fully impressed with the conviction that the fall of the Confederate government was only a question of time. He realized that the North could reckon not only on the bravery of its soldiers, but upon what Victor Hugo called "the cowardice of inexhaustible resources." But although hopeless of success, he remained in the service of the Confederacy until the end. Being physically unfitted for the field, he was attached to Longstreet's Corps as Judge Advocate.

In 1866 he resumed work in the University of Mississippi, occupying first the Chair of Political Economy and Social Science, and, in 1867, a Chair in the Law Department. In 1868 he returned to the practice of his profession, and had a fair proportion of such business as came before the courts, though his practice could not be called extensive.

In 1872 he was elected to Congress. In order that he might have leisure and quietude in which to prepare a series of speeches which he proposed to make in his campaign, he retired to his plantation and erected in a secluded place a one-room log-cabin. This he furnished with a chair, table, and mosquito-net, the latter suspended from the ceiling and stretching around him like a tent. There in serene contemplation he thought out his lines of argument, reading meanwhile as a mental tonic Macaulay's "History of England;" while outside the singing insects, in the felicitous phrase of Nathaniel Hawthorne, "sounded the small horrors of their bugle-horns." Lamar was always an omni-

vorous reader. As an orator, he could rely upon inspiration in the sense of the definition, "Inspiration is the product of a full mind." Like Macaulay, he could find relief for fag of brain in reading trashy novels. His love of literature was intense; his reading wide and varied, both in the classics and the choice books of the English tongue.

For the first time since the war, the House of Representatives, which assembled in 1872, was Democratic. Lamar was chosen to preside over the caucus of his party, and made a speech of great power, outlining the policy which he thought should be pursued. During his terms in the House, being re-elected in 1874, and subsequently in the Senate, he interested himself in the question of Improvements of the Mississippi, and was a friendly advocate of the Texas and Pacific Railroad.

The eulogist of Sumner, the defender of Jefferson Davis, — in these two rôles Lamar figured in Congress. Are they capable of logical reconciliation? Except Robert Toombs, the grand old Lucifer, who declared, when urged to apply for a removal of political disabilities, that "he had never pardoned the North," it is certainly true that men of the South who were prominent in the agitation of secession, in the war, and in the Confederate government, have been equally prominent and faithful in the public service of the restored Union. Have they been enabled to do this merely by finding a working hypothesis; or is there really a ground upon which, without any sacrifice of intellectual integrity, a loyalty to the traditions and convictions of the past may stand unabashed side by side with hearty acceptance of the obligations and duties of the present? This is too large a question to enter upon here, although it lies legitimately within the purview of any attempt to analyze Lamar's character or to understand his public life. The basis of reconciliation is hinted at in Lamar's eulogy on Sumner, presently to be quoted. Sincerity of conviction, especially when held at the cost of life and fortune, will always command respect; but the man of the South claims more than that as due to the Southern side of the irrepressible conflict. Two theories — one magnifying the Union, the other magnifying the State, — according to one of which the supreme allegiance of the citizen was due to the nation, and according to the other, due to the State — emerged at an early period of American history. These contending theories were compromised in the Constitution, not settled by it. In favor of the view embraced at the South, there was as much of history, logic, and patriotism, as in favor of the view championed at the North. Only the arbitrament of war could settle a controversy so radical in its nature, so tremendous in its import. To accept with unreserved satisfaction the decision of the appeal to arms involves no abatement of the claim, either of the sincerity or reasonableness of the convictions which the defeated party maintained in the struggle. This is, in mere outline, the basis on which the South asserts in the same breath her unshamed loyalty to her past, and her unstinted devotion to the "indestructible union of indestructible States." It may be doubted whether any person who was ranged on the other side of the contest is capable of that extension of intellectual sympathy which will enable him fully to appreciate this view; but even those who would utterly deny its truth must still rejoice that the citizens of the seceding States have found this mental attitude possible; for it is incontestible that a self-respecting loyalty to the restored Union is a better basis for good citizenship than the half-hearted and reluctant allegiance of the repentant rebel and craven apologist.

On April 27, 1874,[1] Lamar delivered the eulogy on Sumner, — a speech which at once fixed upon him the gaze of the nation. In its result it was the first fulfilment of the famous prophecy with which Lincoln closed his Gettysburg speech. In describing Sumner's relation to the antislavery movement, Lamar showed that he was capable, not only

[1] Cong. Record, Forty-Third Congress, p. 3410.

of breadth of view, but of a wide range of sympathy.

"Charles Sumner was born with an instinctive love of freedom, and was educated from his earliest infancy to the belief that freedom is the natural and indefeasible right of every intelligent being having the outward form of man. In him, in fact, this creed seems to have been something more than a doctrine imbibed from teachers, or a result of education. To him it was a grand intuitive truth inscribed in blazing letters upon the tablet of his inner consciousness, to deny which would have been to him to deny that he himself existed. And along with this all-controlling love of freedom, he possessed a moral sensibility keenly intense and vivid, a conscientiousness which would never permit him to swerve by the breadth of a hair from what he pictured to himself as the path of duty. Thus were combined in him characteristics which have in all ages given to religion her martyrs and to patriotism her self-sacrificing heroes.

"To a man thoroughly permeated and imbued with such a creed, and animated and constantly actuated by such a spirit of devotion, to behold human beings or a race of human beings restrained of their natural rights of liberty, for no crime by him or them committed, was to feel all the belligerent instincts of his nature roused to combat. The fact was to him a wrong which no logic could justify. It mattered not how humble in the scale of rational existence the subject of this restraint might be, how dark his skin, or how dense his ignorance. Behind all that lay, to him, the great principle that liberty is the birthright of all humanity, and that every individual of every race, who has a soul to save, is entitled to the freedom which may enable him to work out his salvation. It matters not that the slave might be contented with his lot; that his actual condition might be immeasurably more desirable than that from which it had transplanted him; that it gave him physical comfort, mental and moral elevation and religious culture not possessed by his race in any other condition; that his bonds had not been placed upon his hands by the living generation; that the mixed social system of which he formed an element had been regarded by the fathers of the Republic, and by the ablest statesmen who had risen up after them, as too complicated to be broken up without danger to society itself, or even to civilization; or finally, that the actual state of things had been recognized and explicitly sanctioned by the very organic law of the Republic. Weighty as these considerations might be, formidable as the difficulties in the way of the practical enforcement of his great principle, he held none the less that it must sooner or later be enforced, though institutions and constitutions should have to give way alike before it. But here let me do this great man the justice which, amid the excitements of the struggle between the sections now past, I may have been disposed to deny him. In this fiery zeal, and this earnest warfare against the wrong, as he viewed it, there entered no enduring personal animosity towards the men whose lot it was to be born under the system which he denounced. . . .

"Though he knew very well that of his conquered fellow-citizens of the South, by far the larger portion, even those who most heartily acquiesced in and desired the abolition of slavery, seriously questioned the expediency of investing, in a single day and without any preliminary tutelage, so vast a body of inexperienced and uninstructed men with the full right of freemen and voters, he would tolerate no half-way measures upon a point to him so vital."

Referring to the olive-branch which Sumner had sought to hold out to the vanquished, he said: —

"Conscious that they themselves were animated by devotion to constitutional liberty, and that the brightest pages of history are replete with evidences of the depth and sincerity of that devotion, they can but cherish the recollection of sacrifices endured, battles fought, and the victories won in defence of their hapless cause. And respecting, as all true and brave men respect, the martial spirit with which the men of the North vindicated the integrity of their devotion to the principles of human freedom, they do not ask, they do not wish, the North to strike the mementoes of her heroism and victory from either records or monuments or battle-flags. They would rather that both sections should gather up the glories won by each section, not envious, but proud of each other, and regard them a common heritage of American valor.

"Let us hope that future generations, when they remember the deeds of heroism and devotion done on both sides, will speak not of

Northern prowess or Southern courage, but of the heroism, fortitude, and courage of Americans in war of ideas, — a war in which each section signalized its consecration to the principles, as each understood them, of American liberty, and of the Constitution received from their fathers.

. . . . . .

"Charles Sumner, in life, believed that all occasions for strife and distrust between the North and South had passed away. Are there not many of us who believe the same thing? Is not that the common sentiment, or, if it is not, ought it not to be, of the great mass of our people, North and South? Bound to each other by a common Constitution, destined to live together under a common government, forming unitedly but a single member of the great family of nations, shall we not now at last endeavor to grow toward each other once more in heart as we are already indissolubly linked to each other in fortunes?

"The South — prostrate, exhausted, drained of her life-blood as well as her material resources, yet still honorable and true — accepts the bitter reward of the bloody arbitration without reservation, resolutely determined to abide the result with chivalrous fidelity; yet, as if struck dumb by the magnitude of her reverses, she suffers on in silence.

"The North, exultant in her triumph and elated by success, still cherishes, as we are assured, a heart full of magnanimous emotions towards her disarmed and discomfited antagonist; and yet, as if mastered by some mysterious spell, silencing her better impulses, her words and acts are the words and acts of suspicion and distrust.

"Would that the spirit of the illustrious dead whom we lament to-day could speak from the grave to both parties to this deplorable discord, in tones which would reach each and every heart throughout this broad territory, 'My countrymen, know one another, and you will love one another.'"

Lamar foresaw that the temper of public feeling among his constituents was not in consonance with his utterances. In a letter dated June 15, 1874, he wrote to a friend:

"My recent speeches have not been prompted by self-seeking motives. It was necessary that some Southern man should say and do what I said and did. I knew that if I did it I would run the risk of losing the confidence of the Southern people, and that if that confidence was once lost it could never be fully recognized. Keenly as I would feel such a loss, — and no man would feel it more keenly — yet I loved my people more than I did their approval. I saw a chance to convert their enemies into friends, and to change bitter animosities into sympathy and regard. If I had let the opportunity pass without doing what I have, I would never have got over the feeling of self-reproach."

But in the campaign that followed, he was sustained. Doubtless it was as a pacificator that Lamar's greatest service to the country was rendered.

As an orator, Lamar stood in the front rank. He had that subtle power called magnetism, which enabled him to command the applause of, and to exert a mastery over, popular assemblies. It required a momentous occasion to arouse his great powers; but the greatness of the man was evidenced by the impression he made upon his contemporaries that he would measure up to the demands of any occasion. His style had none of that efflorescence of verbiage and metaphor which Northern audiences (who would not tolerate it in a speaker of their own section) seem disposed to applaud in a Southern orator as being *characteristic*, — in the same way that France condones the excesses of the Gascon. His style was polished, but severely chaste and simple.

What John Bright called "the physical basis of oratory," Lamar lacked. He visited Paris in 1859, to consult physicians there in reference to cerebral disease with which he was threatened. He had frequent attacks of vertigo, — premonitory of a threatened paralysis. This contingency hung over his head like the sword of Damocles. The excitement of every speech was incurred at the risk of life. A weak man would have been unnerved by this tormenting consciousness; but Lamar acted upon the noble motto: *Nec propter vitam perdere causas vivendi.*

His mode of preparation for his speeches was peculiar. Referring to a statement in the press that all his speeches were written

and memorized, he wrote to a kinsman in 1874:—

"As to never speaking on any occasion without committing my speech to memory, I am forty-eight years old and have not done such a thing but once or twice (on literary occasions) since I was twenty-one years old. *I cannot write a speech.* The pen is an extinguisher upon my mind, and a torture to my nerves. I am the most habitual extemporaneous speaker I have ever known. Whenever I get the opportunity, I prepare my argument with great labor of thought, for my mind is rather a slow one in constructing its plan or theory of an argument. But my friends all tell me that my off-hand speeches are by far more vivid than my prepared efforts."

Further light is thrown on this point in an (unpublished) address of Hon. John W. Fewell, of Mississippi, delivered at Meridian, at a memorial meeting, from which I am permitted to make a few extracts:—

"In the company of men whom he liked, there was an 'abandon' in his manner and conversation which was very captivating. He would then tell you every thought he had, — every motive that actuated him. He would even explain his 'tricks' of oratory. I remember his account of his encounter with Senator Conkling. It ran thus: —

"'Well, you know, early in the session Mr. Conkling had insulted a certain Southern Senator in some remarks in the Senate. Some of that Senator's friends got together, — myself among the number, — and conferred about the matter with the view to advising our friend what to do in the premises. The matter had become somewhat cold by lapse of time. We agreed that anything in the way of a challenge or looking to a duel was out of the question. We felt that such a course would place us in an attitude which would weaken our section; we knew that such a course would raise a howl from the people of the North that would cause renewed prejudice towards the people of the South. After a long conference we arrived at the conclusion that nothing could be done but bide a time when our friend could hope to strike back in debate. I felt so much aggravated that I determined that I would myself prepare some good "sticks" for brother Conkling and "lay for him;" so I spent some thought and prepared some good ammunition, — some good stout "sticks" for him, and laid them away ready for use. It seemed to me as if I should never get a chance to use my "sticks;" but finally, after long months, my opportunity came.

"'The session was nearly over. One day, Mr. Conkling, being in a bad humor, was strutting about the Senate, jumping on everybody, Republican or Democrat; snarling and snapping, and making himself generally odious. Let me turn aside' (said Mr. Lamar) 'to say that Conkling is a formidable man. He is a man of great pose and power; no man wanted to encounter him; the fact is that everybody was afraid of him. Well, that day he finally "rounded up" his "muck running" by charging a number of us who had made a certain agreement with bad faith. Then I saw my time was come. I jumped on him with all my strength, and denounced him; it was not my plan to bring out my "cold sticks" at that stage. My onslaught was so unexpected that I had him at a disadvantage; he realized this instantly and fully, and instead of coming back at me with that perfect poise and that incisive manner, was "rattled;" he lost his head, and howled like a wounded animal (*sic*). When he resumed his seat just in front of, and across the aisle from me, I rose, ready with my "cold sticks." Now, no man who has not been one of our little band there can appreciate the anxiety on the part of that band in a moment like that. There was a terrible tension. breathless silence. Some of my friends were uneasy; they knew that I was an impulsive man; they knew that I had struck a United States Marshal over the head with a chair in a court-room, and they feared I would assault Conkling or do something indiscreet. Old Vance' (so he spoke of the Senator from North Carolina) 'came down the aisle and stood by me, ready to stop any foolish thing I might start to do. Ah,' said Lamar, 'they did not know that I had any "cold sticks." After a preliminary remark in which I said I did not wonder that the Senator recoiled at my words, I brought out one of my "cold sticks." Now, I had n't thought so much of that particular stick; I had others I considered far superior to it. But when towering over him and glaring at him, I said with all my energy: "They were words. Mr. President, which no good man would deserve and no brave man would bear," the whole house

came down with applause; the galleries joined, and old Vance clapped his fat hands. I saw instantly that was the place to stop, and with a great effort I resisted the temptation to bring out any more "sticks" and sat down.'

"To appreciate the recital it must have been heard; it cannot be written or repeated so as to give any correct idea of its graphic interest. How few men could so control themselves as to resist such a temptation!

. . . . . .

"Once when I had declined to speak after him on the hustings (stating that I was not prepared), Mr. Lamar said to me: 'You were wise not to attempt to speak. You are a young fellow just starting out; let me give you a piece of advice: never attempt to speak when you are not prepared.'

"I thanked him for the advice and asked him, 'Do you mean to intimate that you never speak without preparation, and do you mean by being prepared that you write your speeches?' 'No,' he said, 'I try not to speak unless I am prepared. I don't write my speeches; my practice is, when preparing a speech, after having determined what subjects to discuss, to frame my sentences in my mind; to turn each sentence over and over until I get it in shape to suit me, and then to repeat it to myself until it is thoroughly impressed on my mind, and then to go on to the next sentence; so that when I am through with my preparation, I not only know what I am going to say, but the very gesture that will accompany every word of it. You will find it difficult at first to do that, but you can soon train yourself to it.'

"His own statement was quite sufficient, but it was corroborated by the fact that in that campaign he made the very same speech a great number of times, — *verbatim et literatim et punctuatim.*"

In 1877 Lamar took his seat in the United States Senate. In the Senate he had an opportunity to display his sense of the duty of a representative not to be bound by the instructions of his constituents (upon an issue not involved in his election), when these were contrary to his own judgment and conscience. On the Silver Bill he said:

"MR. PRESIDENT, — Having already expressed my deliberate opinions at some length upon this very important measure now under consideration, I shall not trespass upon the attention of the Senate further. I have, however, one other duty to perform, — a very painful one, I admit, but one which is none the less clear. I hold in my hand certain resolutions of the Legislature of Mississippi, which I ask to have read." (Mr. Lamar then sent to the Clerk's desk, and had read the resolutions of the Mississippi Legislature, instructing their Senators to vote for the Silver Bill.) Mr. Lamar, continuing, said: "Mr. President, between these resolutions and my convictions there is a great gulf. I cannot pass it. Of my love to the State of Mississippi, I will not speak; my life alone can tell of that; my gratitude for the honor her people have done me no words can express. I am best proving it by doing to-day what I think their true instincts and their characters require me to do. During my life in that State it has been my privilege to assist the education of more than one generation of her youth; to have given impulse to wave after wave of the young manhood that has passed into the troubled sea of her social and political life; upon them I have always endeavored to impress the belief that truth was better than falsehood, honesty than policy, courage better than cowardice.

"To-day my lessons confront me. To-day I must be true or false, honest or cunning, faithful or unfaithful to my people, even in this hour of their legislative displeasure and disapprobation. I cannot vote as these resolutions direct. I cannot and will not shirk the responsibility which my position imposes. My duty, as I see it, I will do, and I will vote against this bill. When that is done, my responsibility is ended. My reasons for my vote shall be given to my people; then it will be for them to determine if adherence to my honest convictions has disqualified me from representing them. Whether a difference of opinion upon a difficult and complicated subject, to which I have given patient, long-continued, conscientious study, to which I have brought entire honesty and singleness of purpose, and upon which I have spent whatever ability God has given me, is now to separate us, — whether this difference is to override that complete union of thought, sympathy, and hope which on all other, and, as I believe, even more important subjects bind us together. Before them I must stand or fall; but be their present decision what it may, I know that the time

is not far distant when they will recognize my action to-day as wise and just; and armed with honest convictions of my duty, I shall calmly await the results, believing in the utterance of a great American who never trusted his countrymen in vain, — that truth is omnipotent, and public justice certain."

His confidence was not unwarranted. He was re-elected to the Senate in 1882. Lamar had something of Lincoln's faith in the people, especially when he knew he would have opportunity to "state his case" before them.

Judge Emory Speer says: —

"On one occasion he told me that a young kinsman wrote to him, asking him to see what he could do about a certain political contest in which he was engaged, and in which the machine was being used against him. He wrote his young friend that he had never had any experience in machine politics, but that whenever there was a conspiracy against him, all he could do was to go there and make a speech, and break it up."

On March 5, 1885, Lamar was made Secretary of the Interior in the Cabinet of President Cleveland. There was some partisan criticism of the appointment, based on the alleged incongruity of having an ex-Confederate officer at the head of the Pension Office. These critics must have been surprised at the following language in his first Report: —

"I know of no burden of government that is more cheerfully borne than that of the pension system. I concur fully in all efforts to demonstrate that it is universally regarded as a noble beneficence, and in the view that when well and cleanly administered, it is noble in its purpose, and good in its results, diffusing with liberal and just hand the wealth of a wealthy people among those who suffer from the strokes of war, and have become impoverished by its misfortunes."

In subsequent reports he called the attention of Congress to worthy classes of cases for which existing laws failed to provide, and urged that the omissions be cured.

Mr. Fewell says: —

"Lamar was very much out of place when Secretary of Interior Department. He was a poor business man; he abhorred drudgery; detail bored him. The duties of that department required business talent and experience; they consisted almost wholly of detail. I knew that he felt himself unsuited to the place. I have reason to believe that he longed to get out of it, and that he desired and accepted the Supreme Court Judgeship, not so much as a place suited to his tastes, but as a refuge from the crushing 'grind' of the Interior Department. I recall my last interview with him. He was seated in his official chair in the Department on Interior, before a desk filled with papers. He shook me by the hand, and looked at me as if asking himself, 'Does this man want office too?' I asked about his health, and as quickly as I could do so with ease stated that I had not come to see him about any office; that I had a matter of business pertaining to the Land Office, and I requested a letter of introduction to Commissioner Sparks. He readily complied with my request, — dictating the letter to his stenographer. That done, he turned to me and we indulged in a brief chat. He read an opinion he had just given in some land matter. I hardly understood the purport of the opinion, I was so pained to observe how worn and weary he looked; his face was haggard, his eyes were lustreless. I asked myself, 'Have they crushed the ambition out of this man entirely? Is he worn out and done for? Let me see if I can rouse him. — Colonel Lamar,' I said, 'this is no place for you; you will wear yourself out at this drudgery. I will tell you where you ought to be, and where our people need you and need you badly.'

"'Where?' he asked, exhibiting some interest.

"'In the House,' I answered; 'there is your place, there is where you ought to be, — to lead. We have no leader in that body, and things are going to the "bow-wows" there.'

"Instantly he was the Lamar of old. His eyes blazed; his countenance cast off its almost perpetual shadow; he rose to his feet and glared about him with the manner of a prisoner who was called to break his bonds. He swept his arms through the air, and said with great but suppressed animation, 'You are right, by — ! There is where I would like to be. If I were there, I would mash some of those —— fellows. I 'd teach them some sense.' Then he recalled himself, and resumed his

seat and his tired look. The light faded from his eyes, his frame became limp; a clerk came in with my letter; Lamar signed it. 'Good-by,' I said. 'Good-by,' he responded. We shook hands. I never saw him again.

"I did not fully understand his reference to 'those fellows,' but I inferred that he meant the Democratic members. It was common talk, at that time, that the Democratic House, having no leader, was drifting about like dead wood in an eddy."

While it is doubtless true that Lamar was not fond of office detail, yet he filled conscientiously and ably all the requirements of his position as Secretary. His Reports are equal to any State papers that have emanated from that department. He was a warm friend of the Indian, and earnestly desired to terminate the "Century of Dishonor." He declared that "the only alternative now presented to the American Indian race is speedy entrance into the pale of American civilization, or absolute extinction. . . . After incorporating into our body politic four millions of blacks in a state of slavery, and investing them with citizenship and suffrage, we need not strain at the gnat of two hundred and sixty thousand Indians."

Upon his appointment to the Supreme Court by President Cleveland, Lamar took his seat, Jan. 18, 1888. Mr. Carson, in his "History of the Supreme Court," says: "One of his colleagues, upon being asked whether he had met the expectations of his friends, replied: 'Fully. Mr. Cleveland made no mistake in appointing him. Whatever doubts existed as to his fitness for the Supreme Bench, growing out of his long political and parliamentary career and absence from the active practice of his profession, have wholly disappeared.'" It is surprising that any doubt should have been predicated upon the fact first mentioned. To cite only the Chief-Justices as instances, Jay had been Secretary of Foreign Affairs; Ellsworth had been Senator; Marshall, Taney, and Chase had all been members of the Cabinet. An analysis of the history of the fifty-four judges who have occupied the bench, with regard to the manner in which they acquired the eminence that led to their appointment, shows that eighteen acquired their distinction in politics, twenty-two on the bench, while only fourteen can be credited to the bar. Since the passage of the Act establishing Circuit Courts of Appeal, — leaving to the Supreme Court almost exclusively federal and constitutional questions, — the value to a judge upon that bench of previous experience in the practical administration of the government will be even greater than it has been heretofore.

But while his political career was no disqualification, — rather the reverse, — the fact that Lamar had never had any extensive practice, and doubtless very little in the Federal Courts, caused the apprehension among his friends that he would be at a disadvantage in association with judges before whom cases are argued on the assumption that the law is already known and its application only is in question. Those who knew his conscientiousness, his capacity for labor, his great intellectual power, never once feared that his decisions would fall below the standard of that great court; but they did fear for him that he would find his work on the bench excessively laborious. Such was the fact. Justice Lamar had none of the false pride that would have prompted a concealment of it. One of his colleagues alludes to it in a note expressing his admiration of the opinion in Pennoyer *v.* Connaughy, 140 U. S. 1: "Your differentiation of cases where a State may and may not be sued is the best I have seen. The case seemed to me a difficult one, and I should not have suspected *that you did not enjoy writing opinions.* This is excellent." In a conversation with the writer he remarked: "Writing out a decision costs me two or three times the labor it costs a facile worker. Now, there 's Judge Blatchford: he can take a record, master it, and" (with a quick gesture) "there is the whole thing — the decision — *produced,* in the time that it takes me to determine how I shall set about approaching the case."

Chief-Justice Fuller, to whom this remark was repeated, said, "His decisions, if written with difficulty, do not show any traces of it." While no case which came before him (except, perhaps, that of Neagle) called for the "amplest exploitation of his powers," yet it may be confidently said that his opinions, numbering precisely one hundred, from 125 U. S. to 145 U. S. inclusive, are worthy of the great court of whose records they form a part.

From the point of view of the "Green Bag," — to wit, that of entertaining, — the leading case that came before Justice Lamar was that of Anderson *v.* Miller, 129 U. S. 71, in which the question was infringement of a patent on "re-enforced drawers." This was the case in which John S. Wise so successfully waged war against the gravity of the court. The patentee was a male citizen of Virginia. The defence was want of novelty. Brandishing a sample of the bifurcated garments before the court, Mr. Wise argued that it was a great reflection on the famous wives and mothers of the grand old Commonwealth for any man to pretend that he had invented an improvement on drawers that was not already known to these good matrons. It is said that, for the first time in its history, the whole court was convulsed; but it is to be regretted that no trace of the fun of the argument appears in the decision.

Most of Justice Lamar's decisions are in cases involving surveys and boundaries of land, land grants, etc., indicating that his experience in the Department of the Interior had given him a familiarity with these questions which led his associates, perhaps, to defer to him on these subjects.

In one case where the question was whether a negotiable instrument, signed by an officer of a corporation, imported a corporate liability or an individual contract of the signer, he speaks of "the vast conflict — we had almost said *anarchy* — of the authorities bearing on the question under consideration" (128 U. S.).

In Allen *v.* Gillette, 127 U. S. 596, — purchase by trustee of trust property at sale brought about by third party, — he finds occasion to declare: "The language employed by the text-writers does not present a thorough and perfect generalization of the essential principles pervading the decisions on this subject."

Excellent examples of his judicial work are found in the following cases: Kidd *v.* Pearson, 128 U. S., holding constitutional the statute of Iowa providing that intoxicating liquors may be manufactured and sold within the State, for certain purposes and no other; McCall *v.* California, 136 U. S. 104, holding that an agency of a line of railroad between Chicago and New York, established in San Francisco, for the purposes of inducing passengers going from San Francisco to take the line at Chicago, but not engaged in selling tickets for the route, or receiving or paying out money on account of it, is an agency engaged in interstate commerce; Howard *v.* Stillwell & Bierce M'f'g Co., 139 U. S. 199, deciding when profits which would arise from the performance of a contract may be recovered as damages for the breach thereof; McLish *v.* Roff, 141 U. S. 661, to the effect that a writ of error will not lie to the Supreme Court on a question of jurisdiction, under the act establishing Circuit Courts of Appeal, until final judgment in the Circuit Court. The work of his predecessors in the great court which is the glory of the Constitution, he happily characterized as a "century of wise and patriotic analysis" (135 U. S. 82).

Of his dissenting opinion in the Neagle case, Mr. Carson well says: —

"The logical power of Mr. Justice Lamar, his striking talents as a rhetorician, his clearness of vision in detecting the true point in controversy, and his tenacious grasp upon it through all the involutions of argument, his familiarity with adjudged cases, his well-defined conception of the nature of the general government and the distribution of its powers under the Constitution, are best displayed in his dissenting opinion on *Re* Neagle, in which, unswayed by horror or resentment at the atrocious

attempt to assassinate Mr. Justice Field, he insisted that before jurisdiction of the crime of murder could be withdrawn from the tribunals of the State where the act was perpetrated, into the Federal Courts, it was necessary to show some law, some statute, some act of Congress, which could be pleaded as an authoritative justification for the prisoner's act, and that no implied power existed in the President, or one of his subordinates, to substitute an order or direction of his own, no matter how lofty the motive or commendable the result."

Harvard conferred upon him the degree of LL.D. in 1886. President Eliot saluted him on that occasion as follows: "Lawyer, Scholar, Senator, Administrator, Teacher."

The romance of his early life proved the happiness of his later years. His first attachment was for Miss Henrietta Dean, of Macon, who did not look with disfavor on his suit; but parental objections intervened. Lamar's first wife was a daughter of Augustus B. Longstreet, author of the inimitable "Georgia Scenes." Miss Dean married Gen. William S. Holt. Lamar lost his wife during his term in Congress. Mrs. Holt had been a widow for many years, when in 1886 Lamar met her again, and they were married Jan. 5, 1887.

In December, 1892, failing health compelled Lamar to give up work. He came to Macon with his wife, and seemed to be making improvement. But "the feet of the avenging gods are shod with wool." On the night of Jan. 23, 1893, he was suddenly attacked with illness, and died within an hour.

His obsequies at Macon, on January 28, were attended by Chief-Justice Fuller and Mrs. Fuller, and by Mr. Justice Blatchford, Mr. Justice Brown, and Mr. Justice Brewer, also by the Clerk and Marshal of the court.

Thus far this sketch has dealt with the external facts of Lamar's career. But character is more than achievement. To be and to know are greater things than to get and to have. What of his spirit, of the inner life? "As a man thinketh in his heart, so is he." Lamar was warm-hearted, impulsive, tender, generous, sympathetic, good. He was especially considerate of young men, — literally eager to help them forward by kindly and encouraging words. If one did anything worthy of praise, he would take great pains to contrive some indirect method by which he might make known his appreciation. His courteous and patient dealing even with those who made preposterous claims upon his good offices showed the thorough kindness of his nature, while at the same time his candor — "the sweet fresh air of our moral life" — prevented him from permitting the applicant to entertain the hope of having his support when he was not free to give it. His purity of life, purpose, and conduct was never questioned; not even did slander cast any temporary film upon his reputation. Conscience was his guide. He was a patriot. It was a peculiarity that for many years he wore in an inside vest-pocket a small copy of the Constitution. This was buried with him.

The influences surrounding Lamar in early life were deeply religious. His training at home and at college was distinctly evangelical. Almost all his public utterances show in their religious cast the impress of this training. Robert Browning intimates in one of his poems that in this age we have our choice to live "the life of doubt diversified by faith," or "life of faith diversified by doubt." Another poet, equally reverent, declares: —

> "Doubts to the world's child heart unknown
> Question us now from star and stone;
> The letters of the sacred book
> Glimmer and swim beneath our look."

Lamar had many vacillations — perhaps once a total lapse — from the early faith which he "drank in with his mother's milk;" but in his later life it came back to him with sustaining power.

The imperishability of non-sentient life he expressed in a verse which is perhaps his best contribution to the judicial anthology: —

"They are not ours,
The fleeting flowers,
But lights of God
That through the sod
Flash upward from the world beneath, —
That region peopled wide with death, —
And tell us in each subtle hue
That life renewed is passing through
Our world again to seek the skies,
Its native realm of Paradise."

There is an immortality in the influence even of those who "live faithfully hidden lives, and rest in unvisited tombs;" much more in the influence of those who by great personality set in motion those "echoes that roll from soul to soul, and grow forever and forever." We may apply the noble words of William Watson to the forceful and kindly spirit that has left us: —

"And now from our vain plaudits greatly fled,
He with diviner silence dwells instead.
Unto no earthly seas with transient roar,
Unto no earthly airs he sets his sail,
But far beyond our vision and our hail
Is heard forever, and is seen no more."

BROADMOOR ASYLUM AND ITS INMATES.

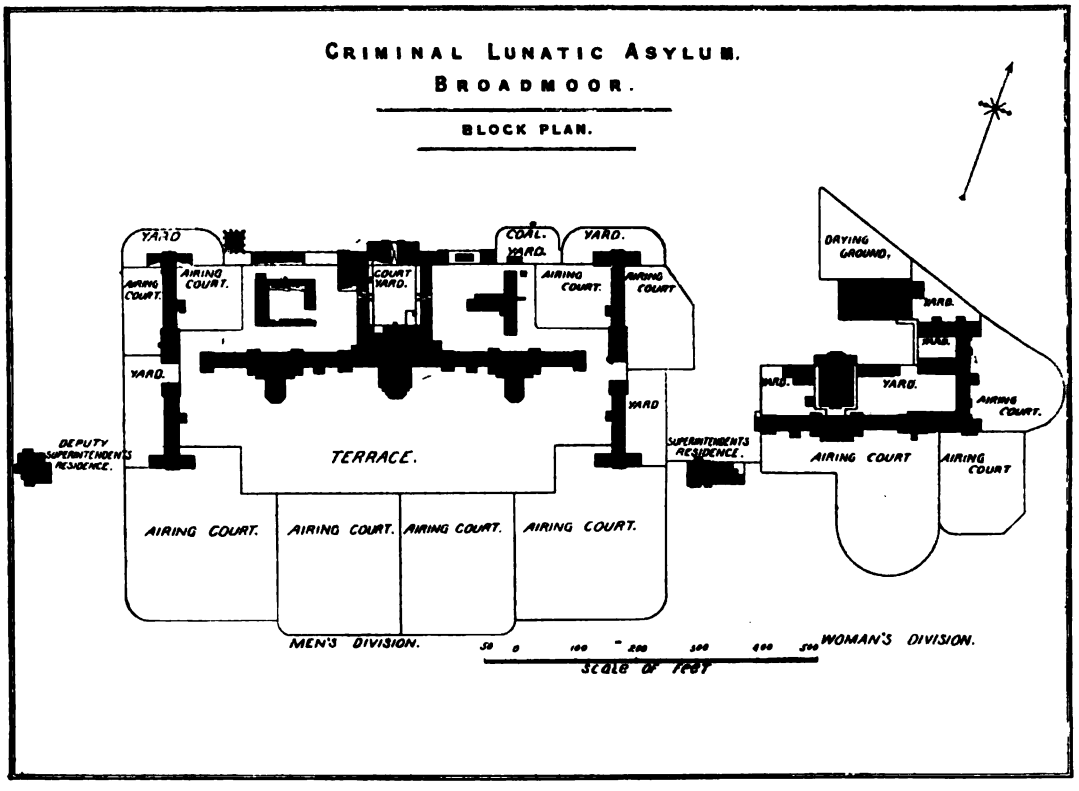
By a Legal Visitor.

"THE prisoner was acquitted on the ground of insanity, and directed to be detained during her Majesty's pleasure." How often does the newspaper report of a criminal trial end with these commonplace and colorless words, and how many readers understand their significance, or attach to them any definite idea whatever? In this paper I propose to give an account, based on personal observation, of the great English asylum for the reception of criminal lunatics and lunatic criminals, and thus, if possible, to bridge over a gap in popular knowledge.

Down to the year 1860 persons accused of having committed a criminal offence, but found insane upon arraignment or by the verdict of the jury that tried them, and convicts who became lunatic while undergoing their terms of imprisonment, were in this country simply distributed under a magisterial or judicial order, among the various county and other asylums, where they were maintained at a cost of from £26 to £34 a year. This system had, however, a number of obvious disadvantages, of which the chief were the evil influence exerted by criminal lunatics upon ordinary patients, who in spite of their madness have a large and comprehensive faculty of imitation, and the impossibility of subjecting the criminal inmates of such asylums to adequate supervision and control; and accordingly in 1860, principally through the agency of the Earl of Shaftesbury, an act of Parliament was passed authorizing the establishment of a *State Criminal Lunatic Asylum* for England. Three years later the project contemplated by this statute was carried into effect, and Broadmoor Asylum was formally opened. All that I desire to say about the local habitation, the exterior, the interior, the administration, and the inmates of this important and interesting institution may be stated most compendiously in the form of a description of a visit which I paid to it a few days ago, in company with my friend Grice, an official of high standing in the civil service of India, who is now at home on furlough, and who seeks to divert his thoughts from the unspeakable rupee by plunging into a course of scientific dissipation. We started from Waterloo at 9.38 A. M., and reached Brackwell in Berkshire a little after eleven. Brackwell is thirty miles from London, and — a fact of some moment to the traveller already suffering from the tedium of the railway journey — four miles from Broadmoor. A considerate cabman offered to drive us to the asylum and back for ten shillings; but

although on pleasure bent, our minds were frugal, and we decided to walk, and — in spite of the proffered assistance of a guide, already under the influence of liquor and thirsting for more — to walk alone. Our independence was soon subjected to a severe test. At the outset a thick mist enveloped us; as we made our way with difficulty along the curveless avenue that leads to Broadmoor, it moor; but I dispelled this impression by the free distribution of half-pence, and thus escaped the danger of "turning out the town."

The site of Broadmoor is well chosen; it covers three hundred acres, and commands an extensive and uninterrupted view, into which Sandhurst and Sandringham enter. The building is of red brick, and is surrounded with a wall varying from fourteen to sixteen



deepened in intensity and in volume, and by the time that the asylum came in sight it had finally converted itself into pouring rain. There is a little village at Broadmoor, the inhabitants of which are connected with the asylum either officially or as purveyors of its supplies. A few children, despising the descending torrents of rain, were playing in the solitary street of which the village can boast. Grice, who is facetiously disposed, gave them to understand that he was conveying me into the kindly custody of Broad- feet in height. The subjoined block plan will enable me to dispense with any further reference to the structure itself.

The windows are securely protected by iron bars, and these are practically the only indication of the character of the building. Dr. Nicholson, the superintendent of the asylum, a powerful Aberdonian, who, after having acquired an extensive knowledge of the criminal classes as medical officer in the convict service, held the position of deputy superintendent of Broadmoor for ten years

under Dr. William Orange, and succeeded that gentleman in 1886, received us with the utmost kindness, and initiated us into all the mysteries of the asylum life and administration. We of course selected the most sensational topics for the subject matter of our inquiry. Escapes from the asylum are of rare occurrence, — the height of the surrounding wall and the absolute smoothness of its copestone render this intelligible. Between the opening of the asylum in 1863 and the end of 1877, only twenty-three inmates escaped. Between 1877 and 1880 there were no escapes, and between 1880 and the present year very few. The majority were recaptured on the next or following day, one not till three months after his escape, and four were never discovered. Although a large proportion of the past and present inmates of Broadmoor has been and is composed of convicted murderers and murderesses, no case of actual homicide has occurred within the asylum since 1863; and yet no forms of mechanical restraint, such as fetters, straitwaistcoats, leg-locks, straps, or padded rooms, are resorted to, or indeed are to be found within the walls of the asylum; the superintendents and officials have no firearms or weapons of any kind for their own protection, and the only safeguard that exists against the violence of this strange colony of mad criminals is an unusually large staff of powerful and imperturbable attendants. In the main this régime has worked well; and it is clearly for the good of the patients that the treatment should as far as possible proceed on the assumption that they are still amenable to ordinary human motives, and be directed to the reconstruction, rather than to the dispersion, of the scattered fragments of their reason. But the defencelessness of the officials at Broadmoor has on several occasions been taken advantage of. One Sunday about twenty-five years ago, during the Communion, and when the chaplain was in the middle of the collect for the Queen, a patient with a sudden yell rushed at Dr. Meyer, then the superintendent, who was kneeling, surrounded by his family, close to the altar, and a deadly blow was struck at his head with a large stone slung in a handkerchief. The stone inflicted a serious injury, and the blow would have been fatal if it had not been somewhat turned aside by the promptness with which the arm of the patient was seized by an attendant. The chaplain was never afterwards able to say the particular collect which was interrupted in so awful a manner. A similar attack was made on Dr. Orange, who preceded Dr. Nicholson as superintendent of Broadmoor; and unless my memory deceives me, Dr. Nicholson himself was a few years ago temporarily laid aside from duty by a blow from the hand of a patient. In spite of these gloomy memories, however, the lives of the inmates of Broadmoor are, on the whole, both smooth and attractive. Concerts, Punch and Judy shows, and private dramatic representations are held in the theatre, the walls of which are decorated with fantastic paintings, the handiwork of a gifted artist once a patient in the asylum. Chess, draughts, billiards, bagatelle, and whist are the usual indoor games; while bowls, cricket, and croquet are played out of doors. Although work is not compulsory, — for Broadmoor is not, of course, a prison, — a large number of the inmates are engaged in useful employment. Some clean the wards; others repair clothes and linen, furniture, mats and carpets; others are engaged in the laundry and on the farm; an eighth of the patient's earnings is put to his credit, and he is allowed to spend it as he thinks best. Grice and I saw orders drawn on their accounts by patients, for the purchase of apple-trees for their gardens and other articles; and payments in such cases are made by transfer orders similar to checks on a banker. The asylum is a model of cleanliness, good discipline, and comfort, and reflects the highest credit on Dr. Nicholson and his assistants. The patients are recruited chiefly from the lower, but to some extent also from the midde and upper classes. We conversed with a great number of patients, heard their griev-

ances, which Grice carefully noted in his memorandum book, and found perpetual food for reflection and comment in the deceptive character of the outward appearance of most of those with whom we talked. This cringing miserable who assures you that he is the son of the king of Mull and that he would not harm a human being, is one of the dastards that shot at the Queen ; this wild-looking old man in the infirmary who tells you that a theft committed under the influence of delirium tremens was the sole cause of his "sequestration from society" murdered a whole family ; that youthful lady with the ruddy complexion and the long auburn locks — of which "age cannot wither nor can custom stale the infinite variety" — is the person who poisoned a little boy with strychnine in a fashionable English watering-place, two and twenty years ago, in order to gratify insane jealousy and love. And so the catalogue of surprises goes on. The fearful inscription which was written in unseen characters on the portals of every asylum in Europe last century, — "All hope abandon, ye who enter here!" — has never been traced above the gates of Broadmoor. Convalescent patients are allowed to go home, or are "boarded out," under proper supervision, the guardians being required to report their progress to Dr. Nicholson from time to time. It would be difficult to imagine a stronger inducement to the inhabitants of this insane colony to make the effort to recover their mental equilibrium than the hope of this conditional release.

A BRANCH OF PINE.

[*Hung above a Portrait of Whittier.*]

By Wendell P. Stafford.

SINGER, whose going all men mourn,
What should our tribute be?
Only the winter pine branch, torn
From the tumultuous tree!

We know what perfect flowers belong
Where silent poets sleep;
The roses o'er thy bed shall throng,
And the pure lilies sweep.

But not the bard alone we frame
Within this greenwood cheer,—
We crown the prophet without shame,
The fighter without fear.

This waif from winter's wildest hill
Deserves a smile from thee:
It holds the scent of summer still;
It whispers of the sea.

Some likeness of thy youthful day
Was in its stormy strife;
Something its verdure seems to say
Of an unfading life!

Wherever now in airs of heaven
The fronded palms are blown,
Dost thou not hear, more faintly given,
The song our pines intone?

A LADY IN COURT.

THE following piquant sketch of a first experience of the Old Bailey is from a letter to Miss Berry by Lady Dufferin, granddaughter of Sheridan and mother of Lord Dufferin, the Viceroy of India. It is found in the life of Miss Berry and her sister by Lady Theresa Lewis, vol. iii. p. 497; and its humor is not unworthy of the wit of the "Critic," or the fun of the "Yacht Voyage to Iceland."

HAMPTON HALL, DORCHESTER,
Saturday [Oct. 14], 1846.

Your kind little note followed me hither, dear Miss Berry. As you guessed, I was obliged to follow my *things* (as the maids always call their raiment) into the very jaws of the law! I think the Old Bailey is a very charming place. We were introduced to a live Lord Mayor, and I sat between two sheriffs. The Common Sergeant talked to me familiarly, and I am not sure that the Governor of Newgate did not call me "Nelly." As for the Rev. Mr. Carver (the ordinary), if the inherent vanity of my sex does not mislead me, I *think* I have made a deep impression there. Altogether my Old Bailey recollections are of the most pleasing and gratifying nature. It is true I have only got three pairs and a half of stockings, one gown, and two shawls; but that is but a trifling consideration in studying the glorious institutions of our country. We were treated with the greatest respect and ham sandwiches, and two magistrates handed us down to our carriage.

HAMPTON COURT, Octo. 22nd.

My mother and I have returned to this place for a few days in order to make an ineffectual grasp at any *remaining* property. Of course you have heard that we were robbed and murdered the other night by a certain soft-spoken cook who headed a storming-party of banditti through my mother's kitchen window; if not, you will see the full, true, and dreadful particulars in the papers, as we are to be "had up" at the Old Bailey on Monday next for the trial. We have seen a good deal of life and learned a great deal of the criminal law of England this week,— knowledge cheaply purchased at the cost of all my wardrobe and all my mother's plate. We have gone through two examinations in court; they were very hurrying and agitating affairs, and I had to kiss either the Bible or the magistrate, I don't know which, but *it* smelt of thumbs.

I find that the idea of *personal property* is a fascinating illusion, for our goods belong in fact to our country and not to us; and that the petticoats and stockings which I fondly imagined *mine* are really the petticoats of Great Britain and Ireland. I am now and then indulged with a distant glimpse of my most necessary garments in the hands of different policemen; but "in this stage of the proceedings" may do no more than wistfully recognize them. Even on such occasions the words of justice are: "Policeman B 25, produce *your* gowns;" "Letter A 26, identify *your* lace;" "Letter C, tie up *your* stockings." All this is harrowing to the feelings, but one cannot have *everything* in this life. We have obtained *justice*, and can easily wait for a change of linen. Hopes are held out to us that at some vague period in the lapse of time we may be allowed to *wear* all of our raiment,— at least so much of it as may have resisted the wear and tear of justice; and my poor mother looks confidently forward to being restored to the bosom of her silver teapot. But I don't know. I begin to look on all property with a philosophic eye as unstable in its nature; moreover the police and I have had my clothes so in common that I shall never feel at home in them again. To a virtuous mind the idea that "Inspector Dawsett" examined into all one's hooks and eyes, tapes and buttons, is inexpressibly painful. But I cannot pursue that view of the subject."

THE SUPREME COURT OF TENNESSEE.

II.

UNDER THE CONSTITUTION OF 1834.

By Albert D. Marks.

CONSTITUTION-MAKING was a new art at the time the first Constitution of Tennessee was adopted in 1796. Models were few. There were then only three, — that of the United States, that of Vermont, that of Kentucky. The many evils of the unrestrained discretion of a legislative body had not then made themselves manifest, and there were no safeguards against them. The instrument was consequently largely devoted to the declaration of those fundamental rights which are to be found in the great charters that make up the British Constitution, to which were added those established by the Revolution.

The immature idea of a judicial department, embodied in the first Constitution of the State, has been referred to. By the time the Constitutional Convention of 1834 had been called, the conception of this branch of the government as co-ordinate with the legislative and executive had fully developed in the Constitutions of the various States adopted in the mean time.

Events occurring shortly before had brought to the attention of the convention the necessity of securing the stability of the judiciary. In 1831 one of the circuit judges of the State was impeached for neglect of his official duties. After a long and bitter trial, the Senate refused, by a tie-vote, to sustain the charges. The Supreme Court had annulled some of the most popular enactments of the Legislature, and yet had drawn on itself no attack. But because of an effort to remove the objectionable circuit judge, the Supreme Court was in great peril of being legislated out of existence. Failing in the impeachment of the judge, his enemies sought to deprive him of his office by re-organizing the whole judicial system, thus throwing out of office all the judges, who were then elected for life. The bill for that purpose was defeated by only one vote.

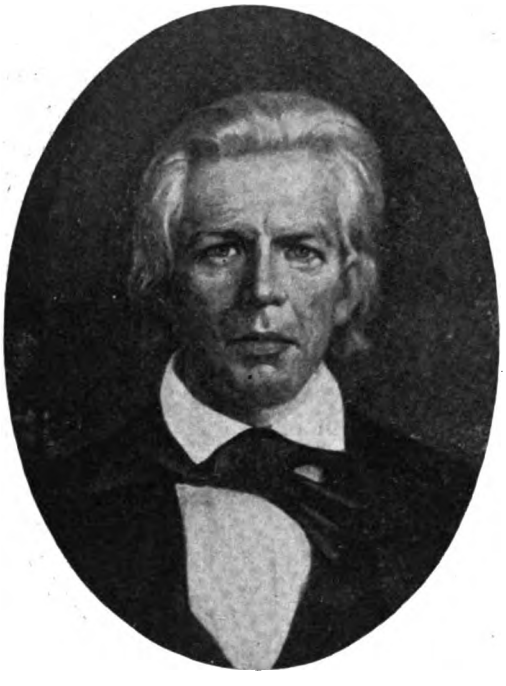
This struggle was fresh in the minds of the members of the convention of 1834; and Section I. of Article VI. of the Constitution that they drafted, provided that "the judicial power of this State shall be vested in one Supreme Court, and in such other inferior courts as the Legislature shall from time to time ordain and establish."

The Supreme Court was to consist of three judges, no more than one of whom should be from the same grand division of the State. They were to be elected by the Legislature for a term of twelve years. In 1853 an amendment to the Constitution was adopted, providing for election by the people, and shortening the term to eight years.

On the re-organization of the court in 1835, at the first session of the Legislature after the adoption of the Constitution, only one of the four judges theretofore on the bench was re-elected. This was Judge Nathan Green, who defeated Chief-Justice John Catron, who was also a candidate for re-election. Judges Whyte and Peck voluntarily retired. William B. Turley and William B. Reese were elected as the colleagues of Judge Green. The court was thus constituted for the full constitutional term of twelve years.

It is rare for three colleagues to remain together for so long a time in one service. It is rarer still for three judges of such ability as Judges Green, Turley, and Reese to be associated at the formative period of a jurisprudence. It was these three men who gave shape to those fundamental doctrines which to-day obtain in the courts of Tennessee.

The labors of their predecessors are not appreciated by many of the present practitioners in the State. Those labors were confined largely to questions growing out of the land laws, and those arising under the technical rules of pleading of the common law. Statutory enactments swept away the refinements of the common law, and that mass of learning was made useless. Lapse of time has perfected the titles to land in the more populous parts of the State, and the land law is *terra incognita* to nearly all the lawyers of the State outside of East Tennessee. But the cases found in the reports covering the period from 1835 to 1847 are familiar to all, and in them are to be found the principles from which the rules that to-day determine all controversies in the courts of the State, are to be drawn.



NATHAN GREEN.

When these three judges entered upon their work, the nature of the litigation had changed from what it had been. From the foundation of the State, its courts had been vested with equity jurisdiction. However, the machinery for the exercise of the jurisdiction was most imperfect. There was a lack of those officers that are such valuable adjuncts to courts of chancery, and largely increase their efficiency. There were no established rules of procedure. The absence of a special forum for the determination of causes by equitable principles made the lawyers unfamiliar with its practice. The result was that this extraordinary power of what was ordinarily a court of law was rarely invoked. In 1827 the Legislature had created separate courts of chancery. Nathan Green was one of the first two chancellors; and on his elevation to the Supreme bench in 1831, William B. Reese became his successor. When these two became associated with Judge Turley in 1835 on the highest court of the State, the business of the new chancery courts had grown amazingly. Two chancellors were at first able to dispose of the business for the whole State. In 1836 it became necessary to add a third chancellor, and a fourth in 1840.

To declare the rules of equity which should govern in these courts, was the most difficult and important work of the Supreme Court. For that work all three judges were well fitted. Each bore a conspicuous part, and none of them can be said to have distinguished himself above his fellows, though it fell to the lot of Judge Green to deliver more opinions in this class of cases than either of the other judges. And the impress he left on the judicial policy of the State was much greater by reason of the fact that his term of service was nearly double that of either of the other two judges.

Succeeding generations have respected their handiwork. Most States have abolished separate courts of Chancery; but in Tennessee legislatures and constitutional conventions have uniformly declined to take from a special tribunal the administration of the beneficent principles then enunciated.

The period was one in which there was

great prosperity in the State. Its population doubled in two decades, and its wealth increased rapidly. The economic conditions brought about large dealings between its people and the merchants and commissionmen of distant cities. Numerous suits grew out of controversies arising in the course of business, and a very considerable part of the time of the Supreme Court was devoted to the consideration of questions of commercial law. All the mooted questions that have divided and vexed the courts of the various States in this branch of the law were before the court. The positions then taken have generally been steadily held ever since. The disposition of the court was pronounced to follow the lead of the highest courts of the State of New York on such questions, though it is the expressed policy of the present judges to align themselves with the Supreme Court of the United States on all new questions of commercial law.

WILLIAM B. TURLEY.

The policy of State aid to internal improvements, then being actively carried out, caused a great deal of litigation. Many turnpike companies were chartered, and the State gave aid to the building of a complete system of roads, until it was apparent that the railway was destined to supersede the turnpike, when the State aid was diverted to the building of railways. Many banking and manufacturing corporations were chartered, and their charters came before the court in various ways, so that corporation law even at that early day was much considered.

It was also the office of these three judges to lay down the rules governing torts, out of which was to be developed the law that should determine the rights and liabilities of parties under the new conditions which have come about since they left the bench.

Slavery likewise furnished many questions to be answered by that court and its successors before the Civil War. But such suits were not commensurate with the extent of the interests of the State in slave property. Large holdings of slaves were rare. In Tennessee slavery was largely a household institution. The servants were considered more as *villeins* attached to the land, and to be transmitted with it from one generation to another. They were infrequently the subject of sale, and so the opportunity for controversy was limited.

But to consider the members of the court in detail.

Nathan Green was born in Amelia County, Va., in 1792. He was of respectable family, though he was not of that class known as the "first families." His education was such as could be obtained in the primitive schools of his county, and was but little more than meagre. He enlisted as a soldier in the War of 1812, and served gallantly in Virginia throughout the war. On one occasion while on sentinel duty he halted General Taylor, the general commanding, who was unable to give the countersign, and made him mark time at the end of his bayonet until the arrival of the officer of the guard, who recognized and rescued his luck-

less commander. The young private was much abashed when he found the man was really the general, as he had claimed to be, and on the next day, when called out before his division drawn up in a hollow square, he was full of fear and trembling; but the demonstration was for the purpose of giving to General Taylor an opportunity of publicly commending him for the strict discharge of his duty.

Returning from the army after the treaty of peace, he began the study of law, and was admitted to practice. He married about this time. After practising law in his native county for some months, he determined to emigrate. He had inherited a comfortable patrimony, and his wife had considerable property. Gathering their possessions together, they removed to Winchester, Franklin County, Tenn. He took up the practice of his profession, and had signal success. He was a State Senator in the General Assembly of 1827. This Legislature created the courts of chancery, providing for the election of two chancellors. Judge Green was elected by the Legislature as the Chancellor for the Eastern District, and he served until 1831, when he was elected a judge of the Supreme Court. He, and his associate, Chancellor Cook, compiled the rules of chancery practice that prevail in the State to-day, practically unchanged.

Having become judge of the Supreme Court in 1831, he continued to serve until 1853, making his term twenty-two years. This period of service has been surpassed by only one other incumbent of the office. Peter Turney, lately Chief-Justice, and now Governor of Tennessee, was on the bench for twenty-three years. It so happened that both these men were from the same county, — Franklin. When Judge Green was elected chancellor, he induced Hopkins L. Turney, afterward a United States Senator from Tennessee, to remove from an adjoining county to Winchester, to take charge of his very large practice which he was about to relinquish. Governor Turney, the son of Hopkins L. Turney, was then an infant, but he was destined to fill honorably for many years the position that Judge Green was soon to assume.

Judge Green was a most remarkable man physically. He was six feet six inches tall. He was not graceful, and as an advocate it was his deep earnestness that gave him a peculiar power. His manner was grave, and his voice thunderous, forcing the earnest attention of his hearers. Hon. Edwin H. Ewing, writing of him as a judge, said: —

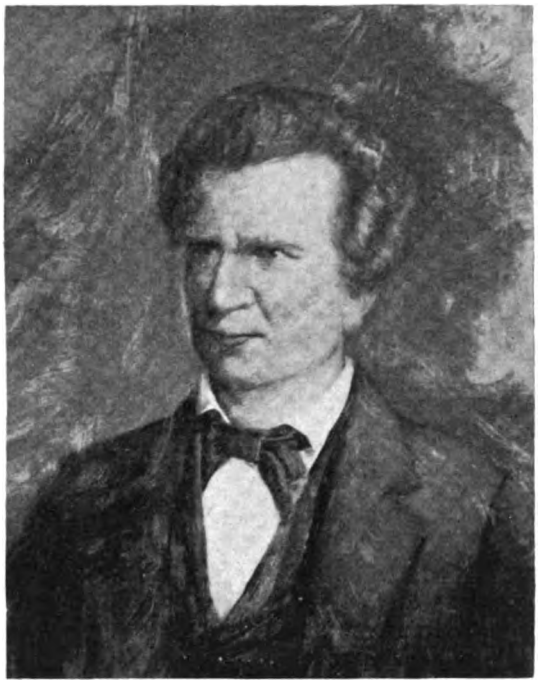
"Without polished learning or extensive technical knowledge of his profession, he wrote well, and seldom, if ever, made a technical mistake. But he loved especially to deal, like Mansfield, with the great and broad principles of the law; he searched for the deep foundations on which the structure stands; he analyzed, with an acuteness and vigor seldom equalled, the most complex propositions, and eliminated the truth, genuine and naked, however hidden by perplexing fallacies."

Fearing that age might impair his usefulness as a judge, he resigned his seat on the bench in December, 1852, and accepted a professorship in the Law Department of Cumberland University at Lebanon. He was a most devout man, and was a member of the Cumberland Presbyterian Church, under the patronage of which the university was; and his high sense of religious duty doubtless influenced him in taking this step. Judge Abram Caruthers was associated with him in the Law School, and by their efforts it was put at the head of such institutions. Among its graduates are to be found many of the distinguished lawyers of the Southwest.

Judge Green died at Lebanon on March 30, 1866.

William Bruce Turley was born in Alexandria, Va., in the year 1800. He was principally of English extraction, though there was in him a strain of both Irish and Huguenot blood. His parents removed to Davidson County, Tenn., in 1808, settling near Nashville. He entered the University

of Nashville, and took his degree when sixteen years of age, graduating with high honors. He read law in the office of Judge William L. Brown, a leading lawyer of Nashville. After he was licensed to practice, he opened an office in Clarksville. His extraordinary talents soon attracted attention, and in 1829 he was elected by the Legislature judge of the newly created eleventh circuit. So brilliant was his career as circuit judge, that on the reorganization of the Supreme Court in 1835, he was unanimously elected by the Legislature a judge of that court. Thus at the early age of thirty-five he had attained the highest judicial position in the State. He served one full term of twelve years, and was re-elected in 1847. But the relations between Judge Green and himself having become strained, he was induced to resign in April, 1850, to accept the position of Judge of the Common Law and Chancery Court at Memphis. The work of a *nisi prius* judge was more suited to his tastes than was that of supreme judge. He was a man of unusually quick apprehension, and it was irksome to him to go over in consultation the same ground over which his rapidly moving mind had carried him during the argument of a case. It is related of him that often when an important case would be taken up in consultation, he would state his views to his colleagues, and then, walking out, leave the case to the other two judges, who would usually find that the slower processes of analysis and reference to authority had brought them to the conclusion announced by Judge Turley. Precedents with him had no weight, unless supported by reason. It was not his habit to base his decisions on former cases, but to argue out the proposition from original premises, citing precedents only to illustrate his conclusions.



WILLIAM B. REESE.

Judge Turley was highly educated, but he acquired a vast store of knowledge after he reached manhood. He delighted in poetry and history. He was thoroughly versed in literature, particularly in English history. He had a very retentive memory, that made his stores of knowledge immediately available. Probably the most elaborate opinion that he delivered was in the case of Green *v.* Allen, 5 Humphreys, 170, declaring void a charitable bequest to the Tennessee Annual Conference of the Methodist Episcopal Church. The case was submitted to the Court on Saturday, and the opinion was completed on Monday. It was the first case on that subject in the State, and was important in itself. The opinion was a long one, and went minutely into the history of the abuses growing out of the absorption of great wealth by the clergy and the Church, and the various statutes enacted by Parliament, designed to restrict the evil. The review of this legislation and the decisions under it was a masterful one.

Judge Turley met a painful accidental death. While walking on the street in Raleigh, he fell and caught on his cane. It broke, and one of the sharp points ran

him through. He died from the injury on May 27, 1851. In his dying moments his thoughts wandered back to the consultation-room where he had so often sat; and his last words were, "I can never agree to that, Judge Green."

Judge Green was the intellectual giant of the bench, Judge Turley was its genius, and Judge Reese its scholar.

William B. Reese was born in Jefferson County, Tenn., on Nov. 19, 1793, dying at Knoxville on July 7, 1859. He was the son of James Reese, one of the pioneers of East Tennessee, and a leading member of the Legislature of the State of Frankland, which the early settlers had set up for their protection in the wilderness when they were neglected by the mother State. The father was a lawyer, and from him the son inherited mental endowments of the highest order. By the time he had reached the age for mental training, he found on every hand schools able to give him a classical education. The early settlers of Tennessee had turned their attention to the establishing of good schools, before they had made secure the tenure of their new homes, conquered from the Indians. Judge Reese was first put in the preparatory school of the Rev. Dr. Henderson in his native county. He was afterwards a student at Blount College. He finally entered Greeneville College, and was there graduated. But his education did not stop here. His intellectual vigor, independent thinking, and profound research led him into deep studies of everything that makes up the sum of human knowledge; and these he continued during his long and active life. He became one of the most thorough scholars that the State has ever had in all the departments of learning.

Taking up the study of law, he mastered it as a science. For a considerable part of his life he was a judge, and in his decisions he always dealt with the question before him as one to be answered by the application of fixed principles of law that were not to be varied by the hardships of the particular case.

He was admitted to practice in 1817. His care in the preparation of his cases and his logical power made him a formidable adversary. That was pre-eminently the day of young men; and in 1831, when he was but little past thirty-five, he was made Chancellor of the Eastern District, to succeed Chancellor Green. Out of his many decisions brought before the Supreme Court, he was reversed only twice. He made such a reputation as a chancellor that on the reorganization of the Supreme Court in 1835, he was unanimously elected by the Legislature a judge of that court. He was the first native Tennessean to become a Supreme judge.

Reference has been made to the high order of his judicial work; but there is one opinion of his that deserves especial mention, as a splendid illustration of the qualities his mind possessed. It is the case of Polk *v.* Faris, 9 Yerger, 159, where it was held that personal property given by a deed to a person for life, and after the termination of that estate, then to the heirs of the body of that person, and upon default of such issue, then to return to the grantor and his heirs, vests absolutely in the first taker, under the rule in Shelly's case. The erudition of that opinion drew forth especial praise from Chancellor Kent.

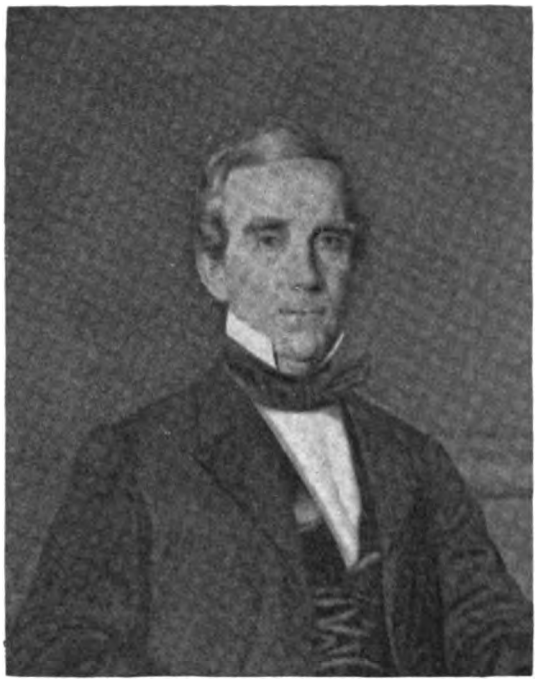
Judge Reese on the expiration of his term as Supreme Judge in 1847, became a candidate for United States Senator; but after a prolonged contest, John Bell was elected. Judge Reese shortly afterward became President of East Tennessee University. He held the position until a short time before his death, when the encoachments of disease compelled him to resign it.

Judge Reese was not simply a judge and man of letters. He took an active interest in the development of his State. He was in 1828 an earnest advocate of the building of a canal to one of the South Atlantic ports, and was afterwards a director in the East Tennessee and Georgia Railroad Company. He was also President of the East Tennessee

Historical and Antiquarian Society from its organization in 1830 to his death.

Judge Reese was the first of the judges so long associated to retire. He was not a candidate for re-election on the expiration of his term. Judges Green and Turley remained together for three years longer. Judge Reese was succeeded by Robert J. McKinney.

Judge McKinney was born in County Coleraine, Ireland, on Feb. 1, 1803. As was said by his biographer, Col. W. A. Henderson: "An Irishman, like his tobacco plant, can never develop until he is transplanted. His Green Isle is the hot-bed, and the world is his patch, which he has undertaken to fill." The father of Judge McKinney was a poor man, and he emigrated with his family to America in 1809, finally settling in Hawkins County, East Tenn. The son was for a few months at Greeneville College; but his education was limited. On leaving college he became a student in the law office of his uncle, John A. McKinney, at Rogersville. His predilection was for the common law, and his time was devoted to the mastering of its intricacies. He was admitted to practice in 1824. His earlier professional life was bare of pecuniary reward. His diffident, almost timid manner did not inspire that confidence in him that his talents merited. After having been some years at the bar, it chanced that by reason of the sudden illness of the senior counsel, with whom he was associated in an important will case, the responsibility of the conduct of the whole case fell to him. He displayed such unlooked-for qualities in its management that it attracted to him the favorable notice of the whole circuit that he rode, throughout which the *causes célèbres* were discussed. The professional advancement that he had so long waited for and so well prepared for by diligent study, now came to him rapidly. He accumulated a fortune from his professional income.



ROBERT J. McKINNEY.

He was a delegate to the Constitutional Convention of 1834. He took a most important part in its discussions, and many sections of the Constitution it proposed bore the impress of his work. In 1836 he was an elector for the State at large in the interest of the candidacy of Senator Hugh Lawson White for President. His ticket carried Tennessee; but his candidate was overwhelmingly defeated in the general result.

On the retirement of Judge Reese in 1847, he was unanimously elected his successor by the Legislature, without solicitation on his part. He was chosen for a second term at the popular election after the change of the Constitution. He continued as an active judge for fourteen years, until December, 1861, when the war between the States caused a suspension of the court. Judge McKinney was opposed to the secession of Tennessee; but when that action was finally taken, he acquiesced in it and declared his allegiance to his State. He was one of the three men composing the Peace Commission, appointed by Gov. Isham G. Harris, which proceeded

to Washington before the commencement of hostilities in the vain hope of averting the impending war. After the suspension of the court, he sought his home, where he spent the remainder of his life in contented retirement. He died Oct. 9, 1875. The last public service that he rendered was as commissioner in the various suits brought by the State after the close of the war to enforce its lien on the railways, to which State bonds had been issued under the internal improvement acts. There were associated with him on this commission Francis B. Fogg, Esq., and Judge Archibald Wright.

The opinions of Judge McKinney are clear in style and usually short. He clung tenaciously to the common law, and opposed all innovations upon it. He thought it indeed the perfection of reason, and looked upon equitable principles as uncertain and shifting rules for determining rights. He understood the common law as have but few men in America, and his opinions give some of the ablest expositions of its principles as applied in the courts of this country. It is impossible to find any more satisfactory. He was particularly attached to the system of common-law pleading, and he could never countenance slovenly pleadings. These characteristics, added to a stern, dignified manner, won for him the soubriquet of "Old Strictissimus."

Judge Green was succeeded by the second native Tennessean to reach the Supreme Bench, Robert L. Caruthers, who was appointed by Governor Campbell on the resignation of Judge Green, in 1853.

Judge Caruthers was born in Smith County, Tennessee, in the year 1800. His mother died when he was two years old, and when he was ten his father was stricken with paralysis that rendered him a helpless invalid. The lad was left to struggle for himself. He hired to his neighbors as a field hand. When sixteen years old, he secured a position as clerk in a store in the town of Carthage. He won the confidence of his employer, and was made a partner, taking charge of a branch establishment in the town of Woodbury. He longed for an education, and by means of the profits of his mercantile venture, he entered Greeneville College, where were also educated Judge Reese and Judge McKinney. Having completed the course, he became a student-at-law in the office of Judge Samuel Powell. He was licensed to practice on April 8, 1823. In September of that year he was elected clerk of the House of Representatives of the General Assembly of Tennessee. After the end of his duties in that position, he began the practice of law in his native county. In 1827 he was elected by the Legislature Attorney-General for his circuit, and served until 1832, when he resigned. In 1835 he was the member from Wilson County of the House of Representatives of the General Assembly. The work of this assembly was of great importance, as it was the first after the adoption of the new

ROBERT L. CARUTHERS.

Constitution. Judge Caruthers served with great distinction as a member of the Judiciary Committee. After the adjournment of the Legislature, he, in conjunction with Judge A. O. P. Nicholson, made a compilation of the statutes of the State, rendered necessary by the many changes after the publication of the compilation of Haywood & Cobbs. In 1840 he was elected to Congress, succeeding John Bell. He declined a re-election. After that he held no other office until he was appointed Supreme Judge by Governor Campbell, to succeed Judge Nathan Green on his resignation in December, 1852. Judge Caruthers was re-elected by the Legislature on its assembling in 1853; and on the adoption of the constitutional amendment providing for election by the people, he was elected by the people in 1854. He held office until the latter part of the year 1861. He was a delegate to the Peace Congress in 1861. On the failure of that mission, he became a member of the Provisional Congress of the Confederate States. He was elected in 1863 Governor to succeed Isham G. Harris; but the occupation of the State by the Federal forces prevented his induction into office. At the close of the war he formed a partnership with Judge William F. Cooper for the practice of law at Nashville. After a few years he retired to Lebanon, where he spent the rest of his life as a professor of law in Cumberland University, of whose board of trustees he had been president since 1842. This position he held until his death on Oct. 2, 1882, at the extreme age of 82.

A. W. O. TOTTEN.

That which was the greater part of his contemporary fame — his reputation as an advocate — has almost become only a tradition. His work as judge is enduring. His opinions embalm that. His work as advocate has no lasting memorial; and the recollection of it is passing away with those who felt the spell of his power. He was without a doubt the greatest advocate Tennessee has ever had. It was frequently said that it was tantamount to a denial of justice to the opposing party for him to appear before a jury. He was not a great orator. There have been many advocates who could sway the emotions of a jury in a way that he could not rival. He was not gifted with the graces of person or of voice; but his mental power seemed almost resistless. It could not be fortified against. His hearer could not tell when his change of mind took place. He would feel one part of his preconceived opinion slipping away, to be followed by another; but the change was so gradual that the movement seemed to be simply a readjustment of what had already been in one's mind.

The predominating character of Judge Caruthers, as a judge, was his power to penetrate any sophistry. It was impossible to practise any deception on him. His style as a writer was unusually easy; his words flowing smoothly and evenly, but expressing what was in his mind most perspicuously.

Judge Turley was the second to leave the court. He was succeeded by A. W. O. Totten.

Judge Totten was born in Middle Tennessee; but his father removed with him when a youth to Gibson County, West Tenn. He studied law and commenced the practice at Trenton, the county-seat. After making a name for himself at the Trenton Bar, he removed to Jackson, that being the place of meeting of the Supreme and Federal Courts for the Western Division of the State. On the resignation of Judge Turley as Supreme Judge in 1850, he was first appointed and then elected to take his place. He was on the bench until 1855, when he resigned, being succeeded by Judge Wm. R. Harris.

Judge Totten was not a man of pre-eminent ability, but he filled the measure of judicial duty. He was deliberate in the formation of his opinions, diligent in research, attached to established precedent, and could not be swayed from his conscientious convictions. He died in 1867.

On the resignation of Judge Totten, he was succeeded by Judge Harris of Memphis.

William R. Harris was born on Sept. 26, 1803, in Montgomery County, N. C. At an early age he emigrated to Tennessee with his father, who settled on Duck River in Bedford County, afterwards removing to Franklin County. His father was a poor man, and the son was forced to work to help maintain the family. His education was such as could be had in the academy at Winchester in the intervals between the making of crops. Even after he came of age and was appointed a deputy-sheriff of Franklin County, he applied himself at night, and kept up with his class in Carrick Academy. In 1825 he began to read law under Isaac Cook, Esq., at Lawrenceburg, being admitted to practice in 1827. He opened an office in Paris, Henry County, West Tenn., which had been thrown open to occupation only a short while before, on the extinguishment of the Indian title. Its rich alluvial lands caused a great inflow of population, and unexampled prosperity resulted. Its citizenship was of the highest order. Judge Harris was one of the founders of such a community. He rapidly acquired an extensive and lucrative practice. In December, 1836, when only thirty-three years old, and after practising his profession only nine years, he was appointed by Governor Cannon to fill the vacancy created by the resignation of Judge John W. Cook, as judge of the Ninth Circuit. He was afterward elected to the position by the Legislature, and served until 1845. On his retirement he resumed the practice, removing to Memphis in 1851. On the death of Judge Turley, he was appointed his successor as judge of the Common Law and Chancery Court, and was afterward elected to the place. On the resignation of Judge Totten as Supreme Judge in August, 1855, Gov. Andrew Johnson appointed Judge Harris as his successor. On Dec. 1, 1855, he was elected by the people for the full constitutional term; but his term was destined to be cut short. On Jan. 13, 1858, he was killed by the explosion of the boilers of the Mississippi River steamboat "Pennsylvania," bound from New Orleans to Memphis.

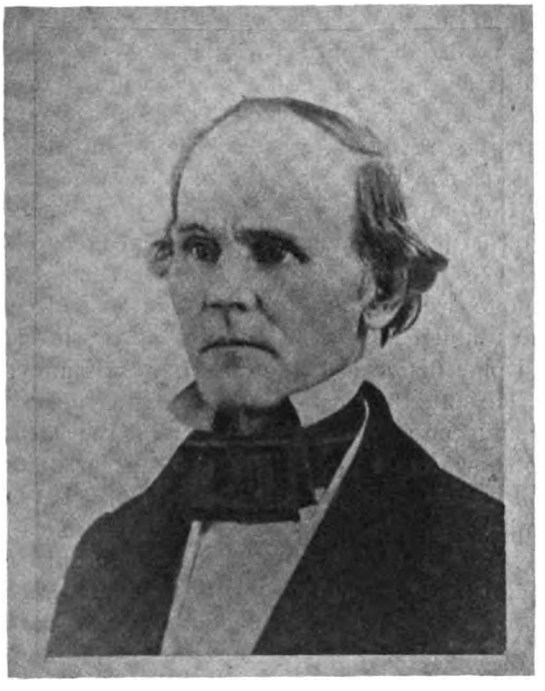
Judge Harris came of an eminently strong-minded family. One brother was a minister of the Methodist Church, and one of the ablest preachers of the denomination. Another brother, Isham G. Harris, was war-Governor of Tennessee, and has represented his State for three terms in the United States Senate.

Judge Harris had paid particular attention to the common law, going back of its rules in order to learn their origin. He was very familiar with the adjudications and statute laws of his own State. As to matters of practice he had no equal. His untimely end cut short what would have been a most brilliant judicial career.

On the death of Judge Harris the melancholy duty of appointing his successor fell to his brother, Isham G., then Governor of

the State. He named Archibald Wright of Memphis, the third native Tennessean to reach the Supreme Bench.

Judge Wright was born in Maury County, Tenn., on Nov. 29, 1809, of very poor parents. His father, John Wright, a native of North Carolina, was the son of Duncan Wright, a Scottish Highlander. The mother of Judge Wright was of the same sturdy stock. Shortly after his birth his family removed to the adjoining county of Giles. Here he grew to manhood. A scanty education was received at Mount Pleasant Academy and Giles College. He was conspicuous there for the diligent habits of study that afterwards characterized him. An awkward and uncouth country youth, he sought the office of Judge Bramblette, at Pulaski, to study law. The first impression he made on the tutor he sought was not a favorable one; but there was that about him that finally attracted Judge Bramblette to him, and he accepted him as a student. He was licensed to practice in 1832, and opened an office in Pulaski. The Florida war soon followed. On the call for volunteers he enlisted and served throughout the war. He returned to his practice at Pulaski, and continued to live there until 1851. His fame as a lawyer had grown, and he determined to seek a larger field. He removed in 1851 to Memphis, a city then rapidly developing. He found a partnership with the Hon. Thomas J. Turley. The sons of these two partners are to-day associated in the practice of law at Memphis, and they are generally esteemed as the ablest firm of lawyers in the State. Judge Wright did not solicit the position, but his reputation caused Governor Harris to bestow on him the office of Supreme Judge on the occurring of the vacancy in 1857. In August, 1858, he was elected by the people; but because of the interruption of business by the Civil War, he did not serve out his term. On the breaking out of the war he ardently espoused the cause of the Confederacy. His only two sons, then striplings, enlisted in its army. Too old for active service himself, he followed the army so as always to be by his boys when danger was near. One of them fell on the fatal field of Murfreesboro; but the other was spared to him.



WILLIAM R. HARRIS.

At the end of the war he found himself largely in debt because of obligations incurred in extensive purchases of plantations and slaves in Louisiana before the war. His property was dissipated by the war, but the debts remained. He scorned to take advantage either of the law of Louisiana excusing payment of obligations incurred in the purchase of slaves, or of the bankrupt law. He set himself to work to pay his debts. It was a grievous burden, but his soul knew no tiring. He steadily refused all offers of official position, and labored incessantly at his profession until within a few weeks of his death, which took place Sept. 13, 1884, at the advanced age of seventy-four.

The spectacle of a man devoting his life

to the payment of debts which he might have escaped with the sanction of the law was a common one in the troublous times of which we write, and in that symbol lies the chiefest glory of the civilization of the period which produced such men. There never was a time in the history of the world when so nearly a whole people regulated their daily conduct by what is best defined as "honor," as in the South during the epoch preceding and following the civil war.

Except his term as judge, Judge Wright held no office save that in 1847 he represented Giles County in the House of Representatives of the General Assembly, and at the end of the war he, with Judge McKinney and Francis B. Fogg, Esq., constituted a commission for enforcing the State's lien on the railways under the internal improvement acts.

His opinions as a judge were utterly without ostentation. He indulged in no elaborate discussion to display his learning or his reasoning power. He stated the controlling principle clearly and concisely, amplifying it only enough to show that in it was to be found the essence of justice. No man was more thoroughly familiar with the cases than he. He could almost recite the Tennessee Reports; but he disdained to make use of citations to authorities to any great extent. He sought for reasons, not precedents. His opinions had the unusual quality of ordinarily convincing the losing lawyer of his error. He had another quality in keeping with his nature. The opening sentence generally announced the decision of the case. He never indulged in the artifices used by judges to keep a lawyer in suspense as to the disposition of the case until he reaches the concluding sentence of the opinion.

As Judge Greer said to him, he used a rifle as a judge, but the shot-gun was his weapon as an advocate. In a very important case which had been on trial for several weeks before an able Federal judge, he filed brief after brief on the questions arising in the progress of the cause, until the number reached nine. One morning the judge, seeing a new brief prepared for filing, asked Judge Wright how it was that a judge whose opinions were models of terseness, should as a practitioner use such voluminous and numerous briefs. "Sir," he replied, "when I was a judge I had the power to say what the law was, and I said it as succinctly as possible; but in the trial of my causes I find it essential to be prepared on all points, because I don't know what a fool judge may decide."

He continued in full practice at the extreme age of seventy-four down until a few weeks before his death, his last years being as full of activity as his younger. As was said of him, "he loosened the hold on life, as a giant oak in green old age rushes to its fall."

When the business of the court was suspended because of the flagrant hostilities of the Civil War, it was composed of Judges Robert J. McKinney, Archibald Wright, and William F. Cooper, who had just been appointed in the stead of Judge Caruthers. Judge Cooper was sworn in, but never served as judge.

Nashville, the capital of the State, and which happened to be the place where the Supreme Court was last in session, was occupied by the forces of the Union on Feb. 25, 1862. A provisional military government was set up under the authority of the United States, but there was no attempt to restore the civil State courts. The State was from that time forward disputed territory, and scarcely a week passed that there was not a battle within the borders. Aside from this fact, practically the whole State was under arms; from its white population of 825,000, it furnished 100,000 soldiers to the Confederate army and 30,000 to the Federal army.

The disastrous defeats of General Hood at the battles of Franklin and Nashville in the latter part of 1864, made the Federal occupation of Tennessee secure. Andrew Johnson had been acting as military governor of the

State since 1862. When it became apparent to him that the power of the Confederacy was broken, and that the supremacy of the Union in Tennessee could not again be threatened, he undertook to reorganize the Supreme Court, though he had no warrant of authority for his action. On Jan. 25, 1865, he, as acting Governor, commissioned Russell Houston, Samuel Milligan, and Henry G. Smith as judges of the Supreme Court. Russell Houston declined the office, and before the court organized removed to Kentucky to become general counsel of the Louisville and Nashville Railroad Company. In the mean time Wm. G. Brownlow had been chosen as Governor by a Union convention held at Nashville, and was recognized and upheld as such by the United States authorities. On May 16, 1865, he commissioned Alvin Hawkins as Supreme Judge; and on Aug. 24, 1865, he commissioned J. O. Shackleford as such judge.

ARCHIBALD WRIGHT.

The court organized for the transaction of business at Knoxville on Sept. 11, 1865. It was composed of Judges Milligan, Hawkins, and Shackleford. By a series of resignations and appointments, its membership was changed; but the court continued to act until displaced by the Constitutional Convention of 1870. Aside from those named, it numbered among its members Henry G. Smith, George Andrews, Horace H. Harrison, and Andrew McClain.

This court is known to lawyers as the "apocryphal" court. Many of its decisions have been overruled, and its opinions are infrequently referred to as authority. There were two of the judges who were men of talent, and were good lawyers, Judges Milligan and Andrews. The opinions of Judge Milligan particularly were noteworthy. But he was soon promoted to be judge of the United States Court of Claims. The other men composing the court were of mediocre ability, who could not by possibility have reached a position of such importance in ordinary times.

All the members of the court, without exception, were bitter partisans. They had all been Union men, and they took the partisan view of all questions growing out of the war. Such cases were innumerable. The status of the seceding State was to be determined; acts of all the officers of its various departments were drawn in question; many payments had been made in Confederate money; contracts between the citizens of belligerent States were to be passed upon; returned Confederate soldiers were sued civilly for torts alleged to have been committed by them in their military service, and they were indicted under the criminal laws as well. The administration of Governor Brownlow assumed to itself the most extraordinary powers for depriving all not in sympathy with him of any share in the government, for punishing those lately in rebellion, and for suppressing all demonstrations hostile to his rule. He procured the passage of many oppressive acts from a com-

plaisant Legislature, and enforced them with great harshness and much bloodshed.

The Supreme Court, when these matters came before them, invariably rendered a strictly partisan decision. Its opinions were uniformly acceptable to the executive branch of the government.

It should be added, however, that the court was kind and courteous in its treatment of all lawyers appearing at its bar, whether Confederate sympathizers or not.

It is not in the province of this article to detail the methods by which the horrors of "reconstruction" were ended, and the body of intelligent people put in control of the State; but on Jan. 10, 1870, there assembled at Nashville the third Constitutional Convention of the State, a majority of the members of which disapproved of the course of Governor Brownlow and were desirous of seeing power lodged once more in the hands of the whole people of the State. The Constitution they adopted removed the judges then in office, and provided for a reorganization of the court.

PRACTICAL TESTS IN EVIDENCE.

VI.

By Irving Browne.

Experiments. — *Continued.*

In People *v.* Hope, 61 Cal. 291, a case of burglary, a witness for the people was permitted to experiment before the jury with a small steel bar which he had made for the purpose of screwing on it certain couplings or sockets, one of which was found in a hole over the bank-vault in question, and the other in the defendant's trunk.

On the trial of the Davis will case, in Montana, in 1891, in answer to the claim of the contestants that the will was written in Nigrossin ink (which was not known of until many years subsequent to the date of the will), it was shown by tests in court that it was written in logwood ink, which has been in use for forty years.

In a case in 1886, before "Tom" Hughes, who was a county judge, the question was who had won a foot-race; and being in doubt, he ordered it to be run over again in his presence. The "Law Journal" comments on this as follows: —

"The course taken by Judge Hughes in the case of the walking case recently before him shows how difficult it is even for the judge to subdue the instincts of the natural man. As an old hunter put to hack work pricks up his ears, and perhaps jumps over the hedge at the sound of the voice of a pack of hounds; so the author of 'Tom Brown,' at the mention of a foot-race, throws off his wig, and is ready to hurry to the ash-path. When the evidence on the question who won the race is not clear, to order it to be run over again is the newest form of new trial. It is not an effective form, because the man who wins the race to-day is not necessarily the man who would have won it three months ago; and we fear it is not contemplated by the practice of any court of law, whether county court or other. For the judge of law to turn himself into the judge of the course, besides being a little undignified, might lead to an action being brought against himself in his own court. These methods are less suitable for this prosaic time than for the mythical days of Sancho Panza or Haroun Alraschid."

It is probable that "Tom" is fond of a joke as well as a race.

On the trial, at Hamilton, Ont., of an action of damages for an injury sustained by the falling of a derrick, the plaintiff, Alfred Green, testified that since the accident whenever he shut his eyes he became dizzy and fell down. The defence claiming that Green was shamming, Mr. Carscallen, with the judge's consent, decided to test the man in the presence of the jury. Green had sworn that when he shut his eyes, usually in thirty seconds or less he would become so dizzy that he would fall to the ground. Mr. Carscallen drew a stop watch, and proceeded to try the experiment. The judge directed Green to step back three paces, then walk forward three paces, stop, and then close his eyes. Green, as he came deliberately forward, stopped and shut his eyes. In a moment he changed color, reeled back, and clutching the rail of the witness-stand, swung round and fell in a heap on the steps at Judge McMahon's feet. A daily paper said: "The scene was too real to doubt the genuine character of the man's affliction."

Mr. E. A. Angell, of Cleveland, Ohio, writes us: —

"In the case of Peoria Target Company *v.* Cleveland Target Company, for alleged infringement of a patent granted to Fred Kimble, for a target composed of pitch and plaster-of-paris, in the proportion of one hundred parts of pitch to seventy-five of plaster-of-paris, heard before Judge Ricks, U. S. Circuit Judge for the Northern District of Ohio, at Cleveland, in November of 1889, the court allowed us, representing the defendant,

against objection, to manufacture in court a target similar to the target described in the patent sued upon, but composed of the same materials in different proportions; namely, five parts of plaster-of-paris to four parts of the pitch. This target was manufactured by us in the presence of the court as a part of the argument of counsel, not claiming, of course, that it was evidence. This composition, namely, five parts of plaster-of-paris and four of pitch, was described in a previous patent issued in 1880, to one Woodward. Our contention was that the properties of the two compositions were essentially the same, and that there was no material difference between them."

Mr. Albert H. Gladding, of Norwich, N.Y., writes us: —

"In 1878 John W. Church, Esq., was district attorney of this county; and he put upon trial, at a court of sessions held by Hon. W. F. Jenks, County Judge, a prisoner under indictment for burglary. The prisoner's counsel was the late Isaac S. Newton, one of the brightest and ablest lawyers in this part of the State. The testimony upon the part of the people was to the effect that the defendant broke into and entered the dwelling in question through a certain cellar window. The defence produced in court the frame of the very window in question, and showed that its dimensions were nine inches by thirteen inches. The defendant was a man of full age, and appeared to be of ordinary size though rather slim and spare. At the close of the evidence the defendant's counsel moved for a direction to acquit, upon the ground that it was utterly impossible for the defendant to have committed the burglary as alleged and proved, to wit, through that cellar window. Any one looking at the man and the window-frame would have jumped to the conclusion that the prisoner had established a perfect defence. The court inquired of the district attorney if he claimed that entrance was effected in any other manner, or if he claimed that this was not the identical window-frame; which questions were answered in the negative. When the court seemed about to give the direction for acquittal, the district attorney arose suddenly, and in a stern and commanding voice told the prisoner to 'stand up.' He quickly and meekly complied. The district attorney with increased energy said to him, 'Hold up your right hand, sir, as high as you can reach.' It was done. 'Reach your left hand down by your side.' He did so; and having got him into that position, and while his counsel was looking on with amazement and curiosity, wondering what the unusual proceeding meant, the district attorney seized the window-frame, and throwing it over the prisoner's up-extended arm, drew it down to his arm-pit, and giving it a sudden jerk it came over his left shoulder, and then with both hands he stripped it down over his body with such force as to take two or three buttons off his waistcoat and produce an exclamation of anger or pain or both, while the window-frame lay around his feet on the floor unbroken. Everybody was taken by surprise, but none more so than the prisoner's able and usually alert counsel. It is needless to say that the court declined to direct an acquittal. The jury found the prisoner guilty, and he served his term in State's prison. Any one having the curiosity to try the experiment will find that he can 'crawl out of a much smaller hole' than he would expect, by taking the position Mr. Church put the prisoner in."

Judge Loran L. Lewis, of the New York Supreme Court, has given me two interesting instances of experiments in or out of court in his practice. Manke was on trial for murder. A witness testified that he saw him from behind, ascending a hill, facing the sun, wearing a pepper and salt suit. Mr. Lewis experimented at the same place, under exactly similar conditions, with persons wearing clothes of the color described, and of various other colors, and proved by observers that it was impossible to tell the color of any suit, on account of the sunlight. He also experimented with variously painted boards, with the same result. On the trial of Schell, for arson, a witness testified that he went with the defendant into the cellar of the house in question, in the evening; that the defendant put a thin layer of shavings in a box, sprinkled them with kerosene, set in the midst a lighted candle projecting above them, and fitted another box on the top so closely that no ray of light was visible from the outside. The fire broke out some hours after the time fixed by the witness. Mr. Lewis brought boxes, shavings, and candles into court, and conducted experiments under the

conditions described. The result was that when the boxes were close together the candle went out in nine minutes; the upper box being very slightly raised, — the thickness of a cent, — the time was increased to some sixteen minutes. The wider the space and the more air admitted, the longer the candle burned; but so great was the space required before the candle could have burned down sufficiently to ignite the shavings that the fire would have been easily visible through the cellar windows. The witness's story was thus demonstrated to be false.

Music.

In Reed *v.* Carusi, an action tried before Chief-Justice Taney, at Baltimore, concerning copyright of a musical air, a professional singer was sworn and sang the two songs to the jury. The poem was "The Old Armchair."

On Horne Tooke's trial, Lord Campbell informs us that "a witness having said that a treasonable song had been sung at a public meeting, Tooke proposed that it should be sung in court, so that the jury might ascertain whether there was anything treasonable, resembling *Ça ira* or the Marseillaise Hymn, in the tune." It does not appear that the test was adopted. This would seem to be an instance where, contrary to Shakspeare, those who *had* music in themselves were fit for treason, etc.

Of the renowned case of State *v.* Linkhaw, 69 N. Y. 214; s. c. 12 Am. Rep. 645, in which the defendant was indicted for disturbing a religious meeting by very bad but well-intended singing, and on the trial of which a witness was allowed to imitate it, I have given the readers of the "Green Bag" a rhymned version (vol. 1. p. 209), on the fidelity of which to the prose report I greatly pride myself.

On a recent hearing in the New York Supreme Court upon the application of Henry E. Dixey, the comedian, for an injunction against the singing of a song which he claimed to be an infringement of his copyright in the song, "It 's English, you know," Mr. Dixey upon the witness-stand was asked by the defendant's counsel to sing the song; but his own counsel objected. On an appeal to the court for a ruling on the admissibility of this evidence, the defendant was allowed to ask for a repetition of the words of the song. Mr. Dixey evidently did not want to sing the song; and before he could do so Judge Allen said that a copy of the words would be more satisfactory to him, and a recess was then taken while Mr. Dixey wrote out the words. After the recess, Mr. George Purdy, leader of the Boston Museum orchestra, was called and sworn. He took his violin, and placing the score of Mr. Dixey's song against a directory, played the tune to his honor. The music caused both the court and spectators to relax their features. The other song, "Quite English," was then played on the violin by the witness, and the resemblance was so close that all recognized it. A score was then presented of "When the Band begins to Play," and that also was rendered by the witness. Mr. Purdy did not think that there was any resemblance between the "English" songs and "When the Band begins to Play," at least to the ear of a musician. Several experts testified to the similarity of the songs. The unwonted echoes of the music through the court-house attracted a large audience, which apparently enjoyed the lively concert.

Memory.

In Innis *v.* State, 42 Ga. 477, a witness having testified that he committed to memory part of the play of Punch and Judy, while certain facts to which he had sworn were transpiring, the court allowed counsel on cross-examination to require him to repeat the dialogue in question.

ECCENTRIC WILLS.

THE making of wills by most people may be said to be a thing that is unpleasant to do at best, — indeed, so unpleasant is the idea associated with will-making that many neglect to make wills altogether and die intestate. Whimsical people, when they do make wills, usually produce characteristic documents. They rarely consult a lawyer, fearing, no doubt, that he might counsel them against doing what they intend. But whimsical bequests have sometimes served a useful purpose, and instances are not unknown of such bequests having been made by lawyers themselves.

Here is a case in point. William J. Haskett, a lawyer, who died in New York some years ago, left a will containing this curiously worded clause: "I am informed that there is a society composed of young men connected with the public press; and as in early life I was connected with the papers, I have a keen recollection of the toils and troubles that bubbled then and ever will bubble for the toilers of the world in their pottage caldron; and as I desire to thicken with a little savory herb their thin broth in the shape of a legacy, I do hereby bequeath to the New York Press Club of the city of New York $1000, payable on the death of Mrs. Haskett."

There is probably no more profitable class of business to a lawyer than that arising out of disputes about wills; and the following extract from a French advocate's will pithily expresses his opinion of his clients: "I give 100,000 francs to the local madhouse. I got this money out of those who pass their lives in litigation; in bequeathing it for the use of lunatics I only make restitution."

It is recorded of a rich old English farmer that, in giving instructions for his will, he directed that a legacy of £100 be given to his wife. Being informed that some distinction was usually made in case the widow married again, he doubled the sum; and when told that this was quite contrary to custom, he said, with heartfelt sympathy for his possible successor: "Aye, but him as gets her 'll deserve it."

A testator has considerable latitude given him in the expression of his wishes in his will; and as he is not afraid of libel suits in what he writes or dictates in such an instrument, he can be very caustic as well as very just. This is well illustrated in the following extract from the will of John Hylett Stow, an Englishman, which was proved in 1781: "I hereby direct my executors to lay out five guineas in the purchase of a picture of the viper biting the benevolent hand of the person who saved him from perishing in the snow, if the same can be bought for the money; and that they do, in memory of me, present it to —— ——, a king's counsel, whereby he may have frequent opportunities of contemplating on it, and by a comparison between that and his own virtue be able to form a certain judgment which is best and most profitable, — a grateful remembrance of past friendship and almost parental regard, or ingratitude and insolence. This I direct to be presented to him in lieu of a legacy of £3000 I had by a former will, now revoked and burned, left him." If the lawyer named was present at the reading of that will, his feeling may well be imagined.

M. Colombies, a merchant of Paris, had his revenge on a former sweetheart, a lady of Rouen, when he left her by his will a legacy of £1200 for having, some twenty years before, refused to marry him, "through which," states the will, "I was enabled to live independently and happily as a bachelor."

An uncommon case of eccentricity on the part of an Englishman occurred something over fifty years ago. His will contained the following unique paragraph: "I bequeath to my monkey, my dear and amusing Jacko, the sum of £10 sterling per annum, to be employed for his sole and exclusive use and

benefit; to my faithful dog, Shock, and my well-beloved cat, Tib, each a pension of £5 sterling, and I desire that in the case of the death of either of the three the lapsed pension shall pass to the other two, between whom it is to be equally divided. On the death of all three the sum appropriated to this purpose shall become the property of my daughter Gertrude, to whom I give this preference among my children, because of the large family she has, and the difficulty she finds in bringing them up."

Another instance of a bequest for the support of domestic pets is thus related: In 1875 Mrs. Elizabeth Balls, of Streatham, Surrey, Eng., after liberal legacies to hospitals and other charitable institutions, set apart the sum of £65 per annum for the support of her late husband's cob mare, and £5 per annum for the keep and care of a greyhound; the mare to be kept in a comfortable, warm, loose box, and not to be put to work either in or out of harness, and that her back should not be crossed by any member of her late husband's family, but that she should be ridden by a person of light weight, not above four days a week, and not more than one hour each day, at a walking pace.

A curious and peculiarly hard case came before a Vice-Chancellor in London in 1880. The facts are as follows: A Miss Turner devised large real estates to her father for life, and then to her brother on these conditions: "But if my brother shall marry during my life without my consent in writing, or if he shall already have married, or hereafter shall marry, a domestic servant," then such bequest to her brother to be void. The brother, it appears, came into possession of the said estates, and died in 1878, leaving a widow and two children. The suit was instituted against the widow and children, on the ground that testatrix's brother had forfeited his title to the legacy by marrying a domestic servant. It was contended on behalf of the widow that she had been a housekeeper, and not a domestic servant. The Vice-Chancellor, however, was of the opinion that a housekeeper was a domestic servant, and thus the legacy was forfeited.

A bequest made by a Frenchman may be styled "a new way to pay old debts," — that is, if it was availed of. Vaugelas, the famous French grammarian, was in receipt of several pensions; but so prodigal was he in his charities that he not only always remained poor, but was rarely out of debt, and finally acquired among his intimates the soubriquet of "Le Hibou," from his compulsory assumption of the habits of the owl, and only venturing into the streets at night. After disposing of the little he possessed to meet the claims of his creditors, he adds: "Still, as it may be found that even after this sale of my library and effects, these funds will not suffice to pay my debts, the only means I can think of to meet them is that my body should be sold to the surgeons on the best terms that can be obtained, and the product applied, as far as it will go, towards the liquidation of any sums it may be found I still owe. I have been of very little service to society while I lived. I shall be glad if I can thus become of any use after I am dead."

Dr. Dunlop, of Scotch origin, but at one time a Senator of the United States, left a very singular will. The doctor is described as having been a jovial and kindly man, and his will certainly bears witness to these characteristics. Here are some of its peculiar features: "I leave the property at Gairbread, and all the property I may be possessed of, to my sisters —— and ——: the former because she is married to a minister whom — may God help him! — she henpecks; the latter because she is married to nobody, nor is she likely to be, for she is an old maid and not market-ripe. . . . I leave my silver tankard to the eldest son of old John, as the representative of the family. I would have left it to old John himself, but he would have melted it down to make temperance medals, and that would have been a sacrilege.

"However, I leave him my big horn snuff-box; he can only make temperance horn

spoons out of that. . . . I leave to Parson Chevassie my big silver snuff-box as a small token of gratitude to him for taking my sister Maggie, whom no man of taste would have taken. . . . I leave to John Caddell a silver teapot, to the end that he may drink tea therefrom to comfort him under the affliction of a slatternly wife. . . . I leave my silver cup, with the sovereign in the bottom of it, to my sister ——, because she is an old maid, and pious, and therefore necessarily given to hoarding; and also my grandmother's snuff-box, as it looks decent to see an old maid take snuff." It was, no doubt, fortunate for this affectionate brother that he had left the scene of life before his sisters were made aware of the way in which he had remembered and characterized them, or there might have been some family hair-pulling.

The following very whimsical bequest is taken from a Scotch newspaper: Some years ago an English gentleman bequeathed to his two daughters their weight in £1 bank-notes. A finer pair of paper weights was never heard of, for the oldest got £51,200, and the younger £57,344.

Peculiarly worded wills have led to the waste of many a goodly patrimony. Heirs, executors, and beneficiaries seem to take a peculiar delight in squabbling over a testator's intentions. Montaigne, the celebrated philosopher, is stated to have got over any difficulties in the way of carrying out his testamentary intentions by the happy expedient of calling all the persons named in his will around his death-bed, and counting out to them severally the bequest he had made them. Many a whimsical testator might usefully follow Montaigne's example; but there is always a risk of the donor getting better, and finding himself penniless. I once heard of a case of this sort. A small farmer in Suffolk, England, being very ill, was advised by his affectionate relatives to distribute his money, and thus save legacy duty. He did so, but got well again.

The relatives declined to return these supposed death-bed gifts, and left the poor old farmer to seek parish relief.

In 1772, —— Edmunds, Esq., of Monmouth, Eng., bequeathed a fortune of upwards of £20,000 to one Mills, a day-laborer, residing near Monmouth. Mr. Edmunds, who had so handsomely provided for this man, would not speak to or see him while he lived. Again, in 1775, a Mr. Henry Furstone, of Alton, Hampshire, Eng., died worth about £7000 in funds, and, having no relations, he left this amount to "the first man of his name who shall produce a woman of the same name, to be paid them on the day of their marriage." Mr. John Innes, a well-to-do Lincolnshire (England) farmer, was of the opinion that a son having "expectations" is far less energetic than one having none; for it is recorded that he for many years suffered his son to go to another farmer as a laborer, but by his will left his hard-working son the handsome sum of £15,000.

In England it is not uncommon to hear of unmanageable sons and scapegrace nephews being cut off with a shilling; but the following case of a wife being so treated is unique, to say the least: In 1772 a gentleman of Surrey, Eng., died; and his will, when opened, was found to contain this peculiar clause: "Whereas it was my misfortune to be made very uneasy by ——, my wife, for many years from our marriage, by her turbulent behavior, for she was not content with despising my admonitions, but she contrived every method to make me unhappy; she was so perverse to her nature that she would not be reclaimed, but seemed only to be born to be a plague to me; the strength of Samson, the knowledge of Homer, the prudence of Augustus, the cunning of Pyrrhus, the patience of Job, the subtlety of Hannibal, and the watchfulness of Hermogenes could not have been sufficient to subdue her; for no skill or force in the world would make her good; and as we have lived separate and apart from each other eight years, and, she having perverted her son to leave and totally abandon me, therefore I give her a shilling." — *Ex.*

THE SUPERNATURAL IN CRIME.

DREAMS have played no small part in the unravelling of the mystery surrounding crimes, and the record of a few cases which have actually been elucidated in British law-courts may prove interesting to our readers.

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 afterward 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 Glenshie." 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 his 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 England.

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 Murdock 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.

In his sleep he declared that 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 particulars 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 afterward 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.

One would ask many questions anent this

case, such as: Were these two dreamers conversant with the locality or with the nephews? Did they have any prior knowledge of each other? The lawyers, of course, were conducting a criminal case, and not a scientific inquiry. One cannot help wondering how much evidence of this sort is tendered to the detective police, and whether it is always duly investigated. One readily understands that much of such dubious testimony is suppressed at its very source, from fear of ridicule on the one hand or of suspicion on the other. . . .

In May, 1812, Mr. Spencer Perceval, Prime Minister of England, was shot in the lobby of the House of Commons by one Bellingham.

It was claimed that eight days before the assassination, it was foreseen in a dream by a gentleman, a Mr. Williams, living near Truro, in Cornwall. The story has been often told, sometimes carelessly, sometimes with added "effects." We shall give the version of a gentleman whose father was with the dreamer at the date of his dream, as corrected by the version of another friend, who frequently heard the story from the lips of the dreamer himself, when in advanced age.

Mr. Williams, his brother and his partner, were, in the early part of May, 1812, visiting their mines in the eastern part of Cornwall. Mr. Williams had lately sent his son, Michael (afterward M. P. for the county), to London to confer with the Government respecting the duty on foreign copper. One morning, Mr. Williams, when driving with his friends, remarked that on the previous night he had had a singular dream of being in the lobby of the House of Commons, and seeing a tall man shoot a short one in the left side. He repeated this dream so often that his companions were rather annoyed. When he himself told the story in after years, he added that the shot was fired as from behind his shoulder, and that he heard an usher say that the murdered man was Mr. Perceval; that he had debated with his sons on the propriety of his going to London and warning the minister, but that they had dissuaded him, which he ever afterwards regretted. He added that it was eight days before the murder that he had this dream. His son, Michael, was in a committee room opening off the lobby when the murder took place, and returned straight home, where his father, the moment he saw him, exclaimed that he knew the news he had brought. When the old gentleman went to London, he sought for portraits of the assassin and his victim, but was not satisfied with the first he saw of the former, as the hero of his dream had "basket buttons" on his coat. Presently he found a print in which this detail was correctly portrayed. Mr. Williams was generally considered a very practical and unimaginative man.

The murderer, Bellingham, in his confession, owned that the murder had been fully conceived in his own mind for a fortnight before the deed was committed!

Is it possible that some "rapport" was established between Bellingham and Mr. Williams, by the presence of Michael Williams in London, and that the dream was a kind of "thought transference"?

LONDON LEGAL LETTER.

LONDON, March 11, 1893.

THE English judiciary contains no more strongly marked individuality than that of Mr. Commissioner Kerr, who presides in the City of London Court. The court in question is only a "county" court, but from the circumstances of being situate in the metropolis, and being the scene of an immense amount of litigation, and more especially as the judgment-seat of Judge Kerr, it enjoys a great fame. He is a Scotchman, with the defects and virtues of his race; extraordinary acumen, legal insight, knowledge of men, force of character make him a model judge, and suitors love his rapid and sensible methods of dealing with the cause list, al-

though the argumentative advocate has frequent occasion to deplore the Commissioner's refusal to listen to the exposition of his laborious if tiresome researches. But determination to walk by the light of his own understanding, sometimes yclept obstinacy, is equally a characteristic of our judge; and this feature of his judicial career has brought him into a now almost historic conflict with the Lord Chief-Justice, Lord Coleridge. This controversy turns on the question of the obligation of a county court judge to take notes of the cases tried before him. When there is an appeal to a divisional court of the high court, the notes of the judge below are invariably asked for. Now, it has on many occasions happened that when Lord Coleridge came to hear appeals from Mr. Commissioner Kerr, no such official record of the proceedings was forthcoming, the explanation being that the Commissioner stoutly declined to take notes of his cases, on the ground that he was under no legal obligation to do so, and that owing to the mass of business disposed of in his court, it was a course practically impossible. After a long controversy between Lord Coleridge and the Commissioner, the matter was finally submitted to judicial decision, with the result that Judge Kerr scored a victory. The court held that there was no legal duty on his part to take a note of the proceedings unless so required by a party to the action. After slumbering for a time the question has again been actively canvassed, not only in legal circles, but in the press; the "Standard" strongly recommending the judge to follow the sensible custom of his county court brethren rather than insist on his strict rights. The Commissioner has replied to his critics by applying to the corporation for the appointment of an official shorthand writer to take notes of every appealable case tried in his court. The application should certainly be granted, and raises the question whether official shorthand writers should not be attached to every court of justice. With us this practice is only known in the Divorce Court, where it has been in force with most excellent results for many years; but its extension to every court has been recommended by eminent judges, and is approved by most lawyers.

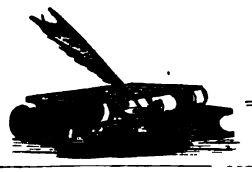
A movement is on foot to establish a club for the exclusive use of members of the Inner and Middle Temple, either within the precincts or in the immediate vicinity. This obvious requirement has during recent years been partially met by the Common Rooms which the authorities of the Inns of Court provide for the use of barristers and students; but the Common Rooms, however admirable in their way, scarcely supply the place of a regular club. For one thing, they are controlled to a large extent by the benchers, not by those who use them; and then they close at too early an hour, and on certain public holidays do not open their doors at all. The masters of the bench are not too favorably disposed towards the new scheme, as they see it would seriously affect the prosperity of the Common Rooms.

Since Professor Bryce, whose book on their Constitution Americans know well, gained cabinet rank as Chancellor of the Duchy of Lancaster, he has found his political duties too multifarious for the discharge of the functions of his chair at Oxford. He has been a great figure as a University professor, and attracted much larger audiences than most professorial lecturers in our old seats of learning generally succeed in doing. There will be many eyes set on the reversion to the professorship; among possible successors are Mr. Poste, the editor of "Gaius;" Mr. Sandars and Mr. Moyle, both famed for their editions of Justinian; and Dr. Erwin Grueber, of Munich, who has for some time past filled the post of deputy professor. I should not be much surprised, however, if the appointment were conferred on Mr. Thomas Raleigh, Fellow of All Souls and Vinerian Reader of Law in the University of Oxford, one of the most distinguished scholars of his day and a constitutional jurist of the highest eminence. Mr. Raleigh is a man, moreover, with political ambitions; and his friends are extremely anxious to see him in Parliament, where it is anticipated he would occupy a conspicuous place.

I alluded some time ago to the new career on which the "Law Journal" had entered under the new proprietorship Mr. A. Wood Renton, whom your readers know as a not infrequent contributor to your pages, has just been appointed editor. Mr. Renton was the most distinguished legal graduate of his day at Edinburgh, and held the much coveted distinction of the Bacon Scholarship at Gray's Inn. The proprietors of law magazines in London rather like the editorial chair to be filled by a practising barrister, as the journal is thus kept thoroughly in touch with the every-day life of the profession.

* * *

The Lawyer's Easy Chair.



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

BY IRVING BROWNE.

CURRENT TOPICS.

PAY FOR TALK. — There is a common impression that lawyers are paid more for talk than any other class of men. There is however one class that seems to crowd them hard, if the following, from the "Buffalo Courier," is to be relied on: —

"It is better to be at the head of a commonplace calling than at the tail of a distinguished one. A tiptop auctioneer, for instance, has a good deal better hold on success than a low-grade lawyer or doctor. It is said that an East Buffalo auctioneer, who lately broke the record by selling 345 horses in one day from one auction-block, receives $7,500 a year for two days' work in each week at East Buffalo This is $150 a week, or $75 a day. The same man receives $5,000 a year for two days' work each week in Philadelphia, and because he can't stand any more travel he has refused $8,000 a year to add to his labors one day in the week at Chicago. Thursdays he has to himself; and on that day he runs a horse auction of his own in Richmond, Va. He seems to be a type of the busy and successful man. How many Buffalo doctors and lawyers are doing as well?"

We should incline to answer the concluding question with "Not one." But it must be conceded that an auctioneer does more talking in two days than a lawyer in six, even allowing the latter to be a "hurricane talker," as another Buffalo newspaper recently very incorrectly described Roscoe Conkling. That distinguished orator was very deliberate in his utterance, — ninety words a minute, we believe. Almost any man can get a reputation for wisdom if he will only talk slowly or infrequently. Poe said that the popular notion that the owl is wiser than the parrot is an error.

CURIOUS LEGISLATION. — Bulletin number three of the New York State Library, concerning the Legislation of 1892, will be found timely and useful. There are many curious and suggestive things in it. For example, it would be interesting to know the reason of the New York act exempting bicycles and tricycles from the operation of the act requiring contracts for sale of personal property on credit to be filed in town clerk's offices. Why not pianos as well? Vermont seems to have "let up" a little in cases of conviction under the prohibitory liquor-law, by limiting the sentence to *three years!* Probably this came through Mr. Justice Field's strong protest in the case in the United States Supreme Court. A humane law of the same State is that prohibiting barbed-wire fences around schoolhouses. Let the small boy take green apples, and pumpkins for jack-o'-lanterns without hindrance. They could not do it in Maryland; for that State passed an act last year making it larceny to take melons from vines, fruits from vines, and vegetables from soil, the other conditions existing. This is probably aimed at the nocturnal and predatory Ethiop That is a good law of this State forbidding that any child under sixteen, under a criminal charge, shall be confined with adults. In Ohio sheriffs are permitted to ride with their prisoners on freight-trains. Louisiana provides artificial limbs for maimed Confederate soldiers. Georgia lets them peddle without license when indigent; and Mississippi gives pensions to them, their widows, and their colored servants. This exhibits much more piety than seems to be prevalent in Rhode Island, where it has been found necessary to denounce penalties for removing flags or markers from graves of soldiers. Georgia properly lets the inmates of insane asylums correspond without censorship. In Georgia we read of chain-gangs and whipping-posts, but black and white must not be chained or confined together. In New York people are forbidden to descend from balloons by parachute or trapeze. Here is a dangerous symptom of Anglomania, — in Massachusetts English bloodhounds are exempted from the act prohibiting the keeping of bloodhounds. Barmaids are prohibited in New York.

THE CRITIC. — "The Critic" is easily the first authority in this country among journals wholly devoted to literature. The book notices in "The Nation" are generally excellent; but "The Critic" surveys the whole field, and has no other interests. Its criticisms are marked by breadth and humanity, and the author will never feel that he is the victim of malice or jealousy, or a small desire to show off the critic's "smartness." Such a journal deserves success, and we believe this journal has obtained it in a large degree. It gives us pleasure to learn that the ownership of it has been acquired by Mr. J. B. Gilder,

its accomplished editor. "The Critic" will be an instructive and entertaining companion to lawyers who care for books that are not bound in sheep, and we believe there are many such lawyers. "The Critic" is to be somewhat illustrated in future.

DEGRADING OFFICES. — Mr. William Morris, of England, poet, manufacturer of wall-papers, and socialist, says that the offices of Judge and Prime Minister are "degrading." Mr. Morris is a singular compound of culture and combativeness. His poetry and papers are very different from his politics. He writes beautiful smooth verses of the Chaucerian spirit, and he makes the sweetest wall-papers and stuffs, but his politics are extremely levelling and ultra-democratic, not to say ferocious. We believe he regards property as a crime. We hope he systematically gives away the profits of his manufactures in verse, papers, and stuffs. Perhaps he does. We do not know. But to be consistent he ought to do so. If he were not so good a poet as he is, we should be apt to agree that property derived from poetry is a crime. That is the spirit in which we regard much of Swinburne and Browning, and all of Ella Wheeler Wilcox, and in which we regard the compensation which we receive from this magazine for our legal verses; and so we regularly devote it to a certain charitable object, which said charity begins at home. It is not our province to defend Prime Ministers. But we do not see how Mr. Morris can seriously regard the judicial office as degrading. We have always had an impression that it is an elevating and ennobling office, and that a good judge — and most judges are good — is the nearest approach to divinity. But we begin to feel timorous of our opinion. We really should like to know the basis of Mr. Morris's belief. Poets are such practical and worldly-wise persons that he must have some reason for it, satisfactory to himself at least; and he owes it to the legal profession to expound it, so that if it is sound they may shun the bench.

CRINOLINE. — The bill proposed in the New York Legislature prohibiting the wearing of crinoline or hoop-skirts has been referred to the committee on commerce and navigation. We should have preferred a reference to the committee on grievances. But the laughter and ridicule with which the threatened fashion is hailed, and the protests of the fair victims themselves, will not postpone the dreaded day. They will all rush to the dressmakers to be converted into guys as soon as the edict is issued Why is it that women are so eager to deform themselves? They are never willing to allow an approach to Nature's fair proportions, but are always humping or inflating themselves. If Nature had inflicted on their bodies permanently the deformities which they assume in dress at the dictates of fashion, they would submit to the most painful surgical operations, without anæsthetics, to be rid of them. Imagine a hump on the body like a bustle, or humps on the shoulders such as are now in vogue in dress! And now the poor creatures must look like balloons or be out of the style Probably with crinoline will come in its ancient accompaniment of the "waterfall," a sort of rat's nest of false hair at the back of the head. There is one way, and only one, in which the men can defeat this aeronautic movement, — let them refuse to pay for more than say twenty yards of material for a gown, and let the courts pronounce any excess above that quantity not a necessary. (We know what we are talking about, — we paid for thirty-six yards once!) Old Abinger said, "Let the wedding-dresses be struck off!" So let our courts say, "No crinoline!" And let the men refuse to get up and give their seats to women in the cars if they wear the accursed thing. We have thought about making it a cause for divorce, but we reserve that for a last resort. There is a case on record where a husband got a divorce because his wife struck him with her bustle! It is said that Ben Franklin wrote a tract entitled "Hooped Petticoats Arraigned and Condemned by the Sight of Nature and the Law of God."

SHAFTESBURY. — One of the most interesting recent biographical sketches is that of the Earl of Shaftesbury, author of the writ of *habeas corpus*, by Hon. Alexander Martin, in the current number of the "Michigan Law Journal." The most that the young lawyer ever hears of this daring and indomitable man is Dryden's satirical lines on him in "Absalom and Achitopel." He was not a very admirable character nor much of a lord chancellor, but the Anglo-Saxon people owe him a great debt of gratitude for drafting and carrying through this measure. Mr. Martin relates the following incident: —

"It is more than traditionary that the third reading in the house of lords was carried by a mistake in the tally. Bishop Burnet, who is a partial historian of Shaftesbury's life, says: 'Lords Grey and Norris were named to be tellers. Lord Norris, being a man subject to vapors, was not at all times attentive to what he was doing. So, a very fat lord coming in, Lord Grey counted him for ten, as a jest at first; but seeing Lord Norris had not observed it, he went on with his misreckoning of ten; so it was reported to the house, and declared that they who were for the bill were the majority, though it indeed went on the other side.' After the majority in its favor had been announced from the chancellor's seat, Shaftesbury, perceiving a commotion among the opponents of it, as from a surprise at the result, immediately took the floor, and spoke on some other matter for nearly an hour, concluding with a motion relating to the matter of which he had

been speaking During his speech many members entered and left the house, so that the division if called for again could not have been taken A division was taken then as at the present time, by all the voters retiring and coming back through two doors — and not by ayes and nays, as in American assemblies. The bill as thus passed by the lords was hurried down to the house of commons, for agreement to the amendments. The conference between the houses was managed with so much address by Shaftesbury, that all objections to the amendments were waived by the commons, and the bill reported back to the lords as perfected. 'Soon after the king came in, taking his seat on the throne, and, the bill being read by its title as having passed both houses, he assented to it, and it became an enduring charter for the relief of prisoners and captives."

FUTURES. — We have never entertained a friendly feeling for contracts for the purchase and sale of "futures;" but Justice Blandford, of Georgia, paints them in vivid terms of reprobation. He says of them that "this ferocious beast has been allowed to stalk about in open mid-day, with gilded signs and flaming advertisements, to lure unhappy victims to its embrace of death and destruction." This is indeed a terrible picture of an advertising animal.

SPURS FOR JUDGES. — One of our London legal exchanges remarks: —

"What allegory is contained in the presentation by the tradesmen of Walsall to Baron Pollock and Mr. Justice Hawkins of a pair of silver spurs apiece? — sterling silver, bearing the names of the learned judges? Spurs indicate an unwilling horse, and the necessity for more speed. But how can that apply to her Majesty's judges? We fail to appreciate the humor of the incident."

We have no information as to Baron Pollock, but the gift was certainly appropriate as to Mr. Justice Hawkins, for he is well known to be a lover of horse-racing Perhaps there was a hint in the gifts that the donees ought to ride their circuits more.

READING OPINIONS FROM THE BENCH. — The practice of reading opinions from the bench still obtains in New Jersey. So do some other foolish things, such as having an ultimate court of fourteen, and of having four of these persons who do not know any law. The "New Jersey Law Journal," while regarding the practice as "somewhat of a bore," seems to regard "reading day" as a convenient opportunity for the lawyers to assemble and have a good time. In commenting on this the "New York Law Journal" asserts that the practice "still survives in the Supreme Court of the United States." Unless we have been misinformed, it was discontinued there several years ago, save in cases of exceptional importance. The New Yorker however very aptly suggests: —

"If a regard for tradition and precedent must still be humored, we would suggest that there be procured for every court where this usage still obtains a composition portrait of eminent members of the bar, which, after business hours or on holidays, might be adjusted for panoramic view from the bench. Then, if the artist of the Eden Musee would prepare lifelike images of the judges to sit in the accustomed seats of their originals, and a ventriloquist were engaged to make each judge's opinion seem to issue from his own mouth, sentiment could be conserved by machinery, and much valuable time saved. 'Reading Day' is a lingering institution of a time when ceremony was made much more of than at present, and when the volume of legal business was comparatively small. The universal complaint from all courts of importance to-day is that the calendar is over-crowded, and that the judges are pressed for time to dispose of their work. What a vicious squandering of the public time it therefore seems to devote a substantial portion of a day each week to the oral delivery of opinions, which are immediately placed on file and made accessible to the parties principally interested, as well as the bar in general! Chief Judge Sanford E. Church, whose sterling common-sense made him a valuable — almost a great — judicial officer, is said to have once remarked to a lawyer, who was reading his printed points, in lieu of an oral argument, to the Court of Appeals, that all the members of the court could read, and that if the gentleman had nothing to say, outside of what he had already printed, he had better submit the controversy forthwith. A substantially similar remark might, with great point, be addressed from the bar to the bench of a court that persists in orally reading opinions, for no better reason than that such has always been the rule."

We flatter ourselves that for once we can improve on the New Yorker's suggestion. Let each judge, instead of writing, spout his opinions into a phonograph, and let them be ground out to those who desire to listen, thus saving the judges a day in which to do some sensible work.

CATS IN LAW. — "Our Animal Friends" is a monthly publication at Boston in the interest of dumb animals. Its matter is usually judicious as well as humane, but occasionally, it seems to us, it overdoes the sentimental. For example, from the last number we extract the following: —

"'A cat has fallen down a chimney from the roof to the first story of a tenement house on East 26th Street, and the housekeeper refuses to let any one get it out,' said a little girl to President Haines, just as he was leaving headquarters for the night. 'We 'll see about that at once,' replied the President Officer Lambert was instructed to go and have the imprisoned animal 'released immediately,' and to arrest the housekeeper or any one else who might obstruct or interfere with him. The plaintive mewing of

the cat was plainly heard through the brick wall of the bedroom on the first floor. 'I found it necessary, in order to secure the release of the animal,' said the officer in his report of the case, 'to break down about five feet of the masonry, and so informed the janitor and asked his assistance. This he refused, and protested against my breaking through the wall.' 'The cat must be released at all hazards,' was the officer's reply, and obtaining a hammer and chisel, he set to work After some time an opening was made, but kitty could not be seen or heard. No amount of coaxing could induce her to respond, and the rescuers were about to give up the task when pussy's little mistress called her pet by name. From out of the depth of the dark hole came a plaintive mew in answer to the familiar voice, and after a little more persuasion on the part of the little girl, pussy made up her mind it was all right. But she had got fastened between two brick partitions in the chimney, and it was impossible for her to extricate herself without assistance. She was finally rescued, and placed in her little mistress's arms, who, with tears streaming down her cheeks, thanked the officer for saving her pet from a cruel death. The belligerent janitor was taught a lesson he will not forget; viz., that a cat is as much under the protection of the laws of the State and the society as a human being."

This is bad law and sentimental nonsense. If a cat trespasses on our premises, we do not believe that any person in the humane business has any legal right to tear our premises to pieces to release it, and thus put us to expense and trouble. It certainly is silly to say that "a cat is as much under the protection of the laws of the State and the society as a human being." "Ye are of more value than many sparrows," said Christ to his disciples. If a cat screeches nightly on our roof or our back fence, we may lawfully kill it. We could not lawfully go so far toward a human being.

COATS OF ARMS. — In the March "Century," in an article on Westminister Abbey, are quoted some words spoken by Archdeacon Farrar in his sermon at the memorial service in honor of General Grant in 1885. The writer says: "He cited the declaration of a preceding President who had avowed that his coat-of arms should be 'a pair of shirt-sleeves,' as an answer showing 'a noble sense of the dignity of labor, a noble superiority to the vanities of feudalism, a strong conviction that men are to be honored simply as men, and not for the prizes of birth and accident.'" If the good churchman had known or recalled the occasion of that President's saying, he might have hesitated about pronouncing such an eulogy upon it. The saying was by President Pierce in reference to his grandfather's shirt-sleeves, and they did stand for a good deal of labor, namely, the whipping of the British at Bunker Hill, which was the occasion to which the President alluded.

NOTES OF CASES.

LIBEL — "BUCKSNIFF." — Buckstaff *v.* Viall, Supreme Court of Wisconsin, 54 N. W. Rep. 111, is a case to make Dickens' ghost laugh, and shows how powerful literature is even after the writer is dust. It was held that a newspaper article alluding to the plaintiff, Buckstaff, as "Bucksniff" is libellous. The court say: —

"1. The name itself is libellous. It is a nickname which is a name of reproach, and an opprobrious appellation, and is in the similitude of 'Pecksniff,' one of the familiar and most contemptible characters in Dickens, and readily suggests that name to the reader, and it is repeated several times. It is used to excite ridicule and contemptuous derision. He is called 'Senator Bucksniff' to more clearly show it was meant for the plaintiff. The article is of and concerning the plaintiff as Senator of Winnebago County. He is also called 'His Majesty, Bucksniff,' 'A legislative god,' 'Dearly beloved Bucksniff,' 'Divine Senator,' 'Mighty Being,' 'Omnipotence.' These appellations may mean that he is vain, self-conceited, pompous, self-aggrandizing, and assumes a despotic and godlike character above his constituents and all other men, and has to be prayed to and beseeched for legislative favors; or it may be, and probably is, ironical, which is a kind of ridicule which expresses a fault and apparent assent, but meaning the opposite, — that is, that he is not the greatest, but the smallest and meanest; or sarcastical or satirical, indicating scorn, contempt, a taunt or a gibe. These very words and phrases are per se libellous. 'That which is written or printed and published, calculated to injure the character of another, by bringing him into ridicule or contempt,' or 'tends to prejudice him in his office,' is libellous per se, by all the authorities. The address to the plaintiff as 'O, dearly-beloved Bucksniff,' is ironical and contemptuous, meaning the opposite, — hated, despised Bucksniff. The phrases, 'beautiful senatorial god,' 'and look with thy mighty right eye alone,' are explained by a colloquium, not by an innuendo, as claimed by the learned counsel of the appellant 'An innuendo is to define the defamatory meaning which the plaintiff sets on the words, and show how they came to have that defamatory meaning, and how they relate to the plaintiff.' A colloquium is the statement of extraneous facts and circumstances necessary to fully understand the defendant's words. The complaint states that these words were spoken 'to sneer at and ridicule the deformity of the plaintiff, caused by a partial paralysis of one side of his face and body.' The learned counsel of the appellant contends that they have no such meaning. But that is a question for the jury, on the proof of the facts stated. It is difficult to understand what these phrases do mean, if they have not reference to some bodily deformity that gives the plaintiff's face an ugly or disagreeable appearance The word 'beautiful' is used ironically, to mean the opposite most clearly, and the 'mighty right eye alone' would indicate that the other eye was closed or injured It seems very probable that the explanation in the colloquium is the correct one. With this explanation, the phrases are clearly libellous, as exciting ridicule, contumely, and shame."

A more ancient reference to literature held to be libellous was in the case where the plaintiff had been stigmatized by the defendant as a "frozen snake," meaning that he had been guilty of base ingratitude.

INFANCY. — The tenderness of most of the courts towards infants is illustrated by Chicago, etc. Ry. Co. *v* Mc Arthur, 53 Fed. Rep. 464, where the syllabus is as follows: —

"Some children playing near a railroad track within the limits of a town, upon hearing the whistle of an approaching train, placed pins upon the rail, and then ran into some bushes. The persons in charge of the train intended to make a 'flying switch,' so as to cut out several cars from the middle of the train, and for that purpose the train was cut in three sections, the conductor pulling the pin between the first and second section, and then immediately going to the rear of the first car of the second section to man the brake. After the first section had passed, the children ran out from the bushes, and one of them, while stooping to pick up the pins, was struck by the second section, the conductor being unaware of his presence. The place of the accident was within the limits of a street which, according to the plat of the town, here crossed the track; but the street had not been opened for vehicles, and was only used by pedestrians. *Held*, that on these facts the court properly refused to direct a verdict for defendant, for the failure to have a lookout on the front of the second section tended to show a want of proper care."

On the point of contributory negligence the court said: —

"It is certainly not illegal for children or adults to engage in what may be termed 'play;' and if while so engaged need arises for going upon a street, they are justified in so doing, provided due care is used in guarding against accidents Thus, if persons engage in playing ball at a place where such sport is permitted, and the ball happens to be thrown across or into a public street, certainly any one of the players, whether a child or adult, may go upon the street for the purpose of getting the ball, without being deemed a trespasser. . . . The right to pass along or across streets or other highways is certainly not limited to those uses which pertain to business, as distinguished from pleasure or amusement; and therefore the mere fact that a person is engaged in what is called 'play' at the time he goes upon a street does not necessarily make him a trespasser thereon."

This is quite in harmony with the hoop-rolling case in our last number. Again, in Sandford *v* Hestonville, etc. Ry. Co., Pennsylvania Supreme Court, 25 Atl. Rep. 833, it was held that where a child riding on the platform of a street car is of such tender years as not to be chargeable with negligence, and there is some evidence, although disputed, that the conductor approached for fare in a manner calculated to frighten him, so that he jumped and was injured, the case is for the jury. The conductor should approach not "like the rugged Russian bear," etc., but with a smiling countenance and soothing words!

NUISANCE — FISH-OIL FACTORY. — In Tuttle *v.* Church, 53 Fed. Rep. 422, it was held that the operation of a factory for making oil and fertilizers from fish should not be enjoined on the petition of the owner of a summer cottage distant a mile and a half therefrom, when the family of counsel instigated, directed, and furnished money to carry on the suit; when there is no regular or serious pollution of the water, and the offensive odors have decreased by reason of improved processes so as to be seldom troublesome in the summer; when the cottager has lived in that vicinity thirteen years, and in his present house ten years, while the factory had been in operation twenty years; and when the granting of an injunction would inflict great injury upon the factory owners and many employés, while its denial would injure the cottager but little.

Citing the oft-quoted language of Vice-Chancellor Bruce, in Walter *v.* Selfe, 4 De Gex & S. 322: —

"The inconvenience must not be fanciful, or one of mere delicacy or fastidiousness, but an inconvenience interfering with the ordinary physical comfort of human existence, and not merely according to elegant or dainty habits of living, but according to the plain, sober, and simple notions among the English people."

So one who neighbors to Caliban may not reasonably complain that he "hath an ancient and a fish-like smell."

ELEVATORS. — In Lawrence *v.* Mycenian Co., New York City Common Pleas (1 Misc. Rep. 105), it was lately held that the failure of a landlord to furnish proper elevator service to an upper tenant in a building provided with an elevator for the use of the tenants amounts to an eviction, and is a valid defence to an action for rent. The lease was of a loft (it does not appear how high up), and the only allusion to the elevator was in the words excepting from the demise "the hallway and the hatch and elevator ways which are for the common use of all the tenants." There was a covenant for quiet enjoyment This is a very important doctrine to upper tenants of "sky-scrapers." The court say: —

"But we are to assume the facts involved in the verdict; and they are, that the plaintiff retained charge and control of the elevator; that its use by defendant was part and parcel of the estate demised, and indispensable to its beneficial enjoyment; that of such enjoyment the defendant was deprived by plaintiff's persistent mismanagement of the elevator and neglect to repair it; and that because he was so denied the beneficial enjoyment of the premises, the defendant abandoned them before the rent in suit fell due.

That upon proof of these circumstances the jury were warranted in finding the fact of eviction is hardly a disputable proposition in the jurisprudence of New York. Tallman *v.* Murphy, 120 N. Y. 345; Koehler *v.* Scheider, 15 Daly, 198, 199; Bradley *v.* DeGoicouria, 12 id. 393, 397; Duff *v.* Hart, 40 N. Y. St. Repr. 676; Denison *v.* Ford, 7 Daly, 384; Bank *v.* Newton, 57 How. Pr. 152; 76 N. Y. 616; Cohen *v.* Dupont, 1 Sandf. 260; Dyett *v* Pendleton, 8 Cow. 728; Edgerton *v.* Page, 20 N. Y. 281."

NAMING OF CHILD — CONSIDERATION. — In Diffenderfer *v.* Scott, 32 N. E. Rep. 87, the Appellate Court of Indiana have held that a note given by the maker to a child, in consideration that the parents should name it after him, is valid. This followed Wolford *v.* Powers, 85 Ind. 294; S. C. 44 Am. Rep. 16, without discussion In both cases the promisor orally agreed to provide for the child's education. In the latter case, in an opinion of some fifteen pages, the court referred to no case precisely in point. The following paragraph contains the substance of the discussion on principle: —

"The surrender, at the intestate's request, of the right or privilege of naming the appellant's child, was the yielding of a consideration. The right to give his child a name was one which the father possessed, and one which he could not be deprived of against his consent. If the intestate chose to bargain for the exercise of this right, he should be bound; for by his bargain he limited and restrained the father's right to bestow his own or some other name upon the child. We can perceive no solid reason for declaring that the right with which the father parted at the intestate's request was of no value. It is difficult, if not impossible, to invent even a plausible reason for affirming that such right or privilege is absolutely worthless. The father is the natural guardian of his child, and entitled to its services during infancy, and within this natural right must fall the privilege of bestowing a name upon it. In yielding to the intestate's request, and in consideration of the promise accompanying it, the appellant certainly suffered some deprivation and surrendered some right. The rule is, that 'It is sufficient if there be any damage or detriment to the plaintiff, though no actual benefit accrue to the party undertaking.' Addison Cont., Sec. 9, Glasgow *v* Hobbs, 32 Ind. 440. Conceding that the intestate derived no benefit, still, as the appellant suffered some detriment and yielded a right, there is a legal consideration."

There seems no answer to this reasoning, although the consideration was slighter than in Hamer *v.* Sidway, 124 N. Y. 538; S. C. 21 Am. St. Rep. 693, where the uncle promised the nephew that if he would refrain from tippling, using tobacco, swearing, and gaming, until he came of age, he would pay him $5000. The court said: "It is sufficient that he restricted his lawful freedom of action within certain limits upon the faith of his uncle's agreement." See Lawson Contracts, § 95. So in Dunton *v.* Dunton, 18 V. L. R. 114, it was held that the agreement of a divorced husband to pay a stipulated monthly sum to his divorced wife on consideration that she "shall conduct herself with sobriety, and in a respectable, orderly, and virtuous manner," is binding. But in White *v.* Bluett, 23 L. J. (Ex.) 36, a promise on the part of the son "not to bore" the father was held insufficient to support a promise by the father.

CONTRIBUTORY NEGLIGENCE BY NOISE. — A novel question of contributory negligence lately arose in the Supreme Court of New York, in Koehler *v.* Rochester, etc. Ry. Co. (to appear in Hun's reports). The court said, by Dwight, P. J.: —

"The plaintiff was hired as a musician to accompany a pleasure-party from Rochester to Irondequoit Bay, on a Sunday morning in August, 1892. There were twenty-eight of the party, and they went and returned in a hired carry-all, driven by the owner. On their return, in the evening, they came into the city by Jennings Street, and it was just about nine o'clock when they reached the intersection of Jennings Street with North Avenue, on the east side of which was the track of the defendant's road. At this crossing the carry-all was struck by a locomotive engine of the defendant, drawing a train from the north, and the plaintiff was badly injured. There was evidence strongly tending to show that as the carriage approached the crossing, and up to the moment of the collision, the company was engaged in hilarious singing and shouting, which must probably have prevented any effective listening for an approaching train. [The plaintiff was acquainted with the locality, and knew a train was due about that time.] Such being the case, counsel for the defendant, at the proper time, requested the court to charge 'that if the plaintiff and his companions in the carry-all approached this railroad with music and singing, and that thereby they were prevented, or he was prevented, from hearing the bell of the train, if it was rung, he was guilty of contributory negligence, and cannot recover.' The court declined to vary the charge already given in this respect, and counsel for defendant accepted. But the court thereupon proceeded to instruct the jury further in this particular, and to the effect that only so far as the plaintiff concurred in making the noise, and was a party to it and helped it along, could he be charged with carelessness in going upon the crossing with such a noise about him. This was not what the court was requested to charge, but rather was calculated, we think, to convey an impression contrary to the purpose of the request. The proposition which we think was fairly presented by the request, was that it was negligence in the plaintiff to go upon the track with the din of noise in his ears which prevented him from hearing the sound of the approaching train; and this without regard to whether he was making or helping to make the noise. We think the proposition was a correct one; that it was the duty of the plaintiff — familiar as he was with the situation and its dangers, knowing that the train, if approaching, could not be seen, and that the only safeguard was the sense of hearing — to refuse to go upon the crossing in

a noise which prevented the exercise of that faculty. If his warnings and expostulations had no effect upon the driver or the company, it was his duty to look out for his personal safety, and escape, if he reasonably might, from an environment so fraught with danger to himself. And this, it would seem, he could easily have done, because, as he testifies, the horses were going at a walk, and he was seated immediately at the door in the rear end of the vehicle, — in the last seat on the south side, next the top of the steps by which passengers alighted. We think the defendant is entitled to an instruction to the jury, to the effect that if the plaintiff permitted himself, under the circumstances of this case, to be carried upon that crossing in a noise of singing and shouting, which prevented him from exercising his sense of hearing to discover the approach of the train, he was guilty of negligence which contributed to produce the casualty of which he complains, whether he was engaged in making the noise or not."

REMEDY OF PASSENGER EJECTED FOR WANT OF TICKET. — In a recent Michigan case (Mahoney *v.* Detroit City Railway), the defendant's street car in which plaintiff was riding did not go to the end of their line,— plaintiff's destination. The conductor informed him when the car stopped he could take another car to the end of the line. Plaintiff had paid his fare in the first car, but had no transfer or any evidence, except his own statement, that he was entitled to ride on the second car without paying. On his refusal to pay the fare demanded, he was ejected, and brought an action for damages. It was held that he could not recover, even if he had a contract with defendant for a ride to the end of the line, because the conductor was not bound to accept his statement that he had such a contract; it was plaintiff's duty to pay his fare, and seek redress for violation of contract. The "Canada Law Journal" very pertinently observes: —

"There was either a contract to carry the plaintiff, or there was not If there was, was it not the duty of the company to carry out that contract, and if necessary provide transfer tickets, or, as is done in some cities, have a transfer agent? And why should the plaintiff be put to the expense of a suit to establish his rights? Why should the company seek to shelter itself by the ignorance of its agent? As far as this passenger was concerned, the conductor was the company."

This is good sense. Common people do not know the fine distinction between an action for ejection and an action for breach of contract to carry. There ought not to be any. The sufferer ought to be able to recover on pleading and proving the precise facts, and not to be bothered with forms of action.

"VISIBLE SIGNS." — An interesting point of accident insurance was recently decided by the Supreme Court of New York, in Gale *v.* Mut. Aid and Accident Association, 47 Albany Law Journal. By the terms of the policy the company was not to be liable for any disability caused by an injury of which there should be no "external or visible signs." The plaintiff strained his recti muscles in lifting. There was no injury apparent to or ascertainable by the eye; but the injury was ascertainable by manipulation, showing rigidity and tenseness of a painful description. This was held to be a "visible injury." The court said: —

"The evidence of the injury must be external, objective, but it need not be visible to the eye. . . . Information derived through the sense of feeling may be quite as satisfactory and convincing as that derived by sight. The word 'visible' is defined by Webster to mean, 'noticeable, apparent, open, conspicuous.' In the Century Dictionary, 'as apparent, open, conspicuous, as a man with no visible means of support, discernible, in sight, obvious, manifest, clear, distinct, plain, patent, unmistakable.' An object that is noticeable, apparent to the touch, may be said to be visible. The surgeons testified that a fracture of a rib would not be visible to the eye, but could be easily ascertained by the use of the hand."

This reasoning is satisfactory as to "visible," but it seems to us that a plausible argument might be made upon "external." Was there any "external sign"? The sign, to be sure, was discovered externally, but was it not internal? Suppose a lawyer puts his shingle only upon the interior wall of his office, but so that it can be seen through the window. Is that an "external sign"?

LOST AND MISLAID PROPERTY. — In Loucks *v.* Gallogly, 1 Misc. Rep. (N. Y.), 22, Wilkinson, J., of the Albany City Court, very clearly points out the distinction between lost property, to which the finder has title except as against the owner, and mislaid property, to which he gets no title. He says: —

"But it is held that articles left by strangers or customers in a shop or other place of business where it is probable they will return and claim them, and where the situation of the articles indicates that they were voluntarily placed where found, and inadvertently left or forgotten, are not considered as lost within the rule stated; and the proprietor of the premises where the property is found is held to have the better right to hold the same for the owner. Lawrence *v.* State, 1 Humph. 228; 34 Am. Dec. 644; McAvoy *v.* Medina, 11 Allen, 548; 87 Am. Dec. 733; Kincaid *v.* Eaton, 98 Mass. 139. The question here is whether the money found by plaintiff was 'lost property' in the legal sense of the term. It has been held that in order to constitute legal losing, the thing must have been actually *lost* by the owner, and not merely *mislaid*; that is, he must not voluntarily and purposely have laid it away in a certain place, for a time, with the intention of retaking it, and then have forgotten where he had placed it; but it must have involuntarily and accidentally, as respects the owner, gotten out of his possession. In the case of McAvoy *v.*

Medina, 11 Allen, 548, a customer found a pocket-book which was lying on a table in a barber-shop, and gave it to the barber to advertise for the owner. The owner never appeared, and the barber refused to give it to the finder on his demand. The finder then brought an action against the barber to recover it. The court in its opinion said: 'But this property is not, under the circumstances, to be treated as lost property in that sense in which a finder has a valid claim to hold the same until called for by the true owner. This property was voluntarily placed upon a table in the defendant's shop by a customer of his who accidentally left the same there and has never called for it. The plaintiff also came there as a customer, and first saw the same and took it from the table. The plaintiff did not by this acquire the right to take the property from the shop, but it was rather the duty of the defendant when the fact became known to him to use reasonable care for the safe-keeping of the same until the owner should call for it.' The opinion cites the cases of Bridges *v.* Hawkesworth, 7 E. L. & Eq. 424, and Lawrence *v.* State, and referring to the latter, says: 'The court there take a distinction between the case of property thus placed by the owner and neglected to be removed, and property lost. It was there held that "to place a pocket-book upon the table and to forget to take it away is not to lose it in the sense in which the authorities referred to speak of lost property." We accept this as the better rule, and especially as one better adapted to secure the rights of the true owner.' In Kincaid *v.* Eaton, 98 Mass. 139, a pocket-book was found within a banking-house on a desk provided for the use of customers (as in the case under consideration), and it was held that the discovery of the pocket-book, voluntarily placed on the desk in the bank, was not the finding of lost property. In People *v.* M'Garren, 17 Wend. 460, where a man placed his whip on the counter in a store and went away forgetting to take it, the court held the whip was not lost property, and the taking and concealing of it by the storekeeper was held larceny."

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.

EVER since we undertook to run a portrait gallery in the "Green Bag" we have had a presentiment that some day or other we should, like "Little Buttercup," get some of these judicial babes "mixed up." We have used the utmost care to prevent such an occurrence; but in spite of all precautions we learn from the "London Law Journal" that the portrait published in our February number as Lord Justice Bowen is not his lordship

LORD JUSTICE BOWEN.

at all. As we have not the pleasure of an acquaintance with the Lord Justice, and were therefore unable from personal observation to identify his portrait, we relied upon what we supposed to be good proof of its genuineness. The portrait published was taken from a photograph secured from the London Stereoscopic Company, and labelled LORD JUSTICE BOWEN; so that our slip was an excusable one. We tender his lordship our humble apology for introducing him to the legal profession in America under false colors, and repair, so far as is possible, our error by presenting herewith a portrait which is vouched for as correct by one who knows him.

Our "Disgusted Layman" furnishes the following bits of legal humor: —

Editor of the "Green Bag":

SIR,— There is a good story of your great lawyers Judge Hoar and General Butler when opponents in a case of a new trial. General Butler quoted, "Eye for eye, skin for skin, tooth for tooth, yea, all that a man hath, will he give for his life." To which Judge Hoar replied, "Yes, the devil quoted that once before in a motion for a new trial." This was severe enough, but will not compare with the old, almost forgotten story of Lord Chatham, who, in urging some grant of public money, was opposed by a Chancellor of the Exchequer who was not above suspicion of personal peculation; and when the chancellor quoted, "This ointment might be sold for much and given to the poor," Chatham replied by finishing the quotation: "This Judas said, not that he cared for the poor, but that he was a thief, and kept the bag and stole what was put therein." Of all retorts this is the most savage I have ever heard. A distinguished bishop of the Episcopal Church made the *neatest* reply I ever heard of; arriving late at a small town one night, he found the hotel closed, and hammering at the door for admission, a neighbor stuck his head out of an adjoining window with, "Say, stranger, knock like h—l!" to which the bishop replied, "I don't know how."

A manufacturer of fertilizers near my home was not above gulling the honest farmer; and his superintendent made some experiments in mixing coal-dust and fire-clay in the fertilizer, using ten per cent of peculiarly loud-stinking rotten bone, the result being that an article was prepared having all the smell and appearance of the fertilizer with only ten per cent genuine. The proprietor exclaimed in his delight, "Why, Andy, if the Lord is only good to us and gives us good crops down Savannah way [his principal market], our fortune is made!" It is hardly to be presumed that "the Lord" bent an ear to this wish; but the manufacturer made a fortune all the same.

There are many stories of President Lincoln's faculty of getting rid of bores; but the one related by an assistant attorney-general under Mr. Lincoln is unequalled. Three parties bedevilled the president for some privilege until he was tired out; and on their being announced, Mr. Lincoln said: "Gentlemen, I am tired of this; let me tell you a story I was reminded of when you three were announced. A boy at school in Illinois was given that chapter in Daniel to read wherein the names of Shadrach, Meshech, and Abednego are recited, and after many failures to remember the names, was promised a flogging if he did not have them right the next day. The next day the boy got on with his lesson very well until he came to the verse ahead of the one reciting these names, when he hesitated and burst out, "There comes them three d——d fellows again." Needless to say, this particular three left Mr. Lincoln in peace after that.

Is the story of some distinguished lawyer of the Southwest too much of a chestnut? I fancy Cilley was the party. He was a very much better lawyer than the judge who persistently ruled some point against him. Cilley was deputed to examine an applicant for admission to the bar shortly after, and stepping to one side with the applicant, exchanged a few words, and returning reported the candidate "no good." "Why," said the judge, "you arrived at a conclusion very shortly, Mr. Cilley; how did you do it?" "Why, your honor, I asked him if so and so was correct" (the point the judge had ruled against him), "and he answered thus" (the way the judge ruled). "Such a gross ignorance of the very commonest principles of law rendered any further investigation unnecessary." I rather guess that candidate got another chance.

That exasperating nuisance, the finical technical lawyer, who *will* "distinguish and divide," was well hit off by a brother professional who was very much "How did you come so?" "Well, now," he remarked, "John is married; well, when the baby comes, John will examine it minutely, and if he finds a spot as big as the eye of a needle, or one kinky hair, he will refuse to pass the title and send it back for correction."

The magnification of what concerns oneself was well illustrated in Governor "Andy" Curtin's story. Sitting on the porch of the hotel at Reading, an old Pennsylvania Dutchman approached him with the remark, "Ist big time in town to-day." "Ah," said Curtin, most blandly, "what is the cause of the interest, sir?" "Oh, ist big case at court-house; de biggest case vas ever in dis county; ish hunder witnesses." "Indeed, that must be an important case. Of what nature is it, sir?" "Oh, ist a saltbattery case." "A hundred witnesses in an assault and battery case! why, how can that be?" said Curtin. "Oh, this so important case," was the Dutchman's reply. "Well, are you a witness?" inquired Andy. "No, I am de man wat do the saltbattery."

By the way, the particular finical nuisance I refer to above once put me to sleep in the office of our counsel, by drawing fine distinctions on the relative propriety of inserting in a deed of some property we were buying, either "John Smith & Co., Limited, *their* successors," etc., or "*its*" successors, etc.; and when I awoke I had to exclaim, "Oh, confound it, stick in both, and then everybody can take his choice."

YOUR "DISGUSTED LAYMAN."

IN our May number we shall publish an exceedingly interesting sketch of Mr. Justice Jackson, who now fills the place left vacant on the United States Supreme Court Bench by the death of Justice Lamar. The sketch is written by H. M. Doak, Esq., of Nashville, Tenn.

LEGAL ANTIQUITIES.

THE Turks are now a nation of smokers, but early in the seventeenth century smoking was denounced as criminal, and Amurath the Fourth ordered that those indulging in this pernicious habit should be punished by death in its cruellest forms. In Russia, at the same period, the noses of smokers were cut off.

THE fraud, impoverishment, and desolation resulting from the administration of the debtor's laws in England were almost incredible. In the processes issued against the person, lawyers and attorneys are the parties who chiefly profit. From returns of affidavits of debts, it appears that in two years and a half 70,000 persons were arrested in and about London, the law expenses of which could not be less than half a million. In the metropolis and two adjoining counties 23,515 warrants to arrest were granted, and 11,317 bailable processes executed. Thus were 11,000 persons deprived of their liberty on the mere declarations of others, before any proof or trial that they owed a farthing. So gainful was the trade to attorneys, that they frequently bought up small bills for the purpose of suing the indorsers, and brought nine or ten actions on each. One house alone brought 500 actions in this way, and most of them for sums under 20 *l.* — *Parliamentary Papers.*

FACETIÆ.

In a Western justice court, a question arising as to certain powers of receivers, counsel in reading an authority to the court came across the words *sui generis*, which he translated, in all soberness, to the court as meaning that the officer so described had a right to *sue generally*. The judge accepted the translation as perfectly correct, until a smile among the lawyers present raised a doubt in his mind.

In a New York court the following answer was filed in a "horse" suit: —

"The defendant further answering said complaint, alleges that on the 13th day of August, 1891, the plaintiff and defendant exchanged *horses;* the plaintiff giving the defendant a *mare*, and the defendant giving the plaintiff *a pair of mules*."

The following bequest is taken from a will recently filed for probate in Genesee County, N. Y.: "To Amanda R. Gregory my shawl that was my brother's wife."

English as she is wrote. — "In the week immediately preceding her death, Elizabeth Fuidge, while suffering under the illness of which she died and *in the immediate expectation of death who was then staying at Weston-Super-Mare for her health*, told Mary Fisher to take the keys of the dressing case and box and to keep the same."

A Pennsylvania testator recently provided that an interest in land devised to his daughter should, in case of her death without issue, be "reversible to my right consanguinary heirs." — *General Digest.*

An amusing instance of bumptiousness and affectation of superior knowledge on the part of a medical man receiving a wholesome check at the hands of a juryman is recorded in Lord Cockburn's "Circuit Journeys." A woman was being tried for the murder of her child, and it appeared from the evidence that the child's throat was crammed full of bits of coal, and that there were marks of a thumb and two fingers on the outside of the neck. These practical tests, however, had little effect upon medical opinion. Whenever any of the murderous appearances, such as the finger-marks on the neck, were brought to the attention of one of the doctors called for the defence, the scientific gentleman, to show his vast experience, stated that however much these things might startle the ignorant, they were of no consequence to a person of large practice, and that he himself had seen hundreds of children born with identical marks. "Ay, but, Doctor," said one of the jurymen, of a severely practical turn of mind, "did ye ever see ony o' them born wi' coals i' their mooth?"

At the banquet of the Virginia Bar Association, the wine being a little slow in materializing, a certain judge obtained a bottle with great difficulty. Proud of his success, he exclaimed, "Gentlemen, my strong right arm secured this champagne, — I acquired it by feudal tenure."

"Well," remarked a brother lawyer as he poured out a copious draught, "we will soon hold it in free and common *soakage* (socage)."

"Our Animal Friends" ought to be apprised of a very frequent form of cruelty to animals among railway switchmen,— treading on the frogs.

We expect to see a question raised whether in an action by a landlord for rent, he may recover anything for "distress."

NOTES.

Not long ago there died in Mexico a miser of the name of Moneche. His relatives then petitioned the authorities to prohibit the interment of the body; for the deceased, too miserly to use ink and paper, had tattooed his will all over his chest with some red pigment. The court, however, decreed that the remarkable "human document" should be copied, and the copy duly attested in the presence of four witnesses. This posthumous will was declared to possess the same legal value as any other will. — *La Tribuna.*

Some excitement has been caused by a judge fining a high sheriff five hundred guineas the other day for want of respect to his position; but Jus-

tice Buller was once asked by an unsophisticated sheriff on the Oxford Circuit whether he was *bona fide* judge (pronouncing *fide* as one syllable), as they had been "often put off with sergeants in those parts." After the topic of the weather had been dropped, he asked the judge whether at the last assize town he had gone to see the elephant. "Why, no, Mr. High Sheriff, I can't say I did," was the good-natured reply; "for a little difficulty occurred: we both came into the town in form, with the trumpet sounding before us, and there was a point of ceremony as to which should visit first." — *James Payn, in the Independent.*

A REMARKABLE example of what Bentham calls "judge-made law" has been furnished by Mr. Justice Wright at the Yorkshire Assizes. In summing up the evidence in the trial of Frederick Claude Vernon Harcourt for killing a man in a quarrel arising out of a dispute regarding the relative merits of the rival candidates at the Sheffield election, the judge observed: "I shall tell the jury that if one man calls another a liar, I think that a slight blow in retaliation is justifiable." This, he added, "may be new law, but it is commonsense." The jury finally returned a verdict of "not guilty," and the accused man was discharged. — *Law Times.*

ACCORDING to the last census there are thirty-three thousand one hundred and sixty-three lawyers in the United States, who receive $35,000,000 every year in fees. That would give an average professional income of about $1,100 to every lawyer; from which it would appear that the law is still one of the best paying professions, if it were not for the fact that the unequal division of the sum total gives to about two thirds of the whole number hardly enough to pay laundry bills for cleansing their consciences. — *Chicago Legal Adviser.*

A VERY curious and interesting story of hypnotism comes from Santa Rosa, a Californian city, to the effect that a man called Edward Livernash being charged with having committed murder by causing an old man to swallow a glass of beer mixed with a strong dose of prussic acid, was hypnotized in court, and then led up by ingeniously directed questions to the time immediately preceding the crime. So treated, it is reported, he "rambled through his story like a half-drunken man, describing all his movements prior to the act of homicide of which he was accused. He narrated all his actions, and stated that he had killed the old man because the latter had refused to bequeath his property to him. A number of interrogatories were pressed by the prosecution, and these Livernash answered readily. So he was convicted." Though it comes from America, this extraordinary statement may be true or partly true. In any case it gives room for reflection. If it became part of our criminal procedure to subject prisoners to hypnotic examination, few persons would dare to commit serious crimes. — *Ex.*

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American Politics: A Study of Four Careers, Harry Pratt Judson; Phillips Brooks, by Archdeacon Farrar and Charles F. Thwing; America in Hawaii, Sereno Bishop; England in Egypt.

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Audubon's Story of his Youth (illustrated), Maria R. and J. J. Audubon; The Jaffa and Jerusalem Railway (illustrated), Selah Merrill; The One I Knew the Best of All, VIII.–X., Frances Hodgson Burnett; A Saharan Caravan (illustrated), A. F. Jaccaci; The Man in Red, T. R. Sullivan; The Work of the Andover House in Boston (illustrated), William Jewett Tucker; The Tale of a Goblin Horse, Charles C. Nott; Ezra Hafdman, M.A., Schuyler Shelton.

LEADING ARTICLES IN THE LAW JOURNALS.

Central Law Journal (March 17, 1893)

Injuries from Polluted Water: Landlord and Tenant, C. A. Bucknam. (March 24.) The Amendment of the Records of Certain Classes of Public Bodies, Thomas A. Polleys. (March 31.) State's Ability to Copyright Judicial Opinions, James M. Kerr.

Columbia Law Times (Feb., '93).

The Medical Expert as a Witness, Frank S. Rice; British Electric Lighting Legislation, Victor Rosewater. (March, '93.) Intention in the Law: A Study in Legal Evolution, Prof. Munroe Smith.

The Counsellor (Feb., '93)

The Extradition and Rendition of Fugitive Criminals in the American Colonies, I., John D. Lindsay.

Criminal Law Magazine (March, '93).

Treason against the State, W. Leaman; The Exercise of Police Power, D. H. Pingrey.

Harvard Law Review (March, '93).

Contracts in Early English Law, Sir Frederick Pollock; Federal Protection against State Power, Emlin McClain; Land Transfer: A Different Point of View, F. V. Balch; The "Parol Evidence" Rule, II., James B. Thayer.

Yale Law Journal (March, '93).

Legal Practice in South America, William Trumbull; Insurance Law as a Specialty, J. K. Hayward.

BOOK NOTICES.

NEGLIGENCE OF IMPOSED DUTIES: CARRIERS OF PASSENGERS. By CHARLES A. RAY, LL.D., Ex-Justice of Supreme Court of Indiana. Lawyers' Co-operative Company, Rochester, N. Y., 1893. Law Sheep. $6.50 net.

We had occasion some time since to notice the first volume of this series on "Negligence of Imposed Duties," by Judge Ray, his subject then being "Contractual Limitations." The present volume covers a field of more general usefulness, and, judging from a careful inspection of the book, it bears out the publisher's claim that it is "the most exhaustive presentation of the law of carriers of passengers ever offered the profession." Judge Ray's work has been thoroughly and conscientiously performed, and the result is a succinct and comprehensive statement of the prevailing law upon the subject. We heartily commend it to the profession.

THE POCKET LAW LEXICON, explaining technical words, phrases, and maxims of the English, Scotch, and Roman Law. To which is added a complete list of Law Reports, with their abbreviations. Third edition, revised by Henry G. Rawson and James F. Remnant. Stevens & Sons, Limited, London, England. 1893. Cloth, $2.00.

This little volume contains in a convenient form all the legal words and phrases to which a lawyer, in the ordinary course of his practice, would have need to refer. It admirably fills the place of the larger and more expensive Law Dictionaries. The list of Law Reports with their abbreviations is a valuable feature of the work.

MARRIAGES, REGULAR AND IRREGULAR, with leading cases. By an advocate. William Hodge & Co., Glasgow, Scotland, 1893.

This little work is intended rather for "persons about to marry" than for the legal profession. It, however, contains much of interest to the lawyer, and furnishes a fund of information regarding banns and other necessary formalities required for regular marriage in Scotland. Aside from its legal value, the book affords some very interesting reading.

THE STORY OF JOHN TREVENNICK. By WALTER C. RHOADS. Macmillan & Co., New York, 1893. Cloth, $1.00.

This is a very readable story of English life. The hero being badly in debt is tempted into smuggling as a means of raising the wherewithal to rescue him from pecuniary embarrassment The result is that he is discovered in his crime and ordered from his father's house. This proves to be the making of him; and the story ends with the reconciliation of father and son, and the hero's union to the girl who had remained faithful to him through all his dark days.

A ROMAN SINGER. By F. Marion Crawford. Macmillan & Co., New York, 1893. Cloth, $1.00.

All of Mr. Crawford's writings have a peculiar charm, but none of them are more delightful than this story of a Roman Singer. As with so many of his books, the scene is laid in Italy, and the pages are filled with the spirit of poetry and passion of that sunny clime. In these days of cheap sensational novels, it is truly refreshing to take up a book like this, in which the characters are real flesh and blood and not mere puppets. We assure those of our readers who have not read "A Roman Singer" that they have a real treat in store for them.

THE REAL THING, and other Tales. By Henry James. Macmillan & Co., New York, 1893. Cloth, $1.00.

This is a charming collection of short stories by Mr. James. All of them are written in his best vein and in the choicest English, of which he is so thoroughly a master. The title-story is a masterpiece of pathos and humor, and equal, we think, to anything that has come from his pen. The other contents are "Sir Dominick Ferrand," "Nona Vincent," "The Chaperon," and "Greville Fane."

THE MARPLOT, by Sydney Rose Lysaght. Macmillan & Co., New York, 1893. Cloth, $1.00.

A MERE CYPHER. By Mary Angela Dickens. Macmillan & Co., New York, 1893. Cloth, $1.00.

Of these two novels the least said the better. They are both unhealthy in tone, and without redeeming literary merit. In one, a woman, through her love for a reformed inebriate, kills her husband to prevent his injuring the said inebriate's reputation; and in the other, a young fellow marries a circus performer, and then finding that she has or should have been married to another man, deserts her, and meets another young woman who is quite willing to live with him as his wife, even after she is aware of his being already married. Both these tales are the veriest trash.

Harriet C Jackson

The Green Bag.

VOL. V. No. 5. BOSTON. MAY, 1893.

MR. JUSTICE JACKSON.

BY H. M. DOAK.

HON. HOWELL E. JACKSON, recently appointed by President Harrison and confirmed by the Senate to be Associate Justice of the Supreme Bench of the United States, was born at Paris, Tenn. in 1832, eldest son of Dr. A. Jackson and his wife Mary W., *née* Hurt, both native to Virginia. They were married in 1829, and removed to Paris in 1830. His father was a large, tall, striking, and handsome man, vigorous in mind and active in body, always a leading man in his community; a strong Whig in politics, and a political leader and debater; a promoter of county stock and agricultural fairs and of scientific agriculture; a capable man of affairs. His mother was a handsome, refined woman, of bright intellect, tempered by sober good sense and devotion to domestic duties, moving in the first social circles of West Tennessee.

Intellectually, Judge Jackson combines the delicacy and acuteness of his mother with the breadth of grasp and strong intelligence of his father. In personal appearance he leans to the side of his mother.

His academic education was completed at Jackson, whither his father had removed from Paris. One of his old school companions, still his devoted personal friend, who differed with him during the War, and has been an active Republican since the War, says of him: —

"As a youth. during his academic course, he was, as he has been as a man, serious, studious, thoughtful, and hard-working. He toiled for what he got, appeared only what he was, never sought to appear other, never borrowed the results of others' toil, and what he got came to him because it belonged to him. One thing only could tempt him from severe and continuous labor. When the skating was good, he would snatch some time for skating."

There are those who sow wild oats and reap good grain, — likely, even then, perhaps, to be flavored of wild oats. If a rare few do get an after grip upon their badly running machinery and make good ending of bad beginning, Judge Jackson's youth is but another instance of a rule so general that it is almost universal: As the boy, so the man.

In 1850 he entered the University of Virginia, and graduated from that great Southern university with high honors. After reading law for a year with his kinsman, Hon. A. W. O. Totten, one of the Supreme Judges of Tennessee, he entered and graduated from the Law Department of Cumberland University, and, in 1856, began the practice of his profession at Jackson, Tenn., removing thence to Memphis in 1858, where he formed a partnership with D. M. Currin, and continued in his profession until the outbreak of the Civil War. His thorough business qualifications led to his appointment as receiver, under the Confederate Sequestration Act, for the Western District of Tennessee; and he discharged so well the difficult duties of this onerous position, and so justly withal, that he escaped altogether the censure that usually followed that difficult part. After the war he was associated with Hon. B. M. Estes, of Memphis, in the practice of law,

until 1874, when he formed the partnership of Jackson & Campbell at Jackson.

His father, more discriminating than parents usually are in judging their sons, once said of him: "I would die happy if I could see Howell upon the Supreme Bench. He was born for it. He will get on and do well anywhere, but that is the place he was born for." He died before his son was elected to the Senate of the United States; but in 1878 Judge Jackson was induced by friends, who recognized his eminent fitness, to allow his name to be presented to the Democratic Nominating Convention, for the Supreme Bench. Recognizing the duties as burdensome, and acceptance of such post as a great pecuniary sacrifice, he consented without eagerness. After a hard and close contest his leading opponent was declared nominated. He was actually nominated, and the fact — probably never dreamed of by his distinguished opponent — was soon known to a few of Judge Jackson's friends; but no contest was made. Where there is pre-eminent fitness, it is hard to say what would or would not "head off" a capable man upon an upward career. He might have only demonstrated his fitness and still gone on upward to his present position. He might have ended his career in the drudgery of the Supreme Bench of a State, whose General Assembly has never yet been able to see that it is idle to be jealous of the Federal Judiciary, when the State fails to elevate and provide for its own judiciary; or he might have gone, grown poor upon judicial honors, back to his profession.

The cause of his public successes unquestionably lay in his past application, unswerving devotion to whatever duty fell his way, trustworthiness, and character; the occasion of them was the manifestation of his character and ability in connection with a question which he saw as one of public morals. The State-debt question vexed Tennessee from about 1873; and a little later, when Andrew Johnson, casting about for a popular issue, first thought of non-payment of public debts as likeliest to suit his senatorial purposes, down to 1883, when it was settled. The question of the rights of the bondholders, the "equities" of the people, the differences between "State-debt proper" and railroad debt, and between the before-the-war-created debt and the debt created by the Brownlow State government, at a time when the people were disfranchised, is one that need not be discussed here. Part of the debt was corruptly created. Some of it was questionable. It enlisted the blatant demagogue upon one side. It may have enlisted the self-seeking friend of the bondholder upon the other side. It was complicated, and it enlisted sincere and honest men upon both sides. It aroused a bitterness of feeling unexampled in Tennessee politics. The view that a question of public faith can ever be a question of political art, of expediency, or even of statesmanship, — the dangerous view that a debtor can ever be allowed to consider and settle the rights of the creditor, — was abhorrent to a large and thoughtful class, to which Judge Jackson belonged.

As a private citizen, he was an active and earnest advocate of the "State-credit" view, — at first payment, and then, as the State-credit advocates were weakened by desertions to the popular "low-tax" view of non-payment of the railroad debt, such compromise as the creditors thrice offered. In the last fight for the Legislature made by the State-credit Democrats, Judge Jackson, reluctantly and against his private inclination and his interests, consented to stand for the Legislature, as the only man who could carry his floterial district. After an able and earnest canvass he was elected. Early in the session of the General Assembly, the senatorial contest exhibited the Republicans, within two or three of a majority on joint ballot, chiefly gathered about Hon. Horace Maynard; the State-credit Democrats, advocating the election of Hon. Jas. E. Bailey, then Senator, ably representing the State, and a thorough advocate of payment; the

"low-tax" Democrats advocating various candidates, and at least three of them ready to join the Republicans. An earnest supporter of Senator Bailey, Judge Jackson thrice refused to allow his name to be used, advised Senator Bailey that he would support him to the end, and finally consented to allow the use of his own name only when Mr. Bailey told him that self-respect would not allow him to remain longer a candidate. This was at four o'clock in the morning, and on the next morning Judge Jackson was elected to the Senate by the united votes of the State-credit Democrats and the Republicans, with, however, a clear majority of Democratic votes.

During the next canvass, which exceeded in bitterness any political contest ever made in the State, Judge Jackson canvassed the State with his colleague, Senator Harris, not excepting Andrew Johnson, one of the most powerful popular stump orators produced by a State of stump speakers. Bold, able, and ingenious, — a man his then colleague has described as one "who always hits above the belt," — it was greatly to Judge Jackson's credit that he held his own, and powerfully impressed all thoughtful minds with his strong logic and statesman-like views. So far as election results went, the canvass amounted to nothing. The State-credit Democrats had been able, by their earnestness and zeal, to force the low-tax Democrats up to a platform of half-payment, such as Senator Harris and others were able to accept; and thus they, and largely Judge Jackson, as their foremost spokesman, saved the State from the downright repudiation toward which it was rapidly rushing.

In the Senate Judge Jackson quickly took high rank as a debater, a constitutional lawyer, a man of untiring working capacity and wide acquaintance with public questions, and especially with political principles and history. In accord with his party upon the tariff and most political questions and issues, he differed with his colleagues as to the Blair Bill, and as to many questions of appointment. Even in the matter of appointments, although unused to politics, he managed to hold his own with his alert and able antagonist. No Senator ever gained in briefer time greater reputation for tireless hard work. He was affable and polite, closely attentive to the interests and wants of his constituents, and always ready to divide with them his valuable and much-occupied time.

After a senatorial career of six years, every way creditable, he was selected by President Cleveland, in a manner at once most embarrassing and most creditable to himself, to succeed Hon. John Baxter, of Tennessee, as Circuit Judge in the Sixth Judicial Circuit. For a moment he was criticised for accepting; but his part was made so clear that all criticism vanished the moment the facts were made known.

Except briefly, from time to time, as special Supreme Judge, his first judicial labor began in 1886. His first experience, at his own home of Jackson, is worth relating. In a suit for damages for personal injuries the plaintiff had utterly failed to make out a case. In accordance with the practice in the Federal Courts the Judge directed the jury to return a verdict for the defendant. The jury, left in no doubt as to the injuries, with the usual sympathy of juries for the injured, where the employer is a great corporation able to pay, returned a verdict for the plaintiff with considerable damages. With his uniform courtesy, the Judge inquired whether the directions of the Court had been understood. The Foreman replied that the jury meant no disrespect to the Court; but they thought they had been sworn to have something to do with the case.

During his seven years upon the Circuit Bench, Judge Jackson heard and determined a large number of cases, involving grave questions of constitutional law, of the jurisdiction of the Federal Courts, of the relations of the United States and of the States

in the Federal system, commercial law, banking, interstate commerce, the powers of and limitations upon the Interstate Commerce Commission, the domestic relations and most of the varied human relations of men, *inter sese* and as political units, with the State and with the United States. Some fifty of these cases are reported in the "Federal Reporter." These fully illustrate the wide range and varied powers and capacities of the judicial mind, his legal learning, power of concentration, and concise business methods. The case of McIntosh *v.* Flint & Pere Marquette R'y Co. exhibits the marvellous care and patience with which he toils through facts, making the complex simple and the obscure clear, making and stating an account with a grasp of generalities and of applicable principles of law and with an arithmetical facility in details beyond that of any clerk upon his circuit. The Lawrence M'f'g Co. *v.* The Tenn. M'f'g Co. was a case of trademark, involving large interests, with a vast mass of proof taken throughout the United States, — a case requiring examination of many authorities, American and English. The opinion exhibits a patient sifting of wheat from mountains of chaff, in evidence, a clear and discriminating review of points of authority bearing direct upon the question at issue. Upon appeal, his decision was affirmed by the Supreme Court. Stutz *v.* Handley involved the liabilities of stockholders, where an insolvent or failing corporation had issued stock, accompanied by bonds, taken by the old stockholders. The case was hotly contested, and after a thorough review of American State and Federal and of English authorities, the Court decreed payment of unpaid stock on behalf of creditors such as were entitled to have looked to such increase of capital stock. The decision was reversed in part by the Supreme Court; but it was clearly a reversal of former United States decisions, and an adoption of the English principle. The Ky. & I. Bridge Co. *v.* L. & N. R. R. Co. is an exhaustive discussion of the powers of Congress in matters of interstate commerce, of the powers conferred upon the Interstate Commerce Commission, of jurisdiction and citizenship, of the powers of the Circuit Courts in matters growing out of the action of the Commission, of rates and charges; and it is one of the most instructive cases in that new and difficult branch of the law. The patent cases heard and determined display a wonderful research into patent laws on the part of one to whom that branch of jurisprudence was almost a new one when he took his seat upon the Federal Bench. They exhibit not only a clear insight into the patent system and laws and their application, but a wonderful grasp of mechanics, along with a clear comprehension of the common-law principles, often applicable to patents in their various relations to commerce and trade, and when and where these are applicable, and when they are and when they are not within the jurisdiction of the Federal Courts.

The case of United States *v.* Harper was an indictment under the National Banking Acts for various alleged violations of law. The case was one of more than one hundred counts, involving numerous large and intricate banking transactions, documentary, oral, and expert proof, bringing before the jury a vast mass of complex and undigested arithmetical and other facts. The part of the Judge was that most difficult and delicate part in judicial life, — to see that the defendant had the benefit of all his legal rights and privileges, to see that society did not suffer from the social position, business connection and standing, and appeals for sympathy, of the defendant. The defendant was convicted and sentenced.

A reading of difficult cases reported would attest the marvellous patience and toil of a laborious man, leaving an erroneous idea of only plodding. In order to know how erroneous this idea is, it is necessary to see the Judge upon the bench, face to face with a vast web of intricate facts. It is then seen that there is a capacity for toil, but also a

lightning perception of applicable principles, and under and in close and undivided connection with these, a lightning-swift and lightning-clear perception and grasp of facts, a quick and unerring analysis, as quick and accurate synthesis and classification; so that when the cause is closed the Judge is at once ready to present the jury with a view of facts and applicable principles, without which facts are nothing, such as defies the criticism of the keenest lawyer.

His seven years upon the bench in that important circuit, whose large and varied business brought before him, from time to time, both the able lawyers of that circuit and many of the great lawyers of the East, demonstrated the superior judicial cast of his mind. At the death of the lamented Justice Lamar, President Harrison, whose sagacity and knowledge of judicial material had been thoroughly demonstrated, wished to make the appointment from the South. His own acquaintance and intimacy with in the Senate, and knowledge of his complete fitness might have led him to appoint Jackson of his own motion. To reinforce this favorable knowledge came a strong appeal from staunch Republican lawyers of the Northwest, who knew from experience the superior fitness of Judge Jackson. To this were soon added appeals of the same kind from the East and from the South. It is also believed, but is not here stated as a fact, that the judges of the Supreme Court desired such an able associate. Representations made without regard to party, added to his own knowledge, enabled President Harrison to know that he could make no mistake in such appointment.

It was every way creditable, both in the motives thereto and in the judgment displayed in the selection. Being an unusual display of party — rather unpartisan — magnanimity, the appointment called for the usual questioning of motives, search for the meaner motive beneath a great act. This invariable search for the mean motive back of a good act suggests something generally mean in man. This is not true; it is rather true that there is something essentially mean in politics and the popular political standard. The meaner motives assigned in this matter are not worthy of mention or refutation. To those who know the inside, the President's knowledge, the movement of good men of all parties for Judge Jackson's appointment, and the Judge's absolute dignified inaction, they were all known to be grotesquely false.

Judge Jackson himself, agreeably situated upon the bench in a great circuit, pleasantly dwelling upon and managing a truly baronial estate, knowing that he could never be so agreeably employed in larger and higher duties, feeling to the full the responsibilities involved, far from being eager, simply felt that no lawyer and judge with a sense of duty and responsibility and a pardonable pride in doing well his part in life, could decline. He accepted with a modest feeling of responsibility, and without exhibiting the elation of gratified personal vanity or of satisfied ambition.

As a judge Justice Jackson is equally skilled to grasp and unravel the most tangled skein of legal principles and conflicting decisions, and the most complicated web of human events, facts, and relations, or the most involved and complex combinations of mechanics and machinery. He is equally facile in his grasp of abstract principles of law, — if it is ever the part of a judge to deal in the abstract, or to deal with principles apart from their application, — and in the close-fit application of principles to facts and relations; he moves with equal facility through a tangled line of conflicting decisions and a complex arithmetical web, frequently shocking an expectant clerk with an account briefly and clearly stated. It is rare that one with an easy grasp of facts is also equally gifted in the law, or that one with clear glance at facts and a marvellous memory and knowledge of details has also the highest reasoning powers and a logical bent equal to his grasp of details. Add to this an even

balance, a perfect self-containment, — an easy but a firm rein upon intellectual and emotional faculties, — ability to resist any temptation to swerve by a hair's-breadth from the business matter in hand, capacity to avoid being turned aside by sympathy, by temptation to rhetorical display, or a show of mere learning for its own sake, — and there is the ideal judge. Not that he lacks sympathies. His eye has been seen to moisten upon the bench, where women and children were involved, and yet his decision to come coldly forth, — the law and justice of the matter.

In his opinions he seeks to be clear, concise, and direct, without ornament, embellishment, or rhetoric, although he possesses a lively fancy and a capacity for sentiment and rhetoric, if he chose to use it. His style is pure, logical, and strong, his diction chaste and elegant, — style well suited to judicial decisions. As a style it has a fault or two, chiefly due to the peculiarities of judicial writing, and these, in a style so nearly faultless, scarcely worth criticism. In a very busy life he has not neglected literature, especially study of the Shakspearian drama; but he rarely uses illustrations drawn from literature, in his opinions. Indeed, he is so sparing of figure of speech and illustration that these are scarcely to be found, and when found, are generally some plain, practical, homely illustration such as clarifies without ornamenting. A man of unfailing courage, he looks only to the law and not to the consequences in deciding causes, regarding consequences as belonging to the legislative power and not to the judicial.

As a man, Judge Jackson is serious, modest, and unassuming, with a quiet, playful humor of his own when he has time to indulge it, and a keen enjoyment of wit and humor in others. Dignified and reserved, he is not easily approachable by strangers, and yet the gentlest and kindest of men when approached. No man knows better the value of reticence; and his quiet reserve has got him charged with coldness, which is unjust. No man is more warmly attached to his friends, or has more thoroughly attached others to him. While uniformly courteous, he is exceedingly gracious to the humble, and kind and gentle to the younger members of the bar. He presides with a quiet, kindly dignity, which is never presumed on, because it is apparent that the iron hand of the judge, although never or rarely seen, is there. He is not what would be called a good "mixer," — no hand-shaker for popularity, — and yet he has attracted men to him and made friends to a remarkable degree.

He has been twice married; his present wife, a daughter of Gen. W. G. Harding, of Belle Mead, — a man foremost in promoting fine-horse breeding, himself a man of highest standing and most lovable and admirable character.

Dwelling upon West Mead, a fertile farm of some three thousand acres, — a valley-plain of lovely meadows, sparsely shaded blue-grass pastures, finely watered, encircled upon two sides by the high ridge of the "Rim" of the lacustrine "Basin" of Middle Tennessee, covered with herds of fine stock; with a beautiful home presided over by a quiet, cultivated, refined wife, — a woman too of strong sense, capable herself in affairs, of the old-fashioned Southern-womanly type, not "strong-minded" in the cant of the day; with a small circle of lovely children; with a delightful coterie of cultivated friends, with whom to enjoy sometimes conversation, sometimes chess, and sometimes a fox-hunt; addressing himself with equal practical sense and capacity to the business of his court, the affairs of his farm, or the disposition of the products of the farm, — his has been an ideal life.

Judge Jackson is an elder in the First Presbyterian church of Nashville, a man profoundly religious, not in a spasmodic or emotional way, but because of a firm and abiding faith in a Supreme Intelligence and a wise, orderly, just, and law-governed universe. His purity is of that kind that is and

was never questioned. His character is that of a self-contained man, just, upright, temperate, with passions and emotions all his life so well in hand, under the mastership of a strong will, that they no longer need a touch of the rein; a man in whom the virtues are habitual. Unlike the most of such men, he is charitable to the halting, stumbling, and falling of those whose lives are a continual struggle against evil. To these, too, he is ready to award praise for genuine heroism, if, when they fall, they do also rise and try all there is in them to walk well in right ways.

In his devotion to, and enjoyment of, hard work, — law, farming, and a keen business capacity in disposing of products, and investment of surpluses, — he has also a capacity for moderate unbending in social enjoyments around the festal board, occasional enjoyment of a well-run race, with especial pride in the Belle Mead stock, of which great stock-farm he was joint-owner until two or three years ago, when he sold out to his brother, Gen. W. H. Jackson, a graduate of West Point, and one of Forrest's brigadiers.

He has also one enjoyment that is like the skating of his schooldays. He keeps a pack of red fox-hounds, and with his friend and neighbor, Thos. H. Malone, one of the leaders of the Nashville bar, he is often found unbending by following the swift and long-winded red fox, or chasing some deer escaped from the deer-park of his brother's neighboring Belle Mead estate. His only other diversions are an occasional dip into literature, a game of chess, and, in the ennui of a summer resort, a game of whist or even euchre.

Such is the man, — if fitted for that loftiest of earthly positions, well worthy to be set out as he is, — a man of clear, precise, practical business character; great self-containment; deep but not obtrusive religious faith; logical faculties, both acute and strong; broad philosophy, wide grasp of facts and principles; close analytical and equally powerful synthetic ability; ripe scholarship; acquaintance with the best literature, for use if ever needed; a fine fancy, too, if ever called for; perfect purity of morals, and a human capacity for innocent enjoyment of innocent amusements in rare moments of unbending. In this direction or that he may be excelled by this man or that. Few men will be found more fully or ripely rounded out from the centre, in all directions. Out of this full-rounded manhood has grown that success in life which has been called his "luck." When just such man was needed he was standing there, just such man; and his success is the result of a past life of fidelity to himself and what was in him, trustworthiness, and faithfulness to the trusts that lay upon his way, — cause and effect.

This sketch is drawn with an admiring hand. None of any value was ever drawn by any other. Plumb-level indifference nor flaw-finding critical faculty ever drew faithful sketch of any man. The justification for admiration grows out of mutual agreeable relations, and out of no servile human-idol worship; and out of the high place Judge Jackson held in the confidence of old Senators of both parties, as a capable, earnest, and able legislator; and out of the manner in which he drew to him as friends and admirers the ablest lawyers of America; and out of the culmination of all this, in his elevation by the clear judgment and honest purpose of the President of the United States to the foremost place in the world, — a place upon the Supreme Bench of the United States.

OUR FIRST GENERAL ASSEMBLY.

By Alexander Brown.

THE Colony in Virginia was in the beginning dependent on the Company in England in almost every way, and it was not until the return of Dale in July, 1616, that it was regarded as a settled plantation. It was then determined to give the planters a fixed property in the soil, and to confirm every man's portion "as a state of inheritance to him and his heyers forever, with bounds and limits under the Companies Seale, to be holden of his Maiestie, as of his Manour of East Greenwich, in Socage Tenure, and not in Capite." Early in 1617 Capt. Samuel Argall was sent with special Commissioners and a special surveyor to prepare the way for carrying out this determination; and, their preparations having been completed, at the beginning of April, 1618, Thomas West Lord De La Warr, the Lord-Governor and Captain-General of the Colonies, went to Virginia "*to make good the plantation there.*" But, unfortunately, he died on June 17, 1618 (I am using the *present* style dates), while on his voyage. The news of his death reached London, Oct. 15, 1618; and some time prior to November 4, the managers of the Virginia Company chose Capt. George Yardley (a first-cousin to Richard Yerwood, step-father of John Harvard, the founder of Harvard College, Mass.) to be Governor of Virginia in Lord De La Warr's place. He was commissioned, on November 28, to serve "onely for three yeares in certain and afterwards during the Company's pleasure." And at the same time the following most important documents were given to him, namely: —

I. "The commission for establishing the Counsell of State and the General Assembly in Virginia, wherein their duties were described to the life."

II. "The Greate Charter, or Comission of privileges, orders, and lawes." And

III. "Sundry Instructions given by The Counsel in England."

As these documents were manifestly issued for the purpose of placing the Colony somewhat "on its own feet," so to speak, that is, "*to make good the plantation there,*" it is probable that similar papers had been given to Lord De La Warr in the spring of 1618; but, if so, his death prevented their execution. The date of the issuing of our first executed Magna Charta, Nov. 28, 1618, is a most important one in our earliest history; and it was not then allowed to pass by without "*a sign in the heavens,*" for on that night "a blazing star" appeared, and the superstitious world looked on with bated breath, believing that

> "Eight things there be a comet brings,
> When it on high doth horrid range:
> Wind, Famine, Plague, and Death to Kings,
> War, Earthquakes, Floods, and Direful Change."

On December 4, King James I., while at New Market, knighted the new Governor of Virginia, Sir George Yardley; and on the 13th, additional instructions were given to him by the Council and Company.

Although the ships had been ready for over two months, Yardley did not sail until Jan. 29, 1619. The comet remained visible in the heavens until December 26, and it may be that it was thought best not to sail until after that baneful influence had passed away. Superstition has made the comet a factor in many great events since — "A thousand sixe and sixty yeare [Hasting, 1066] a comet did appeare, and Englishmen lay dead."

Owing to adverse weather, Yardley did not reach Jamestown until April 29, 1619.

"The commission for establishing the Counsell of Estate [State] and the General Assembly in Virginia," of Nov. 28, 1618,

granted that there should be held in the Colony an annual General Assembly, "consisting of the Governor, the Counsell of Estate and two Burgesses out of eache Incorporation and Plantation, to be freely elected by the inhabitants thereof."

Some time after Governor Yardley's arrival in Virginia, he sent out "his sumons all over the Country, as well to invite those of the Counsell of Estate that were absente [from Jamestown], as also for the election of Burgesses;" and these having been chosen, the first representative legislative assembly ever held within the limits of the United States convened at Jamestown, on Friday, Aug. 9, 1619.

"The most convenient place we could finde to sitt in was the Quire of the Churche. Where Sir George Yeardley, the Governour, being sett downe in his accustomed place, those of the Counsel of Estate sate nexte him on both handes, excepte onely the Secretary then appointed Speaker, who sate right before him; John Twine [Thine?], clerke of the General Assembly, being placed nexte the Speaker; and Thomas Pierse, the Sergeant, standing at the barre, to be ready for any service the Assembly shoulde comaund him."

"The Council of State" were, probably, Capt. Samuel Macock (or Maycott), Capt. Nathaniel Powell, John Rolfe, Capt. Francis West, Rev. William Wickham, and possibly others. John Pory, "the Secretary of Estate," was appointed the first Speaker of the General Assembly.

The Burgesses, who appeared, were: "for James citty, Captaine William Powell, Ensigne William Spense; for Charles citty, Samuel Sharpe, Samuel Jordan; for the citty of Henricus, Thomas Dowse, John Polentine; for Kiccowtan (afterwards Elizabeth citty), Captaine William Tucker, William Capps; (for Martin Brandon — Capt. John Martin's Plantation, Mr. Thomas Davis, Mr. Robert Stacy); for Smythe's hundred, Captain Thomas Graves, Mr. Walter Shelley; for Martin's hundred, Mr. John Boys, John Jackson; for Argall's guifte, Mr. Thomas Pawlett, Mr. Edward Gourgaing; for Flowerdieu hundred, Ensigne Edmund Rossingham, Mr. John Jefferson; for Captain Lawne's Plantation, Captain Christopher Lawne, Ensigne Washer; for Captaine Warde's Plantation, Captaine Warde, Lieutenant Gibbes."

"But forasmuche as men's affaires doe little prosper where God's service is neglected. all the Burgesses tooke their places in the Quire till a prayer was said by Mr. [Richard] Bucke, the Minister. that it would please God to guide and to sanctifie all our proceedings to his owne glory and to the good of this Plantation.

"Prayer being ended, to the intente that as we had begun at God Almighty, so we might proceed with awful and due respecte towards the Lieutenant, our most gratious and dread Soveraigne, all the Burgesses were intreatted to retyre themselves into the body of the Churche, which being done, before they were fully admitted, they were called in order and by name, and so every man (none staggering at it) tooke the oathe of Supremacy, and then entred the Assembly."

The first business before the House was to consider the cases of several Burgesses to whom exception had been taken, and to decide who were entitled to sit as members of the House. The Speaker "tooke exception" at the Burgesses from "Captaine Warde's Plantation," "as at one that without any comission or authority had seated himselfe," etc.; but, Captain Warde having agreed to certain orders of the Assembly, himself and his Lieutenant were admitted "by the voices of the whole Assembly." (Captain Ward had but recently returned from a fishing-voyage to Monhegan Island, New England.)

Then "the Governor himselfe alledged that before we proceed any further it behooved us to examine whither it were fitt, that Captaine Martin's Burgesses shoulde have any place in the Assembly, forasmuche as he hath a clause in his Patente which doth not onely exempte him from that equality and uniformity of lawes and orders which the Greate Charter saith are to extend over the whole Colony, but also from diverse such

lawes as we must be enforced to make in the General Assembly. That clause is as followeth: Item. That it shall and may be lawfull to and for the said Captain John Martin, his heyers, executours, and assignes to governe and comaunde all such person or persons as at this time [1616] he shall carry over with him, or that shalbe sente him hereafter, free from any comaunde of the Colony, excepte it be in ayding and assisting the same against any forren or domestical enemy."

After discussion it was ordered that the two Burgesses for Martin-Brandon should "with-drawe themselves out of the Assembly till such time as Captaine Martin should make his personal appearance before them," and "be contente to quitte and give over that parte of his Patente. . . . Upon this a letter or warrant was drawen in the name of the whole Assembly to sumon Captaine Martin to appeare before them in forme following:

By the Governor and General Assembly of Virginia.

Captaine Martine, we are to request you upon sight hereof, with all convenient speed to repaire hither to James Citty to treatt and conferre with us about some matters of especial importance, which concerns both us and the whole Colony and yourself. And of this we praye you not to faile.

JAMES CITTY, July 30 [O. S.], 1619.

Addressed: To our very loving Friend, Captain John Martin, Esquire, Master of the Ordinance."

Martin appeared on Monday, August 12; and after his case was stated to him, "His answere was negative, that he would not infringe any parte of his Patente. Whereupon it was resolved by the Assembly that his Burgesses should have no admittance." This was the earliest contest in the Colony on Charter Rights. Martin was "educated to the law;" he knew his rights, and knowing dared maintain them.

The Speaker, John Pory, who had been a member of Parliament, first formed the Assembly, and "to their great ease and expedition reduced all matters to be treatted of into a ready method." He divided the business to be considered by the Assembly into "fower severall Objects, namely:—

"*First*, The Greate Charter of .orders, lawes, and priviledges;

"*Secondly*, which of the *instructions* given by the Counsel in England to my lo: la: Warre, Captain Argall, and Sir George Yeardley, might become *lawes;*

"*Thirdly*, what lawes might issue out of the private conceipte of any of the Burgesses, or any other of the Colony; and

"*Lastly*, what petitions were fitt to be sente to England."

The Great Charter was divided into four books, or divisions, and each part referred to a separate committee, — "Captain William Powell, Ensigne Rosingham, Captaine Warde, Captaine Tucker, Mr. Shelley, Thomas Douse, Samuel Jordan, and Mr. Boys" composed the committee "for perusing the first booke of the fower."

"Captaine Lawne, Captaine Graves, Ensigne Spense, Samuel Sharpe, William Capps, Mr. Pawlett, Mr. Jefferson and Mr. Jackson," the committee for the second book.

"The names of the Comitties for perusing" the third and fourth books have not been preserved.

"It pleased the Governour for expedition sake to have the second object of the fower ["what Instructions should become Laws"] to be examined and prepared by himselfe" and the Burgesses who were not on the aforesaid two committees.

The Assembly went systematically to work on "the fower severall objects," and seem to have accomplished their task reasonably well, very nearly on the same lines which have been followed by many subsequent General Assemblies.

"The committees" reported on the Great Charter on August 10, and presented to the General Assembly six petitions for sundry alterations thereof, to be sent to the Treasurer, Counsell, and Company in Eng-

land, and *then*, "there remaining no farther scruple in the minds of the Assembly touching the said Great Charter, the Speaker put the same to the question, and it passed with the general assent and applause of the whole Assembly."

On Sunday, August 11, Mr. Walter Shelley (possibly of the same family as the poet, Bysshe Shelley), a member for Smythes hundred, died.

Monday, August 12, was largely devoted to considering "which of the Instructions might conveniently putt on the habite of Lawes;" and Tuesday to "such lawes as might issue out of every man's private conceipte." Each class of laws being first considered by committees before being submitted to the General Assembly.

A good many laws of sundry sorts were passed, namely: relative to the Indians, regarding the treatment of them, trading with them, their education, conversion, etc.; to the affairs of the church; to the planting of corn, mulberry trees, silk-flax, English-flax, aniseseeds, vines, tobacco, etc.; to land-patents, landlords, tradesmen, mechanics, tenants, servants, etc.; to "The Magazin," trading, etc.; to the general conduct of affairs, private and public, in the Colony; and "against Idlenes, Gaming, drunkeness, and excesse in apparell."

Rents, taxes, etc., "were not to be exacted in money of us (*whereof we have none at all*, as we have no minte), but the true value of the rent in comodity." To this intent the price of tobacco was fixed by law, — "the best at three shillings, and the second at eighteen pence the pounde. . . . And any tobacco whatsoever which shall not prove vendible at the second price shall be immediately burnt before the owner's face."

In order to pay its officers, the General Assembly passed a law that "every man and manservant in the colony of above 16 yeares of age shall pay one pound of the best tobacco; the whole bulke whereof, to be distributed to the Speaker and likewise to the Clerke and Sargeant of the Assembly, according to their degrees and rankes. And to the Provost Marshall of James Citty for his attendance upon the said General Assembly. . . . The gathering of the said tax to begin on the 24th (O. S.) of February nexte" (March 5, 1620).

On August 14, before dissolving, the Burgesses make "their last humble suite to the Counsell and Company in England, that they would be pleased, so soon as they shall finde it convenient, to make good their promise sett down at the conclusion of their comission for establishing the Counsel of State and General Assembly, — namely, that they will give us power to allowe or disallowe of their orders of Courte, as his Majesty hath given them power *to allowe* or *to reject our lawes*."

And then "being constrained thereto by the intemperature of the weather and the falling sick of diverse of the Burgesses," the "Governor prorogued the said General Assembly till the firste of Marche, following, and in the mean season dissolved the same."

The proceedings of this Assembly were *probably* sent to England by "The George," which vessel left Virginia in November, 1619, and arrived there in March, 1620. At any rate, so far as I have been able to find out, the first Acts of the first General Assembly convened within the present bounds of the United States were first mentioned at "An extraordinary Court" of the London Company for Virginia, held on the 30th of March, 1620. As these Acts had to be approved in "A Great and General Court of the Company," before they could have the force of Laws, — this court having the power to allow or to reject them, — they were submitted at such a court, on April 18, 1620, for inspection, revision, etc., to "*a select committee of choice men*," which committee, when finally completed, was composed of Sir John Danvers (afterwards one of the Regicides). Sir Thomas Wroth (who on Jan. 3, 1648, made the celebrated motion in Parliament "to lay the King by and to settle the Kingdom without him"), Sir Henry Rains-

ford, Mr. Christopher Brooke (a celebrated lawyer), Mr. Edward Herbert (a celebrated lawyer), Mr. Thomas Gibbs, Mr. John Ferrar, Mr. Samuel Wrote, Mr. William Cranmer (a grand-nephew of the great Archbishop Thomas Cranmer), Mr. Berblock, and Mr. Bamford.

When the commission of Nov. 28, 1618, was granted for establishing the General Assembly in Virginia, Sir Thomas Smythe was the chief officer of the Virginia Company of London; he was succeeded by Sir Edwin Sandys on May 8, 1619; and Sandys by Henry, Earl of Southampton (the early friend of Shakspeare), on July 8, 1620, on which day, unless the factions then obtaining in the company caused additional delay, the final report of "the select committee of choice men" on the first Acts of our first General Assembly was made to the Great and General Court of the Virginia Company then assembled; but as their report has not yet been found, it is not known which, if any, of the said Acts of our said first General Assembly were allowed by the said select committee, and by the said Great and General Court of the Company to become Laws, and were as such returned under seal to Virginia.

Owing to a reliance on unreliable evidence, the credit for sending to Virginia the commission for establishing this first General Assembly has sometimes been given to the Sandys administration; but the change in the government of the London Company was not really even known in Virginia "till after Michaelmas, 1619."

The first English colony established in America, from the precarious infancy thereof, through the darkest hours and the long days of turmoil and trials, to the making "good the plantation there," was largely under the management of the same men, and it was owing to a peculiar chain of unfortunate circumstances that our knowledge of these men and of their work has been derived almost entirely from the evidence of their opponents or of their critics.

A REFEREE CASE.

By Francis Dana.

THREE goddesses, long, long ago,
The poets tell us,
Sat for inspection in a row
Extremely jealous.

You 've heard it, — what the partialness
Of Paris ends in,
And what a pretty ten years' mess
He gets his friends in.

. . . . . .

Hera and Pallas, malcontents
At Venus' reign,
Said: "Now young men have got more sense,
Let's try again."

And Aphrodite's laughing eyes
Smile glad consent;
She has no fear to lose her prize,
And well content,

Knows what a power to-day, as then,
A lovely maid is, —
Knows well that mankind still are men,
And love the ladies.

So when upon their rival thrones
The three were placed,
They called upon young Lawyer Jones, —
A man of taste.

Gave him an apple ripe and sweet,
And then desired
That he should lay it at her feet
He most admired.

Then each in graceful pose the goddesses
Waited all three,
With eager eyes and heaving bodices,
For his decree.

With such a problem, Jones, too wise
To try to grapple,
Opened his mouth, and shut his eyes, —
And ate the apple.

PRACTICAL TESTS IN EVIDENCE.

VII.

By Irving Browne.

Experiments (*continued*). — Upon Living Human Bodies.

THE latest instance of an experiment, or rather of the exhibition of the human body in court, which has come to my notice, was on the criminal trial in the city of New York a few weeks ago, before Recorder Smyth, of Dr. Parkhurst's detective, where the judge ordered the defendant to rise in court to enable a witness to identify him. The judge claimed that his counsel interfered to prevent his obeying, and thereupon fined counsel for contempt.

In Osborne *v.* City of Detroit, U. S. Circuit Court, E. D. Michigan, Oct. 25, 1886, 32 Fed. Rep. 36, an action for injuries occasioned by a defective sidewalk, where the plaintiff claimed to be paralyzed by the fall, and it was held not error to permit her medical attendant who had not been sworn, to demonstrate her loss of feeling to the jury by thrusting a pin into the side which plaintiff claimed to be paralyzed. The court said: —

"Objection was made to this upon the ground that the doctor was not sworn as to the instrument he was using, nor was the plaintiff sworn to behave naturally while she was being experimented upon. It is argued that both the doctor and the plaintiff might have wholly deceived the court and jury without laying themselves open to a charge of perjury, and that plaintiff was not even asked to swear whether the instrument hurt her when it was used on the left side, or did not hurt her when used on the right side; in short, that there was no sworn testimony or evidence in the whole performance, and no practical way of detecting any trickery which might have been practised. We know, however, of no oath which could be administered to the doctor or the witness touching this exhibition. So far as we are aware, the law recognizes no oaths to be administered upon the witness-stand except the ordinary oath to tell the truth, or to interpret correctly from one language to another. The pin by which the experiment was performed was exhibited to the jury. There was nothing which tended to show trickery on the part of the doctor in failing to insert the pin as he was requested to do, nor was there any cross-examination attempted from the witness upon this point. Counsel was certainly at liberty to examine the pin, and to ascertain whether in fact it was inserted in the flesh, and having failed to exercise this privilege, it is now too late to raise the objection that the exhibition was incompetent. It is certainly competent for the plaintiff to appear before the jury; and if she had lost an arm or a leg by reason of the accident, they could hardly fail to notice it. By parity of reasoning, it would seem that she was at liberty to exhibit her wounds if she chose to do so, as is frequently the case where an ankle has been sprained or broken, a wrist fractured, or any maiming has occurred. I know of no objection to her showing the extent of the paralysis which had supervened by reason of the accident, and evidence that her right side was insensible to pain certainly tended to show this paralyzed condition."

Height of man. — When I was preparing that rhymed version of "The Giant Brakeman" (Hunter *v.* Railroad Co., 116 N. Y. 115, 3 Green Bag, 543), in which the plaintiff contended that, sitting on the top of a freight-car, he struck with his head the roof of a tunnel four feet eight inches above the top of the car, and it was left to the jury to say, by looking at him, whether this was possible, and they said it was, it occurred to me that it would have been a shrewd move on the part of the defendant's counsel to offer to have him measured as he sat in court. This, I am informed, was done on the new trial, and he proved to be one inch shorter than the average. But he rose to the oc-

casion, and concluded that he was not sitting, but was walking forward, and the result of his change of base (if such it can be called) was an increased verdict.

Reading sealed letters. — In United States *v.* Reid, 42 Fed. Rep. 134, the defendant was indicted for an unlawful use of the mails, by swindling people by offering to send replies to their letters addressed to their spirit friends, the price of the reply varying according as the letters were gummed, sewed, or sealed. The defendant's offer to read the contents of sealed letters in open court was refused.

Reading. — In Ort *v.* Fowler, 31 Kan. 478; s. c. 23 Am. L. Reg. (N. S.) 569, it was held not error to require the defendant to read in court, the defence being that he signed a note without reading, because he was unable to read. This seems rather indecisive, because the defendant might still pretend that he could not read.

Fit of clothes. — At the Liverpool County Court there was a dispute with a dressmaker about the fit of a certain bodice. The plaintiff, who refused to take it, alleged it was too short and too much padded. The dressmaker stated that bodices were now cut short on the hips, and that as to the padding it was necessary, on account of the lady being deficient in the place where the padding was placed. The plaintiff did not desire to have her figure improved by the dressmaker; she was quite satisfied with it as it was. The question of misfit or fit appeared to be incapable of decision, till at length the dressmaker demanded that it should be put on. The plaintiff at length consented to do so, and adjourned for that purpose. On her return the judge and court proceeded to criticise the fit. The judge at last made a suggestion — such a suggestion, just like a man! — that surely the fault of the bodice being too short might be remedied by bringing the dress higher up; but then his honor appears to have forgotten all about the ankles. The matter was, however, at last settled. So in Brown *v.* Foster, 113 Mass. 136; s. c. 18 Am. Rep. 463, on a question of the fit of a suit of clothes, the defendant put the clothes on in court at the plaintiff's request.

Handwriting. — In respect to handwriting the holdings are practically not harmonious. Thus in Commonwealth *v.* Allen, 128 Mass. 46; s. c. 35 Am. Rep. 356, the defendant's writing being in question, it was held proper to refuse to allow him to write in court, and submit it to the jury for comparison. But this was permitted in State *v.* Henderson, 29 W. Va. 147, the court observing: —

"The objection urged to this is, that it is a comparison of handwriting by the jury, which it is alleged is not allowable; and the following authorities are cited: Rowt *v.* Kile, 1 Leigh, 216; Burress' case, 27 Gratt. 946; Clay *v.* Alderson, 10 W. Va. 50. It is true, as these cases hold, that it is not allowable to lay other proved but not admitted specimens of the party's handwriting before the jury for the purpose of permitting them to judge by a comparison thereof with the signature in question, whether the said signature is not genuine. But here no such thing was permitted. The jury was not asked to compare different signatures of Leonard with his name signed to the alleged forged receipt. The witnesses were only asked to write an 'L' as they thought Leonard wrote it, so that the jury could the better understand the testimony. If a jury do not have a clear idea of the location of a place where an act is alleged to have been done, no one doubts the right of a party to have a witness describe the place, and by a word-painting of it and its surroundings make its location clear to the minds of the jury. What objection then can there be to the permitting of the witness to make in the presence of the jury a diagram of the place, to enable the jury the better to understand the witness? There can then be no valid objection to the permitting of the witnesses in their attempt to describe how Ebenezer Leonard wrote the letter 'L,' to illustrate their meaning by writing the letter themselves, so that the jury could see whether or not it was in fact different from the alleged simulated 'L.'"

In Sprouse *v.* Commonwealth, 81 Va. 378, on a trial for forgery of Gibson's name, evidence was allowed that when the prisoner

was brought before the mayor he was asked to write the name "Gibson," and that reluctantly, but without threat or promise, he wrote it, and misspelled it "Gipson," as in the forged writing. This was held competent.

In Amos' "Great Oyer of Poisoning," p. 120, it is said: "We learn from the letter of an eyewitness to the Earl of Somerset's trial, that the Earl was desired to write his name, in order that his handwriting might be compared with that of certain letters; but the Earl contended it was contrary to law to require him to furnish proof by comparison of handwriting for his own condemnation; neither the manuscript nor the printed report of the trial contains the slightest allusion to this circumstance."

An expert on a question of handwriting may illustrate his testimony by drawing on a blackboard (McKay *v.* Lasher, 121 N. Y. 477). Where a witness has testified that the color of ink has been affected by a blotting-pad, he may be allowed to illustrate it with such a pad (Tanners & Merch. Bk. *v.* Young, 36 Iowa, 44). A witness having testified that he wrote certain disputed words, on cross-examination may be required to write in presence of the jury (Huff *v.* Nims, 11 Neb. 363).

Several decisions have been reported while these papers have been publishing. In Michigan it has been held, contrary to the doctrine of the Botsford case in the Federal Supreme Court, that the court, in an action of damages for a bodily injury, may compel the plaintiff to exhibit the injured member to the jury. This is put on the untenable ground that the court may compel the plaintiff to produce the best evidence. The court made no allusion to the recent cases in New York and Indiana, holding in harmony with the Botsford case. I have parted with the report of this Michigan case, but it is in a very late number of the West Publishing Company's Reporters.

In Gulf, etc. Ry. Co. *v.* Dutcher, Texas Supreme Court, 18 S. W. Rep. 586, it was said: "The writer of this opinion very much doubts the existence of the power of compulsion in such cases, or to enforce the examination of the person of an individual without his or her consent, the effect of which would be, where the person to be examined is a female, to authorize the physicians to commit acts which otherwise would amount to an aggravated assault. The constitutional guaranty may be inconsistent with the exercise of the power, and we do not understand that the Supreme Court has yet determined this question."

In Siberry *v.* State, Indiana, 33 N. E. Rep. 681, it was held that where a revolver has been identified as being the one with which the homicide was committed, it is proper to show the revolver to the jury, and to allow a competent witness to testify how it could be discharged.

In Western Union Tel. Co. *v.* Carter, Texas, 20 S. W. Rep. 835, an action of damages for non-delivery of a telegram, the court said: —

"The first error assigned is that the court erred in permitting evidence to be introduced showing the acts and conduct of plaintiff Mrs. M. E. Carter, the daughter of the deceased, Gorsuch. The evidence objected to was that of witnesses who stated the conduct and grief exhibited by Mrs. Carter when she learned that the notice of her father's death had not reached her in time for her and husband to take the morning train in order to be present at the funeral; and when she was informed that her father was buried without her being present, she expressed her sorrow and grief by crying and moaning, and appeared unable to stand without assistance. The evidence objected to does not appear to be the conduct and acts of Mrs. Carter, accompanied by the grief and sorrow naturally resulting by reason of the death of her father, but appears to be acts and conduct showing grief and sorrow, accompanied by the facts that she was deprived of the right and privilege to be present at her father's funeral. The physical effect of this fact upon her that was observed by bystanders is admissible. It is permissible for them to say what effect this fact occasioned, if they observed it. The evidence was admissible."

THE SUPREME COURT OF TENNESSEE.

III.

UNDER THE CONSTITUTION OF 1870.

By Albert D. Marks.

THE Constitutional Convention of 1870 was more dissatisfied with the judiciary then administering the laws of the Commonwealth than with any other department of the State government. Accordingly the schedule of the instrument that convention submitted to the people for ratification provided that those then exercising the functions of the judicial offices should vacate their places within thirty days after the time fixed for the election of their successors.

The Supreme Court was entirely reorganized under the new order. It was to consist of five judges, not more than two of whom could reside in any one of the three grand divisions of the State. The judges were to designate one of their number to preside as chief-justice. The court was to sit at Knoxville, Nashville, and Jackson. The judges were to be elected by the people for terms of eight years. To get rid of the great accumulation of cases that had crowded the courts after the war, the schedule of the Constitution provided that there should be six judges chosen at the first election, who might sit in two sections; any vacancy occurring after Jan. 1, 1873, to remain unfilled.

It is a general rule that the average of elective bodies falls on an increase of the number of members. The Supreme Court has been no exception to the rule. There have been individual members of the court, since 1870, who have surpassed all predecessors in acumen, in ability, in learning. Unquestionably the greatest judges Tennessee has had are to be found within that period. But it is undeniable that the general average of the court has been below the standard which was steadily maintained before 1860, when the court consisted of only three judges.

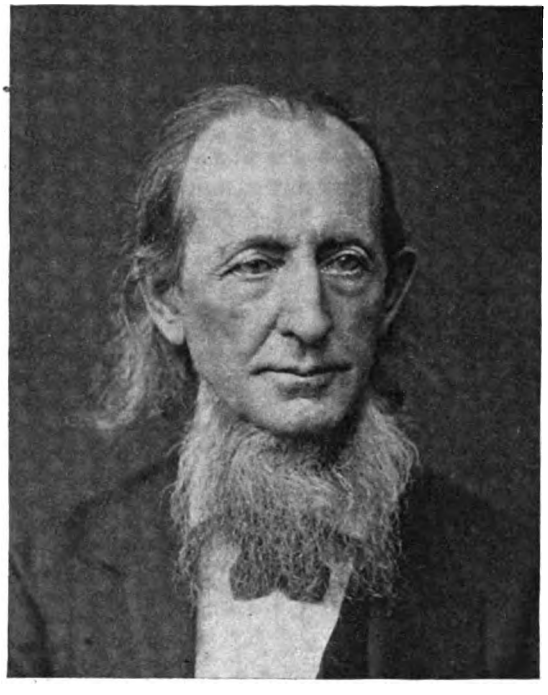
At the first election under the new Constitution, held in August, 1870, A. O. P. Nicholson, Jas. W. Deaderick, Peter Turney Thos. A. R. Nelson, John L. T. Sneed, and Thos. J. Freeman, the nominees of a Democratic convention, were elected. Judge Nelson resigned in December, 1871; and Robert McFarland, appointed in his stead, was elected by the people for the unexpired term in the following August. Judge Nicholson, who was designated as Chief-Justice in 1870, died in office in March, 1876. The vacancy was left unfilled, pursuant to the direction of the Constitution.

In 1878 Jas. W. Deaderick, Peter Turney, Thos. J. Freeman, Robert McFarland, and Wm. F. Cooper were nominated and elected. Judge Deaderick, who had been designated as Chief-Justice on the death of Judge Nicholson, was again chosen to preside over the court. Judge McFarland died in October, 1884. J. B. Cooke, who had been an unsuccessful candidate in 1872 and again in 1878, was appointed in his stead for the unexpired term. He was defeated for re-election in 1886.

In 1886 Peter Turney, Horace H. Lurton, W. C. Caldwell, D. L. Snodgrass, and W. C. Folkes received the Democratic nomination, and were elected. Judge Turney was made Chief-Justice. Judge Folkes died in May, 1890. W. D. Beard, of Memphis, was appointed in his place; but at the following August election, B. J. Lea defeated him for the unexpired term. Chief-Justice Turney, in January, 1893, vacated the office by the acceptance of the office of Governor, and

appointed John S. Wilkes his successor. Judge Lurton was made Chief-Justice. On the resignation of Chief-Justice Lurton to become United States Circuit Judge, Wm. K. McAlister was appointed in his place, and Judge Lea made Chief-Justice. The court is now composed of B. J. Lea, Chief-Justice, W. C. Caldwell, D. L. Snodgrass, John S. Wilkes, and Wm. K. McAlister.

The Legislature, in 1831, created the office of Chief-Justice, and elected Judge John Catron to fill it. The Constitution of 1835 discontinued the office. The Constitution of 1870 revived it, but left the filling of it to the judges. Those chosen, in the order of their service, were Judges Nicholson, Deaderick, Turney, Lurton, and Lea.



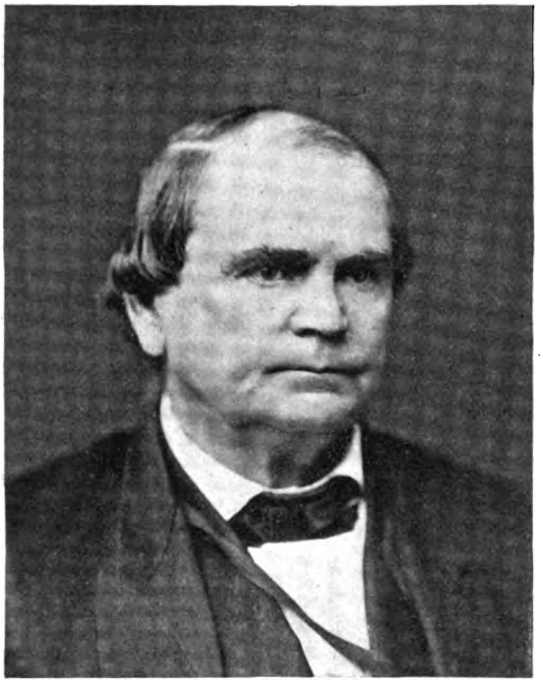
A. O. P. NICHOLSON.

A. O. P. Nicholson was born in Williamson County, Tenn., August 31, 1808. He was of Scotch-Irish descent. He was an *alumnus* of the University of North Carolina. After his graduation he began the study of medicine; but the casual opportunity of a debating-club turned his attention to the legal profession. He studied law, and being admitted to practice, opened an office at Columbia. Then followed an active life, full of honors and usefulness. He was three times elected to the Lower House of the General Assembly, and once to the Senate. In 1835, when only twenty-seven years old, he was associated with Robert L. Caruthers in making a compilation of the laws of the State. In 1848 he published a supplement to this work. In 1840 Gov. Jas. K. Polk appointed him United States Senator, to fill out the unexpired term of Felix Grundy, deceased. The Legislature failed to elect in 1841, and, the Governor declining to appoint, the office remained vacant until 1843. The Whigs had then secured control of the Legislature, and elected Ephraim H. Foster for the remaining two years. The Democrats having regained the Legislature in 1845, Judge Nicholson was again a candidate, but was defeated by Hopkins L. Turney. After this defeat Judge Nicholson was for several years editor of the Nashville "Union," the leading Democratic organ of the State. In 1859 he was elected to the Senate, but left that body on the secession of Tennessee in 1861. He took no part in the war, though an active Confederate sympathizer. He was a member of the Constitutional Convention of 1870, and took a prominent part in its deliberations. He was elected Supreme Judge in 1870, and on the organization of the court was chosen as Chief-Justice. He continued to serve until his death, March 23, 1876. For some months of this time he was disabled from duty because of a serious injury received in a fall down the stone steps at the capitol. He never fully recovered from the accident.

Judge Nicholson is universally esteemed one of the ablest men the State has ever had. His talents were varied. He was not only a leader at the bar, and a legal writer of note, and a great judge, but he was a most effective stump-speaker, and an edito-

rial writer of great force. He was always a prominent factor in the deliberative bodies of which he was a member, standing high in the United States Senate during his brief term of service there.

As a lawyer, he never examined a witness, always intrusting that to his associates. But when the evidence was closed, he had a better grasp of it than any lawyer in the case, or the judge on the bench. As an advocate, he had few equals. As a judge, he did an immense amount of work, taking not only his regular allotment of cases, but also such as were submitted on brief. His most valuable judicial work was in the construction of the Constitution of 1870. Many new provisions were found in it, particularly those regarding the caption and passage of acts, and those inhibiting special legislation. There were many cases involving these questions. Judge Nicholson usually prepared the opinions in them, and they uniformly evince a large broad-mindedness. He was one of the best constitutional lawyers that the State has ever had. He was a voluminous writer, and his opinions are always strong.



JAMES W. DEADERICK.

James W. Deaderick was born at Jonesboro', Tenn., Nov. 28, 1812. He came of good family. His father, a Virginian, had served in the Revolutionary War. After his removal to Jonesboro', he was President of the Jonesboro' branch of the Bank of Tennessee. His mother was a Delaware woman. Her eldest brother, Joseph Anderson, was one of Tennessee's first United States Senators, was made a United States District Judge, and was afterward Comptroller of the Treasury of the United States. Judge Deaderick was educated at East Tennessee College, Knoxville, Tenn., and Centre College, Danville, Ky. He married at Danville the granddaughter of Gov. Isaac Shelby, the daughter of the first white female child born in Kentucky. After his marriage he left college, and settled in what is now Hamblen County, Tenn., leading a life of ease, being possessed of an ample fortune. The financial depression of 1837 bankrupted him because of obligations incurred as surety. He then became an Indian agent in Iowa. After a short stay there, he returned to Jonesboro', and began the study of law under Judge Seth J. W. Luckey. He was admitted to practice in the year 1844, being then thirty-two years old. His professional advancement was slow. He was not a great lawyer, but he was a well-educated man and a well-read man. His close application to the study of his cases, aided by a courteous manner and a high character for honesty, in the end brought him a good business, and gave him a high standing in the profession. He served in the State Senate in 1851, being Chairman of the Committee on Internal Improvements, then the most important of the body. This Legislature enacted what is known as the Omnibus Bill, under which many of the railways of the State were

built. In 1860 Judge Deaderick was district elector for the first district on the Bell and Everett ticket. When the war between the States broke out, he was an active sympathizer with the cause of the Confederacy. Too old for active service himself, he gave his sons to fight in his stead. In 1870 the position he held in the bar of East Tennessee was so respectable that he was elected Supreme Judge over several competitors. He was then fifty-eight years old. On the death of Chief-Justice Nicholson, in 1876, he was made Chief-Justice. He was re-elected in 1878 for another term of eight years. He was continued as Chief-Justice. On the expiration of his term in 1886, he was not a candidate for re-election. He retired to his home at Jonesboro', where he died Oct. 8, 1890.

Judge Deaderick was an eminently conservative man. Changes and innovations were distasteful to him. He did not deliver many written opinions; but when he did write, it was in a clear direct style. He was to an unusual degree impervious to all considerations, except those shown in the record, which might influence a judge in the decision of a case. In the various cases having a political aspect in the decision of which he participated, he never leaned to the side where his political preferences were, but he decided the controversy from a strictly dispassionate point of view. As a presiding officer, his patience was his fault. He was courtesy itself to the lawyers appearing at the bar of the court, and his kindliness would not permit him to say to a lawyer that his argument was giving the court no light.

Peter Turney, sometime Chief-Justice and now Governor of Tennessee, was born in Jasper, Marion County, Tenn., Sept. 22, 1827. He is of English descent; and his Saxon blood is shown in his light hair with blue eyes, and his magnificent physique, he standing six feet three inches high, perfectly proportioned. When yet an infant, his father, Hopkins L. Turney, a leading lawyer at Jasper, removed to Winchester, the county-seat of the neighboring county of Franklin, at the solicitation of Judge Nathan Green, who had just been elected chancellor, to take the practice he was about to relinquish. Governor Turney has continued to reside at Winchester since February, 1828. He was educated in the schools there, and in a private school at Nashville. He began to read law under his father. His father being elected United States Senator, he continued his studies under Major Venable of Winchester, and was licensed to practise in 1848. He opened an office at Winchester, and continued to practise there until 1861. He was, in 1860, an alternate elector on the Breckinridge ticket. He made a thorough canvass of the district. After the election of Lincoln as President, on the fourth Monday in November, the day the circuit court convened at Winchester, he made a speech to the large crowd gathered in the town, advocating the immediate secession of the State. He was the first man in the State to publicly avow that the time for decisive action had come. On Feb. 9, 1861, there was an election held for delegates to a convention to pass an ordinance of secession. Governor Turney was a candidate from his county favoring secession, and carried the county overwhelmingly. Secession, however, was beaten in the general result by a vote of 89,000 against, to 25,000 for. When the result of the election became known, the citizens of Franklin County, so as to be in the Confederacy, held a mass-meeting and adopted an ordinance, withdrawing their county from the territory of Tennessee, and attaching it to Alabama, the county being on the border. Governor Turney, believing war inevitable, then enrolled a company of men, and was elected their captain. He went to Montgomery to tender the services of his company to the Confederacy. He was asked to raise a regiment, and on his return he began the enlistment of it. The enlistment was done in a secret way, the presiding judge of the circuit threatening Governor Turney with indictment for treason. But

the events following the capture of Fort Sumter on April 12, soon brought the people of the State to the side of Confederacy. The regiment *rendezvoused* at Winchester on April 27, and elected Governor Turney as their colonel. On May 1, Colonel Turney set out with his regiment for Virginia, where the Confederate troops were mustering. This was more than a month before the secession of the State. His regiment enlisted directly in the service of the Confederate States as the First Tennessee Regiment. To distinguish it from the First Tennessee, raised by the State, the regiment was always known as "Turney's First Tennessee." Thus Governor Turney was not only the first man to advocate the immediate secession of the State, but was the first captain and the first colonel in the State in the service of the Confederacy.

PETER TURNEY.

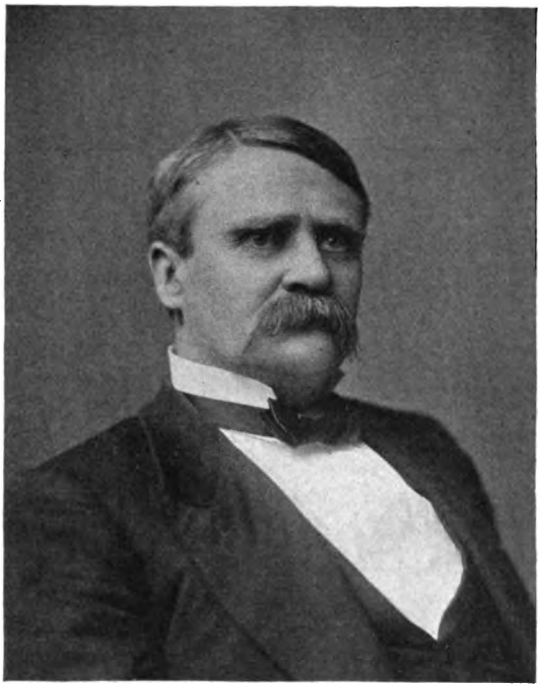
The regiment was attached to the army of Northern Virginia, taking part in the first battle of Manassas and surrendering at Appomattox with thirty-eight men in line out of eleven hundred and sixty-five that marched away from Winchester, to whom were added more than eight hundred others by recruitments at various times, that brought the total enlistment above two thousand. Colonel Turney was at the head of his gallant regiment, whom he affectionately christened "hog-drivers," during the whole of Jackson's Valley campaign, in which it took part. He was severely wounded at the battle of Fredericksburg, Dec. 13, 1862, a ball entering his mouth and passing through his neck, barely missing the spinal cord and the arteries. His vigorous constitution enabled him to withstand the shock of the wound. After recovery, he attempted to resume his command; but the cold of Virginia made it necessary for him to seek a milder climate, and he was assigned to a command in Florida. He continued to serve there until his surrender, May 19, 1865.

He then returned to Winchester to the practice of the law. He took a prominent part in resisting the aggressions of Governor Brownlow, which were particularly directed at his part of the State, because of its intense loyalty to the cause of the Confederacy. In 1870 he became a candidate for Supreme Judge, and was nominated by the Democratic convention and elected. He was re-elected in 1878, and again in 1886. On the reorganization of the court in 1886, he was elected Chief-Justice, and continued to serve until Jan. 16, 1893, when he vacated the office by the acceptance of that of Governor. He accordingly served as judge for nearly twenty-three years, the longest period of the service of any judge in the history of the State.

He is a man of great personal popularity. His easy manner, that never partakes of haughtiness or of familiarity, an absence of affectation, and a genial spirit of good fellowship make him liked by all who know him. These qualities, added to his proverbial honesty and well-known talents, made him

pre-eminently the candidate of his party for Governor in 1892, when it was sought to defeat the then incumbent, who was thought to be in sympathy with the un-Democratic demands of the Farmers' Alliance. After the most urgent solicitation, he permitted his name to be used as a candidate, and was nominated and elected by a large majority. He is now serving his first term as Governor.

He was the best Chief-Justice the State has ever had. The judges who went out of office in 1886 had each favored the adoption of rules for the more rapid disposition of business, but the majority were unable to agree on a revision. Those already prevailing were enforced in a desultory way. The judges elected in 1886 at their first term promulgated a set of strict rules, toward which many of the lawyers were not well inclined. But by his tact Chief-Justice Turney enforced these rules, and educated the lawyers of the State up to them without angering a man who appeared at the bar of the court.



HORACE H. LURTON.

As a judge, in the opinion of the writer, he ranks as the greatest of all the great line that began with White. He is a big man in every way, and in his big brain is a mental force of extraordinary power. A thing he strikes with the trip-hammer of his common-sense must be true metal, or it will break. He has a wide perception, and on the presentation of a case to him he can almost intuitively divide the true from the false. This breadth of vision, that enables one to look beyond the matter in hand and to see where a course will ultimately lead, is the quality that makes a man a great statesman. It is a characteristic of Judge Turney's opinions that none of them is limited to a view of the case in hand, but regard is always had to what follows.

The best test of the various judges is a comparison of their several opinions in the case of Lynn *v.* Polk, 8 Lea, 121; all the judges having delivered opinions in that case, which was the most important ever before the Supreme Court of Tennessee, involving the constitutionality of the Funding Act of 1881, providing for funding at par of a debt of $27,000,000.

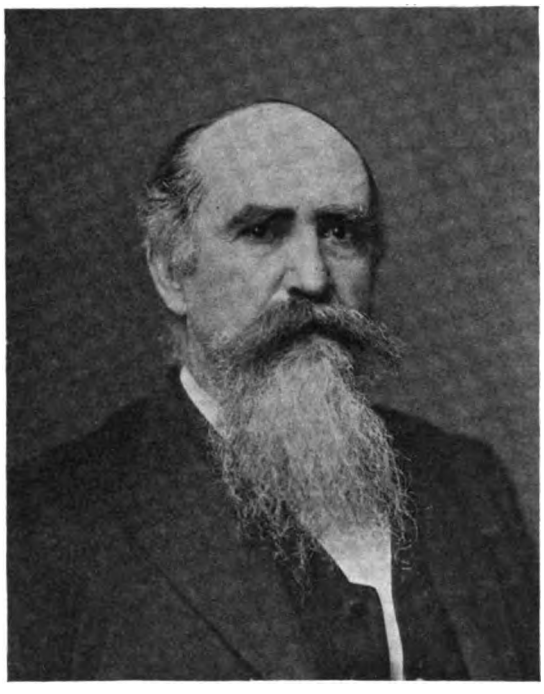
The opinion of Judge Turney covers only eighteen pages of the two hundred twenty-five taken up in the report of the case. His vigorous opinion contrasts well with the treatment of the case by the other judges, and illustrates strongly his abilities as a judge.

He disdains to cite authorities to support a proposition his sense of right tells him ought to be the law. He disregards everything that partakes of a technicality, and plants every decision on the broad ground of justice. He delivered a characteristic opinion in the case of Butler *v.* Kinzie, 90 Tenn. 31, where he held that when a *pro confesso* had been taken against one joint defendant, a successful joint defence interposed by the other defendant would inure to the benefit of both, and defeat the whole

suit. In the course of the opinion he said: —

"If a *pro confesso* is to operate as an estoppel at all times and under all circumstances without qualification, then the courts must sit like fangless lions while fraud and falsehood prowl within their precincts and defiantly taunt their helplessness to uphold the majesty and power of the law to do right and justice.

"Technicalities should never be employed as shields for wrong, but only for the protection of merit. When they present themselves as barriers to justice, courts should, without hesitation, cut through them to the right, that the ends and purposes of equity and good conscience may be attained and served."



BENJAMIN J. LEA.

Horace H. Lurton was born in Campbell County, Ky., Feb. 26, 1844. His family is of English descent. They removed before his birth from Virginia to Kentucky. After his preparatory education was finished, he entered Douglas University at Chicago. While in the Freshman class, the war between the States commenced. He at once returned South, and enlisted in Ben Hill's Fifth Tennessee Regiment. He was absent from his regiment on a sick-leave of absence, when Grant's movement up the Cumberland River began. He attached himself to a Kentucky regiment, and was captured at Fort Donelson. He escaped from Camp Chase, where he was confined, and joined Gen. John H. Morgan's cavalry command. He was captured on Morgan's raid through Ohio, and spent the remainder of the war in prison. He entered the Law Department of Cumberland University in 1865; graduating in 1867. He began to practise at Clarksville. In 1875, when thirty-one years old, he was appointed chancellor by Governor Porter to succeed Charles G. Smith, resigned. In 1878 he resigned to resume the practice of law, in partnership with Judge Smith. This partnership continued until 1886, when Judge Lurton became a candidate for Supreme Judge. Under the Constitution, only two members of the court could be from Middle Tennessee. Both Judge Turney and Judge Cooper were candidates for re-election. To defeat either was a most difficult task. The popularity of Judge Turney made his election almost a foregone conclusion. Judge Cooper had the prestige of his great learning and ability, his distinguished judicial service, a powerful family support, and the almost solid vote of the largest counties in the State; but after an active canvass, Judge Lurton defeated him by a narrow majority. Judge Lurton personally managed his canvass, and demonstrated that his talents were varied, — developing great ability as a leader. When Judge Turney retired from the place of Chief-Justice in Jan. 16, 1893, by common consent Judge Lurton had fairly won for himself a place at the head of the court, and he was made Chief-Justice. He presided, however, only two months. President Cleveland appointed him United States Circuit Judge for the Sixth Circuit, to succeed Judge

Howell E. Jackson, appointed to the United States Supreme Bench. Judge Lurton now holds this position.

Judge Lurton is the only man who served in the Confederate army that has been appointed United States Circuit Judge. When at Cincinnati, shortly after his qualification, he was presented to a lawyer who had a vivid recollection of Morgan's raid through Ohio. On meeting the Judge, he referred to his former visit to the State, adding, "Well, the war *is* over."

In the opinion of the profession generally, Judge Lurton took the lead of the bench after his accession to it, and he maintained it so long as he was on the bench. His influfluence in the consultation-room is shown by his rare dissents, — he usually carried the majority with him when he took a firm stand. His opinions are among the richest contributions to the legal literature of the State, and they have commanded the respect of the courts of other States in a way that the opinions of no other judge of the State in late times have. It has so chanced that in the allotment of cases a larger number of the important ones fell to Judge Lurton than to any other judge. He is an ambitious judge, and availed himself to the fullest of the opportunity afforded him in such cases. He has never failed to deliver an opinion worthy of the case. He has the rare faculty of usually convincing the losing lawyer of the correctness of the position taken in the opinion. This is so, principally, because his decisions are always founded on broad grounds, and never on narrow technical views. Judge Lurton is equally at home in every branch of the law; but corporation law and equity may be said to be those in which he has done his best work. Every one of the seven volumes of Pickle's reports contains several notable opinions on these two subjects. All his opinions are good; but perhaps the greatest he ever wrote was in the case of H. Clay King *v.* State, 91 Tenn. 619. Colonel King, a prominent lawyer of Memphis, had killed D. H. Poston, a brother-lawyer. After a trial extending over a month, he was convicted of murder in the first degree, and sentenced to be hanged. On appeal to the Supreme Court, the judgment was affirmed, Judge Lurton delivering the opinion of the court. The opinion concluded thus: —

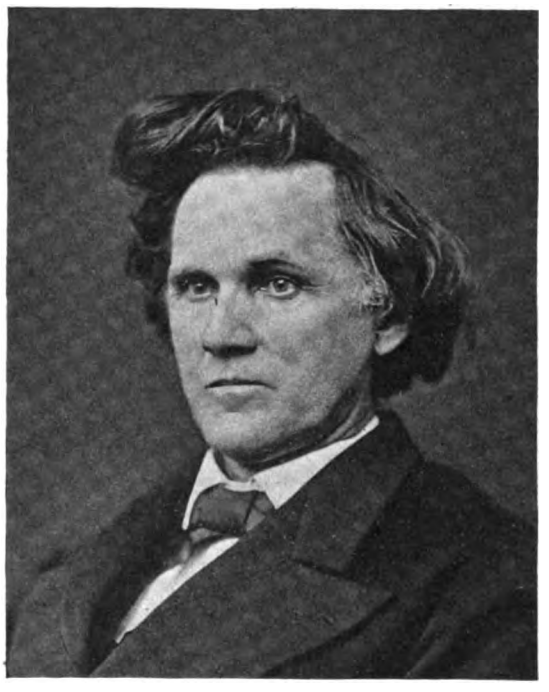
"The verdict is well supported. The defendant was entitled to a full, patient, and impartial trial. This he has had by a jury of his own selection. Upon his appeal the record has been laboriously re-examined. No doubt exists as to the righteousness and justice of the judgment from which he has appealed.

"The defendant stands condemned by that law at whose altar he has so long stood as a ministering priest. The decrees of that law, to be respected, must be impartial, for all are within its compass; 'the very least as feeling its care, and the very greatest as not exempt from its power.'"

Benjamin J. Lea was born on Jan. 1, 1833, in Caswell County, N. C. He is of English and Scotch descent. His mother was a Kerr, belonging to a family prominent in the States of North Carolina and Virginia. After completing his preliminary studies at schools convenient to his home, he entered Lake Forest College, where he graduated in 1852. Immediately on graduation, he removed to Brownsville, Haywood County, Tenn., where he has since resided. He studied law under Gen. L. M. Campbell, and was admitted to practice in 1855. He was elected to the Lower House of the General Assembly in 1859 for a term of two years, being the second Democrat elected from his county. On the breaking out of the Civil War, he enlisted in the Fifty-first Tennessee Regiment, and was chosen as its colonel. He continued in the Confederate army throughout the war, his regiment serving with the Army of the Tennessee. At the close of the war he resumed the practice of his profession at Brownsville. He was elected in 1878 Attorney-General and Reporter for a term of eight years.

He was not a candidate for re-election in 1886, but became a candidate for Supreme

Judge. He was defeated for the nomination, though making a strong race and lacking only a few votes of the number required to nominate. In 1889 he was a member of the State Senate, and was chosen as Speaker. On the death of Judge Folkes, in 1890, he was nominated for the vacancy on the first ballot over a number of opponents, and at the August election he was elected Judge for a term of four years. On the appointment of Chief-Justice Lurton as United States Circuit Judge, Judge Lea was elected as his successor as Chief-Justice, and is now serving in that capacity.



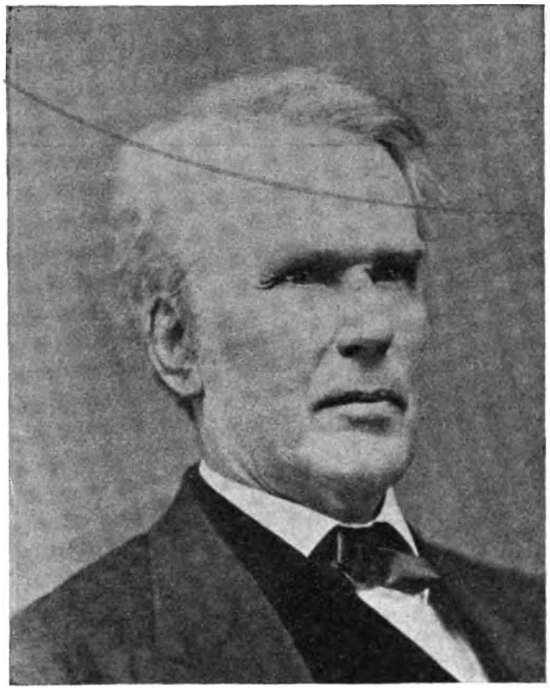
JOHN L. T. SNEED.

Chief-Justice Lea does not attempt to make a display of his learning, or to gain reputation by the writing of long opinions. He thinks the multiplication of reports in late years a great evil, and he writes opinions in only the cases where they will be valuable as precedents. His opinions are usually short, but they go straight to the point of the case and lay it bare. The statement of the holding of the court and the reasons leading to it is always lucid, and shows the strong common-sense he has.

He has been serving as presiding judge only a few weeks; but these have sufficed to show that he is possessed of good administrative capacity, and is a worthy successor of the distinguished men who have gone before him.

John Louis Taylor Sneed was born in Raleigh, N. C., in 1820. He was named for his grandfather, then Chief-Justice of North Carolina. He is of English descent, though Irish blood is mingled in his veins. His mother dying when he was very young, he became a member of the family of an uncle, Stephen K. Sneed, who shortly afterward removed to West Tennessee. After reaching manhood, he began the study of law, being admitted to practice in 1843, opening an office at Memphis. In 1845 he was a member from Shelby County of the Lower House of the General Assembly. On the call for volunteers for the Mexican War, he enlisted. He served with credit throughout the war, and reached the rank of captain. In 1851 he was elected by the Legislature Attorney-General for the Memphis Judicial District, resigning in 1854 to become a candidate for Attorney-General of the State. He was elected and served with acceptability for five years. After retiring from that office, he was the unsuccessful Whig candidate for Congress in his district. On the breaking out of the war, Governor Harris appointed him Brigadier-General in the Provisional Army of Tennessee; but on the mustering of the troops into the Confederate service, he was not given a commission. He then enlisted as a private, and served until 1863, when he was appointed by Governor Harris commissioner on the part of Tennessee to settle its affairs with the Confederate States. This work occupied him until the end of the war. He resumed the practice of law at Memphis. When he became a candidate for Supreme Judge in 1870, his handsome appearance and

commanding presence at once brought him great popular support, and he was readily elected as the colleague of Judge Freeman for the Western Division. He failed of re-election in 1878, but he was shortly afterward appointed by Governor Marks as a judge of the Court of Arbitration, a tribunal established to relieve the Supreme Court of its accumulated cases, to which appealed cases might be submitted by consent, its decree to be made the decree of the Supreme Court. In 1883, on the creation of the Commission of Referees, which succeeded the Court of Arbitration as a means of relief of the Supreme Court, he was made a member of the commission for East Tennessee. Judge Sneed was an unsuccessful candidate for United States Senator in 1887. He now lives in quiet retirement in his home near Memphis.

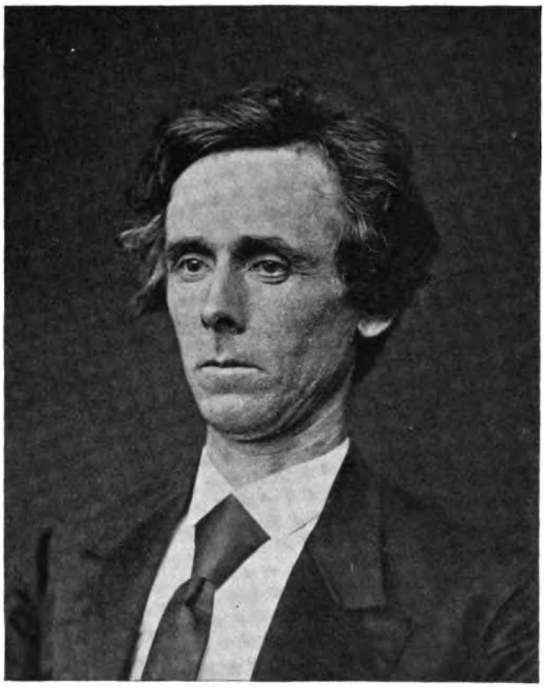


THOMAS A. R. NELSON.

Judge Sneed is essentially a lover of the æsthetic. Added to this is the quality of great dash and bravery; and the two combined give to him and his character a dramatic appearance. In whatever he writes or says, he appears well. His judicial opinions are more than bare statements of legal propositions. He delights in classical and poetical illustrations, and rhetorical figures abound in his opinions, illuminating the position he has taken.

Thomas Amos Rogers Nelson was born in Roane County, Tenn., March 19, 1812. His father afterward removed to Knoxville; and here the son entered East Tennessee College, graduating when sixteen years old. He studied law under Chancellor Thos. L. Williams, and, being admitted to practice, opened an office at Elizabethton, practising over the First Circuit, which lay in upper East Tennessee. In 1833 Governor Carroll appointed him Attorney-General for that circuit, and the Legislature twice elected him to the same office. In 1844 he was a district elector for Henry Clay, and in 1848 for Zachary Taylor. In 1851 President Fillmore tendered him the position of Commissioner of the United States to China, to succeed Hon. Caleb Cushing; but he declined it. In 1858 he was elected to Congress, defeating Landon C. Haynes, one of East Tennessee's most brilliant orators. Upon entering Congress, the fact that he was serving his first term was not suffered to obscure his talents; but he took an active part in the contest over the organization that ended in the election of Wm. Pennington as Speaker. He made great reputation as a powerful debater. The London "Times" published in full his speech on the organization of the house, pronouncing it "the finest forensic effort of American law-givers." He was an adherent of the Union. The vote that carried secession in the State came from Middle and West Tennessee. East Tennessee had opposed it by a large majority. And after it was apparent the State would secede, a Union convention met at Knoxville on May 30, 1861, of which Mr. Nelson was president, and which declared its fealty to the United States, and passed a

resolution looking to the formation of a new State. In August following, an election was held in East Tennessee districts for Congressmen, and Mr. Nelson was returned from the First District. The members so elected were admitted to Congress. He continued an active Union man until the war was at an end. After peace was restored, he had in his heart none of the bitterness that characterized the men whom the chance of war had put over the conquered people of his State. It meant a certain loss of the political prestige his eminent services in behalf of the Union had won for him; but he took a bold stand against the oppressive measures that were proposed and carried into effect. Because of his high character and ability, he proved to be of greater service to the unfortunate people of this State than any other one man. When the attempt was made to remove President Johnson by impeachment, his sentiments were in accord with those of the President, and Mr. Nelson undertook his defence, along with the other distinguished counsel retained by the President.



ROBERT McFARLAND.

The services of Mr. Nelson to the people of his State were recognized by his election to the Supreme Bench of the State in 1870.

Judicial work did not prove congenial to him. His mind was not of that cast. He was an advocate rather than a judge. The work proving irksome, he resigned in December, 1871, after little more than a year's service. He was succeeded by Robert McFarland. Judge Nelson died, Aug. 24, 1873, of cholera, then epidemic at Knoxville, the place of his residence.

Robert McFarland was born on the banks of the French Broad, in Jefferson County, Tenn., April 15, 1832. He was of Scotch-Irish descent, — the same sturdy stock that has furnished to the Southwest a very large part of its great men. He was named for his grandfather, a Revolutionary officer, who particularly distinguished himself at the battle of King's Mountain; and for his father, a gallant officer of the War of 1812. His father died when he was twelve years old, leaving his family poor. But the thrift of the mother and perseverance of the son enabled him to procure a good English education at Tusculum College, near Greeneville. He read law with Judge Barton, and was admitted to the bar at Greeneville in 1856. He made no great reputation as a practitioner, though those who knew him well easily discerned that this modest man had in him the making of the great judge he afterward proved to be. On the commencement of the hostilities of the Civil War, the sentiment of a majority of the citizens of his section of the State was in favor of the Union; but the convictions of Judge McFarland were with the Confederate cause, and he enlisted in the army of his State. He became major of the Thirty-first Tennessee Regiment. He served through the campaigns in Kentucky and East Tennessee, and was captured at Vicksburg. On exchange, his regiment

was reorganized as cavalry, when it was attached to the command of General Early, and served under him for the remainder of the war. After the surrender of General Lee, his command attempted to join General Johnson in North Carolina, but the cessation of hostilities took place before it could reach him.

Returning home, Judge McFarland again took up his practice in his old circuit. On the resignation of Judge Nelson, in December, 1871, the remaining judges requested the appointment of James T. Shields. Governor Brown appointed him, and Judge Shields accepted the office; but he reconsidered, and in an hour afterward he declined it. The court then joined in a request for the appointment of Judge McFarland. He was appointed, elected by the people in 1872, and re-elected in 1878. He died during his second term, on Oct. 2, 1884.

Judge McFarland was but little past fifty at the time of his death. The loss to the State was irreparable. It was a misfortune that his service on the bench did not cover more than eleven years.

Considered in some aspects, he was the ablest judge Tennessee has ever had. The judicial poise of his mind was perfect. He had pre-eminently the power to see clear and think straight. His written opinions are the best to be found in the Tennessee reports. They are not long, as a rule. There are not many citations of authorities. There is no disregard of them, however, enough being referred to to show that he had a due respect for the marks of the pioneers who had first passed that way. His conclusions are clearly stated, and seem self-evident truths when one reads them; but the judge did not content himself with that. He always showed the reasons why his conclusions ought to be the law, and he was the master of the art of the exposition of that. He thought so clearly that it seemed impossible for him to write otherwise than plainly.

ENGLISH AND AMERICAN BAR IN CONTRAST.

By A. Oakey Hall.

THE meeting at the Behring Sea Arbitration Court, the first since the Geneva Conference, of American lawyers and British barristers in a foreign court-room, suggests to even laymen a comparison between the English and our own bar.

When an American lawyer visits the London courts, the element of difference between his own home legal procedures and the new ones confronting him, which first impresses him, is the extreme artificiality that permeates all these new procedures. He is at once sensibly imbued with the presence of that "circumlocution" in English affairs which, as characteristic of Great Britain, Dickens brought so interestingly to the fore. When becoming better acquainted with the progress of English litigation, the American tourist-lawyer finds that this artificiality increases in a geometrical progression.

It is not alone the broad-banded wig and fur-tipped cape and the gown of the judge, nor the horse-hair nightcap of the plain barrister, nor the curled hood of the Q. C., nor the slatternly cotton black gown of the ushers which embodies the preliminary idea of artificiality. But judicial wig and fur seem to destroy judicial spontaneity; and the clinging robes of advocates and horse-hair adornments seem to rebuke their own desires toward naturalness of gesture and tone, and to transform them all into melodramatic actors. Moreover, in intercourse of bar with bar, and bar with bench, and both with suitors or witnesses or jurymen, the artificiality extends.

To these observations the Englishman answers that this apparent artificiality impresses the English public by increasing symbolic respect for law and order. And certainly the average Londoner, who stands where the Strand Avenue ends and Fleet Street begins, and where old London in the sixteenth-century gateway of the Middle Temple confronts new London in the impressive frontage of the Royal Courts of Justice, with its unsanitary, narrow, and honeycombed court-rooms and corridors, — that average Londoner sees nothing whimsical in the apparitions of bewigged and begowned barristers, hatless and umbrellaless, scudding across the street from the court-room to their adjacent chambers of a rainy day; for the average Londoner is tutored to believe that wig and gown are as sacred institutions of the British Constitution as are the Speaker's and Sergeant's mace in the House of Commons, or the Lord Mayor's gilded coach. But the American lawyer, accustomed to see the usual Jove-like front of his judge, and the impressive features of the lawyer of his vicinage, each clad in the customary habiliments of business or social life, when witnessing the toilette incidents of "play-acting" life in and about a court-room, perceives the whimsicality of it; and he naturally asks, *Cui bono?*

But all this that has been noticed is external artificiality; and let us next consider the internal artificiality of English legal life. Let us take the case of another American who visits London in order to become a necessary litigant. He has heard of Frank Lockwood, Q. C., of Mr. Cock, Q. C., of Sir Edward Clark, Q. C., Lawson Walton, Q. C., Sir Charles Russell, Q. C., etc., and selects in his mind one of these as his lawyer. Having discovered the whereabouts of his selection, the American litigant sets out on his pilgrimage.

His selected counsel will not be found in Gray's Inn, — consecrate to the memory of Bacon, Lord Verulam, where the stiff, forbidding-looking, long row of soot-stained

buildings on Gray's Inn Road is known by that lordly appellation; for Gray's Inn buildings (so well pictured and described in the February number of "Green Bag") are principally surrendered for occupancy to solicitors and briefless barristers. The counsel to be sought will be found in either Lincoln's Inn or in the Middle or Inner Temples, where do congregate the busy barristers and popular Q. C.'s. If the client reaches Middle Temple from Essex Street, he will pass by the fountain whereat Tom Pinch, of Pecksniff fame, and his sister Ruth were accustomed to sit (the tree is there yet, and known widely as the Pinch tree, so realistically are Dickens's sketches taken).

Arrived at the Q. C.'s chambers, a barrier of artificiality is immediately encountered. The clerk — and every barrister, even if briefless, must have a clerk, who is to his employer what a grand-vizier is to a sultan — looks surprised, and informs him that "clients never see the barrister, except through the intermediary of a solicitor, and that the applicant must retain one." The clerk gives him the card of his pet solicitor (for the clerk is not above taking commissions); but the applicant being an American, and suspicious of off-hand recommendations, departs to hunt up a solicitor for himself. Inquiry satisfies him of a reliable one. He finds a colony of solicitors hard by in Essex Street, the western boundary of the Temple; or in Chancery Lane, that opens from the gateway near Temple Church. Upon Chancery Lane, adjoining the great law-bookstore of London, he finds the "Institute of Solicitors," where its governing committee have offices, and where there are a library and reading and writing rooms. Here he finds a directory of solicitors, — some three thousand in all. He discovers that each one of these has been articled for several years to a solicitor (really an apprenticeship); has undergone three several examinations, with written questions requiring written answers under oral inspections; and then, having passed each examination, has been licensed as solicitor to originate but not to conduct in court legal procedures, or to orally plead except before a local judge or magistrate, — some barrister for court appearance having to be employed by the solicitor. Consequently it is the solicitor who builds up the barrister, and not public reputation, as in America. This fact gave point to the song in Gilbert and Sullivan's "Trial by Jury," where in some autobiographical rhymes a barristerial character sings, —

"And I married a solicitor's daughter."

Our supposititious litigant, having selected and visited his solicitor and stated his case, is immediately met with more artificiality. "This is a case for counsel's advice. We must take an opinion. I will immediately prepare a statement, and in a few days send you word."

"But what is your own opinion?"

"Really, this is a most important matter; and I would not dare assume the responsibility."

The litigant has not yet become aware that "statement-case for counsel," or "perusing opinion," or "copying opinion for client," are phrases known to bills of cost, or that fees for counsel-opinion are often divisible and apportioned.

Here it is to be observed that, as things legally go in London, solicitors, in order to make money, must do something; and the more the doings, the greater the fees. Solicitors, for instance, are royal good letter-writers. Litigants are ignorant that every time that they are writing a letter or sending a reminder or making a visit, they are being docketed by the London solicitor with a six-and-eightpence for "perusing letter," or half a guinea for "conference," etc. The London solicitor is therefore always on the *qui vive* to do something, or have something instigated to be done, even if immaterial. A retainer of a lump sum is something he knows little of.

I had supposed that "Mark Meddle" —

that legal character in the comedy of "London Assurance" — was a burlesque exaggeration until I became a seven-years' resident of London; and then I made Mark's acquaintance in real life as a type among solicitors. Half a century ago, when those two busy dramatic B.'s — John Brougham and Dion Boucicault — in their capacity of playwrights created M. M., he was styled Attorney-at-law; but time has chastened that common-law cognomen into the softer name of Solicitor.

While there certainly exist solicitors in London who, like American attorneys, will never plunge their clients into needless litigation, nevertheless the large majority of listed solicitors there are typical Mark Meddles, and make war upon the maxim that Mr. Herbert Broome has so delightfully illustrated, — "Interest reipublicæ sit finis litium." Did not Mark Meddle clamor for a kick, so that he might be indulged with an action at law? Well, the average London solicitor encourages lawsuits, and nurses each process with a fond solicitude. To quote an old joke from the "Comic Blackstone," "Such solicitude is the *solatium* of the solicitor." It is his vocation to manufacture costs, and in this behalf it is no novelty for the solicitors on each side to collude. Rare, indeed, is the English solicitor who will protect the pocket of his client in preference to lining his own!

The English cost system is a peculiar one. It is of two branches. There are "costs in the action" which are to be paid by the losing litigant. There are also, and in addition, "costs as between solicitor and client." Under the first grouping are classed costs for services absolutely necessary, as between litigants *per se*. These are taxable; and public costs or disbursements thrown out by the taxing-officer are then transferred to the private tally. For instance, an employment of extra counsel, or a retainer higher than the taxing-officer deems fair, will figure in the private classification. Consultations and letters and printing, or stenographing, or type-writing, or extra expenses in procuring evidence, will figure as items in the private bill, and not in the bill for taxation. Very commonly the bill that an English client has to pay his solicitor, as between the two, will exceed the amount of the taxed bill which the solicitor, and not the client, receives. Of course, the litigant who wins, as well as he who loses, in the legal strife has to pay his own solicitor's private bill. Such an item as "extra allowance" by way of fine to a litigant who pleads in a foolish manner, or who occasions additional expense and trouble, is unknown in London courts. This twofold system of costs bears hardly on the suitor with a narrow purse. Litigation at the English bar is as great a luxury as racing. We have in the States a proverb that an house removal is as bad as two fires in the way of trouble and expense. In England there is a proverb that a lawsuit is as bad in expense as a long fit of illness. The ingenious litigant who can get his solicitor — and London is filled with speculative Mark Meddles — to carry on his side of the suit for the mere prospect of getting taxed costs only, is a lucky chap.

If Mr. Litigant from America is to originate a contention, and counsel gives opinion that an action will lie (*Mem.* rare as a white poll-parrot will be the barrister whose opinion would be adverse!), his solicitor either writes to the proposed defendant, informing him of claim and requesting the name of some solicitor to receive papers; or he issues a writ, — a jargonic document already printed with open spaces for appropriate fillings in, and which is purchased at a crown office in the Royal Courts building for two shillings, — and has it personally served. Unless the solicitor is one of high character, the probabilities are that a writ will be issued, because representing more costs. In eight days' time Mr. Defendant will demand "Statement of Claim," — synonymous with old terms of "Declaration" or "Plaint" or "Complaint." This will be furnished in

plainly stated terms, as briefly provided for by Lord Campbell's Acts. Then Mr. Defendant may demur, — a procedure little favored, because killing accumulation of costs, — or he will answer. His answer can be in the alternative, and in parts can be contradictory and as inconsistent in allegation as ingenuity can conceive. When issue has been joined, it is the custom for either, and perhaps each, solicitor to put questions or interrogatories to the opposite party. These and answers are drawn or settled by Mr. Counsel, — more costs accumulating. Meantime motions may have been made relative to pleadings with objections or amendments, — each stage supervised by a barrister, with accumulating costs. The party beaten on any such motion has usually an appeal taken by his solicitor from a Master, who hears the motion, to a Judge at Chambers; and next from Chambers to Divisional Court. More counselling; more battledore and shuttlecock between Q. C.'s, and of course more costs accumulating. Next ensue as many interlocutory proceedings regarding *de bene esse* and the like as lawyers are familiar with. There was once a great French cook who claimed to possess knowledge of making twenty-seven different omelettes; but if we liken legal procedures to eggs, an English solicitor can make many more kinds of legal omelettes fashioned with costs after the methods which cooks pursue with oysters, mushrooms, or *aux fines herbes*.

If our supposititious American litigant is a defendant, the solicitor will manage the adverse procedures that are readily inferrible from the foregoing with equal opportunities for employing and "snacking" with counsel, and entering items of costs on the two sides of his ledger devoted to the taxable or the private costs.

The London courts do not speak of "calendar" of causes at issue, but of a "List." Each Divisional or Appeal Court speaks of a "Cause list." This document for a "term" (to which is usually given an old ecclesiastical designation, such as Saint Hilary term or Michaelmas sittings, etc.) can be purchased at a crown office in the Court House, or also there bought by daily partition. After which the causes are called and heard, much as in the United States. For the trial are summoned as demanded ordinary or common jurors and special jurors, — English law keeping up its class divisions even in the jury-box. Thus, special jurors are like the passengers in first-class railway-carriages, and common jurors of the kind of passengers supposed to ride in third-class cars.

Let us now suppose our American litigant's case to be called for trial. He enters one of the small stuffy court-rooms with his solicitor. He finds it an amphitheatrical affair. The highest back benches are tenanted by witnesses or friends of litigants, and curious spectators or idlers. The centre benches are occupied by barristers, whose rows of white wigs give a frosty appearance in an atmosphere reeking with odors consequent upon defective ventilation; while the two front rows are occupied by the juniors and Q. C.'s in the pending case or approaching causes. The front bench in what is called the pit is devoted to the solicitors, their clients and clerks. All these confront the judge, who is perched like a canary-bird near the top of his cage; and to change the figure, looks not unlike a cricket-wicket that is erected to be bowled at, while being defended by a pen that is mightier than a bat. A couple of ungainly ushers, clad in sweeping and frayed cotton gowns, pervade the pit for the purposes of conveying papers and books to and fro, and marshalling witnesses.

As the case is called and answered, the jurors are notified and take places. Challenges seem to be unknown procedures even in criminal cases, whether to the array, for principal cause, or to the favor. Then the junior for the plaintiff rises behind the solicitor, and beginning, "Mi Lud and gentlemen of the jury," proceeds "to state the pleadings" without circumlocution. Which ending, the senior barrister or Q. C. opens the

evidence very much in the style used in the States. This opening the solicitor watches; for both he and the counsel have the same brief. The counsel holds his copy, and often refers to it. He is apt to iterate, "I am instructed that," etc., etc. In the very great majority of cases counsel opening the facts has not enjoyed the privilege of intercourse with the client, or of having questioned the proposed witnesses; then he relies entirely upon the brief prepared by the solicitor, who has conferred with the client and examined the witnesses, and upon the brief has outlined the salient facts. Quite often questions have been framed. This mechanical and indeed iron-clad method of examination greatly deprives it of that spontaneity which is so often a charm of examination in American courts with counsel, who is his own solicitor and brief-maker. Solicitors often prepare briefs even for cross-examinations, and have been known to write out series of questions in anticipation with strong suggestions as to tone and policy. The longer are these briefs, and the more the folios, increased charges arise for fresh manufacture of costs.

An American lawyer watching the progress of the trial would perceive that he was not witnessing one to be likened to a trial in any American city. He would be especially impressed with the absence of emphatic objections, — excepting some briefly stated and briefly ruled upon by the judge, who is supposed to be, at least for the moment, omniscient and infallible and without argument, unless the judge should ask for a citation or an explanation. What newspapers in this country sometimes call "wrangles between judge and counsel" become utterly unknown in an English court. Indeed the affectation of deference that is usually shown therein by counsel to the judge is sometimes depressing to one's sense of manhood. No exceptions are taken, because appeals are heard upon case stated, and new trials are argued for and considered upon the actual occurrences, and even upon errors not cognizable during the trial. When counsel have finished their addresses, it is the judge in England who "sums up." His Honor (his title in a county court), or his Worship (his title magisterially), or his Lordship proceeds to talk to the jury. The phrase "charge the jury" belongs only to what is addressed to a grand jury. "Requests" are unknown, because, as has been already said, "the judge is omniscient and infallible for the nonce;" and if he errs relief can be had on appeal to other judges, who by reason of rank are more omniscient and more infallible, — if there can be comparative infallibility.

After verdict there is sure to be an appeal from the beaten solicitor. The appeal is a new deal in the gamble for costs, to which each barrister is "willin'," like Barkis.

Litigation in England so partakes of mechanism that one can hardly expect the British lawyer to take that personal interest in the client which obviously every American lawyer takes. Here it may be remarked that the British judge is more or less a perfunctory functionary, compared with his American brother. The British judge never seems to feel that he represents the people so much as the Crown and Church and State. The American judge, whether appointed by a governor or elected by popular vote, is always in touch with the people. The English judge in his very bearing puts on the mask of a "superior being." He seems to be a "Sir Oracle," whene'er he "opes his mouth." He is never chosen from the rank of solicitor, but always from among the Queen's Counsel. Once he had to be selected from among the Sergeants-at-Law. But now, Sergeants' Inn is dismantled, and the old orders with their coifs are legal magnates of the past, living now only in the charmingly written memoirs of Mr. Sergeant Robinson or Mr. Sergeant Ballantyne. Nevertheless, as a rule, the solicitors of the kingdom are best fitted to become judges, because they are really more learned in the law. For it is they who coach barristers and supply them with briefs, and as a rule the examinations of solicitors are

more rigid and assume a wider scope than those which touch the incipient barristers. Moreover, the solicitor oftenest has the duty of advising clients on their affairs, their risks, and their intercourse with commercial and trades matters. The barrister also advises, but only through employment of the solicitor. The American custom of a client going directly to a counsellor for comfort or warnings is therefore unknown to the English bar. It is not difficult to perceive that advice filtered through the solicitor is less satisfactory than if listened to by word of mouth, and with attendant magnetism of personal address. The method is of course doubly expensive.

The business done in litigation by solicitors is, however, of less extent and value than their office business. There are rich solicitors in London and in the large provincial cities, whose names seldom appear in cause lists. It is the custom for families, firms, and corporations to have permanent solicitors. "My family solicitor" is a common phrase. He keeps the Family Tree in his office, the family secrets in his brain and heart, with the family title and mortgage deeds in his boxes. There not being public records kept in England of deeds and mortgages, solicitors become the "Registers." Such a public record as the States possess has often been agitated for in Parliament; but family pride and the traditional English dislike of novelty and innovation have always prevented the success of the radical agitation.

No one who is familiar with the appearance, carriage, demeanor, and address of lawyers in the United States, and who has also been an attendant upon English courts, can fail to admit and recognize the superiority in those respects of the American advocate. The latter possesses an elasticity and general grace of movement, facial gesture, natural and earnest delivery, readiness and aptitude in questioning, cleverness in repartee, and unction of diction that are seldom met with at the English bar. The average American lawyer attains eloquence which is seldom reached by the English barrister. The latter is a martyr to decorum. He seems oppressed with a ceremonial sense. He cannot run his fingers caressingly through his hair, and at times he talks as if feeling the weight of his wig upon his brain. Occasionally his gown seems to have the effect of a strait-jacket. A sense of etiquette appears often to act as a species of bearing or curb rein to his movements. He is apt to show a realization that he is an actor "made up," and that the judge is like the prompter or stage-manager at the wing, and that the "twelve" form an audience to be pleased rather than to be convinced. He wrestles with his rhetoric, as if weighed down and fettered with his instructions, and to feel that he is a mere conduit or fountain rather than the source of a stream. All noted barristers and Q. C.'s seem in some particular to be sensible that they are actors bred in the same school; while in the United States scarcely two lawyers exhibit similar peculiarities. In fine, the schooling of the English bench and bar tends toward monotony and artificiality, while the schooling of the American bar tends toward freedom and naturalness in thought and speech, and to a general behavior, that is fettered only by the innate dignity of a gentleman, and plainly impressed by a high sense of duty.

LONDON LEGAL LETTER.

LONDON, April 12, 1893.

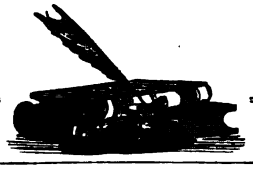
WE have just been having a great to-do over that favorite constitutional topic, the freedom of the press. The occasion was one of the home-rule debates in the House of Commons; and in an article dealing therewith the "Daily Chronicle," a morning newspaper, described the well-known Irish member, Mr. T. W. Russell, as the "tireless mercenary of Unionism." The maligned legislator accordingly complained to the House in due course of this breach of parliamentary privilege; and had some influential political associates not dissuaded him from pressing his grievance to the bitter end, he would undoubtedly have secured a solemn declaration that there had been an abuse of privilege; and so without more ado the incident apparently closed. But more was to come; that august functionary, the Sergeant-at-Arms, addressed a letter, with the approval of the Speaker, to the editor of the "Daily Chronicle," stating that it was his duty to ask him to warn the person concerned that his conduct had been an abuse of the privilege granted to him, and that very serious notice must be taken of it if anything of the kind occurred again. This paternal admonition was keenly resented, and a certain section of the press sought to make of it a grave infraction of their liberty; they maintained that the offence should have been censured in ordinary form or left alone, — neither the Speaker nor his subordinate having any constitutional right to act as they had done. But on the whole, the action of the Sergeant-at-Arms has been applauded. The "Daily Chronicle's" leader writer certainly exceeded the limits of descriptive discretion, and the eminent journal was considered to have got off very easily.

There is one thing English lawyers admire in your legal arrangements, — to wit, your system of vigorous bar associations. We read with pleasure in the professional organs of America how copious is the stream of interests which engross the attention of lawyers across the Atlantic in marked contrast with our condition at home. The annual meeting of the Bar Association will take place next month; but it might as well not take place at all. The gathering is fixed for a Saturday afternoon, under the presidency of the Attorney-General, when there will be a small attendance, a Report about no one knows what, a few short, dull speeches, and a vote of thanks to Sir Charles Russell for presiding. I am not one of those who really think our Bar Association could do much more than it does; for, as I fancy I must have indicated in a previous letter, such functions as it might assume are discharged by the managing bodies of the four Inn of Court, who, notwithstanding occasional criticism, conduct the ancient institutions under their care in a most admirable manner. I have spoken as above of the Bar Association, because no English lawyer feels comfortable unless he maligns at least once a year that innocuous convention.

Solicitors are greatly pleased with a voluminous report on "Officialism," which has been recently published by a special committee of the Council of the Incorporated Law Society. In view of recent inroads on private business, which the official departments in some directions appear to be pressing on, the solicitors assert that the interference of the State with the private business of the public ought to be confined to the narrowest limits compatible with the public interest. They urge that it is impossible to withstand such a form of competition, backed up as it must be by the unlimited resources and interest of the State, and assisted by any required adaptation of existing laws and judicial arrangements to its own purposes. The three points of attack are the bankruptcy and winding-up department, the compulsory schemes of the land registry office, and the proposals for the establishment of a public trustee department. As to land registration, especially, one cannot help thinking that the solicitors are out of touch with the times; we must erelong have compulsory registration of title. Its immediate introduction might not be feasible; but legislation is tending that way, and the arguments urged against it, though plausible enough, are to a large extent inconclusive.

* * *

The Lawyer's Easy Chair.



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

∴ ∴ ∴ ∴ ∴ BY IRVING BROWNE. ∴ ∴ ∴ ∴ ∴

CURRENT TOPICS.

QUIET DIVORCES. — It is very satisfactory to note that the Supreme Court of Colorado, in People *v.* McCabe (32 Pac Rep. 280), have held that it is not lawful for an attorney-at-law to advertise "divorces obtained quietly, good everywhere." This was a proceeding against an attorney to disbar him; and the court, in consideration of his plea that he did not know it was wrong, and his pledge not to do so any more, simply suspended him from practice for six months. This is a wholesome example. Divorces ought not to be obtained quietly. Such actions ought to be well heralded, especially to the defendant. Experience has unfortunately demonstrated that "divorces obtained quietly" are not "good everywhere," and that they lead to very unpleasant complications, and sometimes to the State-prison. In one sad case in the State of New York, where the absent husband, relying on the "quiet divorce" which his wife had obtained, and which he had discovered, and was willing to accept, and marrying again, found himself in prison for bigamy! Where easy and quiet divorce, in connection with the salubrity of the climate, is recommended from the bench as an inducement for immigration, as it recently was in South Dakota, the judges are in danger of becoming unintentionally *particeps criminis*. Before judges suspend lawyers for making a royal road to divorce, in some States at least they should suspend themselves; as for example in Texas, Kansas, Montana, Michigan, and Nevada, where they grant an absolute divorce for a single accusation of unchastity! We speak of respectable courts, and not of courts which are capable of granting divorces for any one of a half-hundred ridiculously trivial causes cited in Mr. Carroll D. Wright's statistics. It would not be singular that a lawyer should not think it wrong to advertise "quiet divorce" in a community where the courts grant absolute divorce because a husband does not wash himself, or keeps his wife awake by talking, or refused to cut his toe-nails, or abused her for having two teeth pulled, or never offered to take her riding, or scolded her for groaning in labor, or where the wife would not cook or sew on buttons, or struck the husband with her bustle, or shot an old sweetheart, or would not walk with her husband on Sunday. It would seem quite proper to keep such divorces as "quiet" as possible.

PRIZE-FIGHTING. — One of the leading Boston newspapers recently defended its practice of publishing elaborate accounts of prize-fights on the ground that everybody wants to read them, — even many of the soberest and order-loving part of the community, including professional men. This is true, but it is no reason. The same class read the accounts of rapes, lynchings, seductions, murders, and official executions; but these are unhealthy reading. We ourself always read the accounts of the prize-fights, and formerly even had an unholy desire, stimulated by these details, to witness a slugging-match; but we should be glad to relinquish this bad curiosity for the sake of ridding the public prints of such matters, just as we should be willing to give up our "little wine now and then," and eke our lager-bier, if prohibition could be effectuated. So, we dare say, it is with respect to most of the respectable classes. Prize-fighting is a disgusting and brutal business. We inherited it from England, from whom we inherited most of our bad ways; but it seems to have fallen into comparative disrepute or disuse there, while here it is rampant. What a matter of reflection for thinking men that an ignorant, vulgar, loaferish, human kangaroo from the antipodes should come to this country, and in nine minutes should make $40,000! — ten years' salary of the Chief-Justice of the United States; more than any but a very few lawyers save in a lifetime; as much probably as the sainted Phillips Brooks left; the equivalent of the average annual salaries of eighty Methodist clergymen, or those of a dozen country college professors: more than has often been cleared by the beneficent work of a literary lifetime; enough to give a liberal education to forty poor young men, to build a hospital, a library, a reform school, to erect ten mission churches, or to fit out several missions to the heathen! The stupid, low-browed brute who won, it is said, has been offered $1,000 a week to go on the stage! How many actors of genius are there who make so much, or how many men in any occupation depending mainly on intellect? It is not a great many years since New York City sent an ex-prize-fighter to

Congress. Even now the most celebrated citizen of Boston is a bruiser, who in ten years has made half a million dollars and squandered it in riotous living, and who has whipped his wife and every man who has opposed him save one. Somewhere out West recently John Fiske was introduced as "the second man from Boston." There can be no doubt who was the first in the introducer's mind, nor that he would have had the larger audience. In the city of Buffalo, where we are writing, nearly all the leading newspapers have a daily department devoted to matters pertaining to the prize-ring, and the "sports" are raising heaven and earth (and of course the other place) in the endeavor to bring the next great "mill" here, promising to erect for it a $15,000 building, capable of accommodating 30,000 spectators, and to "hang up a purse" of $75,000. It would take a long time to raise that amount of money from admission fees in the same city for any good and decent purpose, such as literature, music, education, or religion, and this is a good and decent city; and yet it would probably be a paying adventure to offer two stalwart ruffians, one of whom has just served a term on the treadmill for wantonly nearly killing a weak old man, $75,000 for conducting a contest which it is conceded that no respectable woman should or could witness! Now, what is the attraction? Is it solely the bruising? We think not, although that counts for much in gratifying a passion of mankind which has sought vent in gladiatorial shows, bull-fights, bear-baitings, and student duels. But the attendant gambling has much to do with it. If prize-fighting could be dissociated from betting, the public interest in it would seriously decline. Gaming, in our opinion, is, next to intemperance, the most dangerous vice that threatens this country, and the most demoralizing. At a late prize-fight in Buffalo one of the animals knocked out the other in six seconds from the start! Hundreds of people had paid large sums to see the sport, and how disappointed they were! As for us we "chortled in our joy." So may it ever be! Possibly the brutal sport will decline, like war, the more "scientific" it becomes. But to return to our initial muttons. There are some newspapers which do not publish accounts of prize-fights, — "The Tribune" of New York, we believe, for one, — and they deserve praise for the costly self-denial.

Book Reviews. — The most difficult thing a legal editor ever undertakes is the review of a law-book. Of course it is impossible that he should ever read any law-book through for the purpose, and it is not expected that he should do so. Herein his duty is different from that of a reviewer of literature. A German critic recently fell into ridicule for saying that Mr. Aldrich's "'Queen of Sheba' is like his other poems;" and Mr. Lang shares the ridicule for trying to excuse him, and disclosing in the attempt that *he* did not know that the work is prose! Almost every law-book has some virtues often peculiar to itself, and rarely is a book so bad as not to deserve some degree of commendation. And yet who can doubt that there are more legal text-books published than are fairly necessary? Reviewers are very apt to conceive that they must find some fault. Of course they ought if the fault is serious. But in the desire to do this without the labor necessary to detect specific fault, they are apt to make a general objection not based on any fault. For example, a reviewer might blame Judge Dillon for treating the subject of Municipal Corporations independently, and regret that he had not written a general work on Corporations. This is a very safe kind of criticism, — to reprimand the author for not having written on a different subject. It would be quite in order to blame Mr. Aldrich for not having put the "Queen of Sheba" in rhyme. Another stock criticism is on the omission of some case in some second or third-rate State, and announced while the book was in press. "A little industry would have enabled the author to present the last authority on this much-mooted point" is the formula in that case made and provided. Even if the case was too late, the sting of the reviewer is not diminished by the remark: "Possibly, however, it was too late, which is much to be regretted." The reader carries away a vague impression that the author was slothful because he did not learn of the pending case, and ask the judges how they were going to decide it. Again, if the author professes to state only a common-law rule, it is sagacious to remind him that "this has been changed for many years by statute in Oregon, Wyoming, and Utah, and there is grave doubt whether the rule in question is not very unjust and absurd." The author may safely be blamed for citing too few cases or too many; for putting extracts from opinions into the text or into the foot-notes; for making his index too bare or unnecessarily prolix; etc. If the critic cannot discover any other fault without too much labor, this is a sure ground: "There are some serious and misleading misprints; for example, Doe *v.* Roe, 10 Cowen, 136, is cited as on page 137, and the parties are reversed. If there are many wrong citations like this, it must seriously detract from the value of the work." Although it is not expected that the reviewer should critically read the book, yet it is well for him to read it with sufficient care to discriminate between what is original with the author and what is professedly quoted, and not to censure the author for the opinions of others. A failure to do this brought into deserved ridicule a certain not very prominent or authoritative college law review very recently, but that was the only case of the kind that ever came to our notice. There are certain things

which may reasonably be expected by author from reviewer, such as honesty, candor, intelligence, and a fair amount of breadth; but there is one thing which seems to be expected which is not reasonable, namely, anything worth the name of "review" from a critic in another State on a purely local treatise or digest. It is evident that generally in respect to these the review must degenerate into a few formal words of commendation or blame.

HUMOR IN LEGAL JOURNALISM. — It was to be expected when the "Green Bag" took up the idea of alleviating the austerities of the law with a little humor, and especially when it founded and endowed "The Lawyer's Easy Chair," that other legal journals would see the necessity of imitating it. We had hardly expected, however, to find an imitator in England; but the grave "Law Times," which we believe once adjudicated that the occupant of this Chair "was never in earnest," has established what it calls "The Legal Humourist," — mind the *u*, please! It is probably owing to the disadvantage of not living in England that we are unable thus far to discover any material difference between the contents of that department and the rest of the journal. The current instalment contains a rhymed version in the archaic style of a recent law case; some specimens of the customary dismal attempts of the English judges at wit, under the title of "Fun in Crime;" and a paragraph about a solicitor who advertises eggs for sale. We are not jealous of these things. They merely make us sad, and do not make us wise. If we were to offer any advice to our playful brethren, it would be, in the language of the American tram-car ballad, "*Punch*, brother, *punch* with care."

NOTES OF CASES.

INDIRECT SLANDER. — One may be slandered through his horse. Thus in Henkle *v.* Schaub (Michigan Supreme Court), 54 N. W. Repr. 293, a complaint alleging slander of plaintiff's stallion, which he kept for breeding, was held to be a slander of plaintiff's credit and reputation in that business, needing no allegation of special damage. The court said: —

"The first question suggested by defendant's counsel is whether the action is for slandering the plaintiffs in their business, occupation, or calling, or an action for slandering the plaintiff's horse. It is admitted that if it be the former, then the words may be actionable *per se*, and the action could be maintained without alleging or proving special damages. On the other hand, it is insisted that if the action is upon the words spoken of and concerning plaintiffs' horse, then the words spoken are not actionable *per se*, and no recovery could be had without alleging and proving special damages. . . . The declaration plainly sets out the business and calling of the plaintiffs. As appears by the declaration, they are the owners of this horse, which it is alleged is of the value of $2,000. It was imported from France, and recorded in the stud-book as a full, pure-blooded Percheron stallion, which they had kept for breeding purposes from the year 1887 for hire and gain, and that he had begotten many colts; that he was a good colt-getter, and especially valuable to his owners. It is further alleged that the plaintiffs have represented and held out the horse as such, and that they (the plaintiffs) are upright and truthful citizens, and of good standing in the country; that the defendant is also the owner of a stallion, and greatly envying the good standing and repute of plaintiffs, and wickedly and maliciously intending to injure them in their good name, fame, and credit, he made the false and malicious statements," etc. "It is apparent from the plain terms of the declaration that the action is based, not only upon the slander of the horse, but also upon the character, fame, and credit of the plaintiffs, who are the owners thereof, and engaged in the business and calling of keeping the horse for hire, gain, and reward. The court was therefore in error in holding that the declaration did not state a cause of action. The rule is well stated in Newell on Defamation, Slander, and Libel (at page 181), as follows: 'When language is used concerning a person, or his affairs, which from its nature necessarily must, or presumably will, as its natural and proximate consequence, occasion him pecuniary loss, its publication *prima facie* constitutes a cause of action, and *prima facie* constitutes a wrong, without any allegation or evidence of damage other than that which is implied or presumed from the facts of publication; and this is all that is meant by the terms "actionable *per se*," etc. Therefore the real, practical test by which to determine whether special damage must be alleged and proven in order to make out a cause of action for defamation is whether the language is such as necessarily must, or presumably will, occasion pecuniary damage to the person of whom it is spoken.' The declaration was not demurred to, and the substance of a good declaration is certainly contained in these allegations. Words, spoken or written, injurious to a person in his business, which are false and malicious, are actionable *per se*, and special damages need not be alleged or proved. Manufacturing Co. *v.* Perkins, 78 Mich. 1; Oliver *v.* Perkins (Mich.), 52 N. W. Rep. 613. What proofs the plaintiffs may be permitted to put in, if any, under the claim of slander to the horse, we need not now determine; but the declaration is sufficient to admit proof of the slander upon plaintiffs' business as it is framed."

MAY AND DECEMBER. — Their inability to agree is illustrated in Hoover *v.* Hoover (Kentucky Court of Appeals), 21 S. W. Rep. 234, the point of the decision being that if a husband sues for divorce on the ground of abandonment, and there is no alienation of affection or guilty amour shown on the part

of the wife, the wife should receive reasonable alimony. The court said: —

"No co-respondent or *particeps criminis* is named, but a drag-net is thus cast out to gather up whatever might be found to besmirch his wife's fair name. The chancellor granted divorce to the husband, looking, it must be presumed, solely to the question of abandonment, but refused alimony, *pendente lite* or otherwise, to the wife; and of this she complains. The testimony discloses that in 1884 the appellee, when some forty-odd years of age, married the appellant, who was about eighteen, and they lived together happily until the summer or fall of 1889. The wife was of a lively — almost rollicksome and girlish — disposition. She sought the company of the young and unmarried girls of the village, but was duly kind and affectionate to her husband. He was of steady and serious habits. He was an undertaker, and away from home to a limited extent. For some reason, not disclosed in the record, — but there appears to have been no trouble causing it, — the appellant, in the latter part of the year 1889, left home to visit her brother or father in Cincinnati. Her husband accompanied her to the depot, and affectionately kissed her good-by; and this was the abandonment complained of. When she returned, after some weeks, she was not met by the husband. She repaired to the village inn, and sent for her husband, and, after being charged with infidelity, insisted on facing her accusers. They started out for that purpose, and when she found that her character was to be tried by a coterie of negro strumpets, she indignantly sought the shelter of her father's house in an adjoining State, accepting, presumably from dire necessity, the sum of five dollars from her previous husband. The judgment granting him a divorce cannot be disturbed; but after examining carefully the voluminous body of testimony, without here reviewing it in detail, we are clearly of opinion that the insane jealousy of this otherwise seemingly fair-minded husband has rendered him blind to the plainest dictates of duty and affection, and led him on in this unrighteous attempt to blacken the good name of his wife. We are told of no alienation of affection, — no special infatuation or guilty amour; but on the public highway, at the open window, looking out towards the town thoroughfare, in the woods and out on the fields, and with any passers-by, are these wicked debaucheries and lewd acts practised. And amid it all, the respect of the pure-minded, and the confidence and company of the best people of the community, are retained and enjoyed by the defendant. A veritable Dr. Jekyl and Mr. Hyde! After her alleged detection and fall, she is guided by instincts of purity to the home of her kindred, and is engaged in honest work to provide an honest living. The court should have allowed her a reasonable sum for alimony, and on the return of the case let this be done, including an additional fee for her attorney; and for these purposes, and to this extent, the judgment of the lower court is reversed."

KILLING A BASE-BALL PLAYER. — We note a decision which holds the debatable doctrine that it is a crime for one amateur base-ball captain to kill another. This is the doctrine of Byrd *v.* Commonwealth (Supreme Court of Appeals of Virginia), 16 S. E. Rep. 727. The opinion also discloses the remarkable fact that the ability to throw "rocks," attributed to the heroes of the Iliad, has descended to these modern athletes. The syllabus is as follows: —

"The evidence showed that deceased and defendant, fifteen years of age, were leaders of opposing base-ball teams, and became involved in a dispute over the game. Defendant left the grounds, whereupon deceased applied abusive epithets to those who would refuse to play under such circumstances; and on defendant's asking if he applied that to him, replied, 'Yes,' and picking up a base-ball bat approached near to defendant, and, according to one witness, stood leaning on it, but according to others he said he would mash out defendant's brains with it. Defendant ran back twenty or twenty-five feet, picked up two rocks, and then turned and came nearer deceased, who had not followed or approached defendant further, or threatened to strike him as he retreated, and as he stood leaning passively on the bat, or swinging it in his hand, defendant threw one of the rocks at him, which struck him in the head, fracturing his skull. There was no evidence of any previous ill-will between the parties. *Held*, that a verdict of voluntary manslaughter was properly rendered."

The decision might have been different had the parties been "professionals."

A STUMBLING-BLOCK. — In Seildon *v.* Bickley (Penn.), 25 Atl. Rep. 1104, it was held that where a passenger on a steamboat stumbles over a gang-plank of ordinary construction, lying on the deck of the vessel in close proximity to the place where it must be used, causing severe injuries, the owner of the vessel is not liable in the absence of proof that the plank was negligently or unusually constructed or handled, or other proof of specific negligence which caused the fall. The court observed: —

"If it was in the position testified to by the plaintiff's husband, only two feet in front of the end of the other gang-plank leading from the wharf to the boat, all the passengers who got off the boat and returned must necessarily have passed over it. Yet none of them stumbled, or fell over it, so far as the proof goes, and its location cannot be regarded as either necessarily or probably the occasion of persons stumbling over it. But a gang-plank is a highly necessary and indeed indispensable appliance of a steamboat engaged in the transportation of passengers and freight. There is no other place for it to lie, when not in use, except the deck of the boat; and passengers must be assumed to know the fact that such planks are in use, and are present on the deck in the near vicinity of those portions of the vessel from which landings are made. There are many other appliances on the deck

of a vessel which project above the surface, such as coils of rope or chain, snubbing-blocks, capstans, hatchways, etc., and passengers are bound to take notice of them, and to avoid stumbling over them. We cannot consider that the mere presence of any of these necessary and usual appliances upon the deck of a vessel, if in ordinary and usual condition, confers any right of action upon a passenger who trips or stumbles over them. . . .

"The case, then, is simply this: That a passenger on a steamboat stumbled over a gang-plank of ordinary construction, and lying on the deck of the vessel in close proximity to the place where it must be used, and there was no proof that it was negligently or unusually constructed or handled, nor any other proof of any specific negligence of the defendant which produced the plaintiff's fall. We can only regard the case as a mere accident, not induced by negligence, and therefore without remedy in damages. In the case of Borough of Easton *v.* Neff, 102 Pa. St. 474, an old lady stumbled or stepped into a gutter lying across the sidewalk of a street, and fell, and was injured. She brought an action against the borough, and was bound to prove some specific negligence in order to recover. The court below left it to the jury to say whether there was any necessity for the construction of the gutter at that place; and on that kind of proof the plaintiff recovered a verdict. The judgment was reversed by this court for error in that instruction. Our late Brother Clark, in the course of his opinion, said: 'Was there in the circumstances of the injury any proof of negligence on the part of the borough of Easton in the construction of this crossing? There can be no inference of negligence from the mere fact of the injury. Municipalities are not insurers; they are simply responsible for injuries arising from the negligence of the corporate officers, and the burden of proving that negligence is upon those who allege it. An injury may occur from purely accidental causes, in which no fault can be imputed to any one. We are all liable to the ordinary accidents of life. Was this such an accident, or was it the result of the defendant's negligence? Was this gutter constructed in the usual and ordinary way? Was it reasonably safe and secure?' Of course gutters and curbstones are necessary in paved sidewalks in towns; but the mere fact that a foot-passenger steps into one, or stumbles over the other, whether by night or day, confers no right of action. There must be further affirmative proof of specific negligence in their construction before a recovery can be had. So here a gang-plank properly constructed, so far as the evidence goes, lying on the deck, where it had to be, and in its usual position, according to the testimony, and being a necessary appliance of the business, cannot, without more, confer a cause of action merely because a passenger falls over it. As well might it be claimed that if the plaintiff had stumbled over a coil of rope, or a snubbing-block, or a chair in the saloon, she could recover damages for the fall without proof of specific negligence. We are of opinion that there is no proof of negligence in this case such as can establish liability on the part of the defendant."

Sterrett, J., dissented (no uncommon action on his part, as we have for years observed); but why? He does not tell, and we cannot imagine. We expect to see some one suing for stumbling over his own leg.

Two Sides. — A number of years ago, when the writer hereof was a small lad, there was a customary riddle, "How many sides has a round pitcher?" To which the answer was, "Two, — the inside and the outside." But it seems that this doctrine does not apply in law to a wagon. Thus in Commonwealth *v.* Crane, 33 N. E. Rep. 388, the Supreme Court of Massachusetts held that where a statute makes it unlawful to sell oleomargarine from a wagon, etc., without having on both sides of the vehicle a placard inscribed, "Licensed to Sell Oleomargarine," it is not a compliance to hang such placard inside a covered wagon, although both ends of the wagon are open. The court observed: —

"The defendant admits that the purpose of the act was to protect the public against fraud, and to provide an additional safeguard, by requiring peddlers who sell oleomargarine from wagons, and have the opportunity to cheat and deceive, to notify the public that they deal in oleomargarine. He further admits that the purpose was that the placards should be placed where they could be seen. While we have no doubt that this is the purpose of the act, we cannot concede that the defendant has complied with it, and we are of opinion that placing the placards on the inside of the cover of the wagon was a mere device to evade the manifest intent of the Legislature."

Screen Law. — In Commonwealth *v.* Brothers, 33 N. E. Rep. 386, a prosecution of a saloon-keeper for disobedience to the screen law, it appeared that the shop in question was in the rear of the premises. There were "two windows to this back shop. Upon one of the windows were blinds, closed, and a curtain pulled clear down. On the other window, near some stairs, there was no curtain, but there were boxes and barrels piled up in the back yard, which obstructed the view to some extent. On the side opposite to the back shop were a tenement house and a livery-stable, but no view of any public street could be obtained from the back shop, and the windows were not visible from any public street." Still it was held that these facts did not relieve the defendant from the charge of violating the act by maintaining screens, etc., in such a way as to interfere with a view of the business conducted on the premises. Pretty particular are the courts in rum cases!

The Green Bag.

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

LEGAL ANTIQUITIES.

KING JAMES I. issued a proclamation in which the voters for members of Parliament are directed "not to choose curious and wrangling lawyers, who seek reputation by stirring needless questions;" and in ancient times lawyers were not allowed to sit in Parliament.

THE following extracts from Felt's "Annals of Salem" give a glimpse of some of the singular punishments in vogue in Old New England: —

"In 1637, Dorothy Talby, for beating her husband, is *ordered to be bound and chained to a post.*"

"In 1638, the Assistants order two Salem men *to sit in the stocks on Lecture day*, for travelling on the Sabbath."

"In 1644, Mary, wife of Thomas Oliver, was sentenced to be *publickly whipped* for reproaching the magistrates."

"In 1646, for slandering the Elders, she had a *cleft stick put on her tongue for half an hour.*"

FACETIÆ.

AT Harnett County (N. C.) Superior Court, a few years since, Judge Shipp presiding, the trial of a cause had been protracted till near midnight. The jury were tired and sleepy, and showed flagging attention. Willie Murchison, who was addressing the jury, thought to arouse them; so he said, "Gentlemen, I will tell you an anecdote." Instantly the jury, the judge, and the few spectators pricked up their ears and were all attention, as Murchison was admirable in that line, had a fund of anecdotes, and no one could tell them better. But he then proceeded to tell one of the dullest, prosiest, most pointless jokes possible. Everybody looked disappointed. The judge, leaning over, said in an unmistakable tone of disappointment, "Mr. Murchison, I don't see the point of that joke." "Nor I, either," replied the witty counsel; "but your honor told it to me on our way down here; and as I thought the lack of appreciation must be due to my obtuseness, I concluded to give the joke *a trial by jury.*"

SOME time ago Col. John D. Templeton of Texas defended a man charged with stealing sheep which the evidence showed to be worth five dollars. The county attorney asked the justice to fix the bond at five hundred dollars; and that dignitary was about to do so, when Colonel Templeton suggested that a bond should be in double the value of the property involved, and the evidence showed the property to be worth five dollars, which would make the bond ten dollars. The justice indignantly turned to the county attorney and said: "I guess I know what the law is; I can't fix anything more than a ten-dollar bond in this case." The ten dollars was forthcoming, and the prisoner has not been heard from since.

As a youth Daniel Webster seemed somewhat opposed to physical labor, but he was quick at repartee. While mowing he complained to his father that his scythe was not hung properly. "Hang it to suit yourself, Dan," replied the paternal. The boy immediately hung it on a tree near by, saying, "There, father, it's hung to suit me now."

THE following is said to be in the Statutes of the State of Oregon: "All traction engines *and bicycles* must carry two planks, each 12 ft. by 12 in. by 3 in., upon which to cross bridges, and

must come to a stop within at least 100 ft. of any horse-drawn vehicle approaching from either direction."

NOTES.

THE following incident took place in the Court of Session in Edinburgh in the early part of the present century, the witness being the celebrated Dr. James Gregory, a man of very considerable learning, and at the top of his profession. To appreciate the incident, it is necessary to premise that playing-cards are generally supposed to have been invented for the amusement of the mad King Charles VII. of France. The matter at issue, in the case in which Dr. Gregory was called, was as to the mental capacity of a particular person; and according to the evidence of the witness, the insanity of that person was beyond dispute. On cross-examination Dr. Gregory admitted that the person in question played admirably at whist. "And do you say, Doctor," asked the learned counsel, "that a person having a superior capacity for a game so difficult, and which requires in a pre-eminent degree memory, judgment, and combination, can be at the same time deranged in his understanding?" "I am no card-player," replied the witness, with great address, "but I have read in history that cards were invented for the amusement of an insane king." The consequences of this answer were decisive.

THE following instructions were recently given to the jury by a judge of one of the New York City courts: —

"Now, the mere fact that both counsel happen to be respectable men must not influence you either one way or the other.

"So far as the legal lights of the bar of this city are concerned, I never heard in my experience at the bar, which was probably limited, that General W—— was a leader of the bar; but whether he was or not (and he is as far as I know an honorable gentleman), his law, as opposed to my view of it, is no good, in my opinion, and I will not recognize his law until I am convinced by that authority having power to set me right. I don't believe that any lawyer at the bar has a right to dictate law to me. Lawyers, it is true, have a right to state what their views of the law are; but they have no right to dictate law to a judge upon the bench, and no lawyer, no matter what his merit may be, can influence, overpower, or embarrass me by any proposition of law he may state. On the contrary, the jury is bound to take the law as I lay it down, and not as counsel state it.

"I believe that in this case Mr. S—— knows as much law as General W——; and in saying so, I mean no disrespect to Mr. W——. But I believe that I, in my judicial capacity, know as much law as both of them together, because whatever law I lay down you, gentlemen, must accept as the law, the infallible law, until a higher authority says that I am wrong.

"This much I say, without any vanity on my part. I simply express myself so for the purpose of maintaining the dignity and respect due to the office I hold, and not in any laudation of my own merits as an individual.

"The mere fact that one of the counsel in this case happened to take more exceptions than the other must not influence you in the least. If you should hire either of these gentlemen, you would expect them to take every advantage in the trial of your case which the law gives them; and if they did not do so, you would be justified in censuring them. People employ lawyers to take every advantage of the law they can; therefore if any lawyer so employed did not perform his full duty, he would not be faithful to his client."

Recent Deaths.

GROSVENOR P. LOWREY, one of the leading members of the bar of New York City, died on April 21. He was born in North Egremont, Mass., Sept. 25, 1831, his parents being William Lowrey, a native of Claverack, Columbia County, N. Y., and a descendant of an old Dutch family, and Olive Rouse of Egremont. He received a common-school education in his native town, and completed his studies in the law department of Lafayette College, Easton, Penn., gaining admission to the Bar at that place in 1854.

After a short sojourn in the West, Mr. Lowrey returned to the East, settling in New York City in 1857 for the practice of his profession. During the greater part of the time in which he was in practice he was a member of the firm of Porter, Lowrey, Soren, & Stone, of which the senior member was the late John K. Porter, previously one of the judges of the Court of Appeals, and well known as an advocate through his defence of Henry Ward Beecher, and of General Babcock

at St. Louis; his prosecution of Guiteau, the Parish Will Case, the Metropolitan Bank Case, and his connection with many important civil actions. Our readers will not forget the beautiful tribute paid to Mr. Porter by Mr. Lowrey in the August and September numbers of the "Green Bag" (1892).

During his professional career Mr. Lowrey was for fifteen years general counsel of the Western Union Telegraph Company (from the time of its organization until 1882); and he had been at different times counsel for the Metropolitan Railway Company, Wells, Fargo, & Co., the North American Steamship Company, the United States Express Company, the Baltimore and Ohio Telegraph Company, the Singer Manufacturing Company, the Union Ferry Company, the Knickerbocker Trust Company, and other important corporations.

As a man, Mr. Lowrey was universally esteemed and loved. His cheerful, sunny disposition endeared him to all who knew him. In his death the bench, bar, and community have sustained a great loss.

Hon. W. H. H. Allen, late Associate Justice of the Supreme Court of New Hampshire, died on April 26.

Judge Allen traced his ancestry back to Samuel Allen, of Braintree, Essex County, England, who in 1632 settled in Cambridge, Mass., and three years later emigrated with a band of Puritans from the Massachusetts Bay Colony to Windsor, Conn. From the second son of Samuel Allen, and fifth in line, descended the sturdy Vermont patriot, Ethan Allen; while from the third son of Samuel Allen, and eighth in line, descended the subject of this sketch. Joseph Allen, father of the judge, was a Methodist clergyman.

Judge Allen was born in Winhall, Vt., Dec. 10, 1829. His early life was passed at home, attending school a few months each year; later attending academies at West Brattleboro', Saxton's River, and Keene, fitting for college under the tutelage of Joseph Perry of the latter place. He entered Dartmouth College in 1851, and in 1855 was graduated second in a class of fifty-one, — Walbridge A. Field, Chief-Justice of the Supreme Court of Massachusetts, being first. Other classmates were William S. Ladd and Greenleaf Clark, ex-judges of the Supreme Courts of New Hampshire and Minnesota, and Nelson Dingley, Congressman from Maine.

After finishing his course at Dartmouth, Judge Allen was principal of a high school at Hopkinton, Mass., and superintendent of schools at Perrysburg, Ohio. While serving in these capacities he studied law; afterward prosecuting his studies in the offices of Wheeler & Faulkner at Keene, and Burke & Wait at Newport. He was admitted to the bar in September, 1858, and the same year became clerk of court for Sullivan County. During the five years ensuing he tried many referee cases, and did much other work now done by the judges. In 1863 he was appointed paymaster in the volunteer service, with rank of major, and as such served until December, 1865, being stationed chiefly at Washington, and paying soldiers in the Army of the Potomac.

Returning to Newport, he began the practice of law, which he continued with good success until 1867, when he was appointed Judge of Probate for Sullivan County, an office he held for upwards of seven years. During his term but three appeals were taken from his decisions, two of which were affirmed by the full bench of the Supreme Court, while the other was not prosecuted. From 1867 to 1876 he held the office of Register of Bankruptcy. In 1868 he removed from Newport to Claremont. Upon the reorganization of the courts in 1876, Judge Allen was, upon the unanimous request of the bar of the county, appointed Associate Justice of the Supreme Court, which position he resigned last March. Of the court constituted in 1876 Chief-Justice Doe is now the sole survivor.

Judge Allen was a man of varied gifts and acquirements. His learning covered a broad field, and much of it was the fruit of personal experience and investigation. All his life he was deep in work or study, — work that included not only the prompt and faithful discharge of public duties, but many things beside, — study not only of books, but of men and things. His opinions on matters to which he gave thought were clear and well defined, and he defended them vigorously and often dogmatically. His written opinions, which are scattered through the New Hampshire State Reports, are considered models of conciseness and clearness. Rarely did the Supreme Court reverse his decisions, so carefully were they framed, and so well founded upon a clear and comprehensive knowledge of the law.

CONTENTS OF THE APRIL MAGAZINES.

The Arena.

The Future of Fiction, Hamlin Garland; Wage-workers, Alfred R. Wallace; Authority in Christianity, George C. Lorimer, D.D.; The Modern Expression of the Oldest Philosophy, Katherine Coolidge; Automatic Writing; The Tenement-house Problem in New York, Eva McD. Valesh; Compulsory Arbitration, Chester A. Reed; Anarchism: What it is and what it is not, Victor Yarros; The so-called "Fad" in the Public Schools, Helen E. Starrett.

The Atlantic.

Old Kaskaskia, Part Fourth, Mary Hartwell Catherwood; Unpublished Correspondence of William Hazlitt, William Carew Hazlitt; The American out of Doors, Gamaliel Bradford, Jr.; My College Days, II., Edward E. Hale; Vittoria Colonna, Harriet Waters Preston and Louise Dodge; Some Pelham-Copley Letters, Paul Leicester Ford; Phillips Brooks, Alexander V. G. Allen; The Country Unexplored, Stuart Sterne; Architecture among the Poets, Henry Van Brunt; Betwixt a Smile and Tear, Edith M. Thomas; Money as an International Question, E. Benjamin Andrews; The Dawn of Italian Independence; The Influence of Sea Power upon the French Revolution.

The Century.

The Chicago Anarchists of 1866: The Crime, The Trial, and the Punishment (illustrated), Joseph E. Gary; The Cash Capital of Sunset City (illustrated), Hayden Carruth; The Heart of the Tree (illustrated), H. C. Bunner; An Embassy to Provence, III. (illustrated), Thomas A. Janvier; Sweet Bells out of Tune, VI., Mrs. Burton Harrison; A Tree Museum (illustrated), M. C. Robbins; Idy (illustrated), Margaret Collier Graham; Letters of two Brothers, Passages from the Correspondence of General and Senator Sherman, William Tecumseh Sherman, John Sherman; In Extremity, John White Chadwick; The Princess Anne (illustrated), M. O. W. Oliphant; Margaret Fuller (with portrait), Josephine Lazarus; Benefits Forgot, V., Wolcott Balestier; "Writ in Water," Frank Dempster Sherman.

The Cosmopolitan.

Sohni (a poem), Sir Edwin Arnold; Lent among the Mahometans (illustrated), Frank G. Carpenter; Purses, Pockets, and Personal Receptacles (illustrated), S. William Beck; The University of Chicago (illustrated), Hjalmar Hjorth Boyesen; Historic Figure-heads, Robert G. Denig; A Traveller from Altruria, W. D. Howells; The great Florida Phosphate Boom (illustrated), Alfred Allen; Inaugurations and Coronations (illustrated), Frederick S. Daniel; Berliners (illustrated), Friedrich Spielhagen; Democracy and City Government, Edwin A. Curley.

Harper's.

The City of Brooklyn (illustrated), Julian Ralph; Washington Society, II. (illustrated), Henry Loomis Nelson; Retribution, Howard Pyle; Kansas (illustrated), John James Ingalls; The Refugees, IV., A. Conan Doyle; The Progress of Art in New York, George Parsons Lathrop; In the Barracks of the Czar (illustrated), Poultney Bigelow; A Modern Knight (illustrated), Emily Browne Powell; University Extension in Canterbury, Rebecca Harding Davis.

Lippincott's.

Columbus in Love (illustrated), George Alfred Townsend; What the Publicity Department did for the Columbian Exposition, William Igleheart; Abraham's Mother (illustrated), (Lippincott's Notable Stories), Annie Flint; A Description of the Inexpressible, Julian Hawthorne; Sappho, Edgar Saltus; The Religion of 1492, Frederic M. Bird; Men of the Day, M. Crofton.

New England Magazine.

Trinity Church, Boston (illustrated), Phillips Brooks; Description of Trinity Church, H. H. Richardson; Silas Deane and the Coming of Lafayette, Georgianna A. Boutwell; Some Historical Aspects of Domestic Service, Lucy M. Salmon; Two Women, Ida Worden Wheeler; The Boston Camera Club (illustrated), Benjamin Kimball; Humility, Frank H. Sweet; Biennial Elections and Legislative Sessions, Raymond L. Bridgman; An Easter Prayer, Minna Irving; Plain Words on Protection, Arthur Latham Perry; Andy Rick's Handy Tricks, Lynn R. Meekins; The Convict who Escaped, Joseph Percival Pollard; After the Quarrel, George H. Westley; The City of Buffalo (illustrated), Frederick J. Shepard; John Ballantyne, American, VI.–VII., Helen Campbell.

Review of Reviews.

Mr. Cleveland's Cabinet (illustrated), Woodrow Wilson; The Two Mistresses of the White House; The Boyhood of Grover Cleveland; The World's First Parliament of Religions; Dress Reform at the World's Fair; The Quaker-Spiritualist Revival in Russia, Dr. E. J. Dillon.

Scribner's.

An Artist in Japan (illustrated), Robert Blum; Unpublished Letters of Carlyle; A New England Farm (illustrated), Frank French; The One I Knew the Best of All: A Memory of the Mind of a Child, Chapters XI.–XII., by Frances Hodgson Burnett; The Restoration House (illustrated), Stephen T. Aveling; Worth While, Edward S. Martin; In Rented Rooms, George I. Putnam; The Cities that were Forgotten (illustrated), Charles F. Lummis; A Glimpse of an Artist, Viola Roseboro'; Anne of Brittany's Châteaux in the Valley of the Loire (illustrated), Theodore Andrea Cook; The Arts relating to Women, and their Exhibition in Paris (illustrated), Octave Uzanne; Historic Moments: The Crisis of the Schipka Pass, Archibald Forbes.

LEADING ARTICLES IN THE LAW JOURNALS.

American Law Review (March–April, '93).

Politics and the Supreme Court of the United States, Walter D. Coles; Liability of Members of a De Facto Corporation, Henry L. Woodward; Abatement of Legacies where an Estate shows a Deficiency of Assets, Percy L. Edwards.

Columbia Law Times (April, '93).

The Chinese Question, Hon. John Bassett Moore; Methods of Instruction at American Law Schools: III. Law School of Harvard University, Lloyd McKim Garrison.

The Counsellor (April, '93).

Good City Government, Bishop Potter; Undue Influence as affecting the Validity of Wills.

The Juridical Review (April, '93).

The New Italian School of Private International Law, I., M. J. Farrelly; Relief from Forfeiture, Will C. Smith; Diplomacy in the Time of Machiavelli, Professor Nys; Electricity as a Nuisance, G. H. Knott.

Harvard Law Review (April, '93).

Alteration of Negotiable Instruments, Melville M. Bigelow; Congress should abrogate Federal Jurisdiction over State Corporations, Alfred Russell; Land Transfer: A Reply to Criticisms of the Torrens System, James R. Carret; A Defect in the Massachusetts Probate System, Oliver Prescott, Jr.

Law Quarterly Review (April, '93).

Some Aspects of Law Teaching, Sir Edward Fry; Summary Jurisdiction, W. J. Stewart; Custom in the Common Law, F. A. Greer; The Present System of Law Reporting, John Mews.

BOOK NOTICES.

DEATH BY WRONGFUL ACT. A treatise on the law peculiar to actions for injuries resulting in death, including the text of the statutes, and an analytical table of their provisions. By FRANCIS B. TIFFANY. West Publishing Co., St. Paul, 1893. Law sheep, $4.75 delivered.

This work treats of those questions of law which are peculiar to the various statutory civil actions maintainable when the death of a person has been caused by the wrongful act or negligence of another. It is, in fact, an exhaustive compilation of the statutes bearing upon this point, with full citations of cases. An analytical table of statutes precedes the text, upon the preparation of which much care has evidently been bestowed. The work will be useful to all lawyers desiring information on this important subject.

CODE PRACTICE IN PERSONAL ACTIONS. An elementary treatise upon the practice in a civil action, as governed by the provisions of the New York code of civil procedures. Prepared for the use of students, by JAMES L. BISHOP. Baker, Voorhis, & Co., New York, 1893. Law sheep, $5.00 net.

The law students of the present day enjoy great advantages over those of a generation ago. Books upon every conceivable subject are prepared by competent writers for their particular use; and if they do not leave the law schools fully equipped for the practice of the law, it must surely be their own fault. This book of Mr. Bishop's is the outcome of a special course of lectures on code practice, delivered by the author at the Columbia Law School, and presents in a clear, intelligible manner a full outline of the steps in an ordinary civil action under the New York code. It should be of great aid to all students intending to practise in the New York courts.

THE NOVEL: WHAT IS IT? By F. MARION CRAWFORD. Macmillan & Co., New York, 1893. Cloth, 75 cents.

Mr. Crawford is certainly able, if any one is, to answer the question propounded by the title of this little book; and we think that his ideas as to what should constitute a novel will be accepted as correct by a vast majority of readers. We are glad to see that he looks with little favor upon the "realistic" and "purpose" novels. Of the latter he says: "In ordinary cases the purpose novel is a simple fraud,

besides being a failure in nine hundred and ninety-nine cases out of a thousand." As to what a novel should be, we leave our readers to ascertain from the book itself, which is written in a delightfully easy, chatty style.

THE ODD WOMEN. By GEORGE GISSING. Macmillan & Co., New York, 1893. Cloth, $1.00.

We confess to a feeling of some doubt as to the author's object in writing this book. Ostensibly it is a tirade against marriage; and the heroine is a woman who devotes her life to inculcating ideas against marriage in the minds of young girls. But even she yields to that strongest of all passions, — love; and while she does not end by marrying the man she loves, she would undoubtedly have done so had he been willing to dispense with the forms recognized generally as necessary to constitute a valid marriage. Another of these odd (single) women is driven by her sense of loneliness to drink, and finds refuge in an asylum. So, after all, the unmarried state does not appear to be so entirely satisfactory as the author would fain make us believe. The story is very interesting, and quite worth reading.

PERSONAL REMINISCENCES, 1840–1890. Including some not hitherto published of Lincoln and the War. By L. E. CHITTENDEN. Richmond, Croscup, & Co., New York, 1893. Cloth, $2.00.

This book is a delightful sequel to "Recollections of President Lincoln and his Administration," which the author gave to the public some time since. The present volume abounds in interesting and striking anecdotes told in graphic and masterly manner. The opening chapter is devoted to an account of the organization of the Free Soil party, and is of itself a valuable addition to political history. Other chapters deal with out-door recreations and excursions, and are pervaded with the invigorating atmosphere of mountain, forest, lake, and stream. Mr. Chittenden's account of his experiences in the Treasury Department are extremely interesting, and his stories of prominent officials vastly entertaining.

The lawyer, however, will find an especial attraction in the legal reminiscences and anecdotes to which a great portion of the work is devoted. Nothing could be better than the account of "The Humor and Mischief of the Junior Bar;" and the sentence passed upon a tramp, convicted before Judge Elias Keyes of the larceny of the boots of Senator Dudley Chase, is a fitting companion-piece to Baron Maule's celebrated sentence in a "bigamy" case. Judge Keyes's sentence was as follows: —

"You are a poor creature," said the judge. "You ought to have known better than to steal. Only rich men can take things without paying for them. And then you must steal in the great town of Windsor, — and the boots of a great man like Senator Chase, the greatest man anywhere around. If you wanted to steal, why did n't you steal in some little town in New Hampshire, and the boots of some man who was n't of any consequence? And then you must steal from him when he was on the way to Washington, — and perhaps the only boots he had. You might have compelled him to wait until some shoemaker made him another pair; and shoemakers never keep their promises. And perhaps by the delay some important treaty might have failed of ratification because he was not present in the Senate. . . . What have you got to say why you should not be sentenced to State-prison for the term of your natural life for stealing Senator Chase's boots?"

"I have got to say that you seem to know a derned deal more about stealin' boots nor what I do!" piped the prisoner.

"That is a sound observation," said the judge, "and I will give you only one month in the county jail. not so much for stealing as for your ignorance in not knowing better than to steal the boots of a great man like Senator Dudley Chase."

Taken as a whole, we do not know of a more thoroughly entertaining book for both the lawyer and the layman, and we sincerely trust that Mr. Chittenden may be induced to continue "reminiscing." A book like this whets the reader's appetite for more good things. Let us have them, Mr. Chittenden!

THE SUPREME COURT OF THE UNITED STATES: Its History, by HAMPTON L. CARSON, of the Philadelphia Bar; and its Centennial Celebration, Feb. 4, 1890. Prepared under the direction of the Judiciary Centennial Committee. A. R. Keller Company, Philadelphia, 1892. Two vols. Cloth, $12.00.

This superb work of Mr. Carson's was originally published in one volume; and on noticing it in our December number, 1891, we said: "Taken as a whole, no work has ever been offered to the profession which possesses such intrinsic value." This we now repeat, and desire to emphasize. No such valuable collection of historical facts regarding the Supreme Court of the United States has heretofore been placed at the command of the student of our judicial history; and the story of the inception and growth of our Supreme Tribunal is one of exceeding interest, and one which must appeal strongly to every lover of his country. While Mr. Carson has not attempted to write a treatise on constitutional law, he has given a clear and interesting account of

the sources of the jurisdiction of the court, the establishment of the court itself, and then, dividing his subject into epochs, he traces its history to the present time. Its most important decisions are recalled and commented upon, and many interesting incidents are reverted to. Brief but admirable biographical sketches are given of all Chief and Associate Justices, displaying a vast amount of research and investigation by the learned author.

Since the publication of the first edition important events have occurred, which are alluded to and commented on in the present work, — the establishment of the Circuit Courts of Appeal, the death of Mr. Justice Bradley, the appointment of Hon. George Shiras, Jr. as his successor, — beside which many important decisions have been rendered, all of which are mentioned in the present text, while the citation of leading cases has been brought down to date of publication.

But while the text is one vast mine of legal information, the illustrations, which include portraits, with autographs, of every Chief and Associate Justice who has ever sat upon the Bench, give an incalculable value to the work. *Fifty-four* finely executed etchings make up this portrait-gallery, each one of them being a veritable work of art.

The dividing the work into two volumes was a happy thought on the part of the publishers, as it is now much better adapted to the use of the general reader and students, while the beauty of the plates is in no way sacrificed.

Mr. Carson deserves the thanks of the bench, the bar, and the country for this monumental work. It should be in every library; every student of American history should possess a copy, and, above all, it should be in the hands of every lawyer in the land.

COMMENTARIES ON THE LAW OF PUBLIC CORPORATIONS, including Municipal Corporations and political or governmental Corporations of every class. By Charles Fiske Beach, Jr., of the New York Bar. The Bowen-Merrill Company, Indianapolis, 1893. Two vols. Law Sheep, $12.00 net.

In this new work, Mr. Beach has undertaken to make a treatise covering the entire field of public Company law in all its details. Such a task is a stupendous one, — requiring the most careful and exhaustive research as well as sound judgment and discrimination. How well these requirements have been met, it is of course impossible to say, from a mere cursory examination of a treatise of such magnitude. The true test can come only from actual trial in active practice. We are, however, of the opinion that the work is one of real merit, and it seems to us the best that Mr. Beach has yet produced. The propositions are clearly and succinctly stated, and are all backed by abundant citations. This will be evident when we state that the table of cases alone fills more than two hundred pages. The arrangement is excellent, and the catch-lines of the different sections brief and to the point. The index is very full, and leaves but little to be desired. That little is in regard to Cross-References, of which there are more than are to our liking, though we admit this seems to be the method adopted in indexing the most of our law-books. We hope the time will come when, if we turn, for instance, to "AGENTS," we shall not be told to "see OFFICERS AND AGENTS; PERSONAL LIABILITY; RESPONDEAT SUPERIOR," but shall find just what we want right there under the heading itself. It will take a little more space and some repetition; but what a convenience it will be for the hurried lawyer. All this, however, is a matter of opinion, and does not affect the merits of the treatise itself. We commend this work of Mr. Beach to the profession, and feel sure that they will find it of much value and assistance.

TO LEEWARD. By F. Marion Crawford. Macmillan & Co., New York, 1893. Cloth, $1.00.

This story of Mr. Crawford's was published some years since, and while, perhaps, not equal to some of his later works, it is nevertheless a story of no little power and of great interest. Messrs. MacMillan & Co. are doing a praiseworthy work in furnishing the public an excellent uniform edition of this author's popular books.

PATENTABLE INVENTION. By EDWARD S. RENWICK, Civil and Mechanical Engineer and Expert in Patent Causes. The Lawyers' Co-operative Publishing Co., Rochester, N. Y., 1893. Law sheep, $2.00.

We have read with much interest this work of Mr. Renwick's, as it deals with the law of patents from a different point of view from most treatises on the subject. The views of one who has had experience as an expert in patent litigation for the past twenty years cannot fail to have much of practical value in them; and the profession will derive much assistance from this treatise in determining the all-important question as to whether or not any certain invention is patentable? The book is written in a clear, concise, and logical manner, and the various subjects treated are illustrated by typical cases.

A TREATISE ON THE LAW OF TAX TITLES: Their creation, incidents, evidence, and legal criteria. By HENRY CAMPBELL BLACK. Second edition,

revised and enlarged. West Publishing Co., St. Paul, Minn. Law sheep, $6.00 net.

The first edition of this work of Mr. Black's, published some five years since, met with a cordial reception, and was recognized as a valuable treatise upon the subject of tax titles. While the short time which has elapsed since the issuing of the first edition would hardly seem to make another necessary, this last work has been so thoroughly and carefully revised and rewritten that it is to all intents and purposes a new book. Four chapters and two hundred new sections have been added, and later authorities and important cases, not previously referred to, have been incorporated. In its present form it is much more complete and satisfactory than before, and certainly merits a hearty welcome from the profession.

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

Fully up to the standard of the preceding volumes of this series is the one now before us. That is saying a great deal; but Mr. Freeman's work is so uniformly good that his name alone is a guarantee that there can be no falling off in the excellence of these Reports. Cases are selected from Reports of the following States: Arkansas, California, Connecticut, Florida, Illinois, Kentucky, Nebraska, Ohio, Oregon, Texas, Virginia, West Virginia, and Wisconsin.

THE LAW OF ASSIGNMENT FOR THE BENEFIT OF CREDITORS IN THE STATE OF ILLINOIS. By SIDNEY RICHMOND TABER, of the Chicago Bar. E. B. Myers & Co., Chicago, 1893. Law sheep, $2.00.

This volume simply attempts to answer the inquiries, — What does the Illinois Assignment Act mean? How have its several parts been construed by the courts? What are the rights and duties of insolvent debtors, of assignees, of creditors, and of the courts whose jurisdiction is invoked in this behalf? In a word, touching the subject of voluntary assignment, what is the law of Illinois? These are questions of interest not only to the profession in Illinois, but to most practising lawyers throughout the country, — all of whom have, probably, more or less occasion to make themselves familiar with the law of debtor and creditor in that great State. Mr. Taber seems to have answered these questions clearly and succinctly.

PRACTICE IN COURTS OF REVIEW that substantially follow the Colorado Procedure. By JOHN C. FITNAM, of the Colorado Bar. E. B. Myers & Co., Chicago, 1893. Law sheep, $5.00.

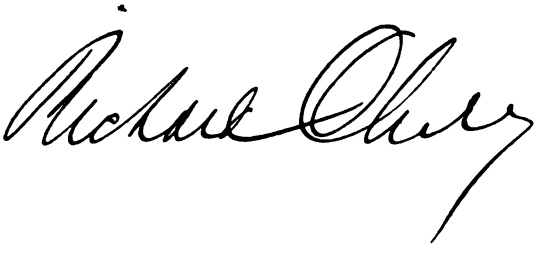
This work is intended as a guide to a correct practice in Courts of Review; and the author's aim has been to point out "what to do, and how to do it." Although based chiefly on the Colorado law and decisions, the work will apply in a great measure to the procedure in Courts of Review in other States. To Colorado lawyers this book will be invaluable, and those in other States where the practice is similar will find it of much assistance.

DIGEST OF THE DECISIONS OF THE SUPREME AND APPELLATE COURTS OF THE STATE OF ILLINOIS, as embraced in Vols. 127 to 137, both inclusive, Illinois Supreme Court Reports, and Vols. 28 to 41, both inclusive, Appellate Court Reports. By HENRY BINMORE, of the Chicago Bar. E. B. Myers & Co., Chicago, 1893. Law sheep, $7.50 net.

This volume brings Mr. Binmore's work down to July, 1892. His previous volume evidenced careful and conscientious labor, and the present one displays the same painstaking care. Of course, the work is one which will be appreciated more by Illinois lawyers than by the profession at large, but it is a valuable addition to any law library.

THE SCIENCE OF INTERNATIONAL LAW. By THOMAS ALFRED WALKER, of the Middle Temple. Macmillan & Co., New York, 1893. Cloth, $4.50.

This volume comprises the subject-matter of courses of lectures delivered by the author in Cambridge, England. It is not a legal text-book, but rather an attempt to define in brief fashion the rightful position in the field of law of the rules which regulate international dealings, and to demonstrate international law to be something more than a haphazard compilation of disconnected case-law, — to be, in fact, capable of simple and scientific appreciation. If any one imagines that the result of such an attempt would be a dry, unentertaining book, they will be most agreeably disappointed. The work is full of interest from beginning to end; and the learned author has made a vast amount of valuable historical information the groundwork for a treatise of rare merit. We commend it heartily to every lawyer as a book which will not only command his interest, but also as one from which he will draw much valuable and practical information.



The Green Bag.

VOL. V. No. 6. BOSTON. JUNE, 1893.

ATTORNEY-GENERAL OLNEY.

THE members of the Suffolk Bar were taken entirely by surprise when they learned that Richard Olney had accepted the position of Attorney-General in President Cleveland's second Cabinet. They could not believe that a man who had always shrunk from holding public office and from everything that led to publicity should, after thirty-five years of assiduous devotion to his jealous mistress, the law, accept the post. But their knowledge of their honored and learned brother taught them that a man with so keen and earnest a sense of public duty could not but answer to the call.

Richard Olney comes naturally by his high sense of duty. He is directly descended from Thomas Olney, who came to America from St. Albans, in the county of Hertford, in 1635, settling in Salem. His stay was short. Fearless and independent in his belief, he was a trusty adherent of Roger Williams. When in 1637 Williams was disciplined — that is, in the view of the present time, was made to suffer martyrdom — and excommunicated by the ecclesiastical barbarians who ruled Church and State in Massachusetts Bay, Thomas Olney shared his pastor's sentence and expulsion. The result was the founding in 1637–38, by Williams, Olney, and others, of a remarkable community — Rhode Island and the Providence Plantations — and an equally remarkable faith, — the Baptist Church in America. The descendants of Thomas Olney multiplied, and form one of the great families of Rhode Island to-day.

One of these descendants was Richard Olney, born in 1770 at Smithfield, R. I., a leading merchant of Providence, and one of the pioneers of the cotton manufacturing industry of New England. He established cotton-mills at East Douglas, Worcester County, Mass., in 1811. In 1819 he moved to Oxford, Worcester County, where he became prominent as a citizen, merchant, and cotton manufacturer, holding many town offices and showing marked ability as a man of affairs. Failing in health, he moved to the neighboring village of Burrillville, where he died in 1841.

Richard Olney's eldest son was Wilson Olney, who was born Jan. 10, 1802, at Providence, and moved to Oxford, Mass., with his father in 1819. He was engaged for many years in manufacturing woollen goods, and was the active man in the management of the Oxford Bank. He died Feb. 24, 1874, after a busy life of the utmost integrity, respected and beloved by his neighbors. Wilson Olney married Eliza L. Butler, who was the daughter of Peter Butler of Oxford, and the grand-daughter of James Butler of Oxford. James Butler's wife was Mary Sigourney, great-grand-daughter of Andrew Sigourney, a French Huguenot who fled from France at the Revocation of the Edict of Nantes, and was the most active man in the settlement of Oxford by the French Huguenots in 1687.

Wilson Olney had three sons, — Richard Olney, the present Attorney-General; Peter Butler Olney, a prominent member of the New York Bar; and George W. Olney, a leading woollen manufacturer of Worcester County.

Richard Olney was born Sept. 15, 1835, at Oxford. He was educated at Leices-

ter Academy, and at Brown College, whence he graduated with high honors in 1856. Entering the Harvard Law School, he took his degree of bachelor of laws in 1858. In 1859 he was admitted to the Suffolk Bar, and entered the office of Judge Benjamin F. Thomas. In 1861 he married a daughter of Judge Thomas; and they have two daughters, who are married. His prominence in the profession did not begin at his admission to the bar. Before he had been long in the Law School, he was picked out by his instructors as a young man of uncommon good judgment, of trained methods of thought, of unusual acumen. As a student his industry fairly amounted to a rapacity of learning.

From the time he entered Judge Thomas's office until the judge's death twenty years afterwards, the relations of these two men, both professionally and otherwise, were very close. They were constantly employed together in the same cases; and as the younger man matured, he grew to be more and more his elder's associate rather than his junior. There was a sympathy and congeniality of mind in both men that produced striking results in the preparation and presentation of their cases.

In 1860 practice at the Suffolk Bar was diversified. No lawyer, except the conveyancer and some of the criminal lawyers, confined himself strictly and exclusively to any special branch of the profession. By 1880 this specializing had made considerable headway; in 1893 it has engulfed the profession.

But from the beginning Mr. Olney's practice led more especially into two channels, — the law of wills and estates and the law of corporations. Upon both he is a recognized authority. His clearness of perception and soundness of intellect, aided by his profound knowledge of the law and his truly judicial quality of mind, gave him peculiar advantages in leading his clients to a safe and sure position.

In his work he is always prompt and thorough. These are attributes which cannot be commended too highly to members of the legal profession. No man can be really successful as a lawyer unless he does his work promptly and thoroughly. Nothing appeals so certainly to a business man seeking legal counsel or direction. It is natural, therefore, that Mr. Olney should have gained a most enviable reputation as a chamber counsel.

To a remarkable force of intellect he has joined an indefatigable industry, supplementing both by a splendid physical constitution. Such a combination in a lawyer is capable of great results, and Mr. Olney has taken entire advantage of these gifts. He is a hard student and an omnivorous reader. All literature, legal and otherwise, is grist to his mill.

His preparation of cases is so complete that they come to trial but rarely. He invariably familiarizes himself with every aspect of the case. Hence the settlement of a case by him means that his client gets all that he is entitled to. His breadth of view is so comprehensive, his honesty and fairness are so well recognized, and his judicial temperament is so thoroughly appreciated by opposing counsel and by all the parties, that his ultimatum is generally accepted.

As a junior Mr. Olney was always of the greatest help to his senior associates. His accumulation of facts and marshalling of the evidence, and his application of the law pertaining to the case in hand, gave his seniors unlimited confidence that they had their whole case within reach. His faultless logic and his ingenuity of mind could always be depended upon to help them over a rough spot or around a sharp corner.

But of late years it is as senior counsel only that Mr. Olney has appeared in cases. There the same great legal qualities already spoken of have won the admiration of his juniors. But more than that, the courtesy, kindness, and patience shown his younger associates have been unfailing, and

are most highly appreciated. He always leads, but never drags his junior.

Mr. Olney's practice has been of late years that of an adviser of great commercial and corporate interests, and in the settlement of estates. Hence his appearance in court is but seldom nowadays. But in his younger days he was an admirable trier of causes and a most forceful advocate. His simplicity of character and his hatred of shams led him to avoid all attempts at clap-trap oratory, but made his presentation of a case to the jury none the less convincing. And the older members of the bar remember that Mr. Olney got from a jury one of the very few acquittals of the charge of murder in the first degree that is recorded in Suffolk County in the past fifty years.

In his presentation to the court of a question of law, Mr. Olney is not excelled by any lawyer in New England. His logic is clean-cut; his diction is wonderfully pure; his rhetoric is always perfectly adapted to his subject; his power of condensation is remarkable; his delivery with a well-modulated voice and clear enunciation is most convincing. His argument presents a view of the case that is a perfectly adjusted series of perspective.

It is not to be wondered at that possessing qualities such as are above described, Mr. Olney should have been offered more than once a place upon the Supreme Judicial Court. But he has always declined the honor, preferring to remain at the bar. Nor is it risky to predict that he will make a most brilliant Attorney-General. As chief legal adviser to the federal government he is sure to be a safe counsellor and an able advocate. In the administration of the Department of Justice he will add to the laurels that he has won in his profession.

HOW THE CASE WAS WON.

IN the early years of this century Philip Doddridge was the leading lawyer in northwestern Virginia, now a portion of the State of West Virginia. Doddridge County was named for him. He resided in Wellsburg, on the Ohio River; but his practice extended well into Pennsylvania and Ohio, and he afterward represented his district in Congress. On one occasion, says the New York "Sun," Mr. Doddridge was called to Washington to defend a man accused of horse-stealing. It was a clear case. The principal witness was an accomplice who turned state's evidence; but this testimony was amply corroborated by that of other people. Mr. Doddridge was not expected to make a very forcible address, and he did not try to. He talked in a desultory manner to the jury for fifteen or twenty minutes, and then added: —

"I have very little more to say, but with the permission of the court I will relate an incident which seems to me to bear on this case. In the older portions of this State it is the custom now, as it was some years ago, for the judges to travel over their circuits and hold court. With the judges went the lawyers. In a certain district I have in mind the Nestor of the bar was a precise gentleman of the old school, who wore ruffled shirt-fronts and cuffs, and prided himself on his invariable attendance upon divine service at the town in which court was being held. He insisted on a similar attendance on the part of the other lawyers, and made it his business to see that they went with him in a body. One Sunday morning they found themselves at a town with no church except one belonging to the Methodists; and although the Nestor was an Episcopalian, he notified the younger attorneys that they would be expected to go to church as usual. They were late in getting ready; and when the dignified old lawyer appeared in church and marched up the middle aisle, followed by all the lawyers in the district, the minister was well in his sermon. He stopped in his discourse, however, gazed at the leader of the file a second, and said, —

"'My friend, if you had not stopped to prink and to arrange those ruffles so carefully, you could have got to church in time. As it is, you come at this late hour and disturb the worshippers by your entrance. I give you warning now,' the preacher added solemnly, raising his finger to make the words more impressive, 'that at the judgment-day I shall appear to testify against you.'

"The old lawyer had stopped when the minister began to address him, and stood waiting in the aisle. When the preacher was through, the lawyer said, —

"'Sir, I have been practising at the bar for forty years, and that much experience has shown me that the greatest rogue always turns state's evidence.'"

At this point Mr. Doddridge left his case with the jury. The entire courtroom was convulsed with laughter, and it was some time before order was restored. Then the jury announced a verdict of not guilty, and Doddridge's client was released.

THE "REY ABDUCTION."

A CELEBRATED LOUISIANA CASE OF 1849.

By Wm. C. Dufour.

A RESEARCH of the records of the courts of Louisiana, and of New Orleans in particular, would no doubt reveal many a bit of interesting history in connection with the famous legal battles that have been waged within her boundaries in the days of Roselius, Soule, and their colleagues, when by reason of the profound intellect and brilliancy of its erstwhile members, the Bar of Louisiana stood without a superior in this or any other country. Indeed, the jurisprudence of Louisiana, from the date of her settlement to the present, has been well-nigh an unbroken link of celebrated contests, interspersed at frequent intervals with some famous cause which has been watched and followed with interest by not only the legal fraternity, but by the entire country. A short sketch, therefore, of one of the most famous of these cases, known as the "Rey abduction," and one which almost resulted in a difficulty with Spain, might be of interest at this period, when the particulars are but indistinctly remembered, even by the oldest inhabitants.

It was in the summer of 1849 that quite a ripple of excitement was caused by the announcement that Don Carlos de Espana, Spanish consul at the port of New Orleans, had been arrested on a charge of being implicated in the kidnapping of one Jean Francisco Rey, alias Garcia, a Cuban refugee.

Though now a common thing, at that period the arrest of the commercial agent of a foreign government, the real status of a consul, was a proceeding undreamt of by the American people; and consequently the arrest, coupled with the announcement that no effort would be spared by Cuban sympathizers to secure the meting out of the proper punishment to the guilty parties, could not but cause a ripple in public opinion, and provoke much discussion as to its final outcome. New Orleans immediately became the cynosure of all eyes, and every move in the famous legal battle was watched and studied.

Rey's crime against the dignity of Spain consisted in the betrayal of a trust reposed in him as a keeper of the Presidio at a time when the revolutionary agitation which terminated in the Lopez invasion was in its infancy.

It appears that one Vincent Fernandez had been convicted of fraudulent bankruptcy, and had been sentenced to a term at hard labor in the Presidio, which is the Cuban penitentiary. In company with Fernandez were two Cubans who had been sentenced to death for certain utterances deemed revolutionary. It was for them that Rey betrayed his trust. Late one night a small boat hovered around the prison. At a given signal it made its way to a side entrance, from which four men emerged, — Fernandez, the Cubans, and Rey, who, fearing the vengeance of his superiors, sought safety in flight. The party succeeded in reaching the Florida coast, and then separated, Rey coming to New Orleans. Shortly after his arrival he became ill and was confined to his bed in one of the small lodging-houses with which the lower portion of the city abounded. While in that condition his identity became known. Information was immediately forwarded to the Spanish authorities, who in turn forwarded instructions to their representative that he should be retaken and reconveyed to the port of Havana, *coute que coute*. The unfortunate man's place of shelter was soon discovered,

when agencies of a most nefarious character were put into operation to secure his person, and in obedience to the mandates of the Captain-General of Cuba, transport him to Havana, where certain death awaited him.

Rey, during his illness, had been attended by a physician; but one of the inmates of the lodging-house persuaded him to discharge the latter, and he then introduced Don Carlos de Espana, the consul, as a physician well known and skilful in the treatment of disease. The poor victim, with much simplicity, yielded to the guidance of the consul in the latter's false character; and when all was ready for the consummation of the plot, he was persuaded to leave the house, ostensibly for an airing. Rey was accompanied downstairs by Don Carlos and two of the latter's hirelings. There he found a carriage and became alarmed. Making a motion to return to his room, a dagger gleamed before his eyes. Thus intimidated, he allowed himself to be thrust into the vehicle, which was driven to a restaurant near the Place d'Armes, now Jackson Square. Here the party, minus the consul, who had disappeared, dined; and wheedled into drinking more than his weak constitution could well bear, Rey became muddled, whereupon the party was driven to the levee, where was moored the schooner Mary Ellen, Captain McConnell, ready to cast off and put to sea. Then it was that the truth dawned on the deluded victim. He struggled desperately for his liberty, but in vain. His companions, stout fellows, seized and pinioned him with rapidity, and then conveyed him bodily aboard the schooner, which was soon under way for Havana.

Little did the Spanish officials dream, whilst concocting and carrying out the plot, that the poor Cuban refugee had powerful friends, who would yet make them suffer for the outrage committed on American soil.

The affair was instantly brought to the attention of the press, and then there was a hue and cry, and the national government was called upon to act in the matter.

Rey's friends, however, did not rest there. Satisfied that Don Carlos de Espana was concerned in the plot, they appeared before Recorder Genois, and attempted to persuade him to cause the former's arrest; but in this they were unsuccessful, Judge Genois declining to entertain so serious a charge, at once compromising the honor of a distinguished foreigner. Failing in this, on July 24, 1849, Don Jose Morante appeared before the United States commissioners, and swore out an affidavit charging Don Carlos de Espana, William Eagle, Henry Marie, and Captain James McConnell with abduction. Warrants were immediately issued, the accused arrested and placed under $5000 bonds to appear for examination Friday, July 27.

Public interest was now aroused to its highest pitch. The stroke was a bold one, but in such cases promptness was a necessity.

On the day fixed the accused appeared for trial before Judges George Y. Bright and M. M. Cohen. Messrs. J. Foulhouze, R. Preux, T. W. Collens, and General Walker of Nicaragua fame had been retained by them as counsel; while Cyprien Dufour, Esq., assisted by Mr. P. S. Warfield, United States District Attorney Logan Hunton, and Parish District Attorney M. M. Reynolds, conducted the prosecution. As an illustration of the interest displayed in the case, the following, clipped from one of the papers of the time, is presented: —

> "Every preparation for the convenience and accommodation of the public had been made in the little court-room, and tables and seats were provided for the reporters of the press.
>
> "The excitement was intense, and the rooms and galleries were crowded to suffocation. Hundreds were unable to obtain admission; and a large crowd assembled opposite, in front of Hewlett's Exchange, awaiting the result."

The trial lasted fourteen days, the testimony bearing out the theory of the prosecution, that the Spanish officials were the prime movers in the plot.

At the close of the argument a decision

was rendered by the court committing the accused to a higher tribunal for trial; and this announcement was greeted with loud and prolonged cheers by the people both within and without the court-room. Don Carlos de Espana and his implication in the infamous plot became a byword in the mouths of all; while the prosecutors became the legal idols of the people, being escorted to their homes by a procession of enthusiasts.

With the decision of the court and the publication of the particulars of the trial, came a spontaneous demand from all sections of the country for national interference, the people being moved at the idea of the agent of a foreign government using his high office for a purpose so base. President Taylor headed the demands, and instructions were forwarded to General Campbell, the United States consul at Havana, ordering him to demand the instant release and restoration of Rey, and to further inform the captain-general that in the event of a refusal force would be used. Spain was loath to yield to the demands; but when she awakened to a proper appreciation of her position, Rey was released and returned to New Orleans, where his statements verified most remarkably the fidelity of the prosecution's searching analysis of the complications of the abduction, and the logical accuracy of the arguments.

The experience and observations gained in this case induced an attempt at a great reformation in the system of criminal jurisprudence; and in the Constitutional Convention of 1852 an attempt was made to have the grand-jury system abolished. The Spanish consul had sufficient influence in the Federal grand jury to prevent an indictment being found against him. Hereupon prominent parties, conceiving the action of the grand inquest to have been to prevent the administration of justice, sought to eliminate it from the judicial system. The attempt failed, only to be again agitated at this late date by the press of the country, and to be condemned as an institution contrary to the principles of American liberty and in conflict with free institutions. Just at this period, however, the Territory of Oregon had been admitted into full Statehood, and the framers of her Constitution, learning wisdom from the result of the Rey case, prohibited grand juries in that State by a section of the organic law which they framed. Singularly enough, too, the only charge under the laws existing at that time in Louisiana upon which the consul and his instruments could be prosecuted, were assault and battery and false imprisonment, or aiding and abetting those offences, because neither the laws of the United States nor the laws of the State provided for the punishment of kidnapping. In the Legislature which met under the Constitution of 1852, a bill was introduced supplying the remarkable omission. The bill became a law, and is the statute under which the famous Digby case was prosecuted, and to this date remains in force upon the statute-books.

THE BISHOP OF GRETNA GREEN.

By Wilbur Larremore.

THE bishop was genial and burly,
  Unsurpliced and guiltless of sleeves;
His red locks were matted and curly,
  Eyes twinkled from bushiest eaves.
A spy-glass well battered lay handy,
  With hammer and nails littered up,
All flanked by a bottle of brandy,
  With never a sign of a cup.

No matter what task was in order,
  At herald of love's refugees
When dust-clouds arose on the border,
  The bishop would tear from his knees
The apron, and forth from the smithy
  In tattered canonicals strode,
Beginning a marriage-rite pithy
  With bride and groom still on the road.

And yet, if the time was not pressing,
  The bishop more leisurely wrought,
And gave, with episcopal blessing,
  A last benediction that brought
A grin to each by-standing varlet,
  Unchecked by the bishop's smug leer.
The bride's face would mantle with scarlet,
  The bridegroom not seeming to hear.

And when the pursuers with clamor
  Drew up at the vestry's front door,
The bishop stood grasping his hammer
  With muscles to wield it like Thor,
And a look that it mattered but little
  If the anvil he smote or a skull,
Since the latter was always more brittle,
  And oftentimes fully as dull.

The lovers for further flight buckled,
Or else perchance fell on their knees.
The bishop said nothing, but chuckled,
And fondled his bottle and fees.
All possible troubles that try men
He drowned in a midnight debauch, —
The high-priest of virtue and Hymen,
Whose bellows-flame kindled the torch.

PIPOWDER COURTS.

A WRITER, in a recent number of the New York "Evening Post," gives the following interesting account of a curious old English custom which was transplanted in colonial times to the soil of South Carolina, where it appears to have flourished until late in the last century.

Historians have had frequent occasion to remark that, owing to the Cavalier influence under which they were settled, instances and survivals of the older English customs are much more frequently to be met with in studying life in the southern colonies of North America than in the northern. It was but natural for the Cavaliers who settled Virginia and South Carolina to strive to perpetuate the old institutions from which their families had derived their greatness, and which at that time were beginning to be treated with contempt by the growing powers in England. It is remarkable, however, when we find them attempting to revive ancient social and commercial customs of the realm which had by common consent passed out of use almost centuries before. Such instances are by no means rare; we know that the Earl of Shaftesbury and his co-proprietors of Carolina seriously attempted to transplant the entire feudal system to the shores of the New World, and several other instances of a like, though scarcely so radical, nature can be cited. Among the most interesting of them are the regulations for conducting the internal commerce of the colonies. As late as 1738 the same rules and customs regarding the holding of public fairs obtained in South Carolina as had governed such institutions in England in the twelfth century, although in the mother-country they had long before fallen into disuse.

In former times in England a public fair could only be held by virtue of a special grant from the King, or of immemorial custom; and the Carolinians, as far as was possible, revived the old usage and, with an extravagance of conservatism, clung to it almost down to the period of the Revolution. Of course, they could not claim the right of immemorial custom, and did not have the assurance to apply to the King for grants, but they fell back on the authority of the Colonial Assembly, and required a special legislative act for the holding of a public fair or market anywhere in the province. In 1723, soon after the colony was attached to the crown, the internal trade had increased so greatly that it became necessary to adopt some regulations to facilitate commerce among the people. Accordingly three towns — thriving centres of life at that time, but now long since dead and almost forgotten — Childsberry, Dorchester, and Ashley River Ferry Town, were, by acts of the Assembly, constituted market-towns, where two annual fairs were to be held, "together

with a Court of Pipowders, and with all the liberties and free customs to such fairs appertaining, or which ought or may appertain, according to the usage and customs of Fairs holden in that part of his Majesty's realm of Great Britain called South Britain, or England." These fairs were to be held four days in the spring and four in the autumn; and as the towns were no great distance apart, different times were selected so as to permit traders to attend all of them. Any persons, whether strangers or inhabitants of the province, were permitted free attendance, and they were accorded some very remarkable privileges during the fair. One special provision was that "no person during the time of holding and keeping the said fairs shall be liable to be taken at the said fairs by virtue of any process, except for treason, felony, or other capital crime, or breach of the peace, but shall be freed and discharged of the same if taken and arrested at the said fairs, by the justices or judges of such courts out of which the process issued." In some cases this indulgence was extended so as to cover the twenty-four hours preceding, and the twenty-four succeeding, the fair, thus allowing traders time to reach the market and to return home without being disturbed. It is easy to see how this indulgence would make the fairs a resort for rogues of every description.

The fair itself, however, was not nearly so interesting an institution as the "Court of Pipowders" which accompanied it. This court, which was one of the most ancient in the realm, had long since been but a tradition in England. As the name is derived from the French, it is probable that, as an institution, it was brought over by the Normans. The early form of the word — "Piepoudre" — indicates the meaning "dusty-footed," so called, says Sir Edward Coke, because justice was done there as speedily as dust could fall from the foot. Barrington, a later commentator, however, derives it from "pied puldreaux," an old French term for pedlers, signifying the court to which such petty chapmen resorted. The Court of Pipowders was a regular court of record, of which the manager of the fair was the judge. In England, as in South Carolina, it was the lowest existing civil court. Its jurisdiction extended to all cases of commercial injuries committed at the fair with which it was connected, and at no other; and every cause must be complained of, heard, and decided during the holding of the fair, as the existence of the court ceased as soon as the market was closed.

Thus, far on in the eighteenth century, the old Court of Pipowders, which had been almost forgotten in England, was revived in South Carolina, and actively invoked by petty litigants from every part of the Province. According to the old English custom, it was presided over by the managers of the fair, and they were "authorized and impowered to have and hold a Court of Pipowders, together with all the liberty and free custom to such appertaining, and that they and every one of them may have and hold there, at their, and every of their, respective courts, from day to day, and hour to hour, from time to time, upon all occasions, plaints and pleas of a Court of Pipowders, together with all summons, attachments, arrests, issues, fines, redemptions, and commodities, and other rights whatsoever to the same Court of Pipowders appertaining without any impediment, let, or hindrance whatsoever."

One feature of the old English Pipowder Court was omitted, however, that being the right of the clerk of the market to sit in judgment on criminal causes that might arise during the fair. In England this custom arose from the Bishop appointing a clerk to act as his deputy, and punish those who might be detected using false weights and measures. From time to time the power of the clerk was increased, until his jurisdiction extended to all petty crimes committed at the fair. As there was no bishop in South Carolina, of course there was no foundation for the existence of this office.

As the courts at Westminster could be called on to aid the process of any English Court of Pipowders, so the power of the provincial courts could be invoked to enforce judgments in South Carolina. All fines and forfeitures amounting to less than £10 were recoverable on a warrant from any justice of the peace, and, if more than that amount, on a warrant issued from any of his Majesty's courts of record in the province. One half of all fines was given to the poor of the parish in which the fair was held, and the other half to the plaintiff.

At every fair were appointed toll-gatherers, who assessed certain charges on all livestock sold; and the amounts assessed give an idea of the relative values of such property in the colonies at that time. It was provided that at the Childsberry Fair there should be collected *2s. 6d.* on every horse, mare, gelding, colt, or cattle; *6d.* for every hog, sheep, or calf; and *10s.* for every slave sold. The classification of slaves along with horses and cattle strikes us to-day as something horrible; but it was done in a very matter-of-fact business way 175 years ago. The act reads that after collecting the toll the gatherer "shall then cause a note to be made of the true number of all horses, mares, geldings, colts, or other cattle or slaves sold at the said fair."

The last public fair and Court of Pipowders established in South Carolina was in 1738; and although no later mention of them is found in the records, it is reasonable to suppose that they continued in force until late in the last century.

PRACTICAL TESTS IN EVIDENCE.

VIII.

By Irving Browne.

IN regard to the voluntary exhibition of the person in a civil action for corporeal injury, the Michigan Court seems alone in holding, as it holds in Carstens *v.* Haurelman, that it is not permissible. This was a question of the surgical treatment of a broken leg of a woman. The trial court refused to allow her to show the leg to the jury. On appeal this was affirmed, partly on the ground that the injury occurred several years before. It is difficult to see what force there is in that position. If the maltreatment was apparent after several years, so much the worse for the surgeon. But the court more explicitly observed: "No inspection after an injury is healed, apart from some knowledge of the character of the injury and the method of treatment, could enable even a medical expert to decide upon the merits or demerits of the attending surgeon. A jury's guessing from such an inspection would be of no value whatever; and any needless exposure would have been, as the court below properly held, improper, if not indecent." I leave the subtle point of modesty out of the question, merely saying that one would suppose that if the woman did not object the court need not be squeamish! But as to the extent of the maltreatment and its effect upon the amount of damages, there can be no doubt that the exhibition of the limb was proper. It is the commonest thing in the world to allow it, and I cannot recall another case that denies it.

In respect to self-criminating demonstration, it was held, in Cooper *v.* State, 86 Ala. 610, 11 Am. St. Rep. 84, that the prisoner's refusal to make footprints, under a promise of release if the tracks when made did not exactly correspond with those of the suspected party, may not be used against him. The court rely on Stokes *v.* State, 5 Baxt. 619, 30 Am. Rep. 72, which I have heretofore commented on; and the court say: "The principle of the decision from which we have quoted is that it would have been unlawful to force the witness to give (or make) evidence against himself; and the plan adopted and permitted accomplished the same result by indirect means. Thus regarded and considered, it is difficult to perceive a difference in its hurtful bearing between making the offer in the court-room before the jury and proving by a credible witness that it had been unsuccessfully made outside of the court-room."

In Copp *v.* Commonwealth, 87 Ky. 35, an indictment for assault with a knife, the people's attorney put his hands on the face of the prosecuting witness, and said: "Gentlemen, look at that scar on his face; is that worth only fifty dollars?" This was objected to, but not rebuked by the court, and was held error. The ground seems to have been that it was a departure from the statutory direction of "the mode and order in which testimony may be given to the jury."

A decision denying the right of the defendant to compel the plaintiff to submit to a physical examination, which I believe I have not cited, is Kern *v.* Bridwell, 119 Ind. 220. This was an action of slander in charging that the plaintiff was unchaste, and had become pregnant and had committed an abortion, and the defendant justified. The court said: "We are not cited to any case where any court has held such an examination to be proper, and we think none can be found. One should not publish and circulate slanderous charges against a young unmarried female, as proven in this case, without being able to substantiate them, when called

upon to do so, without calling upon the court to aid in the search for evidence in his behalf by ordering and subjecting her to an indelicate examination of her person, with the hope of obtaining such information advantageous to the defence, and call to his aid the power of the court as a means of humiliating her still more. When one voluntarily asserts a slanderous charge against another, and defends it by alleging the truth of his assertion, he must be able to substantiate the truth of the charge without invading the privacy of the person about whom the charge is made." This seems to be a unique case.

The same principle was declared on a prosecution for rape (McGuff *v.* State, 88 Ala. 147). The court said: "Such a practice has never prevailed in this State, and if adopted as matter of right in all cases of prosecution for rape, the temptation to its abuse would be so great that it might be perverted into an engine of oppression to deter many modest and virtuous females from testifying in open court against the perpetration of one of the most barbarous and detestable of all crimes." The court distinguish the case from that where the party is voluntarily invoking the assistance of the court in pursuit of a civil right. The court doubt the power to compel the examination in question, but hold that at all events it is a matter of discretion in the trial court, and its refusal was not error.

In Peoria, D. & E. Ry. Co. *v.* Rice, Supreme Court of Illinois, 33 N. W. Rep. 951, it was held that courts have no power to compel a plaintiff who sues for damages for personal injuries to submit to a physical examination by medical experts.

As to the exhibition of the person in bastardy proceedings, it was held that a child a little more than six months old may not be shown to the jury, in a bastardy suit, on the question of paternity (Overlock *v.* Hall, 81 Me. 348). And so when the child was six weeks old (Clark *v.* Bradstreet, 80 Me. 454; 6 Am. St. Rep. 221). The court say this, if allowed, "would be exceedingly fanciful, visionary, and dangerous;" and "the weight of authority is against the admission in evidence of a mere infant, where race or color is not involved."

In Crow *v.* Jordan Ohio Supreme Court, 32 N. E. Rep. 750, it was held, without any reported opinion, that in bastardy proceedings the child may be exhibited to the jury as evidence of the alleged paternity and in corroboration of the testimony of the prosecutrix.

In Leonard *v.* So. Pac. Co., 21 Oreg. 555, 28 Pac. Rep. 887, 15 Lawy. Rep. Ann. 221, it was held that a scar upon the outside of the bottom flange of a railroad rail was made by a wheel on an engine on the rail across the track, may be disproved by producing a similar wheel, although somewhat smaller than that on the engine, and rolling it upon a section of a similar railroad rail across which was laid another similar section in order to show that the wheel could not strike the flange as claimed, it being also shown that the larger the diameter of the wheel the farther it would avoid striking such flange. The court cited Eidt *v.* Cutter, 127 Mass. 522, an action for injury to a house, where it was disputed whether the injury was caused by fumes and gases from the defendant's copperas works or by emanations from a neighboring sewer; and experts were allowed to testify as to experiments upon other premises exactly similar excepting the sewer; also Brooke *v.* Railroad Co., 81 Iowa, 504, where witnesses were allowed to testify as to experiments in placing their feet between rails in order to show how they might be caught. The court remarked: —

"There seems to be some hesitation in receiving evidence of experiments or demonstrations; and from the liability to misconception and error, there can be no doubt that the experiments or demonstrations should be made under similar conditions and like circumstances. In all cases of this sort very much must necessarily be left to the discretion of the trial court; but when it appears that the experiment or demonstration has been made under conditions similar to those

existing in the case in issue, its discretion ought not to be interfered with."

In State *v.* Crow, 107 Mo. 341, 17 S. W. Rep. 745, a prosecution for theft of a cow, pieces of ears, and a dewlap cut from a cow, and a hide sold by defendant, were held admissible to identify the animal stolen and killed, and show that the marks and brands had been mutilated.

It has been held that whether articles are too cumbrous for exhibition in court is a question for the decision of the trial judge (Jackson *v.* Pool (Tenn.), 19 S. W. Rep. 324). And so, although under the Crow case in Missouri, a cow's ears may be exhibited, it might be a grave question whether those of a donkey would be admissible!

On a prosecution for maliciously placing an obstruction on a railway track, it was held proper to exhibit a crowbar, left by the side of the track near the place in question, there being evidence that it was found under the defendant's house after his arrest (Mitchell *v.* State (Ala.), 10 South. Rep. 518). It is hard to see how the production and exhibition of the article could be any more conclusive than oral evidence of the facts. The prisoner ought to have put in a plea in bar! So it was held in People *v.* Wright, 89 Mich. 70, 56 N. W. Rep. 792, that the clothing of two persons admitted to have been killed by the defendant is admissible on his trial for the murder of one of them, to show how near the parties were to one another when the fatal shots were fired.

The most effective exhibition of the clothing of a murdered person recorded in literature was that of Cæsar's toga by Antony, as recorded by Shakspeare: —

"You all do know this mantle: I remember
The first time ever Cæsar put it on:
'T was on a summer's evening, in his tent,
That day he overcame the Nervii.
Look! in this place ran Cassius' dagger through:
See what a rent the envious Casca made:
Through this the well-beloved Brutus stabb'd,
And as he plucked his cursèd steel away,
Mark how the blood of Cæsar followed it.
. . . . then burst his mighty heart:
And in his mantle muffling up his face,
Even at the base of Pompey's statua,
Which all the while ran blood, great Cæsar fell.
. . . . . .
Kind souls! what! weep you when you but behold
Our Cæsar's vesture wounded?"

In McGuire *v.* Joslyn, 31 N. Y. St. Rep. 990, an action by a tenant against his landlord for an injury sustained on a common stairway by reason of defective matting, the court refused the plaintiff's request to charge that if the defendant could produce the matting substantially in the same condition, his omission to do so might be considered like his omission to produce a witness; the court refused, but charged that the jury might give it such weight as they saw fit. Held, no error. The court said: "The matting was in possession of the defendant, and it was admissible as evidence before the jury."

As to experiments in the jury-room, it was held error for the jury to send the constable out of the room, and have him talk in a somewhat loud tone, to test the accuracy of testimony given on the trial; and so in respect to experiments by them to ascertain whether the impression made by a man's foot was shorter in running than in walking (Jim *v.* State, 4 Hump. 290).

In Hays *v.* Railway Co., 70 Tex. 602, an action for running over the plaintiff's foot, it was held error to exclude his boot offered to show the indentations made thereon. The court said: "Physical facts are always admissible; and when the object itself can be brought into court and exhibited, it is more satisfactory than a description of it by witnesses that have inspected it outside of court."

In Cash Register Co. *v.* Blumenthal, 85 Mich. 464, the cash register, for the price of which the suit was brought, was exhibited and worked before the jury, and explained by a witness.

In a recent murder case in New Jersey, "the defence was that the deceased fractured his skull by a fall during the alter-

cation. To prove that this was probable, Dr. Andress was called as an expert. He had a large package which he fondly handled, and while telling his story, unwrapped. He said that on January 9 he visited New York, and procured a head taken fresh from the body of a man sixty years old. Returning to Sparta, he fastened it on an apparatus resembling a human body, the whole weighing about ninety pounds. This was dropped from an angle of forty-five degrees, the skull striking a round stone. It was fractured worse than that of Morris, although he weighed one hundred and eighty pounds. The prosecution were so surprised they forgot to object; and before any one knew what was coming, the shrunken and ghastly trophy of medical experiment rolled on the floor. The effect was electrical. Women shrieked, men shrunk backward, and the court turned pale. One woman fainted, and for a few moments the room was filled with uproar, the persons in the rear striving to get a view, while those in front retreated from the grinning skull. When order was restored, the head was taken from the court, and on an objection the whole evidence was stricken from the records. The court said that the principle involved was unsettled in this State, and somewhat resembled the evidence on which the *McPeek Case* was taken to the Supreme Court."

In comparison with such evidence, ordinary evidence assumes something of the character of hearsay, and the eyes of the jurors constitute the best channel of evidence. It is true that the eye itself may be deceived. It is often cheated by avowed jugglery. There are some eyes that are not good witnesses, as those that are short- or far-sighted or color-blind. The same is true of the ear, as where it is deceived by ventriloquism, or when it is insensible to music. When Raleigh overlooked the affray from the Tower window, he was surprised by the discrepancy between the accounts given by other spectators; but what would have been the result if only hearsay evidence had been accepted? The rule laid down by Shakspeare for love-cases, and the non-observance of which proved so disastrous in the case of Henry Eighth and his "Flanders mare," is good for law-cases: —

> "Let every eye negotiate for itself,
> And trust no agent."

SOME MISSOURI "YARNS."

III.

By Hon. William A. Wood.

SEVERAL of Missouri's brainiest lawyers, to get rid of the habit brought on by the conviviality of the profession, have graduated from the "Keeley Institute for Inebriates" at Dwight, Ill. One of the brightest of them, a few days since, tried a case against a pettifogger who, after misrepresenting the facts to the jury, wound up with an unkind allusion to his opponent's having taken the "Keeley cure." The advocate paid no attention to the personality until he had argued his case, when he closed by saying, —

"Gentlemen, it is true I have taken the 'Keeley Cure.' I thank God for it, and I sincerely hope Dr. Keeley will discover a cure for *lying*, and that my opponent will have the good sense to take it."

Among the early lawyers of Missouri were Judge James C—— and Gen. John C——, brothers, both excellent lawyers and splendid

advocates. General John, when occasion required, closed his argument to the jury bathed in tears himself, with most of the jury and audience weeping too.

One day he and Judge James were trying a case, James prosecuting and John defending. James made his speech, a strong one for his side of the case, and ended with telling the jury, —

"Gentlemen, my brother John will next address you on the other side of the case; and I want to caution you, he will cry and try to make you cry. He does it in all his cases."

General John then spoke to the jury, making one of the very best of his pathetic appeals, causing jury and audience to forget James's admonition; and as tears were freely flowing, John, with great drops rolling down his cheeks, said to the jury, —

"My brother Jim told you I would cry; I am crying; and, gentlemen of the jury, if you had such a d——d mean brother as Jim, you would cry too."

John's client was acquitted.

During the early part of Judge B——'s first term as circuit judge in North Missouri he was one day hearing a case in which a man named Cobb was a party. Some of the witnesses called him "Cobb" and others "Cobbs." The judge asked the client which was the correct name. Old Dr. M——, who was very fat, and always in a state of semi-drunkenness, rose up in his seat and said, —

"It 's C-o-bb, Judge."

"All right, Doctor," said the Judge; "I am obliged to you."

Another witness gave the name wrong; and the old doctor got up and said, "Judge, it 's C-o-bb."

The court replied, "I understand, Doctor; take your seat."

As a drunken man will, the doctor became offended at this, and shouted at the court, "I tell you it 's C-o-bb, Cobb!"

"Mr. Sheriff," said the court, "remove this man to jail."

A deputy started out with the doctor, who, when he reached the door of the court-room turned and yelled back to the judge, —

"It 's a d——d shame to have a fool court that can't spell, and it's a d——d outrage when a friend tries to learn him, to go and send him to jail."

The court ordered the sheriff to take him from the room and release him.

A Ray County lawyer, noted for getting warmed up and "bull-dozing," and sometimes abusing courts, especially justices of the peace, was recently trying a case before a Kansas City justice.

The court made a ruling displeasing to the attorney, when the latter jumped to his feet and began to abuse the justice. The court ordered him to stop, telling him, —

"Mr. B——, I allow no attorney to criticise or talk about this court during a trial."

B—— was nonplussed for a moment only and responded, —

"Well, will your honor allow me to talk about our old justice over at Richmond?"

"Oh, I don't care what you say about him," answered the court.

"Well, your honor," said B——, "if our old justice were to make such a ruling as your honor has just made, we would tell him he was a d——d fool."

The court's anger was drowned in amusement.

In the early days of interior Missouri, the late Judge E—— cut cord-wood, cleared up his homestead farm, and was employed upon one side of nearly every case that came up, being for some years the only lawyer in the county. He had no books except an old leather-covered Bible and an old volume or two of history similarly bound, but had read law a short time in Kentucky in his youth. He was very small and insignificant in appearance, but became before his death a splendid lawyer and an honored judge.

A young attorney from the East settled in the little country town, with his library of

about half-a-dozen new and handsomely bound law-books, and on his first appearance in a case he brought most of his library to the justice's office in a fine beautifully flowered carpet-bag, popular in that day. E—— was engaged against him, and, as usual, had not a book. When his adversary carefully drew his library from the pretty carpet-bag and laid them on the table, E—— looked astonished, but quickly recovered his ready resources, and asked the justice to excuse him for a few moments. He hurried to his homestead half a mile or so away, and put his old leather-bound Bible and histories into a grain-sack and brought them to court; imitating his opponent in laying them before him on the table. The evidence was introduced, and the Eastern man, being for the plaintiff, made his opening argument and read at length from his text-books. E—— made his characteristic speech in reply, closing by reading law from his old Bible just the reverse of that read by his opponent, and took his seat, putting his Bible on the table. His adversary reached over and picked it up, and seeing what it was, eagerly addressed the justice, —

"Your honor," said he, "this man is a humbug and pettifogger. Why, sir, this is the Bible from which he has pretended to read law."

The old justice looked indignant, and interrupting the young attorney, said, —

"Set down, durn ye; what better law can we git than the Bible?" He then decided the case in favor of the defendant.

A case was being tried at Carrollton, Missouri, some years ago before Judge D—— and a jury, in which the plaintiff, a young woman, was suing a city to recover for injuries received by reason of a defective sidewalk. The plaintiff was testifying in her own behalf, and was being subjected to a rigid cross-examination by defendant's counsel, who asked her some questions tending to reflect upon her character.

An Irishman among the spectators had become intensely interested in the trial, and had advanced to a position just behind the attorney who was cross-examining the lady. The Irishman, unable to restrain his indignation longer, exclaimed in a loud voice: "Be gob! you 're no gintlemon, sor, to spake to a leddy loike that."

The court ordered the sheriff to take Pat to jail, but sent a deputy after them to tell the offender if he would promise to stay out of the court-room he would not be incarcerated. Pat made the promise, but got a few more drinks of the "cratur," and slipped back into the court-room, getting near the attorney again. The attorney asked the woman a particularly compromising question as to where she had been the night she received the injury. Pat fired up again, and came to the rescue with, —

"Ye dirty spalpeen, the head of yez ought to be broke."

The court quickly ordered him to jail; and as he was struggling down the aisle in the grip of two deputies, he defiantly shouted, "Be jabers, I 'm willin' to go to jail in defince of any dacent gurrl in Carroll County."

The court kept him locked up until the trial was over.

Congressman "Dick" Norton, of Missouri, who, though never encroaching upon the peculiar field of Congressman John Allen, of Mississippi, often tells a good story in an admirable manner, recently related to us the following: In the early times of Lincoln County, Missouri, and in fact all over the State almost any one could get admitted to the bar. Under this *régime* old Uncle "Joe C——h" was licensed and did some practice at Troy, the county town which was famed for its brilliant orators, learned and profound lawyers. "Joe" defended a neighbor who had committed some offence, had undertaken to flee from justice, but had been caught by a sort of mob whose threats extorted a confession of guilt from him. "Joe" was uneducated and eccentric, but he was certainly inspired with an intuition of what

the law ought to be, for he took the position that this involuntary confession ought not to be admitted in evidence.

The court overruled his objection, and the case was tried, the only evidence of guilt elicited being the defendant's alleged flight and the forced confession. Old "Joe" refused to give up his position; and the following is a sample from his argument: —

"Gentelum of the Jewry you must 'quit this here man; that ther' cornfession ain't no proof; they runned him, an' they kotched him, an' he was skeered an' afeered, an' he *revulged* on hisself."

The defendant was acquitted.

Judge Kellen was for many years Police Judge of St. Louis. An old Irishwoman named O'—— was often before him in consequence of her too great fondness for "a drap of the cratur."

One Monday morning she was called up, and the clerk read the charge: —

"Mary O'——, found drunk in the street."

"What plea do you want to enter, Mary?" said the Judge.

"Well, yer honer," said Mary, "I 'll not be pl'adin' at all to that charge, it 's too gineral; it don't say what strate."

The court had the charge amended after inquiring of the policeman who made the arrest what street he had found Mary on, and good-humoredly let her off with a small fine as a compliment to her knowledge of pleading, acquired by her long experience in his court.

Two prominent St. Louis lawyers, one of them a grandson of a former Justice of the United States Supreme Court, from Virginia, were recently trying a case before a justice of the peace. During the trial a question was raised, and the attorney for the defendant declared the law, as he understood it.

"There is no such law," asserted the scion of the old Virginia family.

"Well, but there is, and it was so laid down by the Supreme Court of the United States in Smith *v.* Jones," said he for the defendant.

"If there ever was such a decision, the man who made it was an ass," said his opponent.

"I cannot help that," said the other; "I can produce the report of the decision."

The court took a recess for half an hour for them to go to the law library and look the matter up. At the end of the time they came into court, and the justice resumed his seat, when Colonel ——, the Virginian, arose and delivered the following remarks: —

"Your honor, I wish to retract my remarks concerning that question of law. There is such a decision of the United States Supreme Court, and the opinion was written by my grandfather. I am satisfied that the decision is a sound one."

An old-time Missouri judge was in the habit of dissipating a little while on the circuit. On one occasion he spent the evening with an old constituent, and they imbibed several "drams" of native rye, and were correspondingly familiar and convivial. The judge came up sober the following morning, and opened court at the usual hour. His old friend, however, was not so fortunate, and came into court, which was in session, very much intoxicated, and exclaimed from near the door, —

"Mornin', Jedge, I 'm a hoss."

The judge pretended not to hear him, when he again called out, much louder, —

"Say, Jedge, I 'm a hoss; donch'er hear?"

The judge could not disregard this, and responded, —

"Mr. Sheriff, take charge of that 'hoss,' and lock him up in a stable."

The old fellow was marched off to jail, to become a soberer if not a wiser man.

THE SUPREME COURT OF TENNESSEE.

IV.

UNDER THE CONSTITUTION OF 1870.

By Albert D. Marks.

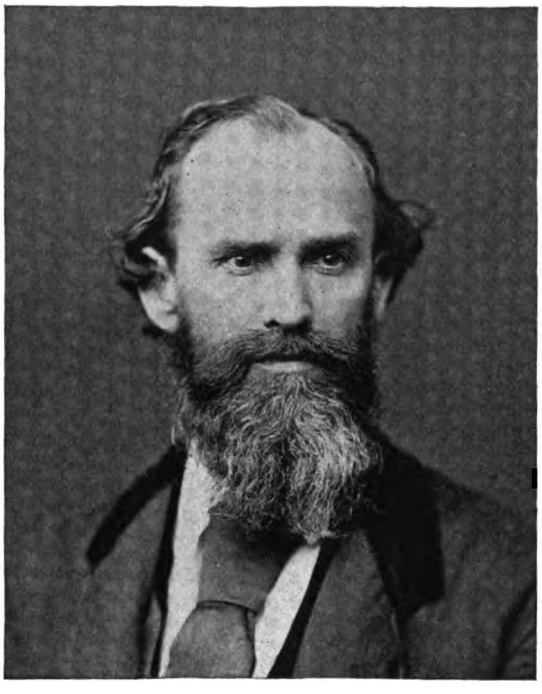
THOMAS J. FREEMAN was born July 19, 1827, in Gibson County, Tenn. He was of English descent. He was not a college-bred man, but he received a good academic education. He took up the study of law at Trenton, the county-seat of his native county, and was licensed to practise shortly after he became of age. He remained at Trenton until the breaking out of the war, when he enlisted in the Twenty-second Tennessee Regiment. He was elected its colonel. He was severely wounded at the battle of Shiloh. After recovering from his wound, he was attached to the command of General Forrest, and served under him for the remainder of the war. After the surrender he removed to Brownsville, where the Supreme Court then sat for the western division of the State. He took high rank as a lawyer, and appeared as counsel in many cases of importance in that tribunal. When he offered as a candidate for Supreme Judge in 1870, he was readily elected. He was re-elected in 1878, after a close contest. He was defeated for re-election in 1886. He shortly afterward became Dean of the Law Department of the University of Tennessee at Knoxville. His health failing, he sought much-needed rest at the home of his son in Dallas, Texas. He died there Sept. 16, 1891.

Judge Freeman had given especial attention to the subject of pleadings, both at law and in equity; and no judge ever sat on the bench in Tennessee who was more thoroughly versed in the difficult art of accurate pleading. He was a diligent student of constitutions. He took a leading part in the decision of the questions growing out of the new sections of the Constitution of 1870. He was for a strict construction of its provisions, and exercised great influence in carrying the court with him to a considerable extent. His extreme ideas, though, were not fully adopted; but he never failed to dissent when a position was taken not in accord with his views. This unbending quality caused him to frequently dissent. His dissenting opinions were among the best he delivered. He never appeared to such advantage as when attacking what he thought an error of his associates. In order to keep the error from becoming too firmly fixed, he seemed to deem it his duty to oppose it with all the force of his ability. It appeared to him that a fallacy of a judge should be more thoroughly refuted than that of a lawyer, and so he put a great deal of care and labor on the preparation of his dissents; and it must be said that he frequently made the right seem to be with him instead of with the majority.

In addition to his arduous labors as judge, Judge Freeman did a marvellous amount of general reading. He had early conceived a passion for books; and reading remained his pastime, and as he sometimes said, "his dissipation."

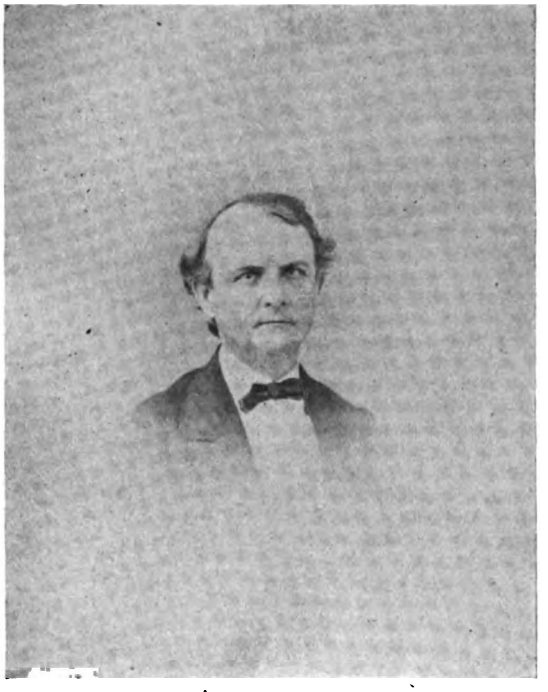
William Frierson Cooper was born in Franklin, Tenn., March 11, 1820. His ancestors on both sides were Scotch-Irish, being of a colony that emigrated in the early part of the century from South Carolina, and settled in Maury and Williamson Counties. His father was a man of wealth. The son entered Yale College, graduating in the class of 1838, when but little past the age of eighteen. Among his many distinguished classmates was Gen. Francis P. Blair. After his graduation he determined on the

practice of medicine as his profession, and began its study, reading for two years and taking a course of lectures at the University of Pennsylvania. Finding the bent of his inclination away from that vocation, he took up the study of law under his kinsman, Chancellor S. D. Frierson. He was admitted to the bar in 1841, at the age of twenty-one. He practised at Columbia for four years, then removing to Nashville, where he continued to reside until within the last year. He entered at once into a large practice, from which he has accumulated his fortune. In 1852 he and Return J. Meigs were appointed as commissioners to codify the laws of the State, their report being enacted as the Code of Tennessee in 1858. He was an unsuccessful candidate for Attorney-General in 1854, being defeated by John L. T. Sneed. In 1861 he was elected one of the Judges of the Supreme Court, to succeed Judge Caruthers. He was sworn in the early part of December; but the court transacted no business because of the near approach of the Federal forces. Judge Cooper was a Confederate sympathizer, but was a non-combatant. He went to Europe, and was in England during the war, spending a large part of his time about the courts of London, and in the study of equity jurisprudence. At the close of the war Governor Brownlow forbade him to resume his office, though his term had not expired. He returned to the practice of law in partnership with Judge Robert L. Caruthers, their practice being very lucrative. In 1872 he was appointed by Governor Brown as Chancellor at Nashville, being shortly afterward elected by the people for the full term. He served until 1878, when he was elected Supreme Judge. Chancellor Cooper found the docket of his court seemingly hopelessly crowded. The years following the war were fruitful of litigation, and it was apparently beyond the capacity of any one man to clear the docket. He adopted new rules of procedure that expedited the despatch of business, and by a season of labor almost unparalleled, he disposed of the accumulated cases. Not only did he dispose of this mass of business, but he delivered elaborate written opinions in most of the cases. He published these opinions, covering his service of Chancellor for six years, in three volumes known as "Tennessee Chancery Reports." These three volumes are richer repositories of learning than are any other law reports. They were from a judge whose decree was not final; but so fortified were they by argument and citation of authority, that they are cited with as much confidence as the opinion of a court of last resort would be. In these opinions are to be found evidences of the diligence with which he studied the English reports during his stay in London. He was essentially a student, and having never married, his life has been one devoted to study, with absolutely no distractions. But the press of his professional duties prevented him from



THOMAS J. FREEMAN.

devoting himself wholly to the study of the law as an abstract science until this period of enforced leisure. Those years were of incalculable benefit to him in fitting him for the great judicial work that lay before him; and his candid friends must say that Judge Cooper will be known to posterity as Chancellor rather than as Supreme Judge. As Chancellor, he was not trammelled by the views of associates. He could write opinions in only such cases as he chose. The questions before him, sitting in the chief commercial city of the State, were more diverse and more interesting than the cases allotted him as Supreme Judge. And this result was as well contributed to largely by the fact that while as Chancellor at home, he had his magnificent library, access to which was made easy by his methodical system of indexing and collating, and as Supreme Judge, he was moved from town to town, and left dependent on such books as he was able to carry with him.



WILLIAM F. COOPER.

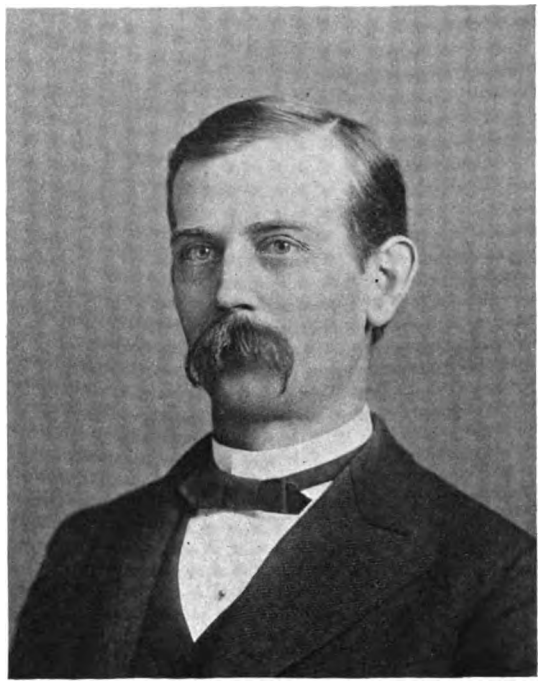
In him Tennessee can claim the greatest expounder of equity doctrines of modern times. As a judge, he loved to search out precedent and to strengthen his conclusions by an array of authorities that could not be met or overthrown. He had well-defined trends of thought, and he applied the principles he believed to be the law regardless of the harshness of the rule in a particular case.

In addition to the mass of decisions that he has left both as Chancellor and Supreme Judge, the State and profession have been vastly benefited by the other results of his unremitting toil. Aside from the well-nigh perfect code he assisted in compiling, he prepared and published a new edition of Tennessee Reports, covering the period from the organization of the State to 1860. This work was rendered necessary by the scarcity of the earlier reports; but Judge Cooper availed himself of the opportunity to thoroughly re-edit the reports, and by annotations and cross-references to much increase their value to the practitioner. He also edited an edition of Daniells's Chancery Practice.

He was defeated for a re-election as Supreme Judge in 1886 by a narrow margin, though not an active candidate. It was the hope of the profession that his retirement to private life would mean that a great book on some branch of equity law would come from his pen, and many flattering offers have been made him by the leading law-publishers; but these he has put off, as he says, until he should be thoroughly rested. But after a life of labor, uninterrupted for forty-five years, he has found rest so grateful that six years have gone by and he is not yet rested. Some months ago he removed from Nashville, and is now making the city of New York his home.

Waller C. Caldwell was born in Obion County, Tenn., May 14, 1849. He was but three years old when his father died. By his own labor, after he became old enough, Judge Caldwell supported his widowed

mother and educated himself. After receiving a common-school education, he entered the academical department of Cumberland University, and took his degree in 1871. He graduated from the law department in 1872. While learning the lesson of law from Chancellor Green, he conned the lesson of love from the daughter. He was married on Oct. 22, 1874, to Miss Ella Green, daughter of Chancellor Green, and grand-daughter of Judge Nathan Green. Judge Caldwell practised at Trenton, Tenn., until 1883, when he was appointed a member of the Commission of Referees for the middle division of the State. He continued to serve until May, 1886, when the business before it was disposed of. He became a candidate for Supreme Judge, and was nominated on the first ballot by the convention, receiving on the call of the roll a larger vote than was cast for any other candidate.



WALLER C. CALDWELL.

He has served most acceptably as a judge, and has taken high rank. He has an immense capacity for labor, and is the master of details, being gifted with an unusually good memory. He can handle a complicated record better than any man on the bench. His opinions are always carefully prepared, and are never handed down until perfectly finished in every part. Judge Caldwell has the unusual faculty of exact statement. The doctrines meant to be enunciated are accurately given, and the position taken shown; and his opinions do not have to be continually limited and explained. There are two classes of questions in which he is particularly proficient, the law of common carriers and that of taxation; and many of his best opinions bear on these.

David L. Snodgrass was born at Sparta, Tenn., April 4, 1851. He was the son of Thomas Snodgrass, a lawyer practising at that bar. Having received an academic education in the schools of White County, he completed his education at the University of Tennessee at Knoxville. He read law under the tuition of his father, and was admitted to the bar in October, 1872. He practised his profession at Sparta for ten years, appearing in the various courts of that circuit. He was the member from White and Putnam Counties of the Lower House of the General Assembly of 1879. He was assigned to the three most important committees of that body, and became one of the leaders of his faction during that exciting session. The final trouble over the settlement of the State debt was then beginning. That Legislature passed an act for funding the debt at 50–4, and submitted it to the people for ratification. The proposition was rejected at the election, and this caused the trouble to commence anew. Judge Snodgrass was a delegate to the Democratic convention in 1880. That convention having adopted a platform on the debt question which the "Low Tax" delegates did not think in accord with the views of a majority of the party, the "Low Tax" delegates, headed by Judge Snodgrass, bolted the convention and

nominated a complete State ticket. Judge Snodgrass took an active part in the heated canvass following, making a reputation as an effective stump-speaker. In 1882 he took a prominent part in the negotiations that led to the reconciliation of the two wings of the party, and the adoption of a platform proposing a settlement of the State debt satisfactory alike to the people and to the bond-holders which was finally effected. During that year he removed to Chattanooga, where he has since resided. In 1883 he was made a member of the Commission of Referees for West Tennessee. By the choice of the other two members of the Commission, he presided over its sessions. His two years' service on that tribunal brought to him such reputation as a judge that when he offered himself as a candidate for Supreme Judge in 1886, he procured the vote of his own county, Hamilton, over Judge Cooke, also a candidate from that county; and he was nominated on the second ballot after a close contest. The almost solid support given him by the lawyers of West Tennessee did much to turn the scale in his favor.

DAVID L. SNODGRASS.

When Judge Snodgrass entered on the discharge of his duties as Supreme Judge, he was barely five months past the constitutional age (thirty-five), being the only man who has ever reached the bench at that age, with the exception of Judge Turley. There had been bitter opposition to his nomination because of the active part he had taken in the late acrimonious political contests. The delegates from upper East Tennessee had contended that he had been a resident of the division too short a time to entitle him to be put on the ticket as the only judge from East Tennessee, and fought his nomination vigorously. For these reasons there was some dissatisfaction with his nomination. But the first term at which he served dissipated entirely this dissatisfaction, and made some of his stoutest opponents his warmest friends and admirers.

The constitution of Judge Snodgrass is such that it fits him for an unlimited amount of work. He is a man of unusual quickness of apprehension, his mind acting with a rapidity that is almost lightning-like. This capacity for work, united with quickness of apprehension, especially qualified him to take part in the cleaning up of the crowded docket of the court. These qualities, added to a retentive memory, make him most valuable in consultation, where his influence is most decided. His written opinions are ordinarily not elaborate, but they evince the thorough grasp that his mind has of the case. He is peculiarly felicitous in phrasing them, and they are fine examples of the best judicial writing. His vigorous mentality leads him to often dissent from the opinion of the majority. He is particularly a persistent opponent of those doctrines that confer special privileges or rights on favored classes. One of his best opinions is that of Case *v.* Joyce, 89 Tenn. 337, denying the right of homestead in land held in com-

mon; an opinion prepared as a dissenting opinion, but which won over one of the majority, and was made the opinion of the court. He attacks vigorously the doctrine that a creditor is to be treated as a hostile enemy who is robbing his unfortunate debtor. The writer is replying to the position taken in Freeman on Co-tenancy, where the author uses the illustration that a tenant in common may lawfully occupy the whole land, building his house upon it, and planting shrubs and flowers about it. Says Judge Snodgrass in his opinion:—

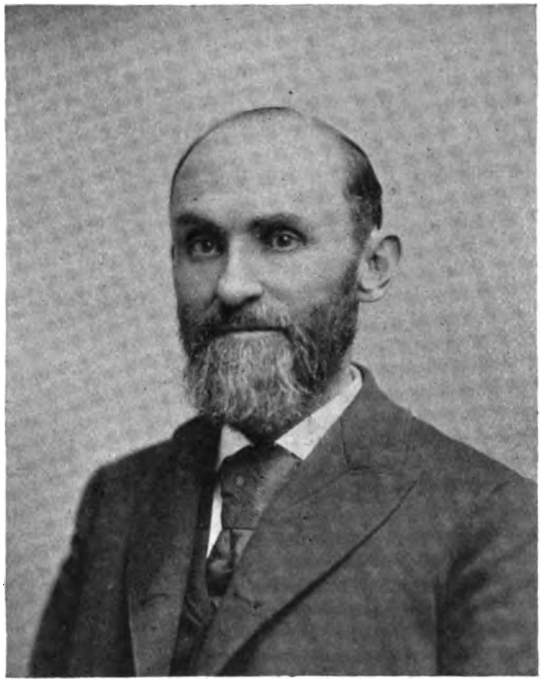
"A man who yields up his homestead to pay his honest debts plants a flower in his rented lawn that will bloom while he lives as a token of honor, and shed a fragrance above his grave when he is gone that will endure forever. It will be a treasure to his children and his children's children; when the shrubs he might have planted in a co-tenancy which he was able to keep only by allowing his debts to remain unpaid, would have decayed by lapse of time, and been blown away in the revilings of those he defeated or defrauded of justice by refusing to render to them their own."

WILLIAM C. FOLKES.

William C. Folkes was born at Lynchburg, Va., June 8, 1845. He was of English descent. When he was only sixteen years old, and yet a school-boy, the Civil War broke out. He at once enlisted in Moorman's Battery, enrolled at Lynchburg, and took part in the first battle of Manassas. He was severely wounded in that engagement. After his recovery, he rejoined the army. He lost a leg in the bloody charge at Malvern Hill. Notwithstanding he was thus disabled, he continued in active service until the close of the war. The war ended, he again took up his collegiate studies at Chapel Hill, N. C., graduating in a short while. He thereupon entered the law department of the University of Virginia, taking his degree in 1866. He determined to seek a newer community as a location, and he emigrated to Memphis, Tenn. The bar of that city had drawn to it the best of the talent of Tennessee, Mississippi, and Arkansas, and was undoubtedly the ablest in the South. The young Virginian took good rank, and soon commanded a large practice. He married Mary, the daughter of Judge Archibald Wright, and became a member of the firm of Wright & Folkes. He continued in full practice down to the year 1886. The Memphis Bar then presented his name as a candidate for Supreme Judge. He was a man of fine appearance and great courtliness of manner; and a personal canvass of the State, added to the very earnest support of the Memphis Bar, resulted in his securing more than two thirds of the whole vote of the nominating convention on the first ballot, over several most worthy and popular opponents.

None of his colleagues set themselves to the heavy task before them with greater energy than he. His loss of a leg made his habits of life sedentary in a large measure, and work literally became both his exercise

and recreation. There is now no living evidence of the greater part of the work he and his colleagues did. Nothing now shows it except the hundreds of decrees entered at each term. But outside of the examination of cases to be decided orally, he put a great deal of patient study on the writing of his opinions in cases where the court directed opinions should be written; and each of them is a finished literary production. The strain of this work proved too much for him; it exhausted his vitality. He yielded to what was seemingly a trifling illness, and died rather suddenly at Memphis, May 17, 1890. There has rarely occurred the death of any public man in Tennessee whose taking-off was the occasion of the expression of so much sorrow throughout the State.



JOHN S. WILKES.

The opinions of Judge Folkes have stood well the test of time. It so happened that it fell to his lot to deliver many opinions on the law of corporations and of commercial paper, — two branches of the law that are among the most important, and in which the fiercest legal battles are fought. Judge Folkes never touched one of these questions but that he illuminated it; and as the years have passed by, and lawyers have had full opportunity to examine his judicial utterances closely, the greater respect his opinions have commanded. They are smoothly expressed in the best of English; following established precedents where there is no conflict of authority, but seeking only the better logic and sounder reason where the adjudicated cases were at variance. In the stating of the conflict, the opposing authorities were fully enumerated; but mere numbers of cases availed nothing in balancing his mind. It is safe to say that the years to come will only add to the high regard in which the opinions of Judge Folkes are now held.

John Summerfield Wilkes was born in Maury County, Tenn., March 2, 1841. His parents were of English extraction, who had removed to Tennessee from Virginia about 1810. He was educated at Pleasant Grove Academy, in his native county, an institution chartered and founded by his father and then famous as a training-school for boys. He afterward entered the Wesleyan University at Florence, Ala. While a student at that university, May 16, 1861, he enlisted as a private in the Third Tennessee Regiment. He was captured at Fort Donelson, and was in prison for some months at Camp Douglass. On his exchange he was made a captain in his old regiment, which was then re-organized. He was afterward made purchasing commissary for Mississippi and Tennessee; and though it was out of the line of his duty, he continued to take part in all the engagements that took place. On his return from the war, he began to read law under John C. Brown at Pulaski, and was licensed in January, 1866. He began the practice at Pulaski in partnership with A. J. Abernathy. In 1871 he was appointed Adjutant-Gen-

eral of the State by Gov. John C. Brown; and he continued to hold that office until January, 1875. While in that office he re-arranged the State archives, which were in great confusion because of their removal during the war, and devised a method of registration of the State bonds by which the complete history of a bond could be shown at a glance. He had charge of the delicate and important task of funding the whole State debt under the Act of 1873. On the expiration of the term of Governor Brown, he and Judge Wilkes resumed the practice of law at Pulaski as partners, though Governor Brown soon removed to St. Louis. In 1885 ex-Governor Brown was made receiver of the Texas Pacific Railroad; and he appointed Judge Wilkes, whose administrative abilities were so well known to him, as treasurer. On the re-organization of the company two years later, Judge Wilkes was tendered the same position, but declined it. He returned to his practice at Pulaski. He continued with a lucrative practice, down to Jan. 16, 1893, when he was appointed by Governor Turney to the vacancy on the Supreme Bench caused by his acceptance of the office of Governor.

WILLIAM K. McALISTER.

Judge Wilkes has been entirely devoted to his profession, and has never sought office. He has been the leader of the bar in his section of the State. He possesses all the qualities that foreshadow a career of great usefulness and distinction on the bench.

William K. McAlister was born in Nashville, Tenn., July 4, 1850. He is of Scotch-Irish descent. His family is among the oldest in Davidson County. Judge McAlister was graduated from Bethany College in 1869. He then took the law course in the University of Nashville, and began to practise at Nashville. In 1874, when twenty-four years old, he was elected city attorney, and held this office until 1883. In 1886 he became a candidate for judge of the Seventh Circuit, and was nominated on the first ballot. He was elected by a large majority. During his six years' service on the Circuit Bench, he won for himself the name of the best *nisi prius* judge the State has ever had. On the resignation of Chief-Justice Lurton, on April 1, '93, Governor Turney appointed Judge McAlister to the vacant place on the bench.

His term as Supreme Judge is just beginning, but his former judicial work shows what his career on the Supreme Bench will be. He is a born judge, and a man of extraordinarily quick apprehension. No lawyer ever made an argument before him that he did not feel that what he said was being fully understood. He was well educated, and is thoroughly cultured in every way. He is a man of dignified presence, and his very appearance inspires respect. He has high notions of judicial propriety. He is absolutely free from any extraneous considerations in his judgments. He has never been swerved the breadth of a hair in his decisions by friendship, or by the popularity or un-

popularity, the wealth or the poverty, of a litigant.

Any history of the Supreme Court of Tennessee would be incomplete without reference to the results achieved by the judges who have sat on the bench since 1886. The amount of work they have done and are doing has been approached by no court of last resort in the United States.

The four years' interruption of the court by the war caused a large accumulation of business. The numberless suits growing out of the war, and the changed conditions it brought about, continued to swell the accumulation. The three judges sitting in reconstruction times worked faithfully and conscientiously, but they were not able to keep down even the current business. In 1870 six judges were chosen, and they sat in two sections; but they proved unequal to the task. Other expedients were resorted to. Arbitration courts, composed of men of unusual ability, were appointed. In 1883 Commissions of Referees in the three grand divisions were provided for; but still it required sometimes three and four years to have an appeal heard. The condition became intolerable to the lawyers of the State. As the general election of 1886 approached, the dissatisfaction increased. The cry of "a clean sweep" rose. Four of the five judges were candidates for re-election. Three of the four were beaten. Judge Turney alone was re-elected. Judges Cooper, Freeman, and Cooke were all defeated. Along with them, every candidate past forty-five years of age, except Judge Turney, was defeated. His four colleagues were aged, respectively, forty-two, forty-one, thirty-seven, and thirty-five.

They were elected under the pledge to clean up the docket. They set about their work intelligently. They adopted a strict set of rules regarding assignments of errors and briefs. They were fortunate in having Chief-Justice Turney as a presiding officer. They increased the time of hearing cases to five and one-half hours a day. Then, aided by a perfect harmony between the judges, the individual members of the court began months and years of sustained work such as but few men have been subjected to. No man or set of men ever toiled more faithfully than did these judges. They disposed of eighteen hundred and twenty-two cases during their first year, and cleared the arrears of the docket in East and West Tennessee. Another term was required to bring up the docket in Middle Tennessee; but at the December Term, 1887, every case then on the docket for that division was disposed of. During that year a total of fourteen hundred and seventeen cases was tried. The court continues to dispose of twelve hundred cases annually, — thrice the average of the Supreme Courts of other States.

Only the self-sacrifice of these men, who have borne cheerfully this great burden, has made good the constitutional guaranty found in the Bill of Rights: —

"That all courts shall be open, and every man, for an injury done him in his lands, goods, person, or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial, or delay."

LONDON LEGAL LETTER.

LONDON, May 10, 1893.

WE lawyers have had a holiday to-day. The occasion of this welcome remission from forensic toil was the opening of the Imperial Institute by the Queen, amidst every circumstance of pageantry and popular interest. It is seldom that London life is enlivened nowadays with a really grand State function, and so the opening of the Institute with every royal ceremony was sincerely welcomed by the metropolitan community to whom such festivities are ever welcome. When the project of an Imperial Institute was originally started in the Jubilee year of 1887, it encountered a good deal of adverse criticism, and candid friends are even yet enquiring the purpose of its establishment. One of our best evening newspapers asserts that the robust faith of the Agents-General for the Colonies and of some of the most practical authorities upon India outweighs all the influences of "philosophic doubt," and that the Institute will be useful along four distinct main lines: (1) The "Commercial Museum" line; (2) The "Information Bureau" line; (3) The "Social" line; and (4) The "Popular Educative" line. On the whole, you may take it that there is now a general consensus of public opinion in favor of the Institute, and its future utility in many directions is not seriously disputed. At the ceremony of to-day the judges in their robes were of course officially present, and as a preliminary to their participation in the public festivities, they and their wives were entertained to breakfast at Sussex Square by the Lord Chief-Justice and Lady Coleridge. Among the Royal Honors bestowed to mark the occasion has been the appointment of the Lord Chancellor Lord Herschell, who is Chairman of the Council of the Institute, to be an Extra Knight Grand Cross of the Order of the Bath.

There were great doings at the Middle Temple on Grand Night this term. The Prince of Wales, who is a bencher, came to dine; and accordingly a great many more barristers and students coveted seats in the Hall than could be accommodated. Places were assigned in accordance with priority of application. The event of the evening was the speech of His Royal Highness, who gracefully alluded to his son's betrothal, which he stated amidst immense applause was the explanation of his absence that night, for the Duke of York had been expected to accompany his father. At some of the Inns of Court after-dinner speeches are not allowed, such frivolities being deemed inconsistent with the sober character of the surroundings. Speeches or no speeches, however, Grand Night is always a very merry occasion, the flowing bowl being much in evidence; and I need hardly say that Middle Temple Grand Night this term was even merrier than usual. There are very few teetotalers at the bar; a few there may be, but they avoid the vinous delights of a bar-mess; although an abstainer is always cordially welcomed at the table, as his abstinence increases the potential potations of his messmates.

We have had one of the most wonderful spells of fine weather in town experienced for many years; the result has been to prolong the spring visitation which country friends make at this season. The Scotch Courts have a long holiday in spring; and few are the judges and advocates of the North who have not been seen airing themselves in the parks, theatres, and other fashionable resorts during the past month.

The Nestor of the County Court Bench, Judge Bailey, has just died at the advanced age of ninety; he has presided in the Westminster County Court since 1849; and although latterly he suffered from deafness, he has always sustained a high reputation for ability and fairness. The Westminster County Court is the best county court appointment in England.

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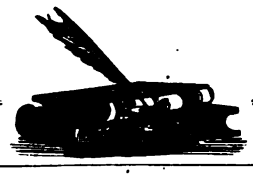
The Lawyer's Easy Chair.



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

BY IRVING BROWNE.

CURRENT TOPICS.

THE ELMIRA REFORMATORY. — The Seventeenth Year-Book of this well-known institution is full of interest to those who are engaged in trying to find some rational and effectual way of dealing with young criminals. It is too late to sneer at the work here attempted; it has justified itself by its good results. It is better to begin reformatory efforts with the young at such schools than with the hardened in the State prisons. It is better yet to begin in the free Kindergarten schools, which in several of the larger cities have obtained such encouraging results. It may be that in this last institution is to be found the solution of dealing with the so-called criminal classes. It is easier to tame the cub than the grown beast. The present volume is printed by the inmates of the school, and is a very creditable piece of work. It has a chapter on the physical training department, illustrated by comparative pictures of many of the inmates before and after, showing the beneficial effect of the system. Another valuable feature is one hundred portraits of inmates. Some of these are very comely lads. Most of them however apparently belong to the so-called "criminal class." These are accompanied in every instance by a short biography, showing the results of heredity and training. We wish that every lawyer and editor and legislator would read and ponder the following questions, given in this report, as to the causes of mental and moral degeneracy: "Alcoholism. — Who allows it, even grants it, a moral support by licensing the sale of intoxicating beverages? Horse-racing. — Who sanctions it? Who favors its popularity by suffering it to be advertised daily in the columns of the press under gay and alluring colors? Gambling, in all forms. — Who tolerates and often connives at it; at any rate, fails signally to eradicate it? Prostitution. — Who bears with it; in many cases legalizes it? Newspaper sensationalism — Who authorizes and sanctions it? Who feeds it? Obscene literature. — Who absolves it? Who indulges in it? Economic crises and irrational social conditions. — Who creates them?" These are serious inquiries, and it may be well for society to recall the parable of the mote and the beam. Another interesting feature is the account of the favorite literature of the inmates. It appears from this that the favorite English author is Dickens, who had a circulation of 783 for the last year; Bulwer follows next with 526, and then Kingsley with 518(!); George Eliot has 436, Hawthorne, 404, Scott, 378, Poe only 103, and De Foe, 94; Ignatius Donnelly has 140 devotees, and Rider Haggard, 557. The disclosure of the favorite books has some surprises. "Les Misérables," "Looking Backward," "Oliver Twist," and "Adam Bede" head the list with 104; then comes "The Scarlet Letter," with 103; then "Ivanhoe," "Tom Brown's Schooldays," and "Robert Elsmere," with 102; then the "Arabian Nights," with 101; then "Last Days of Pompeii" and "Marjorie Daw," with 100. Jane Austen has 28 admirers, and Thackeray, 204. Dumas comes next to Dickens with 646, and Hugo follows with 459. It is encouraging to find that "Mr. Barnes of New York" found only 52 readers, while "Middlemarch" had the same, and the "Marble Faun" had 38. By their books ye shall know them.

THE EQUINE PARADOX. — Such is the name, as probably most of our readers are aware, of a wonderful exhibition of trained horses. Whether the horse is a sagacious or a stupid animal in the opinion of mankind seems to be doubtful, for on the one hand we frequently hear the allusion to "horse sense," and on the other, we frequently hear of a man who is "as ignorant as a horse." But this exhibition will incline the beholder's opinion in favor of the former estimate. A representation of a court-scene by these animals gives rise to the present comment. The lawyers, the prisoner, the witness, the sheriff, and the jury were all horses; but strange to say, the judge was a jackass! and very funny indeed he looked. Now, why was the judge singled out for this uncomplimentary embodiment? If it had taken place in the Bahamas, undoubtedly the chief-justice would have had the horse-tamer up for contempt. (See report in present Notes of Cases.) We must say however that we have never seen quite so great an ass on the bench in courts of men, and certainly not one who looked so wise. But we desire to call the gentlemanly tamer's attention to one inaccuracy. The prisoner was brought to the dock in chains, and wore them all through the trial; and when the jury

brought in a verdict of not guilty (as per placard), the sheriff walked up to him, and loosed his bonds. Now this is wrong, although effective. Prisoners are never subjected to bonds when on trial, unless they are violent, or rescue or escape is threatened. None of these conditions existed in the instance in question. Mr. Bellerophon, or whatever his name may be, should have the bonds removed when the unfortunate but innocent defendant is placed in the dock, if he wishes to have his show beyond legal criticism. We observed too that there were but six jury-horses; but we make no point of that, as the prisoner did not complain of it. It did not appear what the charge was, — probably horse-stealing. We wonder what horses think of men anyway! Perhaps Landseer and Rosa Bonheur could tell; and Swift has essayed to tell, in his savage satire of the Houyhnhnms.

INSOMNIA. — A medical gentleman of Chicago some years ago published a little book entitled "The Insomnia of Shakespeare," in which he essayed to prove, from the dramatist's own works, that he was in the habit of lying awake o' nights. The essay was a transparent and very clever jest; but greatly to his delight it was taken for serious by many readers and reviewers, and treated by them with slight respect. Probably most lawyers have been at some time victims of this vexatious inability to sleep. A friend of ours once satirically remarked that he knew nothing about this, but he did know that lawyers are in the habit of lying awake in the daytime. At one period we suffered from the former — never from the latter — habit, and in one of these attacks we tried to kill the tedious hours by writing some verses, which we turned up the other day in some researches. We give them below. Our readers will appreciate our self-denial in printing them in this department rather than in turning them over to the Editor, who gladly gives us between five and fifty dollars for any poem we can bring ourselves to write for him.

NIGHT NOISES.

SOME poet says the night is "stilly," —
An utterance supremely silly,
For any one who lies awake
Can swear that nightly noises shake
The nerves far more than those by day,
In spite of all that poets say.
And there 's a great variety,
Not due to inebriety,
Nor to imagination's power,
But to the silence of the hour,
Enabling us to clearly hear 'em,
And having heard we learn to fear 'em.
The wind sings through the tight-stretched wires
Like moan of ghostly unpaid choirs;
The wedge-defying windows rattle
Like crash of musketry in battle;
A doctor's dog while yet 't is dark
Deals forth his tonic whine and bark;
A rooster calls his hens to sup, —
'T is but a ruse to get them up;
A nightmare stabled by a neighbor
Stamps loud as if at treadmill labor;
The noisome cats upon the wall,
Like babes in need of catnip, squall;
The furniture all creaks and snaps
Like volleys of percussion caps;
My secretary makes report
Like monster cannon in a fort;
The picture-frames all start and crack
As if their joints were on the rack.
I hear a burglar on the stairs, —
He 's coming for my choicest wares;
His spirits will not be elated
When he finds out my silver 's plated;
On his sin-blasted pate I 'd breathe a
Choice blessing if he 'd give me ether.
The water in the bath-room drops,
And I must count it till it stops,
Or plucking courage up, with jaw set,
Creep in and tighten up the faucet.
A mouse is nibbling in the closet
Where I my manuscripts deposit;
I 'll have revenge both sure and quick, —
My poetry will make him sick.
The clock strikes one, but I can't guess
Whether it 's one or half hour less,
And so with eyes wide open lie
Till thirty minutes saunter by,
And then the clock strikes one once more.
But then my torment is not o'er,
For possibly this means half-past,
So I must watch until at last
It strikes one stroke again, and now
I ought to sleep, but still somehow,
To certify it struck one thrice
I wake until it strikes one twice;
It 's surely two, — I count the chimes,
Sit up in bed, and write these rhymes.

STAGE LAW. — We have not seen the play of "Giles Corey, Yeoman;" but if it is correctly described in some of the newspapers, it makes sad havoc of legal notions. It is said that the hero was "condemned to be pressed to death." Giles Corey, it will be remembered, was the Salem man accused of witchcraft, who, because he would not plead to the charge, was pressed to death. He was not condemned to be pressed to death. He was not condemned to death at all, but met his death because he resisted the efforts of the public authorities to squeeze a plea out of him. The law was not so inhuman, even in those cruel times, as to condemn a malefactor to death by such a barbarous process. The witches, being accused, were gently and tenderly choked to

death, — a process much less lingering and tedious. The pressing process was simply a device, as Pat said the press-gang was, "to force a man to turn volunteer." The only process in modern times similar to pressing is the confinement in prison for months without bringing to trial, in the apparent hope, in the absence of criminating evidence, of so demoralizing the accused that he will confess what he is not guilty of, — as for example in the case of Lizzie Borden. If the playwright is guilty of this error, it should be corrected. Mr. Corey died by pressing, because of his obstinacy. It was entirely unnecessary. All he had to do was to say guilty, or not guilty; and in either case he would have been humanely and picturesquely hanged.

"GRASS WIDOW."—A lively discussion concerning the meaning of this phrase has sprung up in the columns of "The Nation." Imagination has there run riot in regard to it. Until now we had not suspected that there was any doubt about it,— that it is a vulgarization of "grace widow," or one called a widow by way of grace or politeness, — a woman deserted by her husband, or living apart from him. This is the definition and the derivation given by the Century Dictionary and in Brewer's Dictionary of Phrase and Fable, and in Bartlett's Dictionary of Americanisms, although by Brewer's is suggested the notion that in California, in the days of the early gold mania, a miner would put his family to board while he went digging, and hence it was called "putting his wife to grass," as if she were a horse. One derivation in "The Nation" is still more grotesque, and must not be dwelt upon "in the presence of Mrs. Boffin." "Widow bewitched" is said by these authorities to be synonymous; but we have heard that phrase applied to a regular widow of a lively temperament.

THE ANARCHISTS' CASE. — An account of the celebrated trial of the Anarchists for murder of the policemen in Chicago is given in "The Century" for April, by Judge Gary, who presided at the trial. It is a valuable contribution. "The Nation" says of it: "It is perhaps unfortunate that Judge Gary does not unfold more lucidly the cumulative and narrowing trend of the facts fixing special responsibility on the defendants, instead of dwelling on the general responsibility of 'the whole body of conspirators' to such an extent as to imply that Judge Gary holds that all the Anarchists were equally responsible under the law, independently of any question of their degree of nearness to the particular crime charged." Judge Gary does not hold that "all the Anarchists were equally responsible" merely by reason of their political sentiments and without regard to their acts of active conspiracy against public order; and he does, in our judgment, disclose the facts fixing "special responsibility" on the accused, sufficiently to indicate that he does not hold the doctrine imputed to him by "The Nation." At all events, we are glad he did not try to depict such a singular thing as a "cumulative and narrowing trend." We do not deny that a thing may be heaped up and at the same time narrowed, but it must get thin in the process. After all, the best account of this famous trial ever given is in the opinion of Judge Magruder on the appeal in the Supreme Court.

MORE NOVEL LAW. — Let no one suppose that we have read "Miss Nobody of Nowhere," by the author of "Mr. Barnes of New York." A lawyer, whom we suspect of brain-softening, who confessed to having regularly perused that "effusion," called our attention to a remarkable way, disclosed therein, of getting affidavits in legal proceedings from England in a hurry; namely, having them cabled. This is worse than administering oaths to affidavits by telephone, a query in regard to the legality of which recently was raised in the "Michigan Law Journal." But the author of such literature as this is safe in presuming to any extent on the credulity of his readers even on the violent assumption that he himself knows any better.

AMATEUR THEATRICALS. — We recently made from this chair a contrite confession of having once written a play for amateur actors. To show the lasting evil effects of a wrong step in early life, we now have to add that the play in question has just been acted in Albany by the young ladies of the Albany Academy. The male parts were assumed by the young ladies, and no men were admitted to the performance. It is said by those privileged to see it to have been a notably good performance. But it is sad to be obliged to record such an infraction of the statute which prohibits women from masquerading in masculine apparel. Of course the public authorities could not have broken up the performance, for the police could not have been admitted. But the girls should not be encouraged in this sort of thing, how much soever they may pant for histrionic fame.

UNMARRIED LADIES. — Our beloved disciple, R. Vashon Rogers, discoursed of late in this magazine in a very entertaining manner concerning this numerous and deserving class. His speaking of Serjeant Buzfuz's "chops and tomato-sauce" reminds us that an English antiquary has recently broached the plausible theory that "tomato-sauce" some relevancy bore, because at the time when Dickens wrote tomatoes

were usually known as "love-apples." This explains a very dark mystery. Mr. Rogers falls into error in saying that none of the judges in New York are over sixty years of age. Probably most of them are above that age, and they can keep on judging until they are seventy.

NOTES OF CASES.

THE March number of "Green Bag" has been scanned by one of the obscure family referred to in its columns, and space is asked for some comment on "Notes of Cases."

If President Polk "cannot possibly be remembered for anything he did," and if his family are so "obscure," why is the valuable space of "Green Bag" given to these people, whilst there are so many in the present justly famous, and so many whose history would render its columns entertaining.

Periodicals that are finding fault with the Polks for removing the President's *body* should reflect that they are disturbing his *spirit* by their unkind criticisms of himself and his administration. The truth is, the "old-line Whigs" have never forgiven James K. Polk for defeating Henry Clay.

As to the "obscurity of these people," their great-grandfather signed the Declaration of Independence. One of them was Minister to Naples, and Major by brevet in the Mexican War. Among them a Major-General and a Colonel in the Confederate service, an ex-judge of chancery, and a poet of marked merit. This talented young man came into the world with the tocsin of war sounding about his infant ears, while he was being rocked in the cradle of luxury; but his young manhood has been trammelled with poverty and infirmity of body, or he would be at the pinnacle of fame. As it is, he is not unknown as a brilliant lawyer.

Many of the women of this family are shining lights in a circle that seeks its crown of fame in the hereafter. Two of them have enlisted in the great cause for which George T. Angell is battling,[1] — one, President of a National Golden Chain Band of Mercy; and the other, founder of an Orphans' Home. The "American Law Review" "will not print their names;" but the foregoing mention will point them out, each and every one.

With regard to the setting aside the will, Judge Catron of the United States Supreme Court informed Mrs. Polk, soon after the President's death, that the will could not stand a legal test, and for forty-four years it has been known that the State of Tennessee could not execute the trust. After the will was broken, the family waited a year for the convening of the Legislature, hoping that the State would purchase the property for a much-needed Governor's mansion. This would do away with the necessity of removing the sacred dust. The State was not in a financial condition to buy. The family then petitioned it to allow removal to the Capitol grounds, which would be a permanent resting-place and under the eye of the State as it were. This was readily granted. The family bears the expense, and the Governor will select the spot and have the removal done with fitting ceremony.

JUSTITIA.

May 5, '93.

[1] Prevention of cruelty to animals. — ED.

We gladly give place to the foregoing comments, although they would have been more properly addressed to our brethren of the "American Law Review." It is needless to say that they are written by a lady,— their delightful want of logic shows that. It gives us real joy to learn that the great-grandfather who signed the Declaration of Independence is still living, as of course he must be to be one of "these obscure persons." And it gives us peculiar pleasure to learn that one of them is a brilliant lawyer, and still more that another is a poet. Reverence is due to poets. That accounts for our own self-esteem! Our gentle corrector is correct, probably, as to the animus of our part of this offence. We *were* an "old-line Whig," and we never shall forget our chagrin at the defeat of Harry of the West, — we being nine years old at the time. On the whole, it seems that our offence consists exclusively in quoting from the "American Law Review," which we presumed to be well informed on the subject; and we commend our correspondent's protest to the attention of the candid, although combative editors of that periodical. And so we pray pardon of the Signer, the minister, the soldiers, the judge, the lawyer, and above all, the Poet! — ED.

WESTMINSTER ABBEY IN COURT. — We never dreamed of seeing the old Abbey in court, but here it is, and not in Westminster Hall at that! In Saunders *v.* Neil, Court of Appeal, 68 L. T. Rep. 183, the plaintiff registered as a design for the handles of spoons a particular view of Westminster Abbey taken from a photograph; and the defendant having commenced to sell spoons with a design on the handles which was substantially the same, it was held that the words "new or original design not previously published in the United Kingdom" in the statute do not require novelty in the idea of the design itself, but novelty in the way in which the design is applied to some article of manufacture; that this design being novel in its application to the spoons, its novelty was not destroyed by its having

been taken from a source common to mankind, and an action for infringement was sustained. Cave, J., in the first instance had observed: —

"It is quite clear, of course, that if one man registered St. Paul's, it would not be a piracy by another to produce Westminster Abbey, because the two things, when they come to be examined, are intrinsically distinct. The eye says these two things are not the same; and, consequently, the one is not a piracy of the other. So again, if one man takes a particular view of Westminster Abbey, and puts it on the top of a spoon by way of ornamentation, anybody is perfectly at liberty to take a different view. He may take a different view, which is not the same; but he must not, it seems to me, go and take the same identical view."

On the point of novelty, Bowen, J., said: —

"The novelty may consist in the application to the article of manufacture of a drawing or design which is taken from a source to which all the world may resort. Otherwise it would be impossible to take any natural or artistic object and to reduce it into a design applicable to an article of manufacture, without also having this consequence following, that you could not do it at all, in the first place, unless you were to alter the design so as not to represent exactly the original; otherwise, there would be no novelty in it because, it would be said, the thing which was taken was not new. You could not take a tree and put it on a spoon, unless you drew the tree in some shape in which a tree never grew; nor an elephant, unless you drew it and carved it of a kind which had never been seen. An illustration, it seems to me, that may be taken about this, is what we all know as the Apostles' spoons. The figures of the Apostles are figures which have been embodied in sacred art for centuries, and there is nothing new in taking the figures of the Apostles; but the novelty of applying the figures of the Apostles to spoons was in contriving to design the Apostles' figures so that they should be applicable to that particular subject-matter. How does a public building differ from that? In no sense, it seems to me; and the photograph of a public building does not differ. The answer to the whole case of the appellant is that it is not the natural object which is the design; that it is not the photograph which is the design. The novelty of the design consists in so contriving the copy or imitation of the figure, which itself may be common to the world, in such a manner as to render it applicable to an article of manufacture; and I think the learned judge in the court below was quite right."

CONTEMPT OF COURT. — An amusing case is *Re* Moseley, in the Privy Council, 68 L. T. Rep. N. S. 105. In May, 1892, the Chief-Justice of the Bahama Islands, West Indies, addressed two letters to a newspaper published at Nassau, the chief town of the colony, called the "Nassau Guardian," on questions affecting the health of the town. These letters were published in that paper. Subsequently a letter signed "Colonist," containing criticisms of the conduct of the Chief-Justice, was published in that paper. This letter contained the following, among other satirical allusions: —

"Search the annals of the bench of every country, of every age, and I defy creation to produce a more noble, more self-denying, and more virtuous exhibition of a tender conscience than was afforded by our Chief-Justice in refusing to accept a gift of pine-apples! Some cynic has said, 'Every man has his price.' It is assuring to this community to know that the 'Fount of Justice' in this colony is above the price of even one dozen pine-apples Mr. Y.'s noble words of scornful renunciation should be graven in letters of gold upon the walls of every magisterial office in this colony; then, and not till then, will sweet potatoes, pigeon peas, etc., cease to exert their baneful influence on the administration of justice in this colony But should we be selfish and confine the influence of such virtue to the limited area of this colony? No, Mr. Editor, I and others cherish the hope that this beautiful incident will become historical, and the whole world be benefited by this last and greatest proof of the purity of English justice. Difficult as it is, Mr. Y. has mastered the problem of being great in little things. When a boy I remember reading of Judge Gascoygne and Prince Hal: I can but hope the little boys of the future will read of the noble conduct of our Judge Y."

This appears to refer to a statement made by the Chief-Justice from the bench on the 26th April, 1892, in the following terms: —

"A few days ago one of the men in whose favor I had given judgment in the case from Eleuthera, wrote to me offering a present of pine-apples. Although this was after the judgment was given, it was a very wrong thing to do. It seems possibly a trivial matter, but I view it differently. It must not be forgotten that I have by my conduct to sustain the rectitude of various resident justices, necessarily brought into close contact with the people. It is wrong to accept any present whatever from any one who is, or who has recently been, or who is known as likely to be, a suitor in the court. It is needless to say that I refused these pine-apples."

The Chief-Justice by letter requested Mr. Alfred E. Moseley, the editor of the "Nassau Guardian" (being also the proprietor and publisher), to attend at his (the Chief-Justice's) chambers on that day. Mr. Moseley attended, in accordance with the request, when the Chief-Justice required him to give up the name of the writer of the letter signed "Colonist," and to hand over the manuscript thereof before four o'clock on that day, under peril of committal Mr. Moseley in the afternoon wrote to the Chief-Justice, declining to give up the name of the author, or the manuscript of the letter referred to Subsequently the Chief-Justice pronounced judgment, sentencing Mr. Moseley to be kept in prison during the Chief-Justice's pleasure for contempt of court and of his official position, in publishing the letter, and also to pay a fine of £40 to the court, and to be imprisoned, in addition to the other imprison-

ment, until such fine should be paid. For the refusal to discover the name of the writer of the letter, Mr. Moseley was sentenced to pay a further fine of £25, or to be imprisoned until the said fine should be paid. Mr. Moseley was also adjudged to pay the cost of the proceedings. Mr. Moseley was thereupon conveyed to prison. This sentence was set aside by the Governor, and the Privy Council curtly pronounced that the Chief-Justice was wrong, and the Governor was right. Truly a case of a pine-apple of discord!

"ACTUAL OCCUPANCY." — In a recent case in the New York Supreme Court, People *v.* Campbell (to appear in Hun's reports), it was held that the establishment of a hunting camp or lodge in the North Woods by the building of a log house or hut, to be used from time to time upon hunting and fishing trips, with no other improvement or use of the land, by a person living elsewhere with his family, and with no claim or title to or interest in the land upon which the camp or hunting-lodge is established or built, does not constitute an "actual occupancy" within the meaning of the statute requiring service of notice of a tax sale; and that the use of an island an acre in extent, in a lake in the North Woods, as a hunting-camp, without any use of the mainland, except to roam over it in pursuit of game, does not constitute an actual occupancy of a whole tract on the mainland of many thousand acres. The court observed: —

"Upon an island about one acre in extent, situated in a lake bordering upon or included in the tract of land so sold for taxes, the island being a part of such tract, the said Dunning erected a log building thirteen feet wide and twenty-six feet in depth, the sides five or six feet in height, the middle of the building being about ten feet in height, the roof covered with bark. Inside, the building was divided into two rooms by a log partition; the front was thirteen by fourteen feet, no floor to it, and used as a woodshed; the second room thirteen by twelve, with a board floor and a window in the rear. It contained a hunter's bed, three or four camp-stools, a stove with pipe going through the roof; a frying-pan, two or three kettles, water-pail, tea-pot, knives and forks, cups and saucers. The island was uncultivated, the land uninclosed, and with no improvements upon it, except the log building I have described. About six miles distant from this island in another township Dunning resided with his family; having there a dwelling-house and outbuildings, and about an acre of cultivated ground. Dunning is a hunter and guide, and visited the log-house on the island from time to time, using it as a hunting and fishing station, and taking parties there on hunting and fishing excursions.

"It is a custom among the guides and hunters in that vicinity to have camps in different localities for their use in hunting and fishing, having a permanent residence elsewhere. Dunning does not claim to own the land in question or any part of it. No notice of sale or to redeem was ever served upon Dunning or any of his family. I do not think it was necessary to serve notice upon him. . . .

"It appears that it is the custom of the guides and hunters of the North Woods to erect or establish so-called camps in various localities to be used by them in their hunting and fishing excursions; a single hunter might have several, located far apart in different patents or townships, and it is hardly conceivable that the occasional and temporary use of these lodges or camps constitutes an actual occupancy within the meaning of the statute, in the absence of any claim of title to the land upon which the lodge or camp is located. The statute seems to have contemplated an actual residence or dwelling-house, it might be without claim of title, merely the possession of a squatter, but still the establishment of a household; it reads: 'Such notice may be served personally, or by leaving the same at the dwelling-house of the occupant with any person of suitable age and discretion belonging to his family.'

"This evidently contemplates a dwelling-house upon the land to be sold, upon the place claimed to be occupied; it does not contemplate a service at the dwelling-house of a person in New York City who has built a hunting-camp in the North Woods which he uses from time to time for hunting and fishing. Dunning had his dwelling, his family and place of actual residence six miles away. Undoubtedly a person may have a residence in one place, and also occupy land in another, as in Stewart *v.* Crysler, 100 N. Y. 378, where the land was used for the storage of lumber by a person who lived elsewhere; or, as in Leland *v.* Bennett, 5 Hill, 287, where a portion of the land was cultivated, some of it used for pasture, and wood chopped and removed from it by a person who lived at a distance therefrom; but I do think that the establishing of a hunting-camp, the building of a log-house to be used from time to time upon hunting and fishing trips, with no other improvement or use of the land, by a person living elsewhere with his family, with no claim of title to or interest in the land upon which the camp or hunting-lodge is established or built, constitutes an actual occupancy within the meaning of the statute. But conceding that the facts recited constitute an actual occupancy by Dunning, it would only be an occupancy of the island; it is separable from the mainland, and was not used by him in conjunction with it in such a manner as to make him an occupant of the whole tract. The use of an island, an acre in extent, as a hunting-camp, without any use of the mainland, except to roam over it in pursuit of game, does not, to my mind, constitute an actual occupancy of the whole tract of 14,000 acres. Thompson *v.* Burhans, 61 N. Y. 52; Same *v.* Same, 79 id. 93."

The two other judges concurred.

The Green Bag.

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

THE GREEN BAG.

AN Alabama subscriber is responsible for the following: —

Editor of the "Green Bag":

DEAR SIR, — An amusing incident occurred a short while ago, which may be of interest to your readers. A member of our bar was defending a party for the value of a suit of clothes. It seems the defence was trying to reduce the amount of the claim by proving that the suit was a poor fit. In his argument the modern Nestor turned to the court, and dramatically exclaimed: "If your honor please, the pants were too long, the vest too small, and the coat did n't button. Why, your honor, it 's the clearest case of *non est fit* you ever saw."

Yours truly, ——

THE following comes from a Lincoln, Nebraska, subscriber: —

Editor of the "Green Bag":

DEAR SIR, —Reading of the "horse trade" as described by a New York pleader in the April "Green Bag" reminds me of a specimen of Nebraska pleading. The pleader was explaining the relationships of a large family, and after giving to one of the children three parents, was not altogether satisfied with his achievement, but apologized to the court for not giving him a fourth. The pleading in question reads: "And the plaintiffs further say that the defendant S. W. is the son of said H. B., *as also* of said L. B. and J. B., and that the plaintiff J. B. Sr. *is not the father of any of said defendants.*"

Very truly yours, ——

LEGAL ANTIQUITIES.

ONE of the most remarkable legal papers on file in the archives of the world is now in the National Museum of Paris, labelled "Sentence on a hog, executed by justice, in the copyhold of Clarmont-Avin, and strangled upon a gibbet at that place." It is sealed with red wax, kept under a glass case, bears date June 14, 1494, and reads as follows: ". . . We, the jury, in detestation and horror of this crime, and in order to make an example, and to satisfy justice, have declared, judged, sentenced, pronounced, and appointed that the said hog, now detained in the abbey as a prisoner, shall, by the executioner, be hung and strangled on a gibbet near the gallows which is within the jurisdiction of the monks whose names are hereto appended, near the copyhold of Avin. In witness of which we have sealed this present with our seals." Following the above are the signatures of the jurors and the prefect of the Department de l'Aisne.

FACETIÆ.

SOME years ago, in one of the counties of East Tennessee, the following amusing incident occurred: Judge Scott, who held court for several counties, and who rode the circuit on horseback, had occasion to place a note in the hands of an officer for collection. The note was signed by a man living far away in one of the rural districts. The next time Judge Scott held court in this particular section he inquired of the officer as to whether or not the note had been collected. The officer said that he had obtained judgment on the note before Squire McCracken, but that Squire McCracken had afterwards issued an injunction forbidding the collection of it. "And here is Squire McCracken now," continued the officer. The judge turned to a very wise-looking man who was standing by, and said, "Squire, why did you do that?" "Well," replied the Squire, "after I gin judgment on the note, I found out you charged him too much for the things, and I *jined* it. By G—, I gin judgment on my law jurisdiction, and I jined it on my equity jurisdiction."

VERY recently an eminent counsel enlightened the Supreme Court of North Carolina with the following Scriptural quotation: "This law, your honors, is so plain that a wayfaring man, though fool, may read it a-running."

IT was at the same court, but at another term, that counsel made the following quotation: "Gentlemen of the jury, in the language of the inspired poet, 'Who steals my pocket-book steals my trash, but he who robs me of my carak-ter takes all I have got.'"

THE tariff question has crept into the North Carolina courts. A recent case there is catchlined "Married women — free traders."

IN Illinois there is an old law on the statute-books to the effect that in criminal cases the jury is "judge of the law as well as the facts." Though not often quoted, once in a while a lawyer with a desperate case makes use of it. In this case the judge instructed the jury that it was to judge of the law as well as the facts, but added that it was not to judge of the law unless it was fully satisfied that it knew more law than the judge.

An outrageous verdict was brought in, contrary to all instructions of the court, who felt called upon to rebuke the jury. At last one old farmer arose, —

"Jedge," said he, "were n't we to jedge the law as well as the facts?"

"Certainly," was the response; "but I told you not to judge the law unless you were clearly satisfied that you knew the law better than I did."

"Well, Jedge," answered the farmer, as he shifted his quid, "we considered that p'int."

IN Hazlitt's "Studies in Jocular Literature" it is said of the "Hundred Merry Tales": "We are confronted with the admirable apologue 'Of the friar that told the three children's fortunes,' where, after declaring to the horrified mother that of her family one should be a beggar, a second a thief, and the third an assassin, he consoles her by saying that she might make the one who was to be a beggar a friar, the one who was to be a thief a lawyer, and him who was destined to be a murderer a physician."

A TEXAS justice started to try a divorce case, when a lawyer stopped him and told him that he had no jurisdiction. "Well, I guess I can bind the fellow over," was the reply, which he proceeded to do.

How is this for a "finding" of "crowners quest"? This is the latest from one of the interior towns of Michigan: —

"The deceased, John —, we find, came to his death *by violently and feloniously* taking a certain drug with the intent of ending his life, and so the jurors aforesaid say, that the said John —— *then and there violently, feloniously, and with malice aforethought, himself killed and murdered, against the peace and dignity of the people of the State of Michigan.*"

THERE is one lawyer in the city, says the "Buffalo Express," who will never again make use of Latin phrases in writing business letters. A short time ago he had to write a letter to a client of his in a neighboring city regarding an important lawsuit that was to come up before the court in the course of a few days. The information he solicited was highly essential to his case. In writing this epistle he made use of a letter-head with his printed address at the top. In closing his letter he signed himself thus: "John Langdon. Address *ut supra.*" After waiting several days for the reply, which did not come, he again wrote his procrastinating client, and asked why he had not sooner answered his first letter. The next day he received a reply in which the client said that he had answered the letter, and addressed it to "John Langdon, Ut Supra, N. Y."

IT was in Kansas. The young man up for examination was the son of an old practitioner, — a legal Nestor whose opinion had long been followed in the courts of his State. But the young man could not answer the questions they put to him. He hesitated and stammered, and said he did not know; and then the chief examiner, a friend of his father, wishing to let him through, asked him the rule in Shelley's Case. The young man confessed ignorance, and then his father got up. "Sirs," he thundered, "this is an outrage, this is a travesty on justice. There have been a hundred thousand cases decided in this country in the last twenty years, and now you select one from the entire number, and ask him the rule in Shelley's Case.

Why don't you ask the rule in Smith's case, or Brown's case, or Jones's case, or Robinson's case? Why take one poor little insignificant case, and ask my boy about that?" And the father, thinking he had justified his son, sat down.

NOTES.

North Dakota has a new law which provides for the establishment of courts of conciliation. At the election in town, city, or village, of a justice of the peace, four commissioners of conciliation are also to be elected, and for the same term of office. The commissioners are to serve, two at a time, with the justice of the peace in hearing pleadings and testimony in civil cases before the action is brought into court in the usual manner. The hearings are to be conducted entirely without attorneys, and the statement of the principals in the action will be the chief testimony. After hearing both sides, the justice and commissioners are bound to try to bring about an understanding between the two parties on the basis of justice, and to remove the necessity of a more formal legal action. None of the proceedings in the court of conciliation are to be used as testimony in any action which may follow. The object is, of course, to decrease litigation, and facilitate adjustments of misunderstandings growing out of small matters.

In the course of an admirable address delivered to the law class of the Vanderbilt University, Judge John L. T. Sneed told the following anecdote, which we think worthy of preservation and perpetuation. "After the commencement, June, 1827, of the University of North Carolina, a single graduate remained in the village of Chapel Hill, the rest having returned to their homes. He had not money enough to carry him by public conveyance to his distant home. He was a graduate and was waiting for a remittance from home, which a fond father, struggling with poverty, was endeavoring to earn for him. The remittance came, but it did not come in time. The youth grew impatient, and determined to walk to his home in Tennessee. While in a store one day, buying some coarse fabric to make him a knapsack, there was an old Orange County farmer sitting on the counter watching his movements. 'Young man,' said he, 'what do you propose to do with that cloth?' 'I will have a knapsack made of it, sir,' modestly replied the youth. 'Do you propose to walk home?' 'Yes, sir,' said the youth. 'Well,' said the farmer, 'such pluck as yours will be apt to get along. I have a good riding-horse and saddle at my home, which shall be yours as a gift.' The youth hesitated. 'Then,' said the farmer, 'if you want to buy it, send me one hundred dollars in four years without interest — or whenever you are able to do so — out of money you may earn yourself.' The bargain was struck. The young man mounted his horse next morning, and went on his way rejoicing; and in less than three years the fine old granger received a grateful letter covering a draft for one hundred dollars, the first professional earnings, over and above a frugal living, of the late Chief-Justice of Tennessee."

Memphis Appeal.

The district judges down in Texas are elected by the people, and some of them, at least, seem to be fond of a practical joke. Judge King, of San Antonio, was making a brief visit to Austin, the capital city, on business with the Legislature, and there met his friends, Judge Tucker, of Dallas, and Colonel Fulton, the cattle king of Aransas Bay. After transacting his business, while waiting for the evening train to return to his home, Judge King strolled into Colonel Fulton's room at the Driscoll Hotel, and concluded to take a nap. In the mean time Fulton came in, and packed his valise preparatory to leaving on the same train. After a while the slumbering judge awoke, and proceeded to dress himself, but could nowhere find his socks; so he completed his toilet without them, and went downstairs "to round up" the cattle king. He coralled him in the barber-shop. An explanation ensued, and it was determined that Fulton had packed up the judge's half-hose in his valise. While Fulton was gone up to his room to get the missing articles, King seated himself in the barber's chair to get a shave and shampoo. Colonel Fulton, meeting Judge Tucker in the corridor, explained the situation; and together they collected a crowd of Senators and members of the House, and walked into the barber-shop to interview Judge King Judge Tucker, taking his stand by the side of his astonished judicial friend, addressed the assembly as follows: "Gentlemen, you all know the perils that environ an elective judiciary. During the late

canvas at San Antonio it was charged against my friend, Judge King, that he was an aristocrat. It was openly proclaimed among the *tamale-stands* on Milam Square that he was a dude. The sandal-shod sons of sunny Mexico, who had been imported expressly to vote the Democratic ticket, were told, in thunder tones, that this aspirant for judicial honors *actually wore socks.* Gentlemen and fellow-citizens, I am prepared to refute this foul slander. Judge King is a man of the people; he consorts with the 'horny-handed sons of toil;' *he does not wear socks.*" And, suiting the action to the word, Judge Tucker turned up the trousers of his official brother, and proved his assertion by one of Irving Browne's "Practical Tests in Evidence." Judge King accepted the situation, and set up the drinks.

I RECALL one of the incidents of our dinner at Lindenwald, which serves to illustrate the unconventional relations which existed between the ex-President and his son. The plate set before me for one of the courses was most exquisitely decorated, and with the *gaucherie* of an inexperienced curiosity, I could not resist the temptation to turn it over and look for the maker's mark.

"Is not that a beautiful piece of china?" inquired the Prince. "It has a history. It belongs to a dinner-set made at Sêvres for the King of Italy, before the fall of Napoleon. I discovered it in Paris; and although it was expensive, I purchased it and presented it to my father. Ought he not to be grateful for such a magnificent present?"

"Indeed, I am grateful," said the ex-President; "perhaps more grateful for this than for another present you made me about the same time."

"Another present! What is it? I do not remember it," said the son.

"It was a bill of exchange for acceptance for something more than the cost of the china!" replied the elder.

"Yes! yes!" said the Prince; "I intended that the entire transaction should represent a beautiful case of filial and paternal affection. I presented you with the china, — that was filial. You paid for it, — that was paternal. Could anything be more complete?"

(From "The Van Burens of New York and the New York Barnburners," by Hon. L. E. Chittenden, in the "Independent."

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The Columbian Exposition and American Civilization, Henry Van Brunt; "'T is Sixty Years Since," in Chicago, John Dean Caton; An Island Plant, I., Mary Catherine Lee; Admiral Saumarez, A. T. Mahan; Individuality in Birds, Frank Bolles; The Old Hall and the Portraits, Sir Edward Strachey; The Japanese Smile, Lafcadio Hearn; European Peasants as Immigrants, N. S. Shaler; The Queen of May, Louise Chandler Moulton; The English Question, James J. Greenough; Frances Anne Kemble, Henry Lee; Hawthorne at North Adams, Bliss Perry.

The Century.

At the Fair (illustrated), Mrs. Schuyler van Rensselaer; Decorative Painting at the World's Fair (illustrated), W. Lewis Fraser; The White City, Richard Watson Gilder; Sweet Bells out of Tune (conclusion), Mrs. Burton Harrison; The Knight of Pentecost, Harriet Prescott Spofford; Recollections of Lord Tennyson, John Addington Symonds; An Embassy to Provence (conclusion; illustrated), Thomas A. Janvier; Benefits Forgot, VI., Wolcott Balestier; Personal Impressions of Nicaragua (illustrated), Gilbert Gaul; The Chevalier de Resseguier, Thomas Bailey Aldrich; Joseph Bonaparte in Bordentown, F. Marion Crawford; Leaves from the Autobiography of Salvini (illustrated), Tommaso Salvini; The Queen and the Duchess (illustrated), M. O. W. Oliphant; John Muir, John Swett; Mr. Gadsbury's Brother, M. Frances Swann Williams; Relics of Artemus Ward, Don C. Seitz; An Inside View of the Pension Bureau (by an employee of the Bureau), A. B. Casselman; With the Tread of Marching Columns, S. R. Elliot; Writing to Rosina (in two parts; illustrated), Part I., William Henry Bishop.

The Cosmopolitan.

In the Footsteps of Dickens (illustrated), Harger Ragan; Omega — The Last Days of the World (illustrated), Camille Flammarion; Pedagogical Value of the Novel, M. S. Merwin; A Traveller from Altruria, W. D. Howells; Prison Life at Belle Isle

(illustrated), Joseph C. Helm; Lumbering in the Northwest (illustrated), J. E. Jones; American Society in Paris (illustrated), Mary Bacon Lord; The Spoil of the Puma (illustrated), Gilbert Parker; Henrik Ibsen's Poems (frontispiece of Ibsen), Hjalmar Hjorth Boyesen; English Postal Reformers (illustrated), Thomas L. James; Contemporary French Playwrights (illustrated), Arthur Hornblow; Crinoline Folly (illustrated), Helen Gilbert Ecob; A Revolution in the Means of Communication (illustrated), Elisha Gray.

Harper's.

The Evolution of New York (Part I.; illustrated), Thomas A. Janvier; A Dream City (illustrated), Candace Wheeler; James Russell Lowell (with portrait), Charles Eliot Norton; Etelka Talmeyr, a Tale of Three Cities (a story; illustrated), Brander Matthews; A Discontented Province (illustrated), Henry Loomis Nelson; Horace Chase (a novel), Part V., Constance Fenimore Woolson; A Child of the Covenant (a story), Eva Wilder McGlasson; Love's Labor 's Lost (illustrated), Edwin A. Abbey; The Refugees, a Tale of Two Continents (illustrated), Part V., A. Conan Doyle; Colorado and its Capital, Julian Ralph; The French Scare of 1875, Mr. De Blowitz; Phillips Brooks, Rev. Arthur Brooks, D.D.

Lippincott's.

Mrs. Romney, Rosa Nouchette Carey; The Society of the Cincinnati (illustrated), John Bunting; A Pastel (illustrated), Cornelia Kane Rathbone; New St. Louis (illustrated), James Cox; Kühne Beveridge (illustrated), Gertrude Atherton; Colonel Pope and Good Roads, Prof. L. M. Haupt; Men of the Day, M. Crofton.

New England Magazine.

Phillips Brooks and Harvard University (illustrated), Alexander McKenzie, D.D.; The City of Seattle (illustrated), John W. Pratt; Life and Study at the Naval Academy (illustrated), Walter G. Richardson, U. S. Navy; Old Shipbuilding Days at Duxbury, Lucy P. Higgins; A Historic Doll, Caro Atherton Dugan; Pietro Mascagni, the author of the Cavalleria Rusticana (illustrated), Ashton R. Willard; John Ballantyne, American, VIII.–IX., Helen Campbell; New England Art at the World's Fair (illustrated), William Howe Downes; A Professional Lover (a story; illustrated), Arthur C. Grissom; Milton as an Educator, Phillips Brooks; The Legends of Jekyl Island, Franklin H. Head; At the Meeting of the Circle (a story), Julie M. Lippmann.

Review of Reviews.

Woman's Part at the World's Fair, Virginia C. Meredith; Frederick Courteney Selous, the Greatest of African Hunters, W. T. Stead; How a Socialist Millennium would work.

Scribner's.

An Unpublished Autograph Narrative by Washington (illustrated), George Washington; The Country Printer (illustrated), W. D. Howells; Early in the Spring, Robert Louis Stevenson; Broken Music, Thomas Bailey Aldrich. The Reformation of James Reddy (illustrated), Bret Harte; The Upward Pressure: a Chapter from the History of the Twentieth Century, Walter Besant; The Fiddler of the Reels (illustrated), Thomas Hardy; The Middle Years, Henry James; An Artist in Japan (illustrated), Robert Blum; Jersey and Mulberry (illustrated), H. C. Bunner; The One I Knew the Best of All: a Memory of the Mind of a Child (illustrated), Frances Hodgson Burnett; Between Mass and Vespers (illustrated), Sarah Orne Jewett; The Comédie Française at Chicago, Francisque Sarcey.

LEADING ARTICLES IN THE LAW JOURNALS.

American Law Review (May–June, '93).

The Consolidation of Competing Corporations, J. C. Thomson; Corrupt Practice Acts, Joseph Hutchinson; Liability of an Organizer of a Corporation for its Acts; The Legal Aspect of some Modern Political Notions, Robert Ludlow Fowler.

Central Law Journal (May 19, '93)

Burden of Proof in Contests of Wills on the Ground of Mental Incapacity of the Testator. (May 26) Jury of Less or More than Twelve, Nathan Newmark. (June 2) Dividends, Seymour D. Thompson.

Criminal Law Magazine (May, '93).

The Exercise of the Police Power, III., D. H. Pingrey.

Harvard Law Review (May, '93).

Quasi Contract: its Nature and Scope, William A. Keener; The Co-operation of "Law" and "Equity," and the Engrafting of Equitable Remedies upon Common Law Proceedings, Austin Abbott; National Unification of Law, F. J. Stimson; Why is a Master Liable for the Tort of his Servant? Frank W. Hackett.

BOOK NOTICES.

THE LAW OF SUBROGATION. By HENRY N. SHELDON. Second Edition. The Boston Book Company, Boston, 1893. Law Sheep. $5.00 net.

Eleven years ago Mr. Sheldon gave to the profession the first edition of this truly admirable treatise, and it was at once recognized as a most valuable addition to legal literature. Written in a clear, terse, and vigorous style, it is in every way excellently adapted to the practitioner's needs. The present work has been greatly enlarged, portions of it have been practically rewritten, and the number of cases cited has been more than doubled. In its present form it is a brief and concise statement of the law of Subrogation to date, and that it will meet with the favor which was accorded the first edition we have no doubt.

THE CIVIL LIABILITY FOR PERSONAL INJURIES ARISING OUT OF NEGLIGENCE. By HENRY F. BUSWELL. Little, Brown, & Co., Boston, 1893. Law Sheep. $5.50 net.

Mr. Buswell is known to the profession as a law-writer of ability, his previous works having been very favorably received. The present volume will certainly add to his reputation, as it is the best treatise he has yet produced. The subject is very fully covered, and the principles of law clearly and succinctly stated. The citations are numerous, but the author has avoided overloading the work with full statement of cases merely cumulative. For this he is much to be commended. The treatise is a really valuable one, and should receive a cordial welcome.

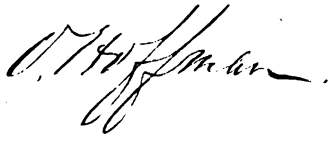
FORENSIC ORATORY. A Manual for Advocates. By WILLIAM C. ROBINSON, LL D., Professor of Law in Yale University. Little, Brown, & Co., Boston, 1893. Cloth, $2.50; Law Sheep, $3.00.

Having the conviction forced upon him that there is an enormous waste of time and energy in the trials of causes in our courts, Mr. Robinson came to the conclusion that nothing is more desirable than that young advocates should be well trained in the principles and practice of the art of Forensic Oratory. Hence this little book. The work is one which will be read with interest, and it contains ideas and suggestions which many of the older members of the profession will do well to ponder over. Forensic Oratory seems to be one of the lost arts; and if this book shall revive an interest in it, the author will have accomplished much. The real orator, however, is born, not made; and all the rules and principles in the world will not produce one if the divine spark be lacking. The work is admirably adapted for the student's use, and gives much valuable information as to the conducting of a trial.

THE STORY OF MALTA. By MATURIN M. BALLOU. Houghton, Mifflin, & Co., Boston, 1893. Cloth. $1.50.

As a writer of books of travel, Mr. Ballou possesses the happy faculty of taking his reader so completely into his confidence that he makes him almost part and parcel of himself, and his works therefore impart almost as much genuine pleasure as a visit in person to the places described. The history of Malta is peculiarly fascinating, and the pen pictures of its people, customs, scenery, etc., are not only interesting, but are full of valuable information. No more delightful summer reading could be found than this story of the "Queen of the Mediterranean."

Engraved by J. C. Buttre



The Green Bag.

VOL. V. No. 7. BOSTON. JULY, 1893.

OGDEN HOFFMAN.

(BORN 1793 — DIED 1856.)

By A. OAKEY HALL.

VETERANS of the Bar of New York recall with pride and pleasure that its bench during the first half of this century listened often to an American Erskine. That was the appellation given to Ogden Hoffman, senior, who, born when the Federal Constitution was under adoption, died on the eve of the Civil War that attacked that document or defended it. Like Erskine, he had vaulted from the berth of midshipman into the legal army; and like that gifted and eloquent Queen's Counsel, whose personal and professional lustre far exceeded any fame that may be claimed to belong to him as an M. P. or a peer or an occupant of the woolsack, Ogden Hoffman's persuasive powers and uninterrupted success before juries became, during a quarter-century, proverbial. Like Erskine, also, he was a comparative parliamentary failure when sent as congressman from New York City to Washington during Jacksonian political complications. But Mr. Hoffman retrieved that early failure when shortly before his death the Whigs elected him as attorney-general of the State of New York, and at the very last election which that once great party participated in before the Slavery and Free Soil issues engulfed all prior political conditions in national controversy.

He inherited name, fame, and legal skill from his father, Josiah Ogden Hoffman, who through several years served as recorder of New York City, and next as a judge in a civil court; and in the same tribunal he was succeeded by his youngest son, Lindley Murray Hoffman, known to the whole profession as a vice-chancellor, as author of a treatise on Equity Practice, and as a State reporter. This brother of Ogden Hoffman died as a judge of the Superior Court of New York, to which Louis B. Woodruff, John Duer, Thomas J. Oakley, and Joseph S. Bosworth, as associate judges, also bequeathed rich legacies of juridical learning.

Ogden Hoffman won honors at Columbia College before adding his degree as counsellor to the primary one of lawyer through a novitiate of seven years, — the then prescribed term of legal study. He served that novitiate in his father's offices at a period when the memories of Alexander Hamilton's eloquence and of Aaron Burr's legal ingenuity were fresh in professional memory, and while the exiled Thomas Addis Emmett stood *primus inter pares* at the New York Bar.

From the outset to the close of his career Ogden Hoffman was regarded as a lawyer grounded in the principles of legal science, and as never "a mere case lawyer." Gifted with handsome and expressive face, graceful figure, excellence of gesture, — not only "suiting the action to the word," but often preceding the strong sentence with that apt and forecasting gesture which Webster, Everett, and Choate remarkably used, — musical voice (popularly termed of silver tones), magnetic eyes, rapid utterance in well rounded Saxon language, logical conception,

a Walter Scott memory, yet freed from pedantry, fertile with figures of speech that were never misplaced or incongruously used, quick at apt quotation, ready with popular selections of illustration, happy adaptions of manner to his audience, whether the twelve or thousands,—Ogden Hoffman was an orator worthy of ranking with Wirt, Webster, and Wendell Phillips, among past Titans of eloquence, or with many of their successors, although these are often handicapped by a "trade" atmosphere, as it were, that of late surrounds the practice of law in New York (land of codes and form books, and procrustean statutes), and by an atmosphere not as congenial to oratory as it was when Marshall reigned in the realms of law, or Story was accepted as premier to the legal profession.

But while cultivating persuasion and the picturesque to an extent never since Ogden Hoffman's death equally known to the New York Bar, he by no means neglected the plod of analysis, the patient search after precedent, or the beauty and force of the maxim *eadem ratio ibidem lex*. He was in whole a rare combination of the old-fashioned lawyer, like Simon Greenleaf, and of the pyrotechnic French Maitre.

Ogden Hoffman was proficient in what Irish hedge-school pedagogues used to call the "humanities." He had been an avid reader of history and poetry. Like many an actor, his mind was stored with Shakespeare of his own mining, — for he lived before the era of the Bartlett quotation manual.

One of his sayings to his juniors — who loved him for his courtesy, urbanity, and readiness at giving advice without accompanying it with any of the "I am Sir Oracle" behavior — was, "When you prepare or try a case, treat your brain as a sponge, and saturate it with precedents, as ready for the occasion sudden, and facts on both sides; try your opponent's case first 'in your mind's eye, Horatio.' Go prepared to meet obstacles by anticipating them, and do not be too confident in your own biased view of the case."

Not alone for oratory or persuasive power was Ogden Hoffman famed, but he was noted also by watchful contemporaries and attorneys who employed him for his skill at direct and cross examination. When he had extracted from his own witnesses the pith of his case, he did not attenuate it by any "linked sweetness long drawn out," nor did he expose flanks or centre to be turned, or to be pierced by too much cross-examination. He was accustomed to refer to that procedure as the lawyer's maelstrom. He has been heard to say that before putting a cross-question the counsel should in framing it consider whether an answer in one possible way could prove damaging, and if so, not to take the risk. He was not likely to neglect the art of laying a trap on his own direct examination of a witness into which an adversary could fall on the cross-examination by the latter pursuing a topic or fact so as to recklessly emphasize it in real aid of the direct examination. What skill and prudence were to the surgeon when lancet or scalpel come near to artery or vital point, those qualities were to Ogden Hoffman whenever probing into the mystics of his opponent's case. He was a fencer and swordsman in examinations from knowledge acquired while a midshipman under Decatur off Tripoli. He there had learned tact, finesse, and had salted his courage. Hence, at the bar he practised well its own play of tierce, carte, and lunge.

If ever disposed to move a nonsuit or the dismissal of a criminal charge, he would first consider what effect a refusal by the court would have upon jurors, who often construe such refusal as a judicial hint to them towards a verdict. He was a firm believer in those legal ethics as to duty towards a client which Henry Brougham enunciated during the trial of Queen Caroline. And while he remembered that kind of duty, and that advocate was in his way as much of a sworn officer of a court as was its judge, Ogden Hoffman rendered to the latter a respectful deference, and often the more when the arbi-

trator upon the bench was his inferior in learning and temperament.

Famed in the drawing-room and salon for gentlemanly instincts and poise, he carried these into court. He was never a Sergeant Ballantyne in bullying a witness, nor did he forget that even prize-fighters shook hands, and duellists saluted, before going to the ropes or measuring weapons; or while it was pistols for two it was also coffee for one. Because of his geniality, consultations with him made delightful meetings for his colleagues.

His forte at the bar came in tort and criminal trials, although he was equally masterful in commercial cases, and especially in those relating to marine matters wherein such colleagues as George Wood, Daniel Lord, and Wm. Curtis Noyes figured, — their specialties being commercial controversies.

Ogden Hoffman exhibited profound knowledge of human nature. He had enjoyed opportunities of studying it. He was born, nurtured, and schooled near Goshen, in Orange County, New York, and not far from the Headquarter-House that is linked with the memory of Washington. Thereabouts, in a region flowing to this day with milk and honey, his father owned a country residence. Wm. Henry Seward was there one of his boyish school companions. Both of them, in the rough and tumble of village life and in Justice's courts, found opportunities for "cramming human nature," as Mark Twain has put it, and of learning how to avoid the pettifogging arts of a Mark Meddle, or a Jenks, who have been satirically immortalized in the widely known comedy of "London Assurance."

Upon his rural admission to the Orange County Bar, young Hoffman's command of cleverness, tact, and persuasion immediately won attention, as did Seward's ability in the Cayuga County district, to which the latter removed. While yet in appearance an urchin, Mr. Hoffman was chosen district-attorney. After his full removal to New York City he was there chosen to serve two terms as such prosecutor in the criminal courts, where more human nature was necessarily studied. The traditions of the New York Bar afford best remembrances of his legal skill in prosecuting or defending accused persons. As district-attorney he never — to use his own phrase — spelled *prosecutor* as *persecutor*. If he thought a case for the people was doubtful, he had the moral courage to obey the law, yet to give the benefit of any rational doubt of guilt to an accused. He never fell into the common error of some prosecutors by seeking a conviction for the mere sake of personal victory. In both civil and criminal forums, judges received his statements as equal to technical affidavits. Neither his emotions were allowed to conquer his judgment, or this to destroy his emotions. Editor Bennett once named him the Admirable Crichton of the Bar.

Musically educated auditors claimed that his voice possessed a gamut upon which he played as if it were an instrument. It could impressively denounce, it could strike a pathetic tremolo, and it could lightly enunciate wit or humor, rise to an alto in sarcasm, or attune itself to the faintest of tender tones. No one at the New York Bar has been his full successor in the arts of oratory, or as a *nisi prius* persuadant. In banco his arguments were permeated with logic, and the sketches of his briefs given in the State or Federal Reports between his meridian of fame in 1830 to its closing hours of 1855, provide testimony to the fulness of his learning, and the close application of it to favorable or unfavorable facts of any case which he conducted.

His greatest success was won by the acquittal of a young man named Robinson, who was charged with the murder in her bed of a *nymph du pave* named Helen Jewett at a noted *maison de plaisance*, when opportunity, means of access, motive, and presence at the scene of crime through a dropped cloak and a deserted hatchet — each traced to his possession on the day of the deed — seemed to concur. But the advocate pressed the theory of doubt and the probability of a

jealous sister inmate committing the crime; and then he demonstrated how ingeniously manufactured evidence could point suspicion towards the accused. All presented so eloquently to the jurors, that as one of them afterwards publicly stated, his fellows were so carried away by the force of Ogden Hoffman's plea, and by the magnetism of his presence, that they on retirement for consultation seemed unable to canvass the evidence with unbiased judgment. That forensic success, akin to a success of Henry Erskine in the Lord Sandwich memorable case, brought to Hoffman immediate retainers, and an accession of income most acceptable to one who, like many lawyers, "lived well, yet worked hard, but seemed born with the luck of dying poor." He was, like Pitt and Fox and Sheridan, constantly hampered with debts and harassed by creditors, although he was free of vices. He ever kept pace with society, and a spontaneous generosity set that pace.

His latest forensic effort was in the contest over the last will and testament of the millionnaire Henry Parish; and his intimates believed that his exhausting labors in that contest — such lawyers as Daniel Lord, Charles O'Conor, and Robert J. Dillon being participants on one side or the other side of the legal struggle involving subtle questions of incapacity and undue influence — contributed to his final illness.

Whoever may collaborate in a book to be entitled "Triumphs of the American Bar" must justly inscribe the name of Ogden Hoffman high on any monument of rhetoric which that collaborator may provide for commemorating eloquence and forensic skill.

Mr. Hoffman's estate after his death, at the comparatively early age of sixty-three, was scarcely deserving, in a pecuniary way, of being opened for administration. And his widow by his second marriage — a daughter of Samuel L. Southard, acting vice-president when John Tyler succeeded, upon the death of Gen. Wm. H. Harrison — was compelled to open for the support of herself and young family a school for young ladies.

The prestige of the Hoffman family as lawyers was continued by a son through a first marriage, — the third Ogden Hoffman of the name, — who served in California as Federal Circuit judge for more than a quarter-century, and who dying a year ago is said to have left a son who will be a fourth Ogden Hoffman to follow the professional "footsteps of his illustrious predecessors."

It is a curious commentary upon the evanescence of a lawyer's fame that in the Appleton American Encyclopædia no mention is made of those three Hoffmans above mentioned, — grandfather, son, and grandson, — while a brother of Ogden Hoffman the second (Charles Fenno Hoffman, who was a poet and journalist of local import) finds therein a memorial place.

LAWYERS AND MARRIAGE.

MARRIAGE tends to get later and later, as the Registrar-General tells us. People who twenty years ago married at twenty-five, now put it off till thirty-five, and of all classes the latest to marry are lawyers. A doctor is bound to marry. Lady patients do not like an unmarried doctor. Clergymen, too, must marry, for a clergyman's wife is as essential a part of the parish as her husband. Moreover, the persistent worship of curates by young lady devotees is sooner or later fatal to the most determined celibate. A lawyer, professionally speaking, is none the worse for being unmarried. Ambitious men (and ambition is the besetting sin of lawyers) think themselves very much better without it. A variety of qualifications for getting on in that profession have been enumerated, — influential connections, "devilling," writing a book, and not possessing a shilling, — but marriage is not numbered among them, unless it be the pseudo marriage of the song, with a solicitor's "ugly elderly daughter." Hence marriage to an unrisen lawyer is a luxury, and an expensive one. We hear much of the uncertainty of the law, but its uncertainty as a source of income is undeniable. When Lord Bacon spoke about giving hostages to fortune, he was probably thinking of his own profession. Certainly he did not commit the imprudence of early marriage himself, for he was forty-five before he found the "handsome maiden to my liking," whom he married, and who afterwards incurred his deep displeasure by flirting with his gentleman usher, or whatever else was the "great and just cause" for which he disinherited her. And the "handsome maiden" he took care should be one with a handsome portion too. But Bacon was of a cold nature, and like many others he waited too long. "I'm no for a man marrying," says Mrs. Poyser in "Adam Bede," "before he's old enough to know the difference between a crab and an apple; but he may wait ower long, and then he's like a man that goes past his dinner-time, and he turns his meat ower and ower wi' his fork, and finds fault wi' the victual when the fault's wi' his own inside." There are many men who are predestined old bachelors, like the eminent lawyer mentioned in Sergeant Robinson's Reminiscences, who said "he was born a bachelor, and in that persuasion he intended to remain." Selden, himself a great lawyer, was one of this type. In his "Table Talk," he calls marriage "a desperate thing." "The frogs in Æsop," he says, "were extremely wise. They had a great mind to some water, but they would not leap into the well because they knew they could not get out." This is rank misogyny. Even Lord Campbell contemplated a solitary old age with dismay. Over and above professional prudence or ambition, there may be a want of susceptibility on the part of lawyers to the tender passion. Their energies, to put it physiologically, all run to brains, leaving the emotional or sentimental part atrophied. Lawyers, at all events, are credited with hard hearts as well as hard heads. "Gentlemen of your profession," said Mr. Pickwick to Sergeant Snubbin, "see the worse side of human nature. All its disputes, all its ill-will and bad blood, rise up before you." "You must admit," said a doctor, addressing Bobus Smith, Sydney's lawyer brother, "that your profession does n't make angels of men." "No," replied Bobus; "your profession gives them the first chance of that." On the other hand, there is a great deal of truth in the saying that a man never settles down to work till he gets married, — ranges himself, as the French say. Lady Hardwicke often humorously laid claim (as she had good right to do) to so much of the merit of Lord Hardwicke's being a good Chancellor, in that his thoughts and attention were never taken from the business of the court by the private concerns of his family, the care of which, the management of his money matters, the

settling all accounts with stewards and others, and above all, the education of his children, had been wholly her department and concern, without any interposition of his, further than implicit acquiescence and entire approbation.

If marriage, too, brings responsibility, it furnishes a new incentive. John Scott would never have become Lord Eldon, unless he had run away with "his Newcastle beauty," Miss Surtees. "I have married rashly," he writes; "but it is my determination to work hard for the woman I love." This was the right spirit; and work hard he did, getting up at four o'clock to read law, and wrapping his head in wet towels. Yet these laborious days in Cursitor Street, when he slipped out at night to Fleet Market to get sixpenny worth of sprats for supper, were among the happiest in his life. His labors were lightened by the constant companionship of his amiable and beautiful wife, who accustomed herself to his hours, and would sit up with him silently watching his studies. "There is nothing," he afterwards said, "does a young lawyer so much good as to be half-starved." When Erskine made his brilliant *début* in Rex *v.* Baillie, he was asked how he had the courage to stand up so boldly against Lord Mansfield. He answered that he thought his little children were plucking his robe, and that he heard them saying, "Now, father, is the time to get us bread." Marriage, too, had a good deal to do with the success of Lord Truro, not to speak of improving the then over-convivial habits of the circuit bar. When Wilde (Lord Truro) joined the Western Circuit, he was an invalid, and travelled with his wife. He rarely dined at the circuit mess, and devoted the entire evening to his briefs. This compelled a corresponding alteration of habits in others; and a popular leader, afterwards a distinguished judge, is reported to have said to him, "I'll tell you what it is, Wilde, you have spoiled the circuit. Before you joined us we lived like gentlemen, sat late at our wine, left our briefs to take care of themselves, and came into court on a perfect footing of equality. Now all this is at an end, and the assizes are becoming a drudgery and a bore."

Lord Campbell had a poor opinion of lawyers' matrimonial choice. "Generally speaking," he says, "the wives and daughters of lawyers are nothing by any means to boast of. Barristers do not marry their mistresses so frequently as they used to do, but they seldom can produce a woman that a man can take under his arm with any credit." This is certainly a monstrous libel. Lord Campbell might have remembered that the wife of the judge whose decisions he reported, Lord Ellenborough, had been a reigning beauty and a toast; that the wife of his great rival, Lord Lyndhurst, was one of the chief ornaments of London society; that the wife of his friend, Lord Tenterden, was all that a wife could or should be; that it was despair for the death of an amiable and accomplished and too well-beloved wife which had caused Sir Samuel Romilly, in a "horrible dismay of soul," to take his own valuable life; to say nothing of Lady Abinger, Lady Denman, and Lady Hatherley. One of the most pleasing incidents in the life of the late Lord Hatherley is that which illustrates his attachment to his wife: —

"Some years before his death Lord Hatherley, having to attend the Queen as Lord Chancellor, was bidden to stay as her Majesty's guest after the business for which he had come was finished. He betrayed some hesitation at this command, and, being pressed to explain, told her Majesty that it was the first occasion in his married life on which he had passed twenty-four hours away from Lady Hatherley. The Queen allowed him to depart, and graciously commanded that the next time the Lord Chancellor visited her he should be accompanied by Lady Hatherley."

"Hatherley," said Lord Westbury, "is a mere bundle of virtues without one redeeming vice." — *Law Gazette.*

PERTURBED SHADES.

By Francis Dana.

Scene, *The Probate Court. Enter,* Three Shades, *invisible.*

1*st* Shade (*intestate*) *sings, pensero.*

HAD I not been too ill to attend to my will
I'd have disinherited Jim;
And now they swear he's my lawful heir,
And they've given it all to him.

2*d* Shade (*who has drawn his own will, in the light of "The Pocket Counsellor-at-law or, Every Man his own Attorney"*) *sings, allegretto.*

Oh, never die till you've made, as I,
Your will and your testament,
Or your administrator'll cut up your estate
According to laws of descent.

(*Judges and registers of Probate defend us!*)
Oh, *hang* that judge — what's that? Oh, fudge![1]
Can't he *read*, I'd like to know?
Has a man *no* say, in regard to the way
His property's going to go?

The Court, *audibly.*

The rule in Shelley's Case applies, and Bertrand takes in fee, the word *heirs* giving a hereditary construction to the whole.

2*d* Shade.

My will I took from a printed book,
Verbatim. Could *I* divine
That that blamed old fool would apply the rule
In Shelley's Case to mine?

[1] The Shade doubtless subjected his desire to use a stronger term to the necessities of the rhyme. — Ed.

I left some land to my son Bertrand
For *life*, with remainder to *heirs*.
He takes in *fee*, and the heirs — ah me! —
Get nothing, in equal shares.

And my devisees in their degrees
Get nothing, or little at best, I see;
While an heir I hate takes a large estate
On the ground of my partial intestacy!

3*d* SHADE (*whose will had been ably drawn by counsel in the previous century*).

Ere *I* took my last journey I had an attorney
And set him at work to draw
An elegant will with a codicil,
According to form of law.

And none by that will hath taken a *mil;*
Since first they broke the seals,
A century's past, and I'm told at last
It has gone to the Court of Appeals.

And each legatee is as dead as we,
And the graves of the heirs are green;
But the will must bide till the court decide
Whatever its phrases mean.

THE OLD AND THE NEW DEBTOR.

TO run in debt in these days is a subject for light comedy, the burden of many a jest. In early times it was truly a tragic situation. The Roman debtor, as everybody knows, who made default for thirty days in paying up, was handed over to his creditors in execution; and with nice particularity (meant to be humane) the Twelve Tables went on to define the exact weight of the fetters (not more than fifteen pounds!) with which the creditor might load him. If this discipline failed, the creditor, after sixty days more, might slay or sell him, or, if there were several creditors, they might hew him in pieces among them; and the Roman law, in such a case, was not as precise as the law of Venice about a creditor getting more of the debtor's carcass than was proportioned to his debt. But this carving up of the debtor was an expensive luxury, only to be indulged in by a Roman Shylock. The usual and business-like thing was to sell him or keep him as a slave. In the pre-Solonian jurisprudence at Athens things were rather worse, for every debtor unable to fulfil his contract was not only liable to be adjudged as the slave of his creditor, but also his minor sons and unmarried daughters and sisters, whom the law gave him the power of selling. The Gentoo law of India also gave the creditor power to seize and confine the debtor, his wife, children, and chattels of all kinds; but it is peculiar in providing that before he proceeded to these "fierce extremes" he was to try various milder modes of obtaining payment. If speaking to the friends and relations of the debtor proves unsuccessful, "he shall go in person," says the Gentoo Solomon, "and importune for his money" (no novelty this), "and stay some time at the debtor's house without eating or drinking." If this fails, "he shall carry the debtor home with him, and having seated him before men of character and reputation shall there detain him." Next, a little roguery may be practised; "he shall endeavor by feigned pretences to get hold of some of his goods." After these have been exhausted ineffectually, the creditor "ramps for his money," and may exclaim with Romeo,

> "Away to heaven respective lenity."

The plan indicated above of staying at the debtor's house without eating or drinking is technically known in India as "doing dharna." The most ingenious form of this debt-collecting process is hiring a Brahmin to do the sitting; for if this sacred person should be starved to death in mute importunity before the debtor's door, curses of the most appalling description would alight on the debtor's head. It is as if an English creditor were to employ an archdeacon, or some other dignified ecclesiastic, to dun his debtor. According to the Teutonic codes, again, the insolvent debtor falls under the power of his creditor, and is subject to personal fetters and chastisement. Cæsar, when he was in Gaul, found Orgetorix surrounded with a retinue of these enslaved debtors of his (*obæratos suos*). King Alfred, in his laws, exhorts the creditor to lenity (Thorpe, I. 53). This extraordinary and uniform severity of ancient systems of law to debtors, and the extravagant powers which they lodge with creditors, is remarked by Sir H. Maine. "It often strikes the scholar and the jurist," he says, "as singularly enigmatical;" and he tries to explain it by the theory that the nexum, to take the case of the Roman debtor, was really in the nature of a conveyance and not contract, payment being artificially pro longed to give time to the debtor. Hence the debtor's default was regarded with great disfavor. This is ingenious, but too subtle. The explanation is probably much simpler; partly it was indifference to suffering, and partly it was that so long as slavery and

serfdom were recognized institutions, so long a man's person was part of his property and a realizable asset; and probably the idea never occurred to members of such a primitive community that the debtor should not pay his debt with his person. The human-chattel view is, of course, very shocking to us, with all its attendant misery; but it requires no particular stretch of imagination to picture such a state of society. We have only to go back a century — hardly that, indeed — to find in our own country, with its boasted freedom and merciful laws, the same thing, slightly modified, — debt, that is to say, expiated by life-long imprisonment with or without the tortures of damp dungeons and fetters (see 17 State Trials, 298–618), an imprisonment involving not only the debtor, but his family. A trumpery matter of a few pounds might lodge a man in the Fleet, or King's Bench, and over their portal was written more unmistakably than that which Dante saw, —

"All hope abandon ye who enter here."

History teems with examples. The comic poet Wycherly languished for seven years in the Fleet for want of £20. Sheridan, in the person of Sir Charles Surface, could flash his brilliant jests at the Jew; but he had to endure the final ignominy of being dragged from his bed, a dying man, to a sponging-house. The scenes of "Little Dorrit," as everybody knows, were no fanciful creations of Dickens; but the veritable picture of his father's and family's own "Micawber" experiences. One bright exception to the blighting influence of the debtor's gaol is on record. The King's Bench prison made the fortune of Chief-Justice Pemberton; for, having squandered his substance in riotous living, and being consigned to "durance vile," he fell to at his law books (hitherto neglected), and established such a reputation for learning as induced his Jew creditor to let him out (not from any weak motive of compassion, but that he might work out his debt by legal practice), and led ultimately to his attaining the highest honors of his profession.

From undue severity the law has now passed to an almost too easy tolerance of indebtedness. The so-called imprisonment for debt under the Debtors' Act is not imprisonment for debt, but for dishonesty, as the late Lord Bramwell pointed out in Stoner *v.* Fowle (13 App. Cas. 28), for it is only when a man has had the means of paying and has not done so that he can be imprisoned. The Bankruptcy Act, 1883, has for the first time struck the right note in recognizing that there are debtors and debtors, and in discriminating between insolvency induced by misconduct, such as extravagant living or reckless speculation, and insolvency induced by misfortune without misconduct. But it may be noted that the withholding the discharge is in the interests of the commercial community, not redress according to the creditor. The creditor's "sole remaining joy," now that whips and fetters are denied him, is to "heckle" his debtor at the public examination. — *Legal Gazette.*

LEGAL REMINISCENCES.

I.

By L. E. Chittenden.

MY DEAR EDITOR, — You have asked me to contribute some reminiscences to the "Green Bag;" and although I am by no means sure that I shall write anything worthy of your clever magazine, yet in order to show my good-will, I will brush up my memory, hoping that it may yield a few curious or amusing incidents which may serve to entertain your readers.

Times have indeed changed since I was admitted to the Bar of Vermont some forty-odd years ago, and in nothing more than in the public estimate of the value of professional services. My legal friends of the younger generation give me a look of incredulity when I tell them that I began practice before a Supreme Court the judges of which worked from nine A. M. to six P. M. every day, except Sundays and holidays, for $750 per year.

"What kind of material did your State get for such niggardly pay?" they ask. Well, the first Supreme Court before which I appeared, comprised Charles K. Williams and Stephen Royce, whose sound opinions are known to every New England lawyer; Samuel S. Phelps, pronounced by Mr. Webster the best lawyer of his time in the Senate of the United States; Jacob Collamer and Isaac F. Redfield, both lawyers and statesmen of national reputation. And although we considered the court a fairly good one, it was not thought to be anything extraordinary. The little State could have duplicated it at the same epoch.

"But they were men of small practice and limited judicial views!" I have heard it said. Possibly; for the following incident will give an idea of the type of men to which they belonged. I had a heavy case before one of them, presiding in our county court, or, as it should be called, the Circuit. It was an action on a written contract to recover pay for ten locomotive engines. The contract provided for payment in the securities of the defendant, — a railroad corporation. It was claimed by the plaintiff that the defendant had disqualified itself from issuing the securities described in the contract, and a recovery was claimed in money.

The case turned upon the construction of the written contract. The question was thoroughly discussed; and much to my disappointment, the judge decided against my client, and directed a verdict for the plaintiff. I made the usual motion for a new trial. The judge asked whether I was willing to have it heard the next morning. As I wanted to appeal, and had no expectation of succeeding in my motion except in the Appellate Court, I consented.

The next morning the motion was heard, — the only question was the one he had decided on the previous day. Of course I argued it as well as I could; my adversaries did the same. The judge decided it on the spot in an able opinion. One who heard it would not have supposed that he had ever heard of the question before, much less that he had decided it the other way within the last twenty-four hours. He reversed his first decision, and granted my motion. His "narrow views" and "pride of opinion" in this instance were rather curiously illustrated; for he exhibited no more hesitation in reversing himself than he would have shown in reversing another for whose opinion he had no respect whatever. Perhaps not every "broad-minded" and experienced judge of recent times would have shown greater courage, or more indifference to his own record for consistency!

"All this may be," says the reader. "Granted that there were giants in those days, Vermont now produces no such judicial material!"

That is an admission which I could not make. I do not believe that the bar has much deteriorated in any of the New England States, though it must be admitted that the practice and legislation have. The suggestion reminds me of a story, or rather of an observation made by a bright Vermont lawyer. He afterwards became insane, poor fellow! and when I last heard from him he was contented and happy in the opinion that he was the proprietor and superintendent of the beautiful institution in which he was confined.

There was a Federal judge to be appointed in the Vermont district. Aspirants were numerous, most of them very competent, with strong and active supporters. The youngest and least known of them received the nomination. A New York lawyer, bitterly disappointed that a friend whom he recommended did not get the place, complained of and criticised Mr. Evarts, then Attorney-General, for passing over distinguished, able men, and appointing one whom nobody knew.

"Don't trouble yourself about Evarts!" said my friend. "He lives half the year in Windsor, and understands the situation. He knows that he can fish up any trout-stream in Vermont, and catch a better man for a judge than he could find in your big city with Lord Rosse's telescope and a search-warrant!"

Although we were so fortunate in those days as to have the best material on the bench, we were often called upon to deal with as worthless stuff on the stand as one could find nowadays in any of our city courts. It has been my observation that a witness who on his cross-examination repeats the question asked him before answering it, is almost invariably dishonest or at least untrustworthy. In a case in which I was counsel, a fellow who called himself an expert testified to facts which, if true, destroyed my client's claim, and in order to make all safe for his employer, he also swore to admissions of my client which were fatal.

"What is your name?" I asked.

"What is my name?" he inquired. I promptly set him down as a fraud, and asked him many questions, to let the jury hear his parrot-like repetitions. He fell into the trap, and did not fail to repeat in a single instance. Finally I asked, "What is your business?"

"What is my business?" he repeated.

"Yes! Can't you hear? What — is — your — business?"

After sufficient hesitation to indicate a doubt in his own mind whether he had any business, he said, —

"Rubber."

"Rubber of what?" I asked.

"Rubber of what?" he repeated.

"Yes! Yes! Rubber of what?" I demanded. "Tell us what kind of a rubber you are?"

I do not know why, but my last question completely upset the expert witness. His assurance left him, — he literally went to pieces. After this, I had no difficulty in exposing his ignorance and his falsehoods. I remarked to the jury that they could see the lie run out of him, as they had seen it run from a leach in the home soap-making of their early lives.

In one respect the lawyers of some parts of New England were remiss. They did not always cultivate the social qualities of each other. Good fellowship, respect for one another, may make our hardest drudgery pleasant. Once or twice in every year the lawyers of every county

> "Should gather round the table,
> With mirth and uproar loud,"

as we did at the annual bar supper of Addison County, Vermont. There we had in all the judges; we criticised their opinions, made speeches, and sung songs. The memory of those festivals still clings around the old

court-house and hotel in Middlebury, and gray-haired sires tell their grandsons of the glorious fun we had at least once a year. Now, forty years afterward, I bear testimony to the fact that nowhere in the State was the hard work of our profession so agreeable, the brethren so courteous to the court and to each other, rivalry and jealousy so completely suppressed among members of the bar in Vermont as in Addison County. These excellent results were largely due to the annual bar supper!

Young Vermont lawyers were sometimes eminently fitted to "go West and grow up with the country." I was for many years chairman of the committee to examine candidates for admission to the bar. One day there came before us two young men who had "entered their names" in some office, and there devoted themselves to teaching. Of the law, of any branch of the law, they were as ignorant as so many Hottentots. The only rule they had pretended to comply with was their term of service in a law office, and their graduation from some college. I frankly told them that for them to attempt to practise law would be wicked, dangerous, and would subject them to suits for malpractice. They begged, they prayed, they cried. They had been poor, — had taught school to pay their way through college, and now wanted to go West. They overcame my associates; and I, with much self-reproach, consented to sign their certificates, on condition that each would buy a copy of Blackstone, Kent's Commentaries, and Chitty's Pleadings, and immediately emigrate to some Western town!

They were admitted. For six or seven years I heard nothing of either. But in 1863 there came to my office in the Treasury in Washington a bulky package by express. Being opened, it exposed a thick volume of seven hundred pages, in law calf, entitled "A Treatise on the Constitution of the United States of America." It was published by a firm of law booksellers in a Western State. One of the candidates whose admission had so strained my conscience *was its learned author.* It was dedicated to, and highly commended by, his rival in ignorance and his companion, with the title of "Justice of the Supreme Court" of the State to which they had so recently emigrated! I cannot pass judgment upon the book, for I have never read it; but I have seen it cited with approval in an opinion by the Chief-Justice of the United States. Both these young men, notwithstanding their bad start in life, went West, grew up with the country, and I have no doubt became good and useful members of the community.

THE SUPREME COURT OF APPEALS OF VIRGINIA.

I.

By S. S. P. Patteson, *of the Richmond, Va., Bar.*

REPRESENTATIVE government, without which modern civilization could not endure, sprang into existence — "broke out," as a writer on colonial history[1] expresses it — at Jamestown, July 30, 1619, and at the beginning of the Revolution of 1776 it was practically a bicameral government all over America. But, strictly speaking, there was then no court of last resort in the colonies.

The famous "Parsons Cause," brought in Hanover County Court, April 1, 1762, in which the Rev. James Maury was the nominal plaintiff, and the Rev. John Camm, "Commissary" of William and Mary College, and as such agent of the Bishop of London and the Established Church of England, was the real plaintiff, was tried before a Virginia jury; and after the rout of the clergy by Patrick Henry, a final appeal could only be taken to the king and his privy council in England. All of the Virginia courts and people sustained Patrick Henry. A case in which Camm himself was plaintiff was appealed from the General Court of Virginia; but the king allowed it to be dismissed in 1767 on a technicality, for it was then very evident that public sentiment on this side of the ocean would not sustain the crown. The voices of the Tories who wished to uphold George III. in his encroachments on the rights of the people were soon silenced by the guns of liberty. It was really a matter which was beyond the jurisdiction of the court, as much beyond such jurisdiction as was the ineffective attempt nearly a century later of the Supreme Court of the United States, in Scott *v.* Sandford, 19 How. p. 393, to stem the tide of the "irrepressible conflict" by a decision, perhaps technically right, of a question bargained for in the Constitution, which had grown to be an outrage upon the conscience of mankind.

The principal court in Virginia before the Revolution, known as the General Court, consisted of the governor and council for the time being, any five constituting a court. It had jurisdiction "to hear and determine all causes, matters, and things whatsoever relating to or concerning any person or persons, ecclesiastical or civil, or to any person or thing of what nature soever the same should be, whether brought before them by original process, appeal from any inferior court, or by any other way or means whatsoever." Its jurisdiction, both original and appellate, was limited to controversies of the value of £10 sterling, or 2000 pounds of tobacco and upwards, as appears by Acts of the General Assembly of 1753, ch. 1, §§ 2, 5, and 25. It had exclusive criminal jurisdiction as a court of oyer and terminer. It retained its criminal jurisdiction as an appellate tribunal exclusive of all others until the adoption of the Constitution of 1851, by which it was abolished. For a short time after the Revolution it was consolidated, as to its appellate jurisdiction, with the Admiralty Court and the High Court of Chancery, which formed the first Court of Appeals of Virginia under her first Constitution, which was adopted on the 29th day of June, 1776. After the Supreme Court of Appeals proper was formed, on Dec. 24, 1788, the General Court had no appellate jurisdiction, except in criminal cases, cases connected with the revenue, taking probate of wills and granting administration upon intestates' estates, in which its jurisdiction was concurrent with the District, and afterwards the Circuit, County, and Corporation courts throughout the State. It received

[1] Seeley's "The Expansion of England" p. 67.

the name of General Court in 1661–1662, and existed one hundred and ninety years under the same name.

Until the Constitution of 1851 the judges of the Supreme Court of Appeals and of the General Court held their offices for life. It is true the Constitution of 1829–1830 authorized the General Assembly, by a concurrent vote of two thirds of the two houses, to remove a judge. Under that Constitution none were ever so removed. By the Reformed Constitution of 1851, the judges of all the courts were elected by the people; the Supreme Court of Appeals for twelve years, and of the Circuit Courts for eight years, all being re-eligible after the expiration of their respective terms of service. The Constitution of 1851 was never regularly abolished; as will later on appear, it was destroyed as a result of the Civil War. The terms for which the judges have since that time been elected have remained unchanged; but there has never been an election of the judges by the people in Virginia since the war. All of the records and order books of the General Court and the Supreme Court of Appeals of Virginia were destroyed by fire at the evacuation of Richmond, April 3, 1865. This was a great loss, not only to Virginia, but to the country at large. The General Court, as we have seen, was abolished by the Constitution of 1851, and its appellate criminal jurisdiction transferred to the Supreme Court of Appeals of Virginia, which had no criminal jurisdiction prior to that time. The first Court of Appeals was a legislative court only. The fourteenth section of the first Constitution conferred the power of electing the judges of the Supreme Court of Appeals, the General Court, the High Court of Chancery, and the judges of the Admiralty Court, by joint ballot on the two houses of the General Assembly, who were to hold their offices during good behavior (Hen. stat. vol. 9, p. 117). The Admiralty Court, consisting of three judges, was established in October, 1776; the High Court of Chancery, consisting of the same number of judges, in October, 1777; and the General Court at the same time, consisting of five judges.

The Supreme Court of Appeals of Virginia was established by an act of the May session of 1779; and it was provided that it should consist of the judges of the High Court of Chancery, General Court, and Court of Admiralty. This court, as is shown by an order entered on its order-book, met without being sworn in; and the judges produced no commissions, as they were already judges and knew each other to be judges. Here is the quaint old order: —

"Williamsburg, to-wit. — At the capitol in the said city, on Monday the 30th of August, one thousand seven hundred and seventy-nine: In virtue of an act passed at the last general assembly, intituled an act constituting the court of appeals, then and there convened, Edmund Pendleton and George Wythe, esquires, two of the Judges of the high court of chancery; John Blair, esquire, one of the judges of the general court; and Benjamin Waller, Richard Cary, and William Roscoe Wilson Curle, esquires, Judges of the court of admiralty: And thereupon the oath of fidelity prescribed by an act, intituled, an act prescribing the oath of fidelity, and the oaths of certain public officers; together with the oath of office prescribed by the said act constituting the court of appeals, to be taken by every Judge in the said court, being first administered by the said George Wythe and John Blair, esquires, to the said Edmund Pendleton, esquire; and then by the said Edmund Pendleton, esquire, to the rest of the Judges the court proceeded to the business before them" (4 Call, p. 3).

They appointed a clerk, crier, and tipstaff.

A case of the gravest significance soon came before the court. It was one of the most important ever decided by any tribunal. There was no precedent for the judges to follow.[1] It was decided in November, 1782, and is styled Commonwealth *v.* Caton, *et al.* 4 Call, p. 5. John Caton, Joshua Hopkins, and John Lamb were condemned for treason. They were tried and convicted in the Gen-

[1] Bradlaugh *v.* Gossett, 12 Q. B. D. 280.

eral Court, and appealed on the ground that they had been pardoned, and that they had been refused the benefit of their pardon. The governor had no right to grant a pardon in cases of treason; but he was authorized to suspend sentence "until the meeting of the General Assembly, who shall determine whether such person or persons are proper objects of mercy or not, and order accordingly." The House of Delegates, by resolution of June 18, 1782, pardoned the prisoners, but the Senate refused to concur. The Attorney-General on behalf of the Commonwealth denied the validity of the pardon, because the Senate had so refused its assent to the action of the lower branch of the legislature.

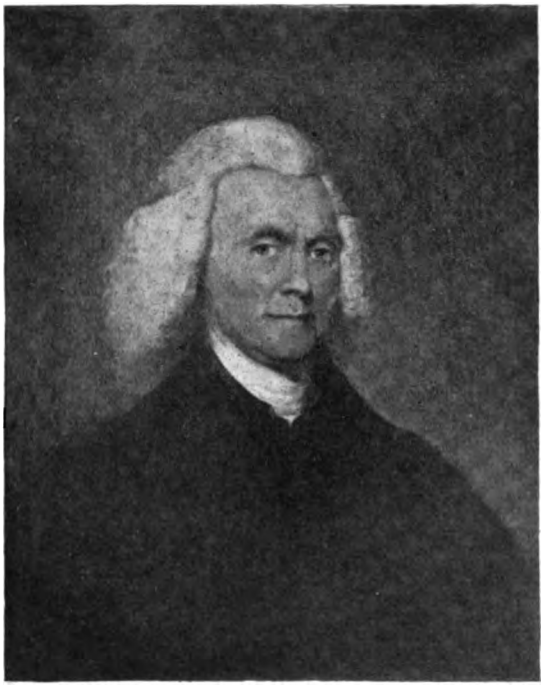
The question then came up squarely: Was this a *constitutional* pardon? All of the judges united in the opinion that the act of the House of Delegates was unconstitutional. Wythe and Pendleton both delivered opinions. Said Wythe, one of the greatest judges who ever sat on the bench in Virginia: —

"I have heard of an English chancellor who said, and it was nobly said, that it was his duty to protect the rights of the subject against the encroachments of the crown; and that he would do it at every hazard. But if it was his duty to protect a solitary individual against the rapacity of the sovereign, surely it is equally mine to protect one branch of the legislature, and consequently the whole community, against the usurpations of the other; and whenever the proper occasion occurs, I shall feel the duty, and fearlessly perform it. Whenever traitors shall be fairly convicted by the verdict of their peers, before the competent tribunal, if one branch of the legislature, without the concurrence of the other, shall attempt to rescue the offenders from the sentence of the law, I shall not hesitate, sitting in this place, to say to the General Court, *Fiat justitia ruat cælum*; and, to the usurping branch of the legislature, 'You attempt worse than a vain thing, for although you cannot succeed you set an example which may convulse society to its centre.' Nay, more, if the whole legislature — an event to be deprecated — should attempt to overleap the bounds prescribed to them by the people, I, in administering the public justice of the country, will meet the united powers at my seat in this tribunal; *and pointing to the Constitution, will say to them, 'Here is the limit of your authority, and hither shall you go, but no farther.'*"

Virginia had completely dissolved her connection with Great Britain and established a constitution for her own government; and President Lincoln was mistaken in stating, in his message of July 4, 1861, that not one of the States "ever had a State Constitution independent of the Union." The Constitution under which the famous decision was rendered was "unanimously adopted" on the 29th of June, 1776. Mason's Bill of Rights had been adopted with equal unanimity on the 12th of June. The other States declared themselves independent after the Declaration of Independence. Article III. of that Constitution provided that "the Legislative, Executive, and Judiciary departments shall be separate and distinct, so that neither exercise the powers properly belonging to the other." That was all the guide these path-breaking judges had to follow.

In September, 1780, Chief-Justice Brearley of the Supreme Court of New Jersey announced that the judiciary had the right to pronounce on the constitutionality of laws; the Rhode Island court in 1786, in Trevett *v.* Weedon, claimed and exercised a similar right; and the Supreme Court of South Carolina (Bowman *v.* Middleton, 1 Bay. 252) in 1792. But one of these cases could by any possibility have been before the Supreme Court of Appeals of Virginia when it decided Commonwealth *v.* Caton *et al.* The language of the judges all indicates that they had never heard of the ruling of the New Jersey court, and the other internal evidence is practically conclusive of the fact that these patriotic men were cutting their way boldly through an unknown forest in the cause of human liberty. It is hardly possible that this important case escaped the notice of John Marshall; it is not improbable that he was employed as counsel by some of the

parties, — the name of the prisoners' counsel is not given in the report,— and it doubtless had its weight with the Chief-Justice of the United States when he rendered his celebrated decision in 1803 in the great case of Marbury *v.* Madison, 1 Cranch, 137. A modern writer[1] of recognized ability says the Supreme Court of the United States has no prototype in history. To all intents and purposes, was not Virginia's court of last resort under her first Constitution the original model? The view of the origin and growth of the principle that a court can declare an act of the Legislature void, here presented, is conceded by the most painstaking writer on the subject[2] to be the correct one. The laurels belong to Wythe and Pendleton.[3] The Admiralty Court ceased to exist on the first Wednesday in March, 1789, that being the date of the commencement of the government under the Constitution of the United States (5 Wheaton, p. 423).



EDMUND PENDLETON.

On the 22d of December, 1788, the General Assembly passed an act amending the act constituting the first court of appeals, which provided that henceforth that court should consist of five judges, to be chosen from time to time, commissioned by the governor, and to "continue in office during good behavior" (12 Hen. stat. p. 764). The act made no provision relative to the then existing judges of the Court of Appeals. The five judges under this new law were elected on Christmas Eve, Dec. 24, 1788, commissioned December 31, and qualified in the following spring. They met June 20, 1789, and proceeded to business. Considerable confusion arose out of these numerous changes, as may be seen by reference to the "Case of the Judges," 4 Call, p. 135. There were no changes of any importance made in the court until the Constitution was changed in 1829–1830. The number of judges are the same to-day as they were then.

In the history of this great court we find no revolt against the past, but a persistent and steady progress. People of Virginia blood and all others can take a just pride in her laws, and those who have interpreted them. The court elected on the 24th of December, 1788, consisted of Edmund Pendleton, John Blair, Peter Lyons, Paul Carrington, and William Fleming.

Edmund Pendleton, the first president of the court, was the son of a respectable man who was too poor to give him more than an English education. Mr. Robinson, then Speaker of the House of Burgesses, observing the brightness of the young man, took him into his office, and taught him law. Pendleton showed all through life marked gratitude for this early kindness. After he came to the bar he soon obtained a good practice in the county courts. His practice rapidly extended to the General Court, where he rose to

[1] Hannis Taylor, Origin and Growth of the English Constitution, p. 73.

[2] Carson's Hist. U. S. Supreme Court, p. 120.

[3] The court had no reporter when the decision was rendered, and 4 Call's Reports, containing Commonwealth *v.* Caton *et al.*, was not published until 1833.

eminence. He went into politics, but not to the detriment of his professional prospects; was a leading member of the House of Burgesses; of the Convention which sat at Richmond in 1775; and upon the death of Peyton Randolph was made president as well of that convention as of the succeeding one which framed the first Constitution of Virginia. He was first judge of the High Court of Chancery soon after it was established, and in consequence thereof, was *ex officio* presiding judge of the first Court of Appeals. Upon the reorganization of that court, he was made president, and held that high place, with the approbation of all parties, until his death, which took place at Richmond, Oct. 23, 1803. Between Wythe and himself there was always great rivalry. He was industrious and methodical, possessed quick perceptions, practical views, great argumentative powers, and sound judgment. He was familiar with statute and common law, as well as with the doctrines of equity, and knew how to apply them to the exigencies of this country.

In his old age he dislocated his hip, and while he was in retirement in the country could not follow rural pursuits. He had easy and engaging manners, a cheerful and social disposition; but always observed perfect decorum, — was what was called pious, and could not bear to hear the name of God irreverently used.

He was not what could be called a deep reader. His reading was confined chiefly to subjects connected with his profession. He knew no language but English, and after the publication of the Reports of *Raymond*, *Peere Williams*, and *Burrows*, he was as fond of reading them as anything else. He was a Democrat, or, as was then called, a Republican in politics, and very much dissatisfied with the Federal Government until the election of Thomas Jefferson. He voted for the adoption of the Constitution of the United States. He was a magnificent judge. In 1789 he was appointed judge of the United States District Court, but declined.

His industry was wonderful, and to that he owes his fame. Success at the bar and on the bench without this is never lasting. His poverty made him great. That cold-hearted and great historian Edward Gibbon tells the world, in his ornate autobiography, that in his early youth Mrs. Gibbon exhorted him to take chambers in the Temple and devote his leisure to the study of the law. Said he: "I cannot repent of having neglected her advice. Few men without the spur of necessity have resolution to force their way through the thorns and thickets of that gloomy labyrinth."

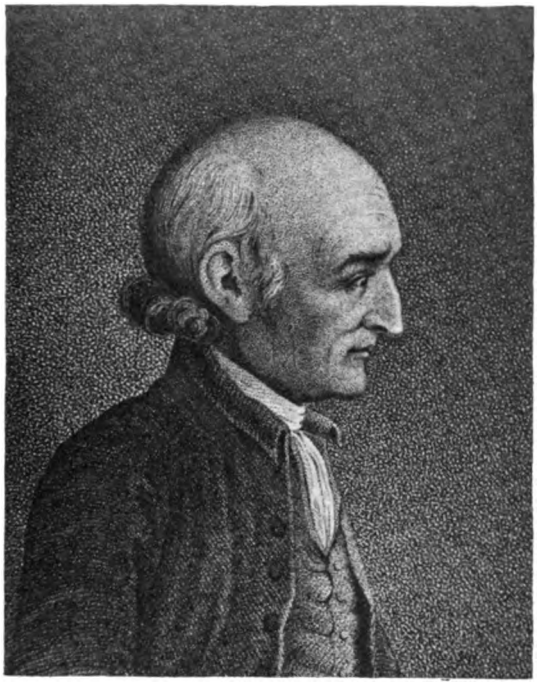
The "spur of necessity" had been driven in deep when it made the President of Virginia's first Court of Appeals read *Peere Williams's Reports* for amusement.

George Wythe was born in Elizabeth City, County Virginia, in 1726. His mother was a Miss Keith, daughter of a Quaker of fortune and education who came over from Great Britain and settled in the town of Hampton, in the year 1690. His father died intestate, leaving his wife and three children a good estate. Under the law of primogeniture, his elder brother fell heir to the estate. But his devoted and clever mother educated him herself. Besides English she was able to teach him the rudiments of Latin and Greek. Whatever may have been the real cause, his early years were spent at home. His literary advantages were thus limited; but his mother's influence implanted in his character the seeds of strength and uprightness for which she is said to have been noted. With no other educational advantages he was placed in the office of his uncle-in-law, a well-known lawyer of Prince George County, at the commencement of his studies for the bar. He had much office drudgery to perform, and made very slow progress. He left the office, and for about two years was a hard student.

A short time before he attained his majority his mother and elder brother died. As soon as he came into possession of the estate, he became very dissipated, going into all

sorts of society, and living in a very reckless way generally.

The old city of Williamsburg possessed many attractions; and as he had the means, as the saying then was, he "lived like a gentleman." At the age of thirty, realizing that his resources were about gone, he suddenly stopped this career, never to resume it. He married a Miss Lewis about this time; and his industry, learning, and eloquence soon secured him a prominent place at the bar. He was a man of great self-control, and used to warn young men, by referring them to his own idle career in early life. He was admitted to the bar in Williamsburg in 1756. A short time afterward Thomas Jefferson began his studies at William and Mary College, and through the influence of Dr. Small was taken under the instruction of Mr. Wythe. Jefferson himself tells of the fine influence he had upon his life. "Mr. Wythe," said he, "continued to be my faithful and beloved mentor in youth, and my most affectionate friend through life. In 1767 he led me into the practice of the law, at the bar of the General Court, at which I continued till the Revolution shut up the courts of Justice."



GEORGE WYTHE.

While a member of the House of Burgesses, Wythe early and warmly espoused the cause of the colony in her contention with the mother country; but he opposed as unreasonable and inexpedient the famous resolutions of Patrick Henry concerning the Stamp Act in May, 1765. But Henry's fiery eloquence got the resolutions through by a majority of one vote. We are all too familiar with the splendid fight Virginia made in the thrilling scenes immediately preceding the Revolution and during that memorable period to recount them here. In that great struggle, says Massachusetts' impartial and eloquent historian George Bancroft,[1] "Virginia rose with as much unanimity as Connecticut or Massachusetts, and with a more commanding resolution." In 1775 Wythe put on his hunting-shirt, joined the volunteers, shouldered a musket, and participated in the military parades in Williamsburg during the latter part of Lord Dunmore's administration. His good sense, however, soon made him realize that he could be more useful to the State in a civic position; so he abandoned the army. He had great contempt for Lord Dunmore, the royal governor of the colony.

One day in the General Court over which Governor Dunmore presided, a case came up in which Wythe and Nicholas appeared on one side, and George Mason and Edmund Pendleton on the other. Mr. Pendleton, Wythe's great rival, when the case was called, asked for a continuance, on the ground of the absence of his associate George Mason. Lord Dunmore indelicately said to Mr. Pendleton, "Go on, sir, for you will be a match for both of the counsel on the other side." "With your Lordship's assistance," retorted Wythe sarcastically, at the same time bowing

[1] Hist. U. S., vol. viii. p. 375.

politely, greatly to the amusement of the spectators. He was a delegate to the Continental Congress, and signed the Declaration of Independence drawn by his former pupil. Wythe, Jefferson, and Pendleton took a leading part in the revision of the laws made necessary by the change of government, the special part undertaken by Wythe being the British Statutes from the fourth year of James I. In the year 1777 he was appointed one of the three Judges of the High Court of Chancery, and on the reorganization of that court in 1788, its sole Chancellor. With his services as Chancellor Wythe, which were highly honorable and useful to the State, we have nothing to do: nor is there space to tell how well he discharged his duties as professor of law for eight years at William and Mary. He was an earnest advocate of the adoption of the Federal Constitution. In the very important case, which excited a great deal of comment at the time, decided by Chancellor Wythe in the High Court of Chancery of Page *v.* Pendleton, Wythe's Reports, p. 211, the court held that the right to money due an enemy cannot be confiscated. The Supreme Court of the United States in Ware *v.* Hylton, 3 Dall, p. 266, refers to the first decision as authority; and that court finally reached the same opinion as had Virginia's great and upright Chancellor three years before. Every Virginia lawyer knows Wythe as *Chancellor* Wythe, and not as Judge; and if any man doubts his learning and integrity, let him refer to Wythe's Reports (1 vol.), which have recently gone through a second edition. He has the great honor of being the only State Court Judge in Virginia who has reported his own decisions.

Wythe was fearlessly honest, both as lawyer and judge. John Randolph said of him that "he lived in the world without being of the world; that he was a mere incarnation of justice, — that his judgments were all as between A and B; for he knew nobody, but went into court, as Astræa was supposed to come down from heaven, exempt from all human bias." His learning was extensive, and he was in the habit of putting curious references to the rules of logic and mathematics in his decrees; and some of them fairly bristle with classical allusions. Many of them are very funny. He rendered a decree in May, 1804, expounding the will of Patrick Henry. After quoting the parable in St. Matthew, ch. xx. he says: "The land was a gift, not naturally or morally to be retributed or countervaled by price, by pounds or dollars, and their fractional parts, but meriting an entirely different remuneration; namely, the effusion of a grateful mind, which owing owes not, but still pays, at once indebted and discharged." In the above quotation the spelling has been modernized.

He was married twice, but had no children who survived him. His death was a very sad one, he being poisoned by his great-nephew George Wythe Swinney, who would have been benefited by his will; but Swinney's crime was discovered in time to change it, — which was done, greatly to the satisfaction of the public. Swinney was not hanged, but escaped, because the circumstantial evidence was not sufficient to convict.

Another very singular occurrence at the end of this distinguished man's career is the melancholy fact that no one knows where he was buried, though his funeral was a public one in the city of Richmond. The Virginia State Bar Association now has under consideration the matter of erecting some sort of monument to his memory.

He was the preceptor of two Presidents and one Chief-Justice of the United States.

Henry Clay, who first knew him in his sixteenth year, was engaged by the Chancellor as his amanuensis, because from gout or rheumatism in his right hand he could scarcely write his name. Mr. Clay says: —

"Upon his dictation, I wrote, I believe, all of the reports of cases which it is now possible to publish. I remember that it cost me a great deal of labor, not understanding a single Greek character, to

write some citations from Greek authors, which he wished inserted in copies of his reports sent to Mr. Jefferson, Mr. Samuel Adams of Boston, and to one or two other persons."

An amusing story is told of the venerable Chancellor and Bushrod Washington, then practising law in Richmond, afterwards Mr. Justice Washington of the United States Supreme Court. The story too illustrates how hard it was for Virginians to accustom themselves to the rigid rules of mercantile life. Mr. Washington called on the Chancellor with a bill of injunction, in behalf of General ——, to restrain the collection of a debt, on the ground that the creditors had agreed to await the *convenience* of General —— for the payment of the debt, and that it was *not then convenient* to pay it. The Chancellor smiled and said, "Do you think, sir, that I ought to grant this injunction?" We are glad to know that Mr. Washington *blushed*, and retired without argument.

PETER LYONS.

We may truly say, as did the Richmond "Enquirer" of June 10, 1806: "Kings may require mausoleums to consecrate their memory; saints may claim the privilege of canonization; but the venerable George Wythe needs no other monument than the services rendered to his country."

John Blair was a member of a large and influential family. He was bred a lawyer, and studied at the Temple in London, where he took a barrister's degree. Returning to Williamsburg, he practised in the General Court, where he had a respectable share of business. For several years he was President of the Council of State. He was kind and generous, and on one occasion his fine disposition was put to a severe test. Colonel Chiswell killed a Mr. Routlige, and was prosecuted for murder. The Attorney-General was nearly connected with Chiswell, and Mr. John Blair was selected by lot from the whole bar to prosecute him; but poor Chiswell (who would probably have been acquitted, as the provocation from his adversary was very great) committed suicide, and thereby greatly relieved the anxiety of his friend and intended prosecutor. A great deal may be seen of the ferment which was created by this occurrence in the Virginia Gazettes of the summer of 1766.

John Blair was Chief-Justice of the General Court, and a judge of the High Court of Chancery, and by virtue of these offices a judge of the first Court of Appeals. President Washington promoted him from a place on the Virginia Supreme Bench to Associate Justice of the United States Supreme Court. After several years he resigned, and died at Williamsburg, Aug. 31, 1800, in the sixty-ninth year of his age.

Peter Lyons was a native of Ireland, but migrated to Virginia at an early period of his life. He studied law, and soon after he came to the bar had a lucrative practice. He steadily rose, was twice married, and was a friend to the colonies in the Revolution. In

1779 he was made a judge of the General Court, and thereby became a judge of the Court of Appeals, and continued so until his death. He was possessed of great integrity and urbanity, was deeply read in the law, and made an upright and impartial judge. Many of his descendants are now living in Richmond, where they occupy high places in the community.

Paul Carrington, a member of one of Virginia's largest and most respected families, was the eldest son of a wealthy gentleman who died intestate. As the law then was, he was heir-at-law, but generously divided his estate with his brothers and sisters. He was bred a lawyer, and soon had a fine practice. He was elected to a number of political positions, and was an ardent patriot in the War of the Revolution. In 1779 he was made a judge of the General Court, and consequently a member of the first Court of Appeals. He was an upright and impartial judge, and his opinions were highly respected. At the age of seventy-five, in 1807, from conscientious motives he resigned, although his faculties were still perfect, fearing that he might be found lingering on the bench after age had rendered him unable to perform his duties properly. He lived in retirement to the great age of ninety-three, universally loved and respected.

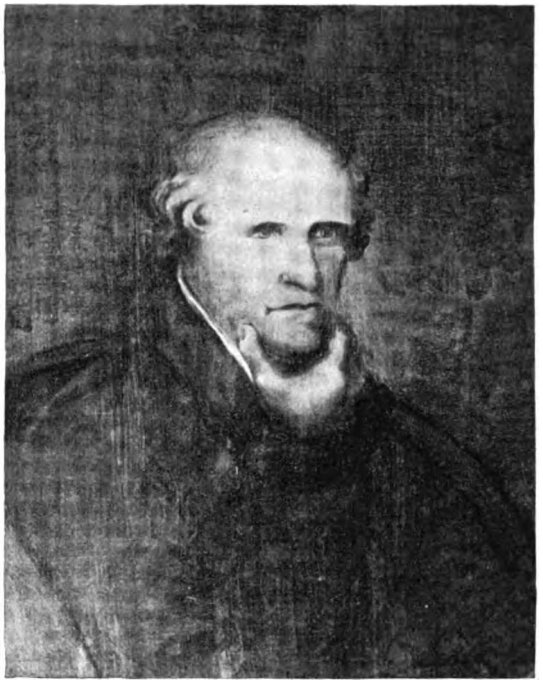
William Fleming was born of a respectable family of Chesterfield County; studied and practised law with success in the county courts; was a member of the Convention of 1775, and took an active part with the colonies; was made a judge of the General Court, and consequently of the first Court of Appeals, and died a member of that court. He was a man of good sense, and an honest judge, who indulged in no theories and aimed to decide a case according to the very right of the controversy, in which object he generally succeeded.

Robert Carter Nicholas, a gentleman of distinguished family, was bred to the bar, and practised with reputation in the General Court under the royal government. He lived on terms of great familiarity with Lord Botetourt, then Governor of Virginia. Lord Botetourt was an amiable and pious man, of a kind and happy disposition. He had an ample fortune, kept a splendid and hospitable court, and was one of the most popular men in the colony of Virginia. He and Mr. Nicholas were both religious men, and often spoke of the hope of immortality to each other. On one occasion Mr. Nicholas said to him, "My lord, I think you will be very unwilling to die." "Why?" said his lordship. "Because," he replied, "you are so social in your nature, so much beloved, and have so many good things about you, that you will be loath to leave them." He made no reply; but when he was on his death-bed sent in haste for Mr. Nicholas, who lived near his residence, which was called "the palace." On entering the chamber, he asked his commands. "Nothing," replied his lordship, "but to let you see that I resign those *good things* which you formerly *spoke of* with as much composure as I enjoyed them." The House of Burgesses erected in the lobby of their hall a marble statue to his memory. The statue is yet in existence, having stood the ravages of civil war, and is now an ornament of the college grounds at old William and Mary. Judge Nicholas was a man of character and integrity; but as he died in 1780, his judicial character had not fully developed itself. He was much esteemed by all who knew him.

Bartholomew Dandridge was born in New Kent County, and soon made a reputation at the bar. He had powerful connections, and was an earnest advocate of the independence of the colonies. He was, in 1778, appointed a judge of the General Court, and consequently judge of the first Court of Appeals. He was an honest man, esteemed by the bench and bar. He died in April, 1785.

Benjamin Waller was descended from respectable parents, and bred to the bar. He was made Clerk of the General Court, and discharged his duties in the most affable manner. He was a good listener to the decisions,

and took practical views of the law. His judgment was sound and reliable, and he was more often consulted in chambers than the most celebrated members of the bar. He expressed his opinion always with great brevity and clearness. While he was yet clerk he continued to practise his profession in the county courts with success. He supported the Revolution, and in 1777 was made presiding judge of the Virginia Court of Admiralty, and thereby became one of the judges of the first Court of Appeals. He presided with dignity in the Court of Admiralty, and his decisions gave great satisfaction; but he gave no reasons for his judgments, — a wise rule, which if carefully followed by some of his successors would have materially added to their reputations.



JOHN TYLER.

He declined to attend the sessions of the Court of Appeals after it was transferred to the city of Richmond, alleging that he had agreed to accept the appointment upon condition that he was not to attend court out of Williamsburg. He died regretted by his friends and universally respected.[1]

William Roscoe Wilson Curle was born in Tidewater, Va., and bred a lawyer. He practised with reputation, and at the beginning of the contest with Great Britain supported his native country. Having been made a judge of the Court of Admiralty, he became a member of the first Court of Appeals; but having shortly afterwards died, his judicial character is little known.

No other judge of the first court had four initials. He was probably the only man of his name in the colony, and it is not known that he left any descendants.

Richard Cary descended from a respectable family in Elizabeth City County, actively supported the colony in her struggles for freedom, and having been made a judge of the Court of Admiralty, thus became a judge of the first Court of Appeals. He was bred a lawyer, and was a man of good understanding. His descendants are yet numerous in Virginia. He was fond of botanical studies, and had some taste for *belles lettres*.

James Henry, a native of Scotland, studied law in Philadelphia, removed to the Eastern Shore of Virginia, and was made a judge of the Admiralty Court, and necessarily of the first Court of Appeals. He was a learned man, whose opinions were well reasoned and much respected. He, Peter Lyons, and St. George Tucker enjoy the unique honor of being the only men born outside of the present limits of the State who have sat on the Supreme Bench.

John Tyler, the father of President Tyler, a judge of Virginia's first Court of Appeals by reason of being on the State Admiralty Bench, was born of respectable parents in Charles City County, and studied law under Robert Carter Nicholas. He was a zealous

[1] His grandson, Judge Waller Taylor, Chancellor of the Territory of Indiana, and by appointment of the President Judge of the Territorial Court, was the first United States Senator from that State.

friend of the American Revolution. In 1808 he was made Governor of Virginia, and in 1811 judge of the United States District Court for Virginia, which office he held until his death. He was a man of popular manners and sound judgment. He liked political tracts and light works, but was not fond of law books. He was very kind and attentive to young lawyers, and did all he could to inspire them with ease and confidence. He had a benevolent heart and sincere and friendly disposition.

James Mercer was bred to the bar, and became a member of the General Court and consequently of the Court of Appeals. His abilities and patriotism were conspicuous. He died in the city of Richmond while attending a session of the court.

Henry Tazewell, a judge of the first Court of Appeals by reason of being a judge of the General Court, was a young Virginian of fortune. He studied law, and married the daughter of Judge Waller while that gentleman was still clerk of the General Court. In 1795 he was appointed United States Senator. He filled all of the public stations he held with great satisfaction. His son was also a United States Senator. There are many of his relatives and descendants in Virginia.

Richard Parker, born in the Northern Neck of Virginia, became a judge of the Court of Appeals in October, 1788, by being a judge of the General Court. Being fond of literary pursuits, he early fell under the notice of the Lee family, then celebrated for their erudition. He was a learned lawyer and an upright judge, and very patriotic, his eldest son having been killed by the British at the siege of Charleston.

Spencer Roane, a distinguished judge of the Virginia Court of Appeals, was born in Essex County, April 4, 1762, was educated at William and Mary College, and there attended the lectures of Chancellor Wythe, the professor of law.

He soon turned his attention to politics; became a member of the Legislature, and married a daughter of Patrick Henry, who was then Governor of the State.

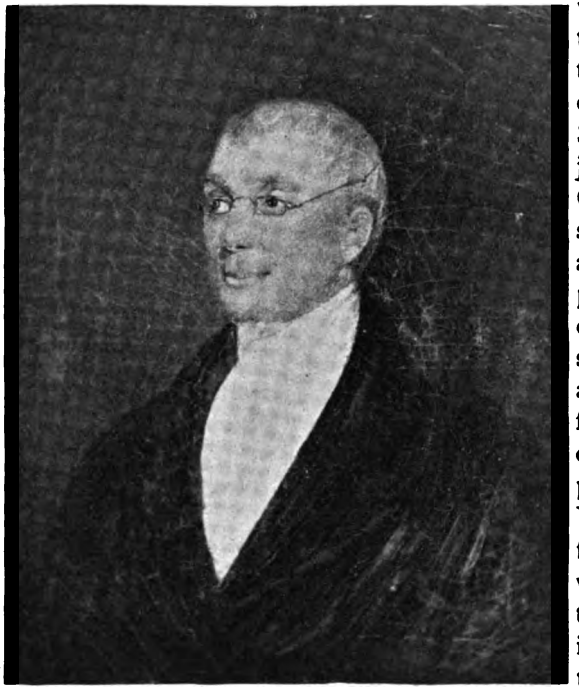
In 1789 he was made a judge of the General Court, which office he held until 1794. On December 2 of that year, a vacancy having occurred on the Supreme Bench by the election of Judge Tazewell to the United States Senate, he was appointed to fill it. Not until that time did he become an earnest student of law. He was a man of considerable literary attainments, and was supposed to be second in ability to Edmund Pendleton only. He never acquired the habit of "mixing law and equity together" says Mr. Daniel Call (4 Call, xxv). But his opinions were generally sound and well-reasoned. He respected the rights of property and the just claims of creditors, and in all of his decisions he inclined to the side of liberty. On the bench he was still a politician engaging in the controversies of the day and frequently writing for the newspapers. He was very ambitious, though he disliked aristocracy and family pride. He held many offices of honor and trust, in all of which he gave satisfaction.

It is said that Thomas Jefferson wished him, at the expiration of President Monroe's term, to run as a candidate for Vice-President.

He was jealous of his associates on the bench, and very disagreeable to all of them. Like Napoleon's Marshal Saint-Cyr, he was calm and cold in his disposition, and passed a good deal of time doing — what do you suppose? Playing the fiddle! It was his master passion. It is not known whether or not he was a skilful performer. He died Sept. 4, 1822, leaving surviving him his second wife, a lady whose amiable disposition rendered her interesting in life and lamented in death.

St. George Tucker, made a judge of the Supreme Court Jan. 6, 1804, must not be confounded with his son Henry St. George Tucker, who was elected president of the same court after the adoption of the Constitution of 1829. St. George Tucker

was born in the island of Bermuda, where he commenced the study of the law, but migrated to Virginia before the Revolution, and completed his studies at William and Mary College. His urbanity, social disposition, and literary attainments introduced him into the best company and most fashionable circles of the city of Williamsburg; and his deportment was such as to procure him the favor of the leading gentlemen of that place. He studied law and settled in Williamsburg, and upon the breaking out of hostilities with Great Britain took part with his adopted country. About the year 1797 he married Mrs. Randolph, the widow of John Randolph of Matoax in Chesterfield County, a lady of exquisite understanding and great accomplishments. He removed to Matoax, and for many years there led a life of ease and elegance. He was made a colonel of militia of that county; and when Cornwallis invaded North Carolina, called out his regiment and took part in the battle of Guilford Courthouse. Mrs. Frances Tucker died in 1788. Her maiden name was Bland, and she was the mother of the celebrated John Randolph of Roanoke. After the death of his wife, Mr. Tucker returned to Williamsburg to educate his children; and in 1803, upon the death of Edmund Pendleton, was appointed a judge of the Court of Appeals, which office he resigned in 1811. In 1813 he was appointed judge of the United States District Court for the eastern district of Virginia, but resigned that also on account of ill health. As a judge, St. George Tucker was diligent, prompt, and impartial. While his opinions are somewhat technical, they are generally learned and sound.



SPENCER ROANE.

He was put into a special pleader's office in Bermuda, and never entirely got over the bias which the rigid rules of that intricate eighteenth-century science gave to his boyish mind. His second wife was Mrs. Carter, the relict of Hill Carter of Curratoman, and daughter of Sir Peyton Skipwith. While a judge of the General Court, he was professor of law in William and Mary College, and published an edition of Sir William Blackstone's Commentaries, a work of great ability, formerly necessary to every student and practitioner of law in Virginia. He was fond of politics, and wrote a number of tracts upon subjects of importance: one upon that question which was the uppermost in American politics until April 9, 1865, — slavery, — in which he took the ground of gradual emancipation as a remedy for the evil. Even at that early day no one was found in Virginia who advocated slavery; the slaveholders simply did not know what to do with the slaves. In private life Judge Tucker was very amiable and much beloved. By his last wife he had no children; but by his first, he had four, two of whom died in his lifetime, and of the two others Henry St. George became President of the Court of Appeals, and Beverley a judge in the State of Missouri. He died in 1827. It

may be as well to sketch briefly the life of his distinguished son here, although the continuity of the history of the Supreme Court will be broken, as he did not become president until after the adoption of the Constitution of 1829–30.

Henry St. George Tucker was born at Matoax, near Petersburg, Dec. 29, 1780, and, like his father, was educated at William and Mary College. In 1802 he went to Winchester to live, and began the practice of the law under the kind encouragement of Judge Hugh Holmes. After reaching a high place in his profession, in 1806 he married Miss Ann Evelina Hunter, of Martinsburg, with whom for forty-two years he lived happily, and raised a large family of children, among whom was the now distinguished John Randolph Tucker, lately prominently mentioned as Attorney-General of the United States in Mr. Cleveland's Cabinet, and President of the American Bar Association.

In 1807 Henry St. George Tucker was elected to the House of Delegates of Virginia, but returned to his profession after a year's service. He took part in the War of 1812; and when it was over, in 1815 was elected to Congress, where he served two terms, and formed intimate friendship with such men as John C. Calhoun, Henry Clay, Lowndes, and others. He occupied a high position in the debates of the period, though a young man, and in contact with his brilliant colleague and half-brother, John Randolph of Roanoke. After leaving Congress he became a member of the Senate of Virginia for four years, when he was elected chancellor of the Fourth Judicial District in 1824, in place of the genial Judge Dabney Carr, who was promoted to the Court of Appeals. While judge of the Fourth Judicial District, he founded his famous Law School at Winchester, Va., which was the largest private law school Virginia has ever known. Among its students were such eminent men as Green B. Samuels, George H. Lee, William Brockenbrough, R. M. T. Hunter (afterward Speaker of the United States House of Representatives), Henry A. Wise, and many other distinguished public men. After the adoption of the Constitution of 1829–30, the Legislature, at its session of 1830–31, elected Chancellor Tucker President of the new Court of Appeals, without his knowledge, over Judges Brooke, Carr, and Cabell, who had been on the bench for years. This unsolicited honor never diminished the mutual regard and esteem of these gentlemen, whose cordial intimacy lasted during all their lives. During the period from 3d to 12th Leigh's Reports, Judge Tucker presided in the Court of Appeals. But in the summer of 1841 he resigned, and accepted the professorship of law at the University of Virginia, where he remained until 1845, when broken in health he retired from all active employments, and returning to Winchester died there on the 28th of August, 1848. He had many charming traits of character.

Some dissatisfaction existed at a very early day at the accumulation of business which was undisposed of in the court. The Legislature passed an Act, Jan. 9, 1811, providing, —

> "That the Court of Appeals shall hereafter consist of five Judges; any three of said Judges shall constitute a court; the said court shall commence its sessions on the first day of March next, and its sitting shall be *permanent*, if the business of the court require it: provided always that the court may in their discretion adjourn for short periods; but it shall be their duty to sit at least two hundred and fifty days in the year, unless they sooner despatch the business of the court."

In conformity with this law, Francis T. Brooke and James Pleasants, Jr., were elected, by joint-ballot of the General Assembly, judges of the Court of Appeals in addition to the three judges then in office; but Mr. Pleasants having soon afterwards resigned his appointment, William H. Cabell was, on the 21st day of March, 1811, commissioned by the Governor to supply the vacancy.

Judge Brooke qualified on March 4, 1811, and was considered an ornament to the bench during his entire career, which was long and faithful.

He was born, Aug. 27, 1763, at Smithfield, the residence of his father, upon the Rappahannock, four miles below Fredericksburg. His father was the youngest son of the Brooke who came to Virginia about the year 1715, and was with Governor Spotswood when he first crossed the Blue Ridge, for which he received from his Excellency a gold horse-shoe set with garnets, and worn as a brooch.

FRANCIS T. BROOKE.

As may be seen by the likeness accompanying this sketch, Francis T. Brooke was a handsome man. He had a life full of adventure, and he has left a charming account of himself in an autobiography.[1] He was one of twin brothers, and one of his other brothers became Governor of Virginia, while he was made a judge of the Supreme Court. They fought in the Revolution with great gallantry. After the term of service of Robert Brooke expired as Governor, he was nominated, in opposition to Bushrod Washington, as Attorney-General, and elected; and while holding that office in 1799, he died. Francis T. Brooke in his own words tells of the start he made in life. Says he:

"My father was devoted to the education of his children. He sent my twin brother John and myself very young to school. We went to several English schools, some of them at home, and at nine years of age were sent to the grammar-school in Fredericksburg, taught by a Trinity gentleman from Dublin, by the name of Lennegan, who having left the country at the commencement of the War of the Revolution was hanged for petit treason, and being sentenced to be quartered after he was cut down, was only gashed down the thighs and arms, and delivered to his mother, afterwards came to life, got over to England, was smuggled over to France, being a Catholic, and died in the monastery of La Trappe (according to Jonah Barrington, in whose work this account of him will be found).

"My father sent us to other Latin and Greek schools, but finally engaged a private tutor, — a Scotch gentleman of the name of Alexander Dunham, by whom we were taught Latin and Greek. He was an amiable man, but entirely ignorant of everything but Latin and Greek, in which he was a ripe scholar. We read with him all of the higher classics; I read Juvenal and Perseus with great facility, and some Greek, — the Testament and Æsop's Fables.

"Having passed the age of sixteen, the military age of that period, I was appointed a First Lieutenant in General Harrison's Regiment of Artillery, the last of the year 1780; and my twin brother, not likely to part with me, shortly after got the commission of First Lieutenant in the same regiment. Our first campaign was under the Marquis La Fayette, in the year 1781, during the invasion of Lord Cornwallis. We came to Richmond in that year, and were ordered to go on board of an old sloop with a mulatto captain. She was loaded with cannon and military stores destined to repair the fortification at Portsmouth, which had been destroyed the winter before by

[1] "Narrative of my Life," by Francis T. Brooke, Richmond, 1849.

the traitor, General Arnold. She dropped down the river to Curle's [probably named after William Roscoe Wilson Curle, one of the judges of the first Court of Appeals], where we were put on board with the stores of the twenty-gun ship, the 'Renown,' commanded by Commodore Lewis, of Fredericksburg; in addition to which ship, there were two other square-rigged vessels and an armed schooner. We were detained some days lying before Curle's, the residence of Mr. Richard Randolph, who treated us with great hospitality."

The arrival of the British fleet in Hampton Roads prevented them from reaching their destination. He returned to Richmond, and was put in command of the magazine at Westham, then seven miles west of the city. His brother John joined his own regiment "under Captain Coleman, and cannonaded General Phillips, then in Manchester, from the heights at Rockets below Richmond." "In a few days," he says, "after I took the command of the magazine, I saw Mr. Jefferson, then Governor of the State, for the first time; he came to Westham with one of his Council, Mr. Blair, whom I had known before, and who informed me they wanted to go into the magazine. I replied they could not, on which he introduced me to Mr. Jefferson as the Governor. I turned out the guard; he was saluted, and permitted to go in. They were looking for flints for the army of the South and of the North, and found an abundant supply."

While the Legislature, to escape the British, had left Richmond and were in session at Staunton, he heard Patrick Henry and Richard Henry Lee speak in the Assembly. He was put in command of a company which was ordered South to join General Green. The regiment was commanded by a Colonel Febiger.

"Having received no pay, the troops mutinied, and instead of coming on the parade with their knapsacks, when the general beat, they came with their arms, as to the beat of the troops. A Sergeant Hogantloy was run through the body by Captain Shelton, and Colonel Febiger ordered the barracks to be set on fire, and we marched about eight miles in the evening. I have said the troops received no pay; one company of them, commanded by Alexander Parker, had been taken prisoners in Charleston, had been very lately exchanged, when it received orders to return to the South; the officers received one month's pay in paper, which was so depreciated that I received, as First Lieutenant of Artillery, thirty-three thousand and two thirds of a thousand dollars, in lieu of thirty-three and two thirds dollars in specie; with which I bought cloth for a coat at $2,000 a yard, and $1,500 for the buttons. Nothing but the spirit of the age would have induced any one to receive money so depreciated; but we were willing to take anything our country could give."

While with the army of the South he tells of an incident which shows what stuff he was made of. He was in the command of Captain Singleton, who was a great favorite of General Green. He says: —

"We lived in the same marquee, on the most amicable terms, until there was a difference between myself and Lieutenant Whitaker, a nephew of the captain. We were eating watermelons, when I said something that he so flatly contradicted that I supposed he intended to say I lied; on which I broke a half of a melon on his head; to which he said, 'Brooke, you did not think I meant to tell you you lied.' I said, 'If you did not, I am sorry I broke the melon on your head;' and there it ended. But his uncle, I presume, did not think it ought to have ended there. Whitaker had fought a duel going out with a Captain Bluir, of the Pennsylvannia line, and wounded him, which made him, at least in appearance, a little arrogant; and our difference was the talk of the camp."

He helped take possession of Charleston and Savannah when the British retired. In the latter place he was very hospitably received. Finally, the company to which he belonged was ordered back to Virginia. They sailed from Charleston for Virginia, and were twenty-four days out of sight of land, almost long enough now to cross and re-cross the Atlantic twice. It was supposed

in Virginia that they had been lost. His own account of himself when he reached home is delightful: —

"Now, what shall I say of myself? The war was over, and it was time that I should look to some other profession than that of arms. I was not quite twenty years of age, and, like other young men of the times, having an indulgent father who permitted me to keep horses, I wasted two or three years in fox-hunting, and sometimes in racing; was sometimes at home for three or four weeks at a time. My father had an excellent family library. I was fond of reading history; read Hume's History of England, Robertson's History of Charles Fifth, some of the British Poets, Shakspeare, Dryden, Pope, etc., and most of the literature of Queen Anne's reign, and even Blackstone's Commentaries, before I had determined to study law. Having resolved at last to pursue some profession, my brother, Dr. Brooke, prevailed upon me to study medicine. I read his books with him for about twelve months, when my brother Robert would say to me, 'Frank, you have missed your path, and had better study law.' I soon after took his advice, and commenced the study of law with him, and in 1788 I applied for a license to practise law. There were at that time in Virginia only three persons authorized to grant licenses; they were the Attorney-General, Mr. Innes, Mr. German Baker, and Colonel John Taylor, of Caroline, — all distinguished lawyers. I was examined by Mr. Baker at Richmond, and obtained his signature to my license. I then applied to the Attorney-General, Mr. Innes, to examine me; but he was always too much engaged, and I returned home. In a few days after, I received a letter from my old army friend, Capt. Wm. Barrett of Washington's regiment, informing me that he had seen the Attorney-General, who expressed great regret that he had not had it in his power to examine his friend, Mr. Brooke, but that he had talked with Mr. Baker, and was fully satisfied of his competency; and if he would send his license down to Richmond, he would sign it. I accordingly sent the license to him, and he signed it, by which I became a lawyer."

He began his professional life in the wilds of Monongalia County, at Morgantown, now West Virginia, and was soon appointed Commonwealth's attorney for the judicial district in which that county was, by Mr. Innes, the Attorney-General who had signed his license. There he met the famous Albert Gallatin, who in his eighty-eighth year wrote him the following letter, namely: —

NEW YORK, 4th March, 1847.

MY DEAR SIR, — Although you were pleased, in your favor of December last, to admire the preservation of my faculties, these are in truth sadly impaired, — I cannot work more than four hours a day, and write with great difficulty. Entirely absorbed in a subject which engrossed all my thoughts and all my feelings, I was compelled to postpone answering the numerous letters I receive, unless they imperiously required immediate attention. I am now working up my arrears. But though my memory fails me for recent transactions, it is unimpaired in reference to my early days. I have ever preserved a most pleasing recollection of our friendly intercourse, almost sixty years ago, and followed you in your long and respectable judiciary career, — less stormy and probably happier than mine. I am, as you presumed, four years older than yourself, born 29th January, 1761, and now in my 88th year growing weaker every month, but with only the infirmities of age. For all chronic diseases I have no faith in Physicians, consult none, and take no physic whatever. With my best wishes that your latter days may be as smooth and as happy as my own, I remain, in great truth,

Your friend,

ALBERT GALLATIN.

Hon'ble FRANCIS BROOKE, Richmond.

He removed to Eastern Virginia, and, says he, "in the year 1790 I sometimes visited my friends at Smithfield; paid my addresses to Mary Randolph Spotswood, the eldest daughter of General Spotswood and Mrs. Spotswood, the only whole niece of General Washington. Our attachment had been a very early one." On account of his poverty there was some opposition to the match; but consent was finally given, and in the seventeenth year of the bride's age, in October, 1791, they were married. He speaks lovingly of her "luxuriant brown hair." She

died on the 5th of January, 1803; and he says: —

"The shock I received on the death of my wife I cannot well describe; but my father had left me a legacy better than property, in his fine alacrity of spirits, (God bless him!) which have never forsaken me; and in the summer afterwards I was advised to go to the Virginia Springs, and began to look out for another wife to supply the place to my children of their mother. While at the Warm Springs, with Mr. Giles and some others, a carriage arrived with ladies. There is something in destiny; for as soon as I took hold of the hand of Mary Champe Carter (though I had seen her before and admired her very much), I felt that she would amply supply the place of my lost wife. I began my attentions to her from that moment. In person and face she was very beautiful. Mr. Jefferson said of her that she was the most beautiful woman he had ever seen, either in France or this country."

The courtship was not long, and on the 14th of the following February they were married. Judge Brooke personally knew all the eminent military men of the Revolution, except Alexander Hamilton and General Knox. He saw Gen. George Washington open a great ball at Fredericksburg, Feb. 22, 1774, by dancing a minuet with a lady, and heard Mr. Jack Stewart, who had been Clerk of the House of Delegates, a great vocalist, when called upon for a song, respond by singing a very amusing one from "Roderick Random." The Father of his Country laughed at it very much; but the next day, when strangers were being introduced to him, he was found to be one of the most dignified men of the age. Judge Brooke freely gives his opinion of many men whom he had met. His sketch of Jefferson is very interesting. He says: —

"He was a man of easy and ingratiating manners; he was very partial to me, and I corresponded with him while I was Vice-President of the Society of Cincinnati; he wished the funds of that society to be appropriated to his central college, near Charlottesville, and on one occasion I obtained an order from a meeting of the society to that effect; but in my absence the order was rescinded, and the funds appropriated to the Washington College at Lexington, to which General Washington had given his shares in the James River Company, which the State had presented him with. Mr. Jefferson never would discuss any proposition, if you differed with him, for he said he thought discussion rather riveted opinions than changed them."

Jefferson's rule might suit for his intellect, but for persons of lesser calibre it will not do. Brooke was a manly fellow, and an ornament to the bench.

Judge William H. Cabell belonged to an old English family which came to Virginia at a very early period. During the Colonial and Revolutionary epochs of our history its members bore a conspicuous part in all public affairs, and in war as well as in peace rendered their country useful and distinguished services. His father had been an officer in the War of the Revolution, and both his father and grandfather had served with distinction in the Virginia House of Burgesses.

Judge Cabell was born on the 16th of December, 1772, at "Boston Hill," in Cumberland County, Va., at the residence of his maternal grandfather, Col. George Carrington. He was the oldest son of Col. Nicholas and Hannah (Carrington) Cabell. He was prepared for college by private tutors at his father's and at his maternal grandfather's, where much of his boyhood was passed. Colonel Carrington had served as a member of the House of Burgesses, chairman of the Cumberland County Committee of Safety, County Lieutenant, and member of the General Assembly. Four of his sons, two of his sons-in-law, and three of his grandsons had served with distinction as officers in the Revolution. His residence was the resort of the eminent men of the times; and the acquaintances there formed, and the influences by which he was surrounded had much to do with shaping the life and character of Judge Cabell.

In February, 1785, he entered Hampden-Sidney College, where he continued until

September, 1789. In February, 1790, he entered William and Mary College, from which he graduated in 1793. In the autumn of 1793 he was licensed to practise law. He soon took a high stand at the bar, and gave evidence of unusual ability. He was elected to the Assembly from Amherst County in the spring of 1796. From that time until he was elected governor, he represented the county of Amherst in the lower branch of the Legislature, his father at the same time representing the Amherst District in the Senate, until his health compelled him to retire from public life. He took a leading part in the Assembly of 1798, and supported the famous resolutions of that session. He returned to the Assembly of 1805, but was that same year elected Governor of Virginia. He performed all the duties of the office with an ability and an industry that won the praise of all parties. It was generally admitted that no executive ever represented the majesty of the State with more propriety, dignity, and grace. Two memorable events occurred in Virginia during Governor Cabell's administration. One of these was the trial of Aaron Burr, at Richmond, before Chief-Justice Marshall, in the spring and summer of 1807, for treason in an alleged design to form an empire in the western part of America. The jury which sat in the case had been formed with much difficulty by repeated venires, summoned from all parts of the State. The foreman of the jury was a conspicuous figure, Gen. Edward Carrington, the uncle of Governor Cabell. General Carrington won distinction in the War of the Revolution; and when Washington formed his first cabinet, he was offered the position of Secretary of War, but declined to enter public life. But another event of greater importance than Burr's conspiracy agitated the country, and produced an excitement hitherto unequalled in the history of Virginia. The disputes with England growing out of the invasion of the neutral rights of American commerce and impressment of American seamen, had aroused universal indignation. Nothing but the prompt and vigorous measures taken by Mr. Jefferson restrained the country from an immediate declaration of war, when it was learned that on the 22d of June, 1807, the frigate "Chesapeake," standing out to sea from Norfolk, had been fired into by the British sloop-of-war, the "Leopard," and several of her men killed and wounded. Some idea of the excitement in Virginia may be formed from the following description: —

WILLIAM H. CABELL.

"Richmond became a theatre of great agitation. Those martial fires which slumber in the breast of every community, and which are so quickly kindled into flame by the breeze of stirring public events, blazed with especial ardor amongst the youthful and venturous spirits of Virginia. Over the whole State, as indeed over the whole country, that combative principle which lies at the heart of all chivalry began to develop itself in every form in which national sensibility is generally exhibited.

The people held meetings, passed fiery resolutions, ate indignant dinners, drank belligerent toasts, and uttered threatening sentiments. Old armories were ransacked, old weapons of war were burnished anew, military companies were formed, regimentals were discussed, the drum and fife and martial bands of music woke the morning and evening echoes of town and country; and the whole land was filled with the din, the clamor, the glitter, the array of serried hosts, which sprang up, like plants of the night, out of a peaceful nation."

During this trying period Governor Cabell displayed great ability, and rendered the country valuable services by his courage and judgment. He was in constant communication with Mr. Jefferson, who valued him as a friend and adviser. He had been an elector at the first election of Mr. Jefferson, and filled the same office again at his second election.

After his term of office had expired, he was elected by the Legislature a judge of the General Court, which office he held until April, 1811, when he was elected a judge of the Court of Appeals, being appointed, March 21, 1811, by Gov. James Monroe and the Privy Council, and qualifying April 3, 1811.

He was elected also by the Legislature, Dec. 7, 1811, and then commissioned by Gov. George William Smith. After the adoption of the new Constitution of Virginia (1830), he was again re-elected a judge of the Court of Appeals, and commissioned by Gov. John Floyd. On the 18th of January, 1842, he was elected President of the court, which position he filled until 1851, when he retired from the bench. He died at Richmond, Jan. 12, 1853, in the eighty-first year of his age, and was interred in Shockoe Hill Cemetery. At a called meeting of the Court of Appeals and Bar of Virginia, held in Richmond, January 14, glowing resolutions in testimony of the singular purity of character and excellences of Judge Cabell were passed, which were published in the "American Times" of Jan. 19, 1853. From thence the following is extracted: —

"*Resolved*, That we cherish, and shall ever retain, a grateful remembrance of the signal excellence of the Hon. Wm. H. Cabell, as well in his private as in his public life. There were no bounds to the esteem which he deserved and enjoyed. Of conspicuous ability, learning, and diligence, there combined therewith a simplicity, uprightness, and courtesy which left nothing to be supplied to inspire and confirm confidence and respect. It was natural to love and honor him; and both loved and honored was he by all who had an opportunity of observing his unwearied benignity or his conduct as a judge. In that capacity wherein he labored for forty years in our Supreme Court of Appeals, having previously served the State as Governor and Circuit Judge, such was his uniform gentleness, application, and ability; so impartial, patient, and just was he; of such remarkable clearness of perception and perspicuity, precision and force in stating convictions, that he was regarded with warmer feelings than those of merely official reverence. To him is due much of the credit which may be claimed for our judicial system and its literature. It was an occasion of profound regret, when his infirmities of age about two years since required him to retire from the bench; and again are we reminded by his death of the irreparable loss sustained by the public and the profession."

Nearly thirty years after the death of Judge Cabell, March 23, 1881, on the occasion of his portrait being placed in the Court of Appeals room at Richmond, the judges caused to be entered in the records of the court an order bearing testimony to his great usefulness and ability, from which the following is taken :—

"We all recognize Judge Cabell as one of the ablest and most distinguished judges that ever sat upon the bench of this court. He was a member of this court for more than forty years. During this time he served his State with a conscientious discharge of duty which he brought to his great office. We, his successors to-day, often take counsel of his great opinions, and those who come after us will do the same. Though dead for more than a quarter of a century, he yet speaketh to us, and will continue to speak, when we shall pass away, to those that come after us, so long as

the jurisprudence of this State shall be governed by the great principles of law and by a fearless determination on the part of her judiciary to declare and uphold that which is just and right."

As legislator, governor, and judge he served his State fifty-six years. The engraving of Judge Cabell which accompanies this sketch is taken from a portrait by the famous French artist Saint-Memmin.

Judge Cabell's opinions were never characterized by a strict adherence to the rigid rules of the common law, but to the more liberal principles of the equity courts. No man ever sat on the Supreme Bench of Virginia who had less pride of opinion than he. A notable instance of this is found in the famous case of Davis *v.* Turner (4 Gratt. 422). Until the decision of that case, the courts of Virginia had followed Edwards *v.* Harben (2 T. R. 587), decided by the Court of King's Bench in 1788, which had established what is known as the doctrine of fraud *per se*. This doctrine was assailed by Judge Baldwin, in a very able opinion, in Davis *v.* Turner. Judge Cabell, after an exhaustive discussion, said, with great candor, that he had changed his opinion, but not without a struggle; yet he would never permit the pride of self-consistency to stand in the path of duty; and he cheerfully changed the opinion which he had theretofore entertained, which would restore the law to the solid foundation of good sense and sound morals. The principles decided in Davis *v.* Turner are the law of Virginia at this day. The case was decided at the January Term, 1848. The General Assembly, which was in session at the time of Judge Cabell's death, adjourned "as an act of respect for his public services."

LONDON LEGAL LETTER.

LONDON, June 7, 1893.

ROYALTY has been much with us of late. Last term it was the Prince of Wales who graced the festal board of the Middle Temple with his august and genial presence. Yestereven being grand night of Trinity term at Lincoln's Inn, the centre of attraction was his Royal Highness the Duke of York, who was recently elected a Bencher. Sir Charles Russell, the Treasurer of the Inn, hurried over from Paris and the Behring Sea arbitration for the occasion. Besides the Duke of York, there were present the Archbishop of York, the Lord Chancellor, the Lord Chief-Justice, the Marquis of Ripon, and the Comte de Franqueville. The company present would number, I think, somewhere about four hundred. Speeches and toasts are not the rule at Lincoln's Inn, but last night an exception was made. After dinner the Treasurer rose and proposed the toast of "The Queen." When this had been suitably honored, Sir Charles Russell then proposed a toast which he said, like the last, needed no preface, and to it the company would look for no response. It was the health of the Duke of York. It gave them the opportunity, of which they gladly availed themselves, of offering their congratulations to his Royal Highness upon a coming event so full of interest to the nation and so full of promise of happiness to him. The toast was, "Health, long life, and happiness to the Duke of York, Master of the Bench of this ancient Inn of Court." The toast was received with great enthusiasm.

Members of the Inner Temple and their friends are eagerly looking forward to a Grand Ball which is to be held in the Hall of the Inn on the 23d of this month. It will be a very brilliant affair, as these functions are always conducted in the most sumptuous manner possible. There has been an immense demand for tickets, and the labors of the organizing secretaries have been far from light.

In a recent letter I referred in terms of praise to the numerous Bar Associations which appear to figure so largely and play so important a part among the lawyers of America. Since then some of the more enterprising leaders of opinion at our own bar have decided to form a Bar Association which shall be to their own profession very much what the Incorporated Law Society is to Solicitors. Practical steps have been already taken; a draft constitution has been published, and a thoroughly representative Provisional Committee will presently take in hand the details of organization. It is proposed that the association should consist of a President, elected annually, an executive council, to be formed of a number of representatives of each Inn of Court, — members of the several circuits, and the Chancery, Parliamentary, Admiralty, Divorce, Bankruptcy, and Criminal Bars being, as far as possible, included. It is suggested that the annual subscription should be five shillings; such a sum would obviously exclude no one, and at the same time, if an adequate number of barristers become members, would suffice to provide working expenses. The Executive Council will hold a quarterly meeting, one probably in each legal term, while there will be an Annual Gathering of the Association under the Chairmanship of the President in one of the Halls of the Inns of Court, where the President will deliver an address reviewing the legislation of the year. Reports of Committees will be considered, and papers read and discussed. The new scheme has met with considerable favor at the hands of the profession, and will in all likelihood get a good start. It is obvious enough that no serious objection could be taken to the idea; at the same time I cannot profess to think that the new Association has a great future before it. The same causes which have stunted the career of the Bar Committee, now to be absorbed in the Association, will operate unfavorably for the latter. As I have said more than once in my letters, the old Inn of Court system, each Inn with a governing body jealous of its prerogatives, stands largely in the way of any other system of professional organization. I have no hesitation in predicting that such an Annual Gathering as is proposed would be a failure; it would be voted dull and uninteresting, and only faint curiosity would follow its proceedings. It certainly will require a number of years of hard and successful work before the English Bar Association can claim a permanent position in our legal system.

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The Lawyer's Easy Chair.

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

BY IRVING BROWNE.

CURRENT TOPICS.

THE LIZZIE BORDEN CASE. — Lizzie Borden was tried last month for the murder of her parents, and just as every lawyer in the country expected, was acquitted in short order. As the case went to the jury there was absolutely nothing against her. The trial was simply a police miscarriage. The people's case was a tissue of improbabilities, — we do not think it too strong to say impossibilities. Here was a murder of two persons, in the most bloody and unnecessarily cruel manner, — hacking with a hatchet even after death; a crime evidently the work of a lunatic or of a desperate and hardened criminal. Instead of looking for such a person, the police seize upon the daughter, a mature young woman, well educated, refined, travelled, Christian, with property of her own, with no adequate motive, on loving terms with the father, and on civil terms with the step-mother, and try to convince themselves, the public, and a jury that she hacked her step-mother to death, in broad daylight, in her own house, at an hour when she might easily have been interrupted, then changed or washed her dress and re-arranged her hair, met her father calmly an hour or so later and killed him in the same manner, and repeated her toilet! The mere statement is enough to defeat belief. Not a spot of blood was found on her nor on any article of her dress; not a weapon was discovered to answer for the wounds. She was self-possessed and calm, though exhibiting great sorrow and horror. The extreme weakness of the case is illustrated by the State's theory that she stripped herself naked to do these horrid deeds! Here then was a Jack-the-Ripper crime, and the police instead of scouring the country for a tiger pounced on a harmless house cat, simply because she was in and out of the dwelling, and they could not see who else could have done it! In the entire history of police stupidity there is nothing to compare with this, and we are sorry to feel obliged to add, nothing to surpass the wickedness and blood-thirstiness with which the young woman was followed up and conspired against in order to save the police from defeat and ridicule. The incident of the prison matron's testimony demonstrated that. But Lizzie was not only acquitted, but triumphantly cleared, in our judgment, of even the slightest suspicion that may temporarily have arisen against her. The terrible injustice done her should teach people that it is not essential to make a victim where none apparently exists, and that citizens are not to be hanged simply because people cannot imagine who else could have committed the crime. The case is not unprecedented. The murder of Mr. Nathan in New York was very similar, but his sons were not put on trial for it. There have been two (if not three) remarkable murders in Connecticut in recent years, and persons have been tried and acquitted in every case. We take pleasure in adding our tribute of admiration of the skill displayed in Lizzie's defence. Greater wisdom, tact, acuteness, and sound sense were never displayed by a lawyer than by Governor Robinson, and these were supplemented by sympathy and humanity which do him honor as a man.

JANUS ON THE BENCH. — The court of chancery survives in Vermont, but it survives in a singular sort. The same officer sits as chancellor and as common law judge, and he deals out common law or equity according to the side from which he is approached. He therefore resembles the heathen god Janus, of the double face, or Mr. Facing-both-ways, in the "Pilgrim's Progress." By an appeal to his better self he can mitigate the rigors of the common law by the application of the milder and more beneficent principles of equity. Like Mr. Orator Puff, he has "two tones in his voice." So, if he finds when approached on his common law face that he is bound to grant the demand of the plaintiff, but feels that it would be unjust and inequitable to do so, he may allow the defendant to prostrate himself beneath his equity face, and solicit him to restrain himself from pronouncing the dreaded judgment of his common law mouth. It is like praying the Deity to restrain his wrath, but with a more appreciable result. A Vermont lawyer, Hon. Joel C. Barker, of Rutland, thus describes this marvellous procedure: —

"In Vermont, where the same man presides over the County Court and Court of Chancery in the same county, we often have the judge saying from his high seat of honor and of justice to a suitor: 'The law compels me to decide this case in your favor, and to award you a sum in

damages; but such a judgment would be an insult to God's justice, you have taken a wicked and mean advantage of your opponent, and your recovery is a wrong and a sin; but your adversary has no legal defence to your iniquitous persecution of him: therefore, as chancellor, I hereby restrain and enjoin you from proceeding further in your action, and forcing me to do such manifest wrong to your victim.' How does this phase of legal practice strike the mind of a just man, who has not been educated in legal schools where the injustice of the law is made to hide under the sheltering wing of the Court of Chancery, and the jurisdiction of equity is held up as the counterpart and corrector of the deficiencies of the common law? Such a man would be thankful that there was a court of equity, but he would be shocked that there were courts that were so antagonistic to the administration of justice that the supervision of an equity tribunal should ever be necessary to protect men from injustice in court. We should be grateful for our courts of equity, but we have no need of any other. There are cases where courts of law can do full justice, and there ought to be no cases where they cannot. One of the reasons given for the necessity of a Court of Chancery is that the procedure at law is too rigid to admit of the special remedies that equity requires; a reason that would never be uttered were it not that man's ingenuity had been taxed to assign a reason where none existed in the logic of the subject. If the forms of law are an impediment to justice in the first and second stages of development as arranged by Sir Henry Maine, these forms should be so changed and improved that they become suitable and proper instrumentalities through which courts can do what is right in all cases. Instead of requiring a special tribunal to correct the deficiencies of a judicial system, the system itself might be reformed."

This description of the versatility of the legal judge of all work reminds one of Steerforth's description of Doctors Commons, in "David Copperfield:" "You shall find the judge in the nautical case the advocate in the clergyman's case, or contrariwise. They are like actors: now a man 's a judge, and now he 's not a judge; now he 's one thing, now he 's another; now he 's something else, change and change about."

We do not know whether the suitor who happens to approach the wrong face of the court is in as grievous a plight as the ancient litigant who entered the temple of justice by the wrong door, and was subject to be kicked out incontinently and to find that door barred against him, or whether the minister of justice simply whisks around the other face. We do not know how stiff-necked justice is among the Green Mountains; but it would be a novel and uncomfortable sensation for the suitor, having knelt before the mild and benignant face of equity, to find, on glancing up, the severe face of common law frowning on him. There is at least one alleviating *feature* in this combination, — *both* faces cannot frown on the suppliant, as in the ancient procedure they sometimes did.

"The Hound's Tail's Case." — This is the title which Sir Frederick Pollock gives to the case of Dickson *v.* Great Northern Railway Co., 18 Q. B. Div. 176, which he has done into verse in his "Leading Cases and other Diversions." We have essayed a poetical treatment of the same case in a different vein, and hope that the critics will find that we have got the feet all right. Why should Mr. Gladstone look further than Sir Frederick or ourself to fill the post left vacant by Lord Alfred? Neither of us could write worse poetry than Mr. Ruskin if we should try. For example: —

Listen to my Tale of Woe!

Tune — "*The wind blew through his whiskers.*"

A ballad of a greyhound's tail —
A tale
Of wail —
Listen to my tale of woe!

On railway-station platform lay
A coursing hound, upon his way,
In sleep
Quite deep —
Listen to my tale of woe!

"Dutch Oven" was that greyhound's name,
Much money he had won and fame;
Sure in that very agile game
To take
The cake —
Listen to my tale of woe!

He lay at length, with tail stretched out;
The passengers in hurrying rout
Observing him, he had no doubt,
Would deftly walk that tail about,
Nor tread
His head —
Listen to my tale of woe!

A luggage-porter, void of wit,
Malicious, careless, or blind a bit,
Soon ran his barrow over it,
And cut a piece off amply fit
For sausage link; stuck on to knit
Though tried,
Denied —
Listen to my tale of woe!

An offer by the corporation
The dog man heard with indignation,
Resorted then to litigation,
And furnished expert information
Of serious deterioration
And curtailed current valuation
By truck —
Bad luck!
Listen to my tale of woe!

While once as fleet as highland deer,
His tail extended in the rear
Like rudder served his course to steer,
Now there arose authentic fear
His feet would prove extremely queer,
And stagger round from far to near,
Like pugilist hit on the ear,
Corkscrew
To view —
Listen to my tale of woe!

The jury swallowed every word,
Nor deemed this theory absurd,
The like of which was never heard
Until this accident occurred;
And not by novelty deterred,
With promptitude the twelve concurred,
And "Five and twenty pound" soon stirred
The court-room's atmosphere in verd-
ict round
And sound —
Listen to my tale of woe!

WHITE CAP-ITAL PUNISHMENT.—When the writer of these lines was at Heidelberg two years ago, he and several of his companions, being desirous of visiting one of the University Society houses, were recommended to apply at the house of the "White Cap" corps, the most aristocratic of all. We did so apply, and were met by a handsome young count, with some scratches on the left side of his face, who informed us, with a trace of hauteur, that the request was unprecedented, and that he did not feel authorized, in the absence of his comrades, to grant it. Our spokesman thereupon apologized, explaining that we were Americans, and having heard much of his corps were very desirous to see the house, and felt a deep disappointment at our failure. "Ah!" replied the young count, "then you have heard of our society in America!" "Yes, indeed," was the reply, mingling a grim sense of humor with the pardonable dereliction from the exact line of truth; "the 'White Caps' are a household word in America!" At that magic touch the count bowed nearly to the ground, the doors flew open, and we were graciously conducted through the sacred precincts. If our conductor had understood the "true inwardness" of the expression, he probably would have felt less flattered, as his gallant and generous soul would have shrunk from a supposed likeness to the meanest, most cowardly, and most brutal organization that ever disgraced the soil of this free country. It must give every lover of social order real pleasure to observe that the people of the South have had all of it and its diabolical outrages that they can endure, and have at last successfuly invoked the arm of the law against it in Mississippi and Louisiana. This is much wiser than a resort to lynching to put down and punish lynching. The craven disturbers of the peace do not appear to good advantage in the courts, but whine and cry at their punishment. In one case, it is recorded, the wife of one of them held up her young baby to the judge, and with tears asked him what was to become of them if the husband and father had to go to prison? The judge kindly took the child for a moment and soothed the mother, but sent the culprit up all the same. That was a pretty scene, — mingling mercy with justice. It might pertinently have been asked by the judge what had become of feeble women and young children, driven out in the inclement night from their blazing homes, their husbands and fathers cruelly tortured and banished, sometimes slain, by reckless and hard-hearted neighbors. It would not prove a great inducement to the inhabitants of civilized Europe to visit the Columbian Exposition at Chicago, if they were informed of the fell doings of "White Caps" in the South and West of the country which is blowing her own horn at such a lusty pitch, and bragging and swaggering at such an intolerant rate about her "civilization"! "White Caps" have infested Indiana and Illinois within a comparatively recent period, and our foreign friends might naturally feel a little timid lest they should break out in some dangerous gambols against the representatives of the hated despotisms of the East. There is considerable discussion in these days about the policy of the death penalty, but there probably will be no difference of opinion about the policy of White Cap-ital punishment.

THE "PURPOSE NOVEL."— We have the misfortune to disagree with Mr. Marion Crawford, and his reviewer in this periodical in the May number (p. 252), concerning the undesirability of a "purpose" in fictitious literature. Mr. Crawford says that novels should be neither sermons nor lectures, and that if their design is other than to interest they become "inartistic." We might go so far with him as to agree that the purpose should not be glaring. But there are many great works of fiction in which there is an underlying moral purpose, for which they are none the worse. The great novels of Dickens are eminent examples of this. Are such works as Bleak House, Dombey and Son, Little Dorrit, Nicholas Nickleby, and Martin Chuzzlewit any the worse because they subordinately preach powerfully against the court of chancery, commercial pride of family, imprisonment for debt, and bad private schools, what Bishop Potter calls "the infinite swagger of American manners," and hypocrisy? Is there not in the one perfect chrysolite of American literature, "The Scarlet Letter," a tremendous lesson concerning the misery of sin, the ugliness of revenge, and the beauty of repentance? In two eminent instances, "Uncle Tom's Cabin" and "Robert

Elsmere," the purpose is completely undisguised; and yet they have been and still are somewhat popular, and doubtless will continue to give pleasure as long, for example, as the unutterable absurdity of "Mr. Isaacs." It is pleasanter, undoubtedly, not to find the purpose too prominent. A purpose is like the human skeleton. We do not want the anatomy offensively visible; we do not want the bones on the outside; but bones are useful. It is not to be denied that many novels without a purpose are pleasing; nor indeed that this is the safer form of expression for most writers, for it requires a master to deal with a purpose in fiction. But the invertebrates, like Mr. Crawford, should not rail against those who have a backbone. The presence of that stiffening enables them to stand against the ravages of time more sturdily than the mere flesh and blood beauties of romance. After all, it is rather amusing to read the criticisms of Messrs. Crawford and Howells on a school of romantic literature so infinitely superior to their own in attractiveness and influence. There were more copies of Dickens's novels sold last year than in any year of his lifetime; but who will know anything of these latter-day apostles thirty years after their death, and for that matter, who ever re-reads their gospel now?

JUDICIAL POETRY. — We knew that Lord Chief-Justice Coleridge comes of a poetical family, but we have seen some recent verses, apparently attributed to him, which seem hardly up to some of the great Samuel's, or some of his own which have come under our observation. The "Law Times" has a column and a half entitled "Royalty at the Middle Temple," beginning thus: —

"Expectation stood on tiptoe on Friday, last week. His Royal Highness the Prince of Wales was going to dine as a Bencher, and his son the Duke of York, just betrothed to the Princess Victoria May, was also expected. It was a great occasion; a large bench mustered, whilst probably never was the old hall so crammed with barristers and students, of every race and color. There was a covered entrance to the hall, and the passages were carpeted with crimson baize and lined with brilliant flowers. The band of the Grenadier Guards, under Lieut. Dan Godfrey, occupied the gallery above the screen. Royalty was late, and kept waiting such august persons as the Master Treasurer, and Lord Halsbury, and Lord Justice Lindley, Sir Henry Hawkins, and Sir Francis Jeune, and gentlemen of the position of Sir Peter Edlin and Sir Henry James, the Dean of Llandaff and Canon Ainger. The genial presence of the Prince, however, removed all sense of hunger and annoyance," etc., etc.

Among a medley of songs and ballads was "the well-known refrain, 'Mrs. 'Enery 'Awkins is a fust-class name,' which excited the merriment of the students to an extraordinary extent, and vastly amused the head-table." The report continues: —

"Subject to correction by Lord Coleridge, we believe the following is correct: —

'I knows a little Dona,
I 'm about to own 'er,
She 's a-goin' to marry me;
At fust she said she would n't,
Then she said she could n't,
Then she whispered, "Well, I 'll see;"
Says I, "Be Missis 'Awkins,
Missis 'Enery 'Awkins,
Or acrost the seas I 'll roam.
So 'elp me, Bob, I'm crazy,
Liza, you 're a daisy,
Won't yer share my 'umble 'ome (won't yer)?

'"Oh, Liza! Dear Liza!
If yoo die an old maid,
You 'll 'ave only yerself to blame.
Oh, Liza! Sweet Liza!
Mrs. 'Enery 'Awkins is a fust-class name."'"

It is awful to think that such things can lurk under a Chief-Justice's wig out of a Gilbert and Sullivan's opera.

NOTES OF CASES

MENTAL ANGUISH. — There is the most unfeeling class of telegraph companies in Texas that we ever heard of! In every number of the West Company's Reports are one or more cases of "mental anguish" inflicted by them. But in a very recent case it appears that the value of that mental anguish was calculated too exactly and at too high a figure to stand on review. It was the case of a sick child (Western Union Tel. Co. *v.* Berdine, 21 S. W. Rep. 982), and it was held that where defendant's negligence caused a delay of twelve hours in the arrival of the doctor, and in the mean time the plaintiff might have called another doctor, a verdict for $1,999.99 damages is excessive.

ACTION BY SERVANT AGAINST FELLOW-SERVANT. — In Steinhauser *v.* Spraul, Supreme Court of Missouri, 21 S. W. Rep. 859, it was held that an action may be maintained by a servant against the master's wife as fellow-servant for injuries sustained in using, at the wife's bidding, a ladder known to the wife to be unsafe. The court said: —

"In the case of Osborn *v.* Morgan, 137 Mass. 1, s. c 39 Am. Rep. 437, where the facts were that the general superintendent of a manufacturing corporation, whose works covered several acres of ground, and in whose employ were a large number of men, including plaintiff, designed for one of its mills a mechanical fixture consisting of a rail sixteen feet above the ground, on which was

a movable truck and chain. The rail was to go from one side of the building to the other. The machine was made too short, so that at one end it only came within fourteen inches of the side of the building. The master builder put it up, and left it without a stop. After the mill had been running some time, a closet was built under the end of the rail, so that in fact, although it was not designed for this purpose, the truck could not get off of the rail while the closet remained, on account of the chain going against it. The day after the closet was made the general superintendent ordered the closet removed so far as it interfered with the movement of the truck; and while the plaintiff, a carpenter in the employ of the corporation, was engaged in this work, as directed by the master builder, the truck came off the rail, and injured him, and it was held, in an action by him against the general superintendent for the injuries sustained, that, even if the defendant was not liable for any negligence in the construction of the building or its appliances, the jury would be warranted in finding that the defendant, who was also an employé, failed in his duty to the plaintiff in ordering him to move the closet, without ascertaining whether the removal would be attended with danger, and that the action could be maintained. In the case of Rogers *v.* Overton, 87 Ind. 410, where one fellow-servant was injured by being directed by another fellow-servant, under whose control he was at the time, to climb upon the elevated end of a bar of iron about which they were at work, and he obeyed, that, notwithstanding the plaintiff and the defendant were serving the same master, did not preclude the former from maintaining an action against the latter for a wrongful or negligent act. A servant may maintain an action against his fellow-servant for injuries received in the master's service. Hinds *v.* Harbou, 58 Ind. 121; Hinds *v.* Overacker, 66 Ind. 547; s. c. 32 Am. Rep. 114; Griffiths *v.* Wolfram, 22 Minn. 185; Whart. Neg. § 245. In the case of Rogers *v.* Overton, *supra*, the court says: 'It is settled law that a servant shall not be exposed to unnecessary and unusual danger; and if he is so exposed he may recover for injuries resulting to him from the wrongdoer who exposed him to peril. It cannot be that a servant shall have no action against his superior who unnecessarily sends him to a place of extraordinary danger, for all sound principles and well-considered laws lead to a different conclusion.'"

It is noteworthy that in the Massachusetts case cited the court very unceremoniously overruled its contrary doctrine in Albro *v.* Jaquith, 4 Gray, 99.

NEGLIGENCE. — A curious case of negligence is Bonner *v.* Grumbach, Court of Civil Appeals of Texas, 21 S. W. Rep. 1010, where it was held that the fact that a passenger on a train takes off his coat, and places it on an unoccupied seat, is not such contributory negligence as will prevent his recovering for money therein contained, lost by the overturning of the coach into the water; but where the passenger recovered his coat shortly after he had got out of the overturned coach, and immediately missed his money, his failure to notify the carrier of his loss, and of all effort on his part to find it, will preclude a recovery. The court said: —

"Plaintiff's act in riding with his coat off in no way helped to bring about that occurrence, which was the immediate cause of the loss. The petition showed that the loss of the money was caused directly and immediately by the fault of the company, through which the car was overturned, without the intervention of negligence of the plaintiff, or of any other cause. The damage claimed was not therefore too remote. . . .

"He does not show that he made any effort to find it, or any inquiry for it, nor that he notified the servant of appellant that he had lost it, or in any way called upon them to recover it for him. So far as the record shows, they knew nothing of the fact that he had lost, or ever had the money. A plaintiff is not required ordinarily to assume the burden of showing that he has not been guilty of negligence; but when the facts which he states expose him to the suspicion that he has negligently contributed to his loss, he must clear away such suspicion before he will be permitted to recover. We think the latter rule applies here. It is not probable that in the overturning of the car the money was destroyed. Its ownership was not changed; it remained the property of appellee. Notwithstanding the negligence of appellants, it was still his duty to act as a reasonably prudent person would ordinarily act under like circumstances, and if by so doing he could have prevented the final loss of his property, he ought not to recover. This principle, we think, would require that one situated as he was should make such reasonable efforts to regain his property as the situation allowed. Certainly, it would require that he at least give notice of his loss to those whom he proposed to charge with responsibility, in order that they might protect both him and themselves, if possible, by recovery of the money. If the circumstances were such that none of these things could have been done, or such as would have rendered effectual any efforts to find the money, that should have been shown."

DEAF AND DUMB DRIVER. — In ancient times deaf mutes were considered idiots, but courts are now more lenient. In Arkansas Tel. Co. *v.* Ratteree, Arkansas Supreme Court, 21 S. W. Rep. 1059, it was held that where a person leaves his horse standing in the street, with a deaf and dumb boy on the seat of the wagon, he himself being in the wagon, though not on the seat, the question whether he left his horse without a competent person to take care of it is for the jury. The court said: —

"At the time the wire fell and caused the horse to start the appellee was in his wagon, and the deaf-mute boy was on the seat of the wagon. We are of the opinion that the question whether at the time of the accident the appellee had left his horse standing in the street, without a competent person in charge of him, was a question of fact properly left to the jury under the instructions of the court. On the evidence in this case it could hardly be said that the appellee could have been convicted of a

misdemeanor, under the ordinance of the city of Ft. Worth, for leaving his horse in the street without a competent person to take charge of him. The jury might have found that the appellee, being in the wagon, was in charge of him himself, or they might have found the deaf-mute boy, being on the seat of the wagon, was competent to take charge of him. The horse did not run away. The ordinance shows that its purpose is to make owners of horses left in the street without some competent person to take charge of them responsible for all damages caused by the horses running away, and to punish the act as a misdemeanor, in the interest of the public as a police regulation."

THE RESTLESS SMALL BOY. — In Catlett *v.* St. Louis, I. M. & S. Ry. Co., Supreme Court of Arkansas, 21 S. W. Rep. 1062, it was held not negligence for a railroad company to omit to keep a lookout to prevent boys from swinging on the ladders of its slowly moving freight-trains. The court said: —

"A railway company is not bound to keep a lookout to prevent boys from swinging on the ladders of its moving freight-trains; and its failure to do so is not negligence. Bishop *v.* Railway Co., 14 R. I. 314; Railway Co. *v.* Stumps, 69 Ill. 409; Railway Co. *v.* Ledbetter, 45 Ark. 246; Railway Co. *v.* Connell, 88 Pa. St. 520. If boys have stolen rides in that way at a given point, without remonstrance from the company's train-men, that fact does not amount to an invitation to do so on another occasion. The boy who attempts it is a trespasser, and the company owes him no duty save not to injure him wantonly. Daniels *v.* Railway Co. (Mass.), 28 N. E. Rep. 283;[1] Morrissey *v.* Railway Co., 126 Mass. 377; Wright *v.* Railway Co. 142 Mass. 296; Rodgers *v.* Lees, 140 Pa. St. 475, and cases cited; Shelton *v.* Railway Co., 60 Mo. 412; Duff *v.* Railway Co., 91 Pa. St. 458; Railway Co. *v.* Smith, 46 Mich. 504. The appellant argues that a slowly moving train is 'dangerous machinery,' alluring to boys; and that it is therefore negligent of the company to fail to take precaution to keep them off such trains. That is the argument made to sustain a class of cases known as the 'Turn-table Cases,' the leading one of which is Railway Co. *v.* Stout, 17 Wall. 657. The doctrine of those cases has been much criticised and doubted, and by some courts repudiated. See Daniels *v.* Railway Co. (Mass.), 28 N. E. Rep. 283; Patt. Ry. Acc. Law, § 196. Whatever its merits may be, it has never been extended to such length as to control a case like this. See Bishop *v.* Railway Co., 14 R. I. 314; Shelton *v.* Railway Co., 60 Mo. 412. The youth of the person injured will sometimes excuse him from concurring negligence, but no amount of youthful recklessness can supply the place of proof of negligence on the part of a defendant sought to be charged on account of negligence. Patt. Ry. Acc. Law, § 75."

WHAT IS A "CHILD"? — In Quinlen *v.* Welch, decided last month by the Supreme Court of New York, it was held that under the Civil Damage Act, which gives a right of action to any husband, wife, or child, for injury in person, property, or means of support in consequence of the intoxication of any person, against the seller of the intoxicants or the lessor of the premises where they were sold, an action may be maintained by a child *en ventre sa mere* at the time of the injury and subsequently born alive. In this case the father became intoxicated, wandered on a railway, and was killed by a train; the child was born alive the next day. Haight, J., in a very well reasoned opinion, showed by ample authority that a child *en ventre sa mere* has many civil rights in respect to estates, and in The George and Richard, L. R. 3 Adm. 465, it was held that such a child, if born alive, would be entitled to damages under Lord Campbell's Act, against the ship-owners for the death of the father produced by a collision, and consequent loss of support. The case of Walker *v.* Gt. Northern R. Co., 21 Irish L. R. 69; 26 Am. Law Rev. 50; 43 Albany Law Journal, 464, where it was held that such a child could not recover damages against the carrier for an injury to its person in transportation while *en ventre sa mere*, was distinguished on the ground that the company contracted only to carry the mother and was not liable for the injury to her freight; or as Judge Haight puts it, "that while the company must be regarded as the common carrier of the mother, under the law of the Emerald Isle, as understood by the court, the mother was the common carrier of her unborn child." That decision is clearly not in conflict with the present, nor with that in the admiralty case. The four judges of the court concurred. We see no satisfactory answer to the position of the court that the action is maintainable because "an unborn child, subsequently born alive, if deprived of a parent suffers in its means of support equally with the children that were living at the time of the decease of such parent." Certainly if an unborn child can at birth take a benefit by will, there is no reason why it cannot enforce a benefit under a statute.

A SAD LOSS. — Lang *v.* Pennsylvania R. Co., 26 Atlantic Rep. 570, Supreme Court of Pennsylvania, is calculated to strike horror to a Kentuckian's heart. Freight-cars loaded with whisky, having been stopped by a flood, were attacked and broken into by thieves, and part of the whisky was taken. The conductor and train-men were present, but left, and made no effort to protect the property. A body of citizens drove the thieves away, and guarded the cars until the next morning, when, to keep it from falling into the hands of the mob, they destroyed the rest of the whisky. *Held*, that as the employes abandoned the whisky, and made no effort to protect it, the carrier was liable for its loss. The loss did not

[1] See "The Siren Turn-Table," 4 Green Bag, 124.

arise from inevitable accident, or the act of God, nor did it result from insurrection, or the work of a mob. The court waxed eloquent and indignant thus: —

"The whisky claimed for in this action was not destroyed by a flood. Part of it was stolen by thieves after the flood subsided, and the rest of it was destroyed by a volunteer guard of citizens, who had watched and protected the train during the night following the flood and part of the next day, as the easiest way of keeping it from falling into the hands of the same dangerous class of men who had gotten a taste of it on the previous afternoon. The flood was therefore not the cause of the loss, but the occasion the opportunity for its plunder by bad men. The thieves came in the wake of the flood to pick up and appropriate what the more merciful waters had spared. They came to this train, and began to force open the doors of some of the cars. The conductor, and part, if not all, of his crew, came upon the ground at about the same time. They saw an ax being used to open one or more of the cars, but they made no effort to defend the train or drive away the thieves. They did not so much as to remonstrate with them, or order them away, but turning their backs, they surrendered the train and its freight to the tender mercies of the vagabonds who had attacked it, and went away from the neighborhood. Private citizens came soon after, drove the thieves out of and away from the train, and stood guard over it all night and until the middle of the next day; but the train men seem to have had neither part nor lot in the effort to save the property of their employer. The reason was given by one of them while on the witness stand with a cool, deliberate heartlessness not often met with in the most hardened criminals. He said he did not try to help the citizens save the cars and their contents because he 'had no orders to do so.' He stood and looked on. He saw the perils of his employer's property. He saw citizens, with no personal interest involved, trying to save it, but he did not help, because he 'had no orders.' Whether he and others like him were cowards shivering with fear in the presence of a few thieves, whom unarmed citizens drove away, or were thieves at heart, and in full sympathy with those who were trying to loot the cars that they should have defended, is a matter of no consequence. In either case they neglected their obvious duty. The railroad company was represented in the carriage and safe-keeping of the freight on the train by the men to whom the train had been committed. If they deserted their posts, and left the goods uncared for, and they were stolen or destroyed, their employer must suffer for their inefficiency. Under the facts of this case the loss sued for did not arise from inevitable accident or the act of God. It did not result from insurrection or the public enemy. It was not the work of a mob. It was due in part to plain stealing, done in daylight, in the presence of the train-men, and without the slightest resistance or remonstrance on their part. For the rest, it was due to the action of citizens who, after having guarded what remained for nearly twenty-four hours, destroyed it, when they could no longer keep up their watch over it, rather than see it consumed by the human brutes to whom it had been abandoned by the train-men."

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IGNORANCE NO DEFENCE TO PERJURY. — The inability of the defendant to spell according to the generally accepted traditions did not seem to avail him in Williams *v.* State, Alabama, 12 South. Rep 808. The indictment was as follows: —

"The grand jury of said county charge that before the finding of this indictment, Turner Williams, with the intent to injure or defraud, did falsely make or forge an instrument in writing, in words and figures substantially as follows. —

'Mr. C. brint
let wash horn
have two dollars
in trade
an oblige
W t L Au 27 1892'

"The said Turner Williams meaning and intending to express in and by said instrument that W. T. Lyles had written an order dated August 27, 1892, to Mr. C. Bryant, to let Wash Holmes have two dollars in trade, or the said Turner Williams, with the intent to injure or defraud, uttered and published as true said above-described written instrument, the said instrument having been falsely made or forged, and the said Turner Williams interpreting and understanding said instrument to be an order from W. T. Lyles to Mr. C. Bryant to let Wash Holmes have two dollars in trade, against the peace and dignity of the state of Alabama."

Such misspelling was certainly against the dignity of the State.

A LUNATIC WIFE. — In Pile *v.* Pile, 22 S. W. Rep. 215, it was held that lunacy is not a ground for divorce, though it prevents the wife from discharging her conjugal duties. Why this case was marked "Not to be officially reported," is hard to discover, for there is nothing in the decision to be ashamed of. Pryor, J., said: —

"It is argued that this mental disease is such as to prevent the wife from discharging her conjugal duties, and the husband from enjoying that intercourse with the wife resulting from the marriage relation. We cannot give such an enlarged meaning to the statute. Here the wife has a mind diseased without her fault. She lived happily with her husband for several years after the marriage, and discharged all the obligations and duties pertaining to the marriage relation. This relation is presumed to have been entered into by reason of the love and affection the two had for each other; and to adjudge that the misfortunes of this life, originating from causes over which neither have control, depriving the husband of the right of enjoying his baser passions, is a ground for divorce, would be placing mankind on a level with brute creation, and making the real virtues and happiness of married life subordinate to the enjoyment of mere animal propensities. This man, when he took the unfortunate woman to be his wife, vowed at the altar to love, cherish, and protect her in sickness and in health, and whether the wife is diseased in mind or body, his marriage vow should and must be

observed. The more helpless she becomes, the greater his duty to love and protect her. The wife has never abandoned the husband, but is now confined in the asylum for lunatics by his consent and direction."

It must be noted that the husband offered to bind his estate for the proper support of his wife.

A DEFINITION. — In Nix *v.* Hedden, 13 Supreme Court Reporter, 881, it was held that tomatoes are "vegetables," rather than "fruits," in the common and popular acceptation of such words, and were not free of duty under the provision of the free list for "fruits, green, ripe, or dried." Mr. Justice Gray observed: —

"There being no evidence that the words 'fruit' and 'vegetables' have acquired any special meaning in trade or commerce, they must receive their ordinary meaning. Of that meaning the court is bound to take judicial notice, as it does in regard to all words in our own tongue; and upon such a question dictionaries are admitted, not as evidence, but only as aids to the memory and understanding of the court. Brown *v.* Piper, 91 U. S. 37, 42; Jones *v.* United States, 137 U. S. 202, 216; Nelson *v.* Cushing, 2 Cush. 519, 532, 533; Page *v.* Fawcet, 1 Leon. 242; Tayl. Ev (8th ed.) §§ 16, 21. Botanically speaking, tomatoes are the fruit of a vine, just as are cucumbers, squashes, beans, and peas. But in the common language of the people, whether sellers or consumers of provisions, all these are vegetables which are grown in kitchen gardens, and which, whether eaten cooked or raw, are, like potatoes, carrots, parsnips, turnips, beets, cauliflower, cabbage, celery, and lettuce, usually served at dinner in, with, or after the soup, fish, or meats which constitute the principal part of the repast, and not, like fruits generally, as dessert.

"The attempt to class tomatoes as fruit is not unlike a recent attempt to class beans as seeds, of which Mr. Justice Bradley, speaking for this court, said 'We do not see why they should be classified as seeds, any more than walnuts should be so classified. Both are seeds, in the language of botany or natural history, but not in commerce nor in common parlance. On the other hand, in speaking generally of provisions, beans may well be included under the term vegetables. As an article of food on our tables, whether baked or boiled, or forming the basis of soup, they are used as a vegetable, as well when ripe as when green. This is the principal use to which they are put. Beyond the common knowledge which we have on this subject, very little evidence is necessary, or can be produced.' Robertson *v.* Salomon, 130 U. S. 412, 414."

TWICE IN JEOPARDY. — In Cleary *v.* Booth, Q. B. Div., 68 Law Times Rep. N. S. 349, it was held that the head master of a board school has power to inflict corporal punishment on a pupil belonging to the school, for an offence committed by the pupil when on the way to the school and out of school hours. Lawrence, J., said: —

"The cases cited show what is to be done by the master with the pupils when they are in school and away from home, but there is nothing to show what is to be done when they are between their homes and their school and misconduct themselves. I am of opinion that in such cases the power of the father, as was exercised by the appellant in this case, is delegated to the schoolmaster. The Regulations of the Education Department of 1892 contain a clause allowing a grant for discipline and organization, and it is also provided in that clause that care should be taken in the management of a school to bring up the children in habits of punctuality, good manners, and language, and also to impress upon the children the importance of obedience, respect for others, and of honor and truthfulness. It could not therefore be said, if the schoolmaster was only allowed to punish for acts done in the school, that he had done everything to insure that end. Should a boy misbehave himself immediately after leaving the school premises, I am clearly of opinion that in such a case the schoolmaster would have authority to punish the boy so misconducting himself. It would not be reasonable, I think, to hold that the parent's authority ended at the door of his own house, and that the schoolmaster's authority did not begin until the schoolhouse was reached." Collins, J., said: "It is clear law that the father has the right to reasonably punish his children. From classic times we have the practice of inflicting corporal punishment by the parent. The question now before us is, How far are we to infer that this right is delegated to the schoolmaster by the parent or guardian? Does the parent delegate his power beyond certain limits? The bringing up and discipline must, to some extent, extend to children when outside the school as well as when inside the school. The parent's authority could never be worked if it is to extend up to the school door, and the schoolmaster's authority were to end when the child leaves the school. Supposing a pupil were to hit the master outside the school, the only remedy the master would then have would be a prosecution for assault against the pupil. Can the moral training and conduct of children be said to only exist in school and during school hours? The Regulations issued by the Education Department say that all reasonable care is to be taken in the ordinary management of the school, to bring up the children in habits of punctuality, of good manners, &c., of consideration and respect for others, &c. Here it is said to be reported to the schoolmaster that a boy, instead of consideration and respect for another boy, had hit that other boy and injured him. I think that we are entirely justified in interpreting that the parent had delegated his authority, and that the corporal punishment inflicted by the schoolmaster was entirely within the master's delegated authority. Whether the punishment so inflicted was more than was reasonable was a question for the magistrates."

This holding is precisely like that in Hutton *v.* State, 23 Tex. Ct. App. 386; 59 Am. Rep. 776; and Deskins *v.* Gose, 85 Mo. 485; 55 Am. Rep. 387; Burdick *v.* Babcock, 31 Iowa, 567; Lauder *v.* Seaver, 32 Vt. 114; Sherman *v.* Inhab. of Charlestown, 8 Cush. 160.

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 question as to whether there is "punishment after death" seems to have been settled beyond all controversy by the legal Solons of Indiana. The following communication clearly demonstrates this: —

INDIANAPOLIS, June 3, 1893.

To the Editor of the "Green Bag":

Without wishing to exalt my own State at the expense of others, I wish to draw attention to a recent penal enactment to show that in the matter of advanced thought Indiana is fully abreast of the times. The learned commissioners who prepared the criminal code, recognizing that the practice of being killed or injured at railroad crossings was a reprehensible one which should be discouraged, and fully realizing that there is a hereafter, and that the sins of the dead should be punished, incorporated in the code a provision which is very properly entitled "Untimely Crossing of Railroad Tracks," and wisely distributes punishment to both railway employee and the miserable offender who violates the law by being run over by the cars. The section, after fining the engineer all the way from $100 to $1,000, and imprisoning him from three months to a year, proceeds: "*And if any person shall be injured or killed by reason of such crossing, he shall be imprisoned in the State prison not more than fourteen years nor less than two years.*" R. S., 1881, section 2174. That there are at present no corpses incarcerated at the penitentiaries is doubtless due to the fact that this apparently severe law has discouraged persons who might otherwise offend from sacrificing their lives at railroad-crossings. For what it has accomplished, I commend it to all philanthropists and thoughtful men.

Sincerely, M. M.

WE are indebted to a Kansas reader for the following: —

OTTAWA, KANSAS, May 26, 1893.

Editor of the "Green Bag":

The following is a true transcript from the docket of a worthy justice of the peace of Williamsburg Township in this county: —

The charge is that "one John Smiley, on or about 10th day of . . . did then and there unlawfully break the peace by getting drunk and breaking glass out of door, &c. The prisoner being brought into court, and having kicked everything down in the office, and kept the air blue with profanity, and proved by three witnesses that he is drunk: Therefore it is adjudged that for his drunken disorderly conduct and destruction of property he is fined the sum of $25, pay $10 for the destruction of property, the cost of this action, and be confined in the County jail of Franklin County for sixty days, or as County atty. shall amend." This form is submitted for the consideration of justices who may have difficulty in formulating docket entries in cases of misdemeanor.

Very truly yours, ——

LEGAL ANTIQUITIES.

THE Blue Laws of Connecticut were so called because they were printed on blue-tinged paper.

These were some of them: —

"No one shall be a freeman or have a vote, unless he is converted and a member of one of the churches allowed in the Dominion."

"No dissenter from the essential worship of this Dominion shall be allowed to give a vote for electing magistrates or any officer."

"No food or lodging shall be offered to a heretic."

"No one shall cross the river on the Sabbath but an authorized clergyman."

"No one shall travel, cook victuals, make beds, sweep houses, cut hair or shave on the Sabbath day."

"No one shall kiss his or her children on the Sabbath or feasting days."

"The Sabbath day shall begin at sunset Saturday."

"Whoever wears clothes trimmed with gold, silver, or bone lace above one shilling a yard, shall be presented by the grand jurors, and the selectmen shall tax the estate £300."

"Whoever brings cards or dice into the Dominion shall be fined £5."

"No one shall eat mince-pies, dance, play cards, or play any instrument of music except the drum, trumpet, or jewsharp.

"No man shall court a maid in person or by letter, without obtaining the consent of her parents; £5 penalty for the first offence, £10 for the second, and for the third, imprisonment during the pleasure of the court."

FACETIÆ.

An Irishman went to a lawyer with a case, but the attorney wanted a retainer. The Irishman was poor, and finally the lawyer said he would take the case on a contingent fee. It was settled, but the contingent fee part of the agreement bothered the client. He confided his ignorance to his friend, Paddy, and asked for an explanation. "An' it is the meanin' of a contingent fee yer after knowin'? Sure, I'll tell ye. A contingent fee means that if ye lose the case the lawyer gits nothin'; if ye win, you git nothin'."

The following good story is told of a Glasgow bailie. In Scottish courts of law witnesses repeat the oath with the right hand raised. On one occasion, however, the magistrate found a difficulty.

"Hold up your right arm," he commanded.

"I canna dae 't," said the witness.

"Why not?"

"Got shot in that airm."

"Then hold up your left."

"Canna dae that, ayther, — got shot in the ither ane tae."

"Then hold up your leg," responded the irate magistrate. "No man can be sworn in this court without holding up something."

"Why do you use such peculiar terms?" asked a lawyer's wife of her husband who had returned worn out by his day's labors. "I don't see how you can have been working all day like a horse." "Well, my dear," he replied, "I 've been drawing a conveyance all day; and if that is n't working like a horse, what is it?"

The following story is told of Rufus Choate:

He was once called into Maine to defend a brother lawyer who was under a cloud; and while preparing the case he was taken sick, the party in whose cause he was acting having to appear before him in his chamber with his witnesses. One of the latter was a good deacon who was deeply interested in the case, and was very earnest in deprecating the wrong done his legal friend.

"Well, deacon," said the great lawyer, "what do you think of the treatment of your friend?"

"I think," was the startling reply, "that it is a d——d shame!"

"That is my opinion," said Mr. Choate; "but you have given it a pious emphasis which I would never have aspired to."

A Chicago attorney, somewhat noted for his sharp practice, sent his client one day to watch the case. Word came to him that his case was next on the docket, and he hurried over to find the opposing counsel already beginning. In vain he looked for his client. He was nowhere to be seen. In vain he asked for delay; but the court told him that the carelessness of a client would not allow such a thing. At last he glanced into the jury-box and saw his client there. The stupid man had thought he heard his name called, and had marched in with the rest. The opposing counsel was so anxious to hurry the case along that he neglected to examine the jury. Seeing the thing was in his own hands, the Chicago attorney turned to the court. "I withdraw all objection," he said; "I have my client where I want him."

There is a certain judge in Chicago who rather prides himself on his vast and varied knowledge of law. The other day he was compelled to listen to a case that had been appealed from a justice of the peace. The young practitioner who appeared for the appellant was long and tedious; he brought in all the elementary text-books, and quoted the fundamental propositions of law. At last the judge thought it was time to make an effort to hurry him up.

"Can't we assume," he said blandly, "that the court knows a little law itself?"

"That's the very mistake I made in the lower court," answered the young man; "I don't want to let it defeat me twice."

ONE of the most prominent members of the Nebraska Bar was especially noted for the effect with which he addressed juries. When once under way, he drew upon his memory and imagination impartially, and without regard to application or circumstances, much less to accuracy, poured forth a torrent of classical and historical references which no jury could withstand. On an important criminal trial in which he represented the defendant, the district attorney had made a very strong speech, in which certain checks were an important point. The opening sentences of the judge's answer, pronounced with great deliberation and emphasis and with immense effect, were: —

"Gentlemen of the jury, my learned friend has said a great deal to you about these checks; but let me ask him, where are the stubs? Gentlemen, it may be that some things are conspicuous in their presence, but there are others which are far more conspicuous in their absence. Why, Gentlemen, it is related that at Rome it was the custom in the funerals of illustrious personages to carry in the procession the busts of the deceased's ancestors. And it is said that once at Rome, at the funeral of the *noble Roman lady Juno*, the busts of her ancestors were carried in the procession. And as the solemn procession filed through the crowded streets of the eternal city, the people saw that the bust of Brutus was wanting, and they shouted 'Where is the bust of Brutus? Show us the bust of Brutus!' (turning to the district attorney). *Where* is the bust of Brutus, where *is* the bust of Brutus, where is the bust of BRUTUS? Show me the STUBS!"

NOTES.

THE trial of Lizzie Borden for the murder of her father and step-mother terminated, as every unprejudiced person must have felt sure it would, in an acquittal of the accused. The Government's case was terribly weak, amounting in fact to no case at all. Link after link in the chain of circumstantial evidence was wanting, and it is surprising that the prosecuting officer should have felt it his duty, under the circumstances, to press for a conviction. However, it is much better for Lizzie Borden to have had the matter finally decided by a jury of twelve men of more than ordinary intelligence. Her vindication is complete. She stands to-day before the world an innocent woman, and no one has the right to cast a shadow of suspicion upon her.

A MOST pleasant evidence of restoration in fraternal feeling between Secession South and Union North can be daily witnessed in one of the Chambers of the Common Pleas in New York City, where Roger A. Pryor is on the bench as judge, and at the deputy clerk's desk before him sits William S. Keiley, while Alfred Wagstaff occasionally as full clerk visits the court-room.

Judge Pryor, as (in 1861) Chief of General Beauregard's staff in Charleston, was the first to enter Fort Sumter under a white flag; and Mr. Keiley was an officer in the Confederate Potomac Army, and shortly after the surrender of General Lee was arrested by Federal General Terry for alleged incendiary editorials in a Petersburg newspaper of which he was proprietor. At the same time Mr. Wagstaff was a Union Colonel.

Lions changed into lambs; but no little boy-lawyer can expect to lead any of the three!

IN the early days of the Western States, when society was free and easy, and marriage was essentially a matter of civil contract, not of status, many of the pioneers formed contract relations which are to-day giving the lawyers and courts considerable business in determining who are the rightful heirs and descendants of these pioneers. As these pioneers in many instances became cattle kings, bonanza kings, or railway directors, and also formed numerous contract relations with a slight marital tinge, the question as to who shall inherit their wealth is often a nice as well as an important one. One of these questions came up recently before the Supreme Court of the State of Washington (Kelly *v.* Kitsap Co. 32 Pat. Rep. 554), in the settlement of the estate of one Michael Kelly. Said Michael Kelly had in the fifties emigrated to the West, and becoming tired of a life of celibacy, sought to enter into a matrimonial alliance. As in those days the female portion of the population in the State of Washington was exceedingly small, he turned to the aborigines of the soil for a better

half, and in accordance with a custom then existing but now almost obsolete, he gave to the relatives of a comely Indian maid named Julia $2.45, in consideration of which princely sum the comely Indian maiden was surrendered to him as a wife. The two cohabited together for several years; and although Mrs. Kelly was not introduced to the relatives of Michael, or into society as his wife, she maintained that relation to him according to the local custom then existing. As a result of their union, one child was born, who was known as Charles Kelly, and appears in this suit, claiming to be the lawful heir of Michael Kelly. It was held by the Supreme Court of Washington that the claim of the plaintiff could not be allowed; that the cohabiting together under such circumstances as existed in the case of Michael Kelly and the Indian maiden Julia, did not constitute a legal marriage; and further, that the claim of the plaintiff was more definitely barred by a territorial statute rendering void all marriages between white men and Indians.

It is to be presumed, from the language of the court, that, the necessity of such alliances having ceased to exist, the offspring of the civil contract marriages of the early days will find some difficulty in establishing their right to inherit the wealth of the millionaires of the Pacific slope.

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The Boston Tea Party (illustrated), Francis E. Abbot; Norway's Struggles for Political Liberty, Julius E. Olson; The Oxford Eights (illustrated), Mabel Norton Evans; John Ballantyne, American, IX.–X., Helen Campbell; Tony (illustrated), Mary A. P. Stansbury; A Mountain Maid, John Albee; Personal Recollections of Whittier, Charlotte Forten Grimke; The Old Meeting House in Hingham, Mass. (illustrated), Price Collier; The Real Inventor of the Steamboat, Charlotte F. Hammond; Trout Fishing in New England (illustrated), Charles Frederick Danforth; The Funeral of Phillips Brooks (a poem; illustrated), Katharine Lee Bates; Experiences During Many Years, I.–III., Benjamin Penhallow Shillaber; The Early School Legislation of Massachusetts, George H. Martin.

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Life in a Logging Camp (illustrated), Arthur Hill; Under Cover of the Darkness, T. R. Sullivan; An Artist in Japan (illustrated), Robert Blum; The Trouble in the Bric-a-Brac Mission, William Henry Bishop; Egotism, E. S. Martin; The Birds that we See (illustrated), Ernest E. Thompson; Endymion and a Portrait of Keats, Edith M. Thomas; The Opinions of a Philosopher (illustrated), Robert Grant; To-Morrow, W. G. Van Tassel Sutphen; The Haunt of the Platypus (illustrated), Sydney Dickinson; De Profundis, Anne Reeve Aldrich; The One I Knew the Best of All, Frances Hodgson Burnett.

BOOK NOTICES.

A TREATISE ON THE LAW RELATING TO GIFTS AND ADVANCEMENTS. By W. W. THORNTON of the Indianapolis Bar. T. & J. W. Johnson & Co., Philadelphia, 1893. Law Sheep. $6.00 net.

It is strange that so important a subject as the one covered by this treatise should not have attracted the attention of our law-writers long ere this. We believe this volume by Mr. Thornton is the *first* American work upon Gifts, and the author has supplied a long-felt want. The treatise is evidently the result of careful and conscientious work on the writer's part, and is admirably adapted to the practitioner's use. The subject is very fully covered, and the notes comprehensive and to the point. We heartily commend it to the profession as a really valuable addition to legal literature.

In its make-up and typography the work is unusually attractive, and the publishers deserve a word of praise for their efforts in this respect.

DIGEST OF FIRE INSURANCE DECISIONS in the Courts of the United States, Great Britain, and Canada, from the earliest period to the present time, with reference to statutory provisions, and including the New York standard form of fire insurance contract annotated, and other standard forms; all classified and arranged as to subject matter according to existing terms and conditions. By GEORGE A. CLEMENT of the New York Bar. Baker, Voorhis, & Co., New York, 1893. Law Sheep. $6.50 net.

In this digest Mr. Clement has given to the profession a very valuable work, and one which will also prove of great assistance to all insurance officers. The arrangement is systematic and logical, and the decisions are given in clear and succinct language. Altogether it comes nearer perfection than any digest we have seen, and we heartily commend it to every lawyer who is interested in the subject of insurance.

THE AMERICAN STATE REPORTS. Containing the cases of general value and authority decided in the courts of last resort of the several States. Selected, reported, and annotated by A. C. FREEMAN. Vol XXX. Bancroft-Whitney Co., San Francisco, 1893. $4.00 net.

The contents of this volume are made up of decisions rendered in the State of Alabama, Florida,

Georgia, Indiana, Kansas, Maine, Michigan, Mississippi, New York, Pennsylvania, and Tennessee. The annotations which are a feature of this series are as full and valuable as ever.

THE GENERAL PRINCIPLES OF THE LAW OF EVIDENCE in their application to the trial of criminal cases at common law, and under the criminal codes of the several States. By FRANK S. Rice. The Lawyers' Co-operative Publishing Co., Rochester, N. Y., 1893. Law Sheep. $7.50 net.

This work by Mr. Rice is arranged on much the same plan as his two volumes upon the law of evidence in civil actions, which appeared a year ago. As we said of them, so we say of this. The work can hardly be called a treatise, but is rather a careful arrangement of decisions under appropriate heads. That it will prove a useful work to the profession there can be no doubt; for the grouping of all important decisions upon a given point cannot fail to relieve the working lawyer of much time and labor. With all its merits, however, it is not an ideal work on the law of evidence. That will come, we trust, in the not far distant future. There is still room for a full and comprehensive treatise upon this subject, but a master hand will be required to meet the wants of the profession.

THE LADY OF FORT ST. JOHN. By MARY HARTWELL CATHERWOOD.

OLD KASKASKIA. By MARY HARTWELL CATHERWOOD. Houghton, Mifflin & Co., Boston. Cloth. $1.25 each.

There is a freshness and charm about Miss Catherwood's books which is delightful in the extreme. The two volumes before us are both fascinating stories, written in the author's best vein.

In the "Lady of Fort St. John" we have a stirring picture of the "times which tried men's souls," and women's too. The early settlement of Acadia was accompanied with many exciting episodes, but none more sad or heart-rending than the tragedy of Marie de la Tour, the story of which is told in this little book.

"Old Kaskaskia" takes us back to the early peaceful days of the Illinois territory, while it was still under French rule; and a charming picture is drawn of the simple life and manners of the olden times. There is plot and incident enough to hold one's interest, and the description of the flood which overwhelmed the old town is wonderfully graphic.

No better companions with which to while away a summer's hour could be found than these two books by Miss Catherwood.

THE PEOPLE'S MONEY. By W. L. TRENHOLM. Charles Scribner's Sons, New York, 1893.

There is probably no subject upon which the masses of the people display a greater ignorance than the question of finance; and this work of Mr. Trenholm's is especially addressed to those uninstructed in this important science. The writer gives a clear and succinct exposition of the principles which ought to control in financial legislation, and the natural laws which govern the operations of trade and exchange. Coming just at this time of financial depression, the book should be widely read. The author's views are eminently sound, and are so plainly put that no reader can fail to thoroughly comprehend them. We heartily commend the book to the attention of all thinking men. It will more than repay a careful perusal, and cannot fail to be productive of much good.

A WASTED CRIME. By DAVID CHRISTIE MURRAY. Harper and Brothers, New York, 1893. Paper. 50 cents.

This is a story of intense interest. The heroine, an ambitious woman, marries above her station, and thereby brings about the disowning of her husband by his father, Lord Audley. The old Lord is seriously injured by an accident, and the young wife conceives the idea of presenting herself as a nurse, hoping in that capacity to effect a reconciliation between father and son. Her scheme would have proved successful had she not in a moment of impulse committed the crime which gives the title to the book. The story is well written, and abounds in dramatic situations. It is just the thing for summer reading.

VESTY OF THE BASINS. By SARAH P. MCLEAN GREENE. Harper and Brothers, New York, 1893. Paper. 50 cents.

In this novel Mrs. Greene has given us a fitting companion piece to her "Cape Cod Folks." The northeastern coast of Maine is the scene of the story, and the characters, quaint and original though they may appear, are not overdrawn. We have met "Captain Leezur" and "Cap'n Pharo Kobbe" more than once, and have laughed as heartily as will the reader of this book, over their earnest, homely talk. Mrs. Greene's portrayal of these "down-Easters" is really something wonderful. Vesty, the heroine, is a most lovable creation, and enlists the sympathy of the reader from first acquaintance. The book is a positive treat, and we commend it to all looking for a really good novel.

THE COURT OF CRIMINAL APPEAL.

A. L. SMITH. JOHN C. DAY. C. E. POLLOCK. COLERIDGE. JOHN B. DAVIS. ARTHUR CHARLES.

The Green Bag.

VOL. V. No. 8. BOSTON. AUGUST, 1893.

THE ENGLISH COURT OF CRIMINAL APPEAL.

ENGLAND has not yet got her Court of Criminal Appeal, although the Council of Judges, in their belated scheme of legal reform, recommend the legislature to create one. Questions whether an action should be dismissed as "frivolous or vexatious," disputes about "security for costs" and the sufficiency of "interrogatories" or "particulars," and all manner of trivial causes affecting property or status, are deemed by the law of England sufficiently important to entitle the parties to them, if dissatisfied with the finding of a court of first instance, to submit it to the touchstone of an appeal. But the lives and liberties of British subjects charged with the commission of criminal offences are in general disposed of irrevocably by the verdict of a jury, guided by the directions of a trial judge. To this rule, however, there are two leading exceptions. In the first place, any convicted prisoner may petition the sovereign for a pardon, or for the commutation of his sentence; and the royal prerogative of mercy is exercised through, and on the advice of the Secretary of State for the Home Department. In the second place, the English machine juridical, notwithstanding its lack of a properly constituted Court of Criminal Appeal, is furnished with a kind of "mechanical equivalent" therefor, in the "Court for Crown Cases Reserved," which was established by act of Parliament in 1848 (11 and 12 Vict. c. 78).

This statute, after reciting that "it is expedient to provide a better mode than that now in use of deciding any difficult question of law which may arise in criminal trials in any court of oyer and terminer and gaol delivery," enacts that when any person shall have been convicted of any treason, felony, or misdemeanor before any such court, the Judge or Commissioner or Justices of the Peace before whom the case shall have been tried may, *in his or their discretion, reserve any question of law* for the consideration of the justices of either bench and Barons of the Exchequer, and thereupon shall have authority to respite the execution of the judgment on such conviction, or postpone the judgment until such question shall have been considered and decided as he or they may think fit. The jurisdiction and authority of this tribunal — which is called the Court for Crown Cases Reserved — are now, under the Judicature Acts, vested in the judges of the High Court of Justice, and may be exercised by any five, or more of them, — the presence of the Lord Chief-Justice of England being essential unless he is unable from physical or other reason to attend. Questions of law are brought before the Court for Crown Cases Reserved on a case signed in the usual manner by the judge, commissioner, recorder, or justice granting it, and are argued like ordinary appeals, with this difference, however, that one of the parties, now the Crown and now the prisoner, is sometimes unrepresented by counsel, and the court has to arrive at its decision in such cases without the aid of forensic argument. The absence of Crown Counsel on the hearing of criminal appeals was the subject of strong animadversion by Lord Coleridge some years ago; and his lordship's criticism has, we believe, had a

salutary effect upon the treasury. Very many cases of abiding interest have been disposed of by the Court for Crown Cases Reserved in its comparatively brief lifetime. It may suffice to mention the Franconia (R. *v.* Keyn), where the existence and nature of "the three-mile limit," well known to international lawyers, were in issue, and where the late Mr. Benjamin delivered the most brilliant and sustained argument, and the late Chief-Justice Cockburn pronounced the most learned judgment, of which English juridical history can boast; The Queen *v.* Ashwall, where a bench of fourteen judges were evenly divided as to whether a person who having asked from another the loan of a shilling received from that person a sovereign in mistake, took it in the same belief, but shortly afterward discovered the error and appropriated the money, could be convicted of larceny; [1] and The Queen *v.* Dudley, where it was held that two men, who in order to escape death from hunger killed a boy for the purpose of eating his flesh, were guilty of murder, although at the time of the act they believed, and had reasonable grounds for believing, that it afforded the only chance of preserving their lives.

The portrait accompanying this sketch presents to our readers the Lord Chief-Justice Coleridge, Mr. (now Lord Justice), A. L. Smith, Mr. Justice Day, Mr. Baron Pollock, and Mr. Justice Charles sitting in a quorum of the Court for Crown Cases Reserved. The career of Lord Coleridge has already been traced with considerable minuteness in the pages of the "Green Bag," and we need only repeat that his lordship is the son of an eminent common-law judge and the grand-nephew of the author of the "Ancient Mariner;" that he was carefully educated at Eton and Oxford, where he reaped a perfect harvest of honors; that he was a singularly successful barrister and politician (his complexion is ardent Liberal); and that although not in the highest sense of the term a great lawyer, he has made an excellent judge and an incomparable titular chief of the Courts of Common Law. Of his four learned colleagues the characteristics are more interesting than the biographies. Sir A. L. Smith was at one time "devil" to Sir Henry James; he then became one of the junior counsel to the Treasury, and soon afterward ascended the bench as a puisne judge of the Queen's Bench Division. He served as one of the Parnell Commissioners, and on the recent retirement of Sir Henry Cotton, was promoted to a Lord Justiceship of the Court of Appeal. Lord Justice Smith has one of the hardest heads among the English judiciary, and an incisive intellect, which acts like an acid solvent on rhodomontade. He is revered by all competent counsel. Mr. Justice Day is the author of a leading, although now somewhat antiquarian treatise on the Common Law Procedure Acts. He also was one of the Parnell Commissioners. His prevailing characteristics are wide mercantile experience and great "strength," — a term for which no lawyer needs to have a definition. Mr. R. B. Finlay, Q. C., was his favorite pupil at the bar, and succeeded to his practice when he went to the bench. Of Mr. Baron Pollock it need only be said that he is the son of the late Chief Baron Pollock; that he was regarded at the bar as an eminently sound junior, with an exceptional knowledge of the mysteries of the old pleading; and that — Sir John Huddleston having now gone over to the majority — he is the last of the Barons of the defunct Court of Exchequer. Sir Arthur Charles is a very able commercial lawyer, but has not yet had the opportunity of earning great judicial distinction.

We may not inappropriately conclude this sketch by describing the constitution and functions of the Court of Criminal Appeal which the Council of Judges now propose that Parliament should establish. The following are the pertinent resolutions:

[1] The court being equally divided, the conviction stood. Cf. Reg. *v.* Flowers, 16 Q. B. D. 646.

"A permanent Court of Criminal Appeal shall be formed of seven members, of whom five shall be a quorum (89). Such court shall consist of the Lord Chief Justice of England for the time being and six other judges of the Queen's Bench Division, to be selected by the judges of that division (90). The jurisdiction of the Court of Crown Cases Reserved shall be transferred to the said court (91). Such Court of Appeal shall have power to revise the sentence of any person convicted of any criminal offence (except murder) by any Recorder or by magistrates at quarter sessions, or by any judge of the Supreme Court, on the application of the person convicted or of the Attorney-General, and to increase or diminish the sentence, provided (96) that a sentence shall not be increased unless and until an opportunity has been given for the prisoner to be heard by himself or council. Where a complaint is made at any time to the Home Secretary with regard to any conviction or sentence, the court at his request may consider such complaint and such further evidence as he may desire to be laid before them, and also such documents as the court shall require or permit to be given, and shall have power to quash the conviction or diminish the sentence respectively (99). The court shall not in any case have power to direct a new trial" (100). It is obvious, says a writer in the Edinburgh Juridical Review (October, 1892), that the establishment of such a Court of Review as the judges recommend would (*a*) secure greater uniformity in criminal sentences (if that, indeed, is a desirable end, — a point on which some doubt may reasonably be entertained); and (*b*) divide the unpleasant responsibility of commuting or confirming convictions which at present rests upon the Home Secretary alone. But the exclusion of murder from the jurisdiction of the Court of Criminal Appeal seems to require reconsideration, and the hope may be expressed that not only the result of the deliberation of the court (when exercising its consultative functions), but the reasoning by which that result was arrived at, will be disclosed to the public. In this way — to borrow an instance from the recent history of Scots Criminal Law — such episodes as occurred after the conviction of the Arran murderer, when the capital sentence passed upon the prisoner was commuted by the Secretary for Scotland on the report of three eminent experts sworn to secrecy, will be avoided; and when effect is given to belated pleas of insanity, the public will at least know the reason why.

Lex.

BRACTON AND HIS RELATION TO THE ROMAN CIVIL LAW.

By W. W. Edwards.

II.

AFTER treating of the acquisition of ownership by Inheritance and by Testament, which, owing to the feudal character of the property of the deceased, was considerably modified, and in some respects different from the Roman law on the same subject, he treats of the rights of the feudal lord on the death of his tenant, such as the custody of his heir, maritagium, etc. He next treats of ante-nuptial donations and dower, with which he closes his title, "Of Acquisition of Ownership of Things," and Book II. The various distinctions which he makes between maritagium, dos, rationabilis dos, and how they differ from the dos of the Roman law, is curious, and is reserved for future consideration.

Book III. opens with the subject of Actions, — what is an action, how actions arise, how they are divided, how propounded and entered, how established and proved up. Bracton defines an action to be nothing else than the right of pursuing in a court of justice what is due to one. This definition is copied, with the exception of one word, from the Institutes of Justinian (I. 4, tit. 6, l. 1).

The different word that Bracton substitutes is *alicui* for *sibi* of the Institutes. I will observe here, in passing, that he often, even when professing to quote the civil law, substitutes a different word or two in a sentence, as on fol. 114, — rarely ever being literally correct, although the signification is the same. Whether this arises from carelessness, or from the fact that the ancient copies of the Institutes, Pandects, and Code in use in Bracton's time were slightly different from those now in use, I am unable to say; but it is certain that in Bracton's time (A. D. 1250) the Corpus Juris had not been collated and put into its present form, and the verbiage of the copies used by him might have been slightly different from those now in use. But be this as it may, in this particular definition of action, which he proceeds to dissect and to explain all its different terms, when he comes to explain the term *quod alicui debetur* he uses the word *sibi* ("*quod sibi debetur*") instead of *alicui*, thus making his definition "*Actio nihil aliud est quam jus persequendi in judicio, quod sibi debetur*," — the same as that of the Institutes.

Having thus dissected his definition of an action and explained the signification of its various terms, he proceeds to show how actions arise, and that they arise from preceding obligations: "That the obligation is the mother of the action, and is to be traced to some preceding cause, as either a contract or *quasi* contract, or to a malfeasance or *quasi* malfeasance. That actions *ex contractu* may arise in many ways; as by convention, or from interrogations and responses, or by conception of words, which brings the wills of two persons into a common consent, as in case of pacts, — agreements which are sometimes nude and sometimes vested; and that if they are nude no action arises, — for *ex nudo pacto non nascitur actio*." By conventions, above, he means valid agreements; and by interrogations and responses he means the Roman stipulation, which was always contracted by question and answer, and anciently in the Latin language only; and by conception of words he means agreements made in other forms in a valid manner. Pacts were either *nude* or *vested*, — that is, clothed with some subject-matter or consideration to act on, and with binding force. All these kinds of actions were civil.

"Obligations also arose from malfeasances

or quasi malfeasances. From malfeasances, as in cases of delicts and injuries, of which there are many kinds; as, if any one should commit the crime of injury to majesty (læsæ majestatis), homicide, or theft, etc. They arose from quasi malfeasances, as if a judge knowingly should make an erroneous judgment, he would seem to be bound *quasi ex delicto*, but because he is not positively bound either ex maleficio or ex contractu, and is considered to have erred somewhat from want of skill, he therefore appears to be bound quasi ex maleficio."

In Chapter III. he treats of the division of actions, of which he says the first division is that some are *in rem*, some are *in personam*, and some are mixed. Of personal actions, some are civil and some are criminal, etc.; so some arise ex contractu or quasi, or ex maleficio or quasi. A personal action ex contractu arises when any one is bound for giving or doing something against him who has contracted, and his heirs, unless it be penal; and such are called native (nativæ) actions, because they are born of contracts. Nearly all personal actions are ex contractu; as, the mutuum, the commodatum, the depositum, mandatum, exemptio venditio, locatio, et conductio. Of personal actions which arise ex maleficio, some are prosecuted for a penalty only, as the action of theft (actio furti); but others are prosecuted for the thing itself and the penalty also, as the *actio vi bonorum raptorum*, and are therefore twofold, because they seek both the thing and the penalty, and are therefore both in rem and in personam; and when they are in one aspect of the case persecutory of a thing, they are brought against all persons who are able to restore the thing (the possessors), whether the possessor is the spoliator or another; but those that are penal can be only brought against the wrong-doer."

It will be observed that the distinctions lastly above made are clearly from the Roman law, and that the action *in rem* of Bracton is not the present common-law action *against* the thing *itself*, but the civil law *in rem actio*, which is brought against the possessor of the thing for the recovery of the thing itself; such are real actions. The action in rem, Bracton says (fol. 102), is that given against the possessor who possesses in his own name, and not in the name of another; because he has the thing, or is able to restore it. It is given to him who claims the thing to be his and seeks the thing itself, and not its value or a similar thing.

As, if one claims from another a certain thing, as a farm or land, and claims that he is the owner, and pursues the thing itself, and not the value of it, from one not personally bound to him, the action or plea is in rem; and that whether the plaintiff prosecuted for the thing in his own right or in the right of another thing which he possessed, — as religious persons or rectors in the name of their church, as for something in common, — or whether he seeks the principal thing or something belonging to it, — as when one claims an advowson of some church, or a common of pasture or a right of way (ire vel agere), or some such thing, which consists in a right, the plea or action would be in rem. Thus the action in rem, as defined by Bracton, was brought to recover a thing or a servitude or easement. Such was the nature of the action called in rem, of the Civil Law. Where the thing demanded is a movable, Bracton says, the action or plea (placitum) should be both in rem and in personam; that the thing may be recovered, or, in default thereof, the value of it; and that he should set forth his action thus: "I demand of such a one that he restore to me such a thing, of such a value;" or, "I complain that such a one unjustly detains from me or has robbed me of such a thing of so much value;" otherwise the vindication of a movable thing, the value not being fixed, would not be good. In giving examples of the action in rem, Bracton gives only cases where an immovable or a servitude attached to an immovable is claimed, and makes a distinction

when a movable thing is claimed in this, — that the value of the thing should always be stated and sued for in case the thing itself could not be delivered, then the value would be decreed to plaintiff; thus being an action both in rem and in personam, or a mixed action, as Bracton called it. By the Civil Law both land and personal property could be recovered by the in rem actio. And the Civil Law did not anciently recognize the mixed action as a *proper class*, but they are often mentioned as a kind of action, and only admitted the two classes, in rem and in personam. (Gaius, Com. book iv. sec. 1.)

He also informs us that actions are in duplum, in triplum, in quadruplum, etc., precisely as in the Institutes. (Fol. 103, ¶ 6.) So, also, he defines the confessory and negative actions (fol. 103, ¶ 7), evidently taken in toto from the Civil Law. (Inst., book iv. tit. 6, § 2.) In like manner, he also tells us that out of malfeasances certain actions arise, such as the *condictio rei furtivæ*, actio vi bonorum raptorum, actio legis Apuliæ et injuriam. All these are well-known actions or condictions of the Roman law, as well as the *condictio certi ex mutuo*. In the Civil Law, actions in personam were called condictions, and had various names, according to the object sought to be obtained through them; as, the condictio indebitati, condictio furtivæ, condictio ob causam datorum, etc. Bracton (fol. 103 b) tells us that actions arise from various obligations, *ex contractu*, and that the obligations, as before explained, arise or are contracted, some through the thing itself, some by words, some by writing, and some by consent. This is evidently copied from the third Book of the Institutes, title 14, § 2, where the same definition is given in the same order, and in nearly the same words.

By the Civil or Roman law, obligations arising from contracts were contracted in four modes; namely, *Re, aut Verbis, aut Litteris, aut Consensu*, and which are thus explained.

1. In many conventions the obligation and action are not founded upon reciprocal assent, but, without the formality of words of the obligation, they are founded through that which one gives or does for another, which the other must return, or for which he must do something else. This is what the Romans term *obligationes quæ re contrahuntur*. (Mackeldey, § 429.) These contracts are of two kinds. Some of them have a particular name, and produce an action bearing the same name; these are termed *nominate* contracts, and always have for their object the return of a particular or certain thing, — *the thing given*. Others, with the Romans, have no particular names, and produce only an action *prescriptis verbis*, introduced subsequently to the mentioned particular actions. These kinds of contracts were called *innominate* contracts, and sometimes proceed for the return of the particular thing, and sometimes — mostly, perhaps — for a designated counter-performance. These were *the* two kinds; and when the stipulations were for a counter-performance, or a performance by the other party, which did not fall within the definition of the consensual contracts, they were called innominate or nameless, and were classed as four in number; namely, *do ut des, do ut facias, facio ut des, facio ut facias*.

The nominate contracts were such as loan, commodatum, deposit, pledge, etc. The innominate contracts were commission, an exchange, etc.

2. *Verbis*, or obligations from words. These obligations were contracted by the use of certain set forms of words, as, "Do you undertake?" (Spondes?), "I do undertake" (Spondeo), etc., which were called *stipulations*.

3. *Litteris*. These were contracts, made in writing, of various kinds.

4. *Consensu*. These were contracts made by consent of the parties, as in buying and selling, letting and hiring, partnership, and mandate.

Now, Bracton refers to all this as law, without any reference to his authority what-

ever. He goes on to tell us that under the first class of contracts, or *re*, the condictio certi de mutuo could be brought. That is just what the civil law prescribes as the proper action. He also informs us that the *condictio certi* can be brought in every case where a certain thing is demanded to be restored, whether by a certain or an uncertain contract; by which he means either under a *nominate* or *innominate* contract. This also is according to the civil law. In certain cases in innominate contracts, where a certain thing was sought to be returned rather than the performance of the stipulation, instead of adopting the action prescriptis verbis, a condiction could be brought, — usually the condictio ob causam. He next says that there are four kinds of contracts which give rise to the condictions of this sort, and gives the four classes of innominate contracts, *do ut des, do ut facias, facio ut des, facio ut facias*, as above set forth, in the same order and in the same words as given in the Pandects (see ff. 19, 5, fr. 5 in pr.) and by all the civil law writers. In all of this portion of his work he is simply expounding the Roman law, but without the least reference to book or title or any other source or authority whence he derives his law.

The petitoria hereditatis actio is that which is brought for an inheritance, and is brought by those to whom a mere right has descended from their ancestors, as by the nearest heirs.

The possessory action or demand (petitio) for an inheritance is to recover one's own possession, and which is called *actio unde vi*, is that by which a person ousted of his possession is restored to it, and may be called an assize of novel disseisin. So, in like manner, the demand of the possession of another, — that is, of a thing formerly possessed by another, as one's ancestor, — by some tenant whose ancestor died seised as of fee, and which is called *actio quorum bonorum*, or assise mort de ancestor, is called a possessory action.

Here we find the petitory and possessory actions of the Roman law in force in England. Bracton calls the process *actio unde vi* and *actio quorum bonorum*, which were termed interdicts in the Roman law; and although they had the force and effect of actions, were not such technically, but in the modern civil law are termed actions. The possessory action to recover one's own possession of property, or the interdict unde vi, is called by the Norman name of assize of novel disseisin; and the interdict quorum bonorum is also changed in name to assize of mort de ancestor, but the nature of the action and its use are but little changed.

In his Chapter IV., fol. 103 b, Bracton lays down the law of actions arising *ex malefitio*. He says the actio or *condictio furti* is brought by the owner of the thing against the thief and his successor, and against all detainers of the thing. The actio vi bonorum raptorum is given to the owner of things for movable things taken away by force or robbery, or to him from whose custody they were surreptitiously taken, when he has settled with the owner so as to be entitled to sue. Thus he goes on to define the following actions, all of which he defines according to the Civil Law; to wit, Actio legis Aquiliæ, Actio injuriarum, Actio quod metus causa, Actio dolo, Interdict unde vi, or assize of novel disseisin; Interdict quod vi aut clam; Interdict de itinere actuque, in which he refers to the prætor.

The Civil Law was the source from which Bracton derived most of his law on actions. In fact, on fol. 114 he explains the prejudicial actions, and also concurrent actions, — in which, if more than one is brought for the same thing, the plaintiff can be forced to elect; and here he for a rarity cites the Pandects several times. His mode of citation is different from the old Continental writers. Thus, he cites Dig. book xiv. title 4, law 9, § 1, as F de tributoria actione, L quod in herede, ff. Eligere, which Continental jurists formerly would cite as l. 9, § 1, ff. de tributoria actione. His mode of

citation is very difficult to a person not very familiar with the Justinian Digests, as the only clew he gives to his cited law is the first words of the title, law, and paragraph, without any numbers.

From actions in general he passes to criminal actions and offences in particular, under the title De Corona, or Crown Law.

In his fourth book he passes to particular civil actions, which he gives under their Norman French names of Assize of novel disseisin, or novæ disseysinæ; Assisa ultimæ presentationis; Assisa mortis antecessoris; Assisa utrum, etc.; and Essoins, Defaults, and Warranty, when he treats of defences to actions in general. Leaving for the present the questions of special actions for future consideration, let us consider the law of *defences* to actions, as expounded by him, and compare it with the Roman civil law. While the Roman lawyers made a distinction between actions and defences allowed by legislative enactment, which they called the civil law, and those allowed by the prætor, by his interdict and authority, I make no such distinction, as they were practically equally effective, and constituted the Roman law and practice; hence the whole is termed the civil law herein.

A brief outline of the Roman mode of defence to an action will enable us to compare what Bracton says on the same subject more easily. An action may be defended by denying the material facts upon which the action is founded (traverse denial), or by alleging other facts to show that the plaintiff either originally had no right of action or that his right subsequently ceased; or he may allege a right by virtue of which he can demand that the plaintiff be nonsuited, even if his action was founded on a subsisting right.

These last two modes are termed confession and avoidance in the common law of the present time, but in the Roman law they were termed exceptions. The division of exceptions into civil and pretorian, or honorary, need not be here considered, as it applies more to their origin than effect. In regard to their effect, they were divided into peremptory and dilatory. The peremptory or perpetual exception was one which (wholly or partially) perpetually destroyed the action. The dilatory or temporary exception only delayed the action, and was a temporary defence. Where an agreement is made not to sue within a certain time on a contract, and the plaintiff sued before the expiration of that time, the defendant could plead the exception *pacti conventi*, — that is, that plaintiff had agreed not to sue until the expiration of the given time; this is a dilatory exception. So objections to the jurisdiction of the court or the competency of the judge are pleaded by way of dilatory exception.

Where a person is compelled through fear to make an improvident contract, he may when sued on the contract plead the peremptory exception *quod metus causa*, — that he was compelled through fear to make the contract.

In like manner fraud may be pleaded to a contract by the exception *doli mali;* and that a former suit on the same cause of action had been determined, by the exception *rei judicatæ;* and there were many other exceptions in the Roman practice.

Sometimes an exception prima facie may seem good, which in fact is destroyed by some other cause not apparent, in the same manner as an action prima facie good is destroyed by an exception; and then the plaintiff must be allowed to set up such objection, which is called a replication; and if the defendant has any answer to make to this replication, it is called a duplication, and the reply to that is called triplication, and then comes the quadriplication, and so on, until the pleadings were made up before the prætor, and the issue sent before a judge appointed by the prætor to be tried. Such was the Roman practice; and the making up of the issue (litis contestatio) before the prætor, and the formula drawn up by him, directing the *judex* what to try,

resembled the old English Breve or Writ, which stated the form of action and matter to be tried, and was probably derived from the practice of the prætor.

Let us now see what Bracton says about exceptions in Book V. fol. 399 b and 400. He asks what is an exception, and how divided. He answers that an exception is the elisio, or crushing out, of an action, by which the action is destroyed or put off,—delayed. Exceptions are thus divided: some are dilatory and some peremptory. Some dilatory exceptions are peremptory of the jurisdiction and dilatory of the action. In like manner, some are peremptory of the writ, and dilatory of the action. Some exceptions are general to all actions, and some are special, and available only against particular actions; for every action has its own appropriate exception, according to the form of the action,—as may be seen in the assize de ingressu. General exceptions apply generally to all actions; as, the exception to the jurisdiction, or to the person of the plaintiff, or to the writ, and the exception which arises from time or by reason of the place, and which are dilatory of the action, and quasi extra actionem, and while they do not destroy the action, they delay it for the time. Some exceptions are to the jurisdiction of the court, and some to the authority of the judge to try the action or suit. Some are against the person of the plaintiff. Such exceptions as are to the writ must be urged in the beginning of the suit, or they will be deemed to be waived; others may be pleaded after view made. And as it is necessary, in order to propound and prove an action, that it should prima facie appear to be just, so it behooves that an exception should appear to belong to the exceptor, the same as an action belongs to the plaintiff. And as exceptions do not always avail against all actions, it is necessary that the plaintiff should have the power of replying to the exception; as if one should sue, the defendant may set up by exception a subsequent pact, that the plaintiff should not sue, against which plaintiff may reply a still later pact that he might sue. And so of other matters destroying an exception; this is a Replication. To the Replication succeeds the Triplication, and to the Triplication the Quadruplication; and so on, in infinitum. Thus it may be seen that an action which at first appeared to be good may be overturned by an exception, and that an exception apparently good may be overturned by a replication, and so on. One may use several different dilatory exceptions at the same time; but if he has several peremptory exceptions, he only ought to propound and prove one.

As was said above, of several concurrent actions the plaintiff only ought to propound one, so the defendant, if he has several peremptory exceptions, and propounds two or more, if he fails in proof of one, he may have recourse to the other, and so defend himself with many sticks; which ought not to be, when the proof of one ought to suffice him. The only difference in the English mode of pleading defences to be observed is that the objection to the replication in the Roman law is called duplication, while Bracton calls it triplication, etc.; and that Bracton states that only one peremptory exception can be pleaded in bar of an action, while the Roman law admitted several.

I have, at the risk of wearying the reader, gone over the dry details of the Roman law, and the law of Bracton, to show their manifold similarities and identities. To enlarge on this by citing many other points and details would be unprofitable. Enough has been shown, I think, to satisfy the careful reader that the system of pleading in England in Bracton's time and long previous was the Continental system, derived from the Roman law; and that afterwards, when the proceedings of the courts were conducted in French, the names of the different pleadings were called by French names, and the old Latin names dropped. Mr. Serjeant Stephen seems to be of this opinion. (See Stephen on Plead-

ing, Appendix, note 35.) Hallam, in his "History of the Middle Ages," p. 1045, note 4, says: "No early lawyer has contributed so much to form our own system as Bracton; and if his definitions and rules are sometimes borrowed from the Civilians, as all admit, our common law may have indirectly received greater modification from that influence than its professors were ready to acknowledge, or even than they knew. A full view of this subject is still, I think, a desideratum in the history of English law, which it would illustrate in a very interesting manner." Hallam admits that he himself, in deference to English notions, formerly deprecated the study of the civil law too much. I think the probability is greater that Bracton modified the English law by incorporating in it *new* and *feudal* ideas than by importing into it the *notions* of the *civil law;* and that the common law after Bracton was less like the civil than before. It was about one hundred years before Bracton's day that the great revival of learning and literature in Europe commenced, as well as the study of the civil law. Books were very scarce; and the Justinian collections of law furnished not only law, but language and literature as well, to the students. The Latin language was the chief written language of Europe, and the Pandects and Code were studied for the sake of the literature as well as the law, and exercised a mighty influence on Europe; and it is extremely probable that the civil law, modified by the feudal law, was the common law of England as well as of France and Italy or Germany. England had been acquainted with the Roman arms for more than one thousand years; why should she be ignorant of the Roman law? Vacarius had taught it at Oxford, and the opposition of the times to the teaching of this law was directed rather against the clergy than the law. We are told that the English barons in Parliament were unwilling to change the laws of England and adopt the civil law. What laws had they, that they were not willing to change? So far as any sufficient or practicable body of municipal law is concerned, neither history nor tradition has ever given us any intelligible account of these peculiarly English laws.

Long previous to the time of Vacarius, we are informed by Tacitus that Agricola, the Roman Governor of Britain, taught the wild inhabitants to build *temples*, *courts of justice*, and *convenient dwelling-houses.* (Life of Agricola, chap. xxi.)

The courts of justice (*fora*) were necessarily Roman courts, where the Roman law with suitable modifications was administered. The further fact that the civil law took root in Scotland and remains there to this day is also significant. The "common law" of Coke upon Littleton contains little more than the law of real estate under the feudal system, and not a general system of law.

These researches conduce to the opinion that the law of England in Bracton's time was nothing but the Roman law modified by the introduction of the feudal customs, and that there was no such thing in existence as the common law of England, as a distinct system.

A SERIOUS PROBLEM.

By Percy Edwards.

The difficulty in our profession is not so much to know the Law as to know where to find it. — Sharswood.

MR. CHIEF-JUSTICE SHARSWOOD, than whom no abler writer and lecturer upon the code ethical has been produced by this country, must have given expression to the above observation something like twenty years ago. We assume, with the utmost confidence, that so great a jurist knew what he was talking about and meant what he said. This proposition of the difficulty of finding the law was undoubtedly unfolded to the students of the University of Pennsylvania at one of his lectures while filling an engagement as Professor of Ethics in that institution. It meant much then; it means more to us poor disciples to-day. Even at this time when Sharswood was lecturing at Philadelphia, not more than two decades ago, there had not yet arrived the age of law-books, the great meteoric shower of law literature.

There was a time when the people were satisfied with the law of the Ten Commandments, and with Moses as their expounder. And even these were n't found necessary until the devil entered into the computation as one of the prime factors, and took his position at the flies of "all the world a stage," as manager thereof. Then fig-leaves and smiles were no longer considered *de rigueur*, and so passed on and off, and law-book writers and digesters came on. Not the law-book writers of to-day, mind you. But beginning with the overthrow of the kingly power some time along in the year 400 before the advent of the Christ, a struggle between the *populas* and the *plebs* in Roman history, the character of the law partook largely of a religious spirit. This character was rudely changed with the changing fortunes of the patricians; and when, at about this time, the *plebs* got the upper hand, they got down to business and laid the foundation for Roman jurisprudence by the celebrated Law of the Twelve Tables. Little is known of even the order or arrangement of this statute; but it was there at that time, and it laid the foundation for the observation of our own Sharswood, as above written.

From the writings of various authors, we learn that the first three of these Tables treated of judicial proceedings; the fourth, of paternal power; the fifth, of heirs, and the subject of succession; the sixth, of property and possession; the seventh, of buildings and fields; eighth, of injuries to persons and property; ninth, of public and political law; the tenth, the law relating to sacred rights and observances; the eleventh and twelfth supplementary or amendments thereto. In England and the United States the law-making power is conferred upon two distinct departments, — the legislative and the courts: the one making statute law; the other construing it according to a rule or constitution, and establishing its dicta in its published opinions. The law of Rome grew up in exactly the same method, by a process about the same in its essential nature, although differing somewhat in external forms, — a portion statutory, and a portion (by far the greater) judicial decision, or what Bentham sneeringly called "Judge-made law."

Along came Hadrian, about *anno Domini* 130, and hired a lawyer by the name of Salvinus Julianus to rearrange the old twelve Tables, an *edictum perpetuum* from that time. From thence the succeeding race of law-writers scribbled away on their labors and learning, torturing the profession with their treatises and commentaries.

During the following period of the Republic down to the time of Cicero, we are told, "many of the ablest, best, and most learned citizens devoted themselves to the study of the law as a science and art. They formed a distinctive class, and were called *jurisconsults* and *prudentes*. They publicly instructed students; they were consulted by litigants, to whom they gave legal opinions. At this time they did not compose systematic treatises upon the law. The answers to questions put to them were termed *responsa prudentium*, and when cited to the courts, would undoubtedly be used with much effect in determining the decision; and this effect depended upon the reputation of the person whose opinion was quoted.

Soon after this came the class of legal writers who introduced the philosophic element, and thence came Justinian and the Digest. From the Pandects of Justinian, the Institutes and Codes, down through the *jus civili*, *corpus juris canonici*, and *jus gentium*, we find our way through early English history into the glorious Shakspearian age, when the versatile but classic Bacon, the acute Coke, and scholarly Blackstone were shining lights in legal literature in that most brilliant literary epoch the world has ever seen. At this time Coke says: —

> "Reason is the life of the law; nay, the
> Common law itself is nothing else but reason."

Precedent was at this time getting a firm hold; and books were beginning to multiply, although but slowly. We had passed the epoch in history when the people were content to accept the mere general assertion of such sentiment as expressed by Froude, that

> "Our human laws are but copies,
> More or less imperfect, of the eternal laws,
> So far as we can read them;"

and if the time had not come when "lawyers are made in a day," it might with truth be said that the time would soon arrive when law-writers would spring up in a day.

Up to this time, certainly, it had been deemed sufficient "to know the law;" and are we not to attribute to this same sufficiency in the lawyer, rather than to any ability to act in the capacity of a search-warrant, such an appointment as that which the Princess of France gave to her counsellor Boget, in the words of Shakspeare, —

> "Bold of your worthiness we single you
> As our best moving, fair solicitor;"

or was this all "love's labor lost"?

What a time, a glorious time in the world's history this is! The age of Sentiment, Poetry, Art, Philosophy, "yet glowing with the sun's departed beams."

"Quod satis est cui contigit, nihil amplius optet."

But the dogs of war and rebellion are again let loose, and Courage "stalks with Minerva's step where Mars might quake to tread." Kingdoms crumble like the potter's clay that has not been hardened with fire. Revolution is the order of the day. A fearful time, when the heavens seem to meet the earth in awful strife, and then, like the storm-cloud that obscures the vision of us poor mortals at times, rolls aside, and we emerge into the beautiful sun-born morn of a new era. The beautiful creation from the ruins of the Past, the Republic, child of Destiny, born to outshine its parentage, and to shed the effulgent rays of its splendor upon the nations of the world. And it is right here where "it is not so much to know the law as to know where to find it," is first brought to our notice. That is, a lawyer may know the principle, the reason upon which such a principle is based, and yet he is not strong in his position until he knows just where that book authority for his principle is to be found, and may be read to a sceptical court. The difficulty is not lack of ability on the part of the court, or erudition on the part of the counsellor; but the multiplied phases of cases, the vast increase of legislative acts, together with the many conflicting revised and overruled opinions of State and Federal Courts, have made the practice a veritable

maelstrom, into which the hapless practitioner plunges in search of the precious jewel, — a paralliel case. Decisions of State courts in the United States multiplied an hundred fold; selected cases, with all the latest modern improvements; a score of text-books on practically the same general subject, although all claim to be different; digests that digest, and some that do not, — all claiming the most perfect exactness as to citations, with expensive additions and improvements in the way of "cross-references," "nice classification," "topical annotations," "together with notes of English cases, memoranda of statutes, annotations in legal periodicals, etc.; a table of the cases digested, and a table of cases *overruled, criticised, followed, distinguished,* etc."; and as a grand *finale* to all this, a million foot or side notes of cases which thresh out the old straw again. And then the works on special subjects and special jurisdictions, the multiplicity of courts and commissions, and the consequent difficulty of defining jurisdiction thereof.

A short time ago an injunction was sued out of one of the many courts at Detroit, Mich., to restrain and enjoin a man from the use of his mouth in swearing by note, for his own immediate and particular enjoyment it appeared, and as he had long been in the habit of doing without let or hindrance. But his tones had lost their whilom sweetness, and had become "harsh and discordant" and annoying to his neighbors. A plea to the jurisdiction of the court brought out an elaborate discussion of the right by an earthly court to deprive a man of the use of his voice. The court, however, we may add, overruled the objection to his jurisdiction, and put a quietus on that voice.

And the awful conflict of authority that struck the puzzled, or dazzled rather, attorney when he appeared before a country justice in one of the interior counties of Michigan for the purpose of objecting to the jurisdiction of the court. Mr. —— read the statute in such case made and provided, when Mr. Justice, looking him squarely in the eye, said, "Mr. ——, is that all the law you have on the point?" Informed that it was, he replied, "Then I decide against you, sir."

But now, seriously, if Mr. Justice Sharswood was right in his proposition that "to know the law" is not so difficult "as to know where to find it," at this time so long ago, how much more force is there in that expression in this age of law-book writers! Law-books have come down upon us in the past decade in a perfect shower; and the lawyer of means today is in greater risk of having too many books than of not having enough, and the needy lawyer is a good deal puzzled in making his selections from the many really good works that have been published.

How much we hear nowadays of "current case law," and "case winners," and "case lawyers," "annotations" and "annotated cases"! These are surely products of the times, and by their exceeding particularity and observance of detail, the difficulty spoken of by Sharswood is multiplied tenfold. We should indeed be wanting in gratitude for the work accomplished by a large number of able writers of our time, did we fail to properly appreciate the onerous and exacting work necessitated in these digests and annotations. We must not ascribe added difficulty to this problem, by reason of the work of digesting and annotating. No: this work, if well done, is our salvation.

Questions and phases of questions are multiplying in the courts at an astonishing rate. Law journals help to set the pace by propounding such questions as involve the importance of acts of [1] "Rats in the Law of Torts," as a kindred condition, with God and the public enemy, in relieving from responsibility. The Supreme Court of New Mexico, in the case of Ellis *v.* Newburgh,[2] found it necessary to pass upon the doctrine of the "Faithists," and to review to some extent their Bible, known as the "Oahspe," which

[1] New Jersey Law Journal.
[2] Central Law Journal.

pretended to give a sacred history of the earth, and the choosing of a God by ballot. The society was incorporated under the name and style of the "First Church of Tae." One of the fair members of this society composed some touching and alleged beautiful lines. The court held that she could not be convicted for this, since not a party to the action. Nellie Jones was the name of this sweet singer; and the court says: "When the plaintiff and Nellie Jones formed their inner circle, and like the morning stars sang together, it matters not whether they kept step to the martial strains of Dixie, or declined their voices to the softer melody of 'Little Annie Rooney,' the plaintiff became forever estopped from setting up a claim for work and labor done, nor can he be heard to say that he has suffered great anguish of mind in consequence of the dishonor and humiliation brought on himself and children by reason of his connection with said defendant's community. His joining in the exercises aforesaid constitutes a clear case of *estoppel in Fac.*" So we see what phases of humanity's troubles come before the court, and serve to establish precedent.

The courts nowadays seem to require a great display of law-books before them. Precedent and parallelism rule the times. Recently, as told by the "Green Bag," a lawyer walked down the street with his arms filled with a lot of law-books. A friend meeting him remarked, pointing to the books, —

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

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

Plautus says, "You know not what a ticklish thing it is to go to law;" and verily, my brethren, the force of such an assertion is getting to be felt more and more.

Now, why this is so is food for thought.

There are comparatively few great principles of law. The law, while progressive in a sense, is an exact science. Then why this confusion? Why cannot cases be decided along great principles of law and equity? Why need there be so much sophistry and technicality? Mind, you, no attempt is intended here to introduce reform discussion. The writer is not so sure that any reform is called for by the exigencies of the case.

It occurs to me here that this very *penchant* of lawyers for sophistical reasoning and "hair-splitting," to use a vulgarism, may be the first cause of the multiplicity of law books and reports. Thus it is that we are overwhelmed with law literature; and the poor and rich practitioner alike are dazzled with the array, and confronted with the difficulty of knowing where to find the law among this "mob of a million feet."

But the writer is well aware that he who complains of an existing error or evil of this kind should have something to offer by way of a corrective or substitutive measure, in order to relieve him of the charge of being a mere faultfinder.

In the first place, this article makes no complaint by intention. We are impressed with the importance of this assertion of Mr. Chief-Justice Sharswood, and we are curious about it. Is this difficulty going to require lawyers to become walking editions of encyclopædic information, and pocket editions of the "Digests of all the reports of all the courts of last resort, of England and Canada as well as the United States, together with most of the intermediate courts of the United States, with copious references to articles in law journals, and a "bird's-eye view" of everything else outside of these? If so, then possibly the time may come to which Tacitus refers when he says, "The State is most corrupt when the laws are most multiplied." At any rate, there will be less lawyers to "fret" the State. The number of lawyers capable of succeeding as great depositaries of legal lore, or rather under the new *régime* "case law," so called by courtesy of the bookmakers, "case-winners," is limited.

OBSOLETE PUNISHMENTS.

THE English criminal code has not always been the lenient thing it now is. Indeed — and it will, no doubt, surprise many good folk to learn it — up to the beginning of this century it was, as a great judge put it, "savage almost beyond belief." A man was sentenced to death or to transportation for life for an offence for which he would now be let off with a month's hard labor, — for such an offence as stealing forty shillings belonging to his master, stealing from a shop-door, stealing apples from an orchard, or the like. In Halifax, in the sixteenth century, when Harrison wrote his "Description of England," there was a law, peculiar to the place, under which a man was executed by a kind of guillotine for a theft of thirteenpence halfpenny or upwards. It is the same Harrison who tells us that Henry VIII. hanged 72,000 "rogues and vagabonds" during his thirty-eight years' reign, and that in his own time (1577) the number of these unfortunates suspended *per coll.* averaged annually from three hundred to four hundred. Coin-sweaters were boiled in lead or hot water, or, if women, were burnt; pirates were hanged at low-water mark on the shore: and a brutal murderer was first of all half hanged, then had his bowels taken out before his eyes, and was afterwards drawn and quartered.

Besides the severe criminal code, half the atrocities of which have been designedly passed over, there were a number of punishments of a more or less humiliating character, for petty offences, — such, for instance, as night-walking, for which frightful *lapsus* a chaplain was once sent to the Tun, a round prison on Cornhill; for selling goods after curfew had rung, for being a "common scold," and for scandal-mongering and lying, — for which, the "Liber Albus" tells us, a man was once adjudged imprisonment for a year, and a day of the pillory once a quarter, for three hours, with a whetstone tied round his neck. The curious instruments devised for quenching the ardor of hot-tempered shrews were numerous. One was the brank, — a sugar-loaf-shaped cap, made of iron hooping, with a cross at the top, and a flat piece, also of iron, projecting inwards for laying upon the offender's tongue, so that it should not wag, and that her head should not move. The brank was padlocked behind, and the woman led through the streets by an officer of the town, probably a beadle, until she began to show "all external signs imaginable of humiliation and amendment." Equally efficacious was the whirligig, a large circular cage turning upon a pivot. It was (says Captain Grose) put on the heads of trifling offenders of all kinds, and not bawling women alone, and was set a-whirling with great rapidity, "so that the delinquent soon became extremely sick," and was very glad to be released and taken home. The most noteworthy, however, of all the instruments designed for the correction of Eve's offending daughters was the cucking or ducking stool, known also as the tumbrel and the trebuchet. A post, across which was a transverse beam turning on a swivel, and with a chair at one end, was set up on the edge of a pond. Into the chair the woman was chained, turned towards the water (a muddy or stinking pond was usually chosen for this purpose when available), and ducked half a dozen times; or if the water inflamed her instead of acting as a damper, she was let down rapidly times innumerable, until she was exhausted and wellnigh drowned. From the frequency with which we find it mentioned in old local and county histories, in churchwardens' and chamberlains' accounts, and by the poets (Gay, for one, has a description of the process in his third pastoral, "The Shepherd's Week"), we shall probably not be wrong in concluding that at one time this institution was

kept up all over the country. In Liverpool, according to the "Gentleman's Magazine" for 1803, it was not formally abolished until 1776; but it was falling into desuetude more than thirty years before, when such an exhibition at Kingston-on-Thames was so novel that it could draw nearly 3,000 spectators to the scene. There is a good deal of humor in another of these queer obsolete punishments, — the drunkard's cloak, with the invention of which the magistrates of Newcastle-on-Tyne, during Cromwell's Protectorate, are credited. It consisted of a large cask with the bottom taken out, and with a hole in the top and one on each side for the toper's head and arms; and, equipped in this greatcoat, he was led through the streets until the looked-for signs of contrition appeared and he promised to give up drinking sack.

Torture on a grand scale went out with Felton, the assassin of Buckingham, but torture on a small scale continued to be practised on military offenders down to the eighteenth century. The form most frequently resorted to was that known as the wooden horse, to ride which was the punishment accorded for petty thefts, insubordination, and so on. The wooden horse was made of planks nailed together so as to form a sharp ridge or angle about eight or nine feet long. This ridge represented the back of the horse, and was supported by four posts or legs about five feet high, placed on a stand made movable by truckles. To complete the resemblance with the noblest animal in creation, a head and tail were added. When a soldier was sentenced, either by court-martial or by his commanding officer, to ride the horse, he was placed on the brute's back, with his hands tied behind him, and frequently enough, in order to increase the pain, muskets were fastened to his legs to weigh them down, or, as was jocularly said, to prevent the fiery, untamed, bare-backed steed from kicking him off. The gantelope, or gauntlet, was another military and naval punishment for theft. A man had to run the gauntlet of a long file of his fellow-soldiers, each provided with a switch; and to prevent the sinner going too rapidly, and to see that no man, impelled by motives of friendliness or kindliness, failed to strike hard, a sergeant walked backwards, facing the said sinner, with a halberd pointed at the latter's breast. After a lengthy experiment this was found to be inconvenient and degrading; so recourse was had to another method, — a variety of the same species of torture. The offender was tied to four halberds, three in a triangle and a fourth across. The regiment or company then filed off; the cat-o'-nine-tails was placed in the hands of the first man, who gave the culprit a lash, and passed on, handing the cat to the second, who also gave a lash; and so the game went merrily on until the offence had been expiated. The picket, the last punishment of which I propose to speak, was generally inflicted on cavalry and artillery men, and was a singularly brutal bit of torture. A long post, near which stood a stool, was driven into the ground. The delinquent was ordered to mount the stool; his right hand was fastened to a hook in the post by a noose, drawn up as high as it could be stretched, round his wrist; a stump, the height of the stool, with its end cut to a round and blunt point, was also driven into the earth close to the post, then the stool was taken away, and the sufferer had nothing to rest his bare feet upon but the stump, "which, though it did not usually break the skin," says Captain Grose, "put him in great torture, his only means of relief being by resting his weight on his wrist, the pain of which soon became intolerable." One can very well believe him, especially when he makes the addition that a man was not unfrequently left to stand in this position for half an hour, although the orthodox period of endurance was fifteen minutes. — *Illustrated London News.*

THE SUPREME COURT OF APPEALS OF VIRGINIA.

II.

By S. S. P. Patteson, *of the Richmond, Va., Bar.*

On the 11th of May, John Coalter was commissioned by Gov. James Monroe to fill the vacancy caused by the resignation of St. George Tucker, and on Saturday, the 1st of June, he took the oath of office. The Legislature confirmed the action of the Governor in the following December.

The Court of Appeals has from the time of its establishment been the supreme civil tribunal; since 1789 it has consisted of five judges (12 Hen. Stat. at Large, p. 764), with the exception of the period following the resignation of Judge Carrington, Jan. 1, 1807, to the death of Judge Lyons, July 30, 1809, during which time there were only four judges; and the period from the death of Judge Lyons until the 9th of January, 1811, during which there were only three. John Coalter was an honored and respected judge of an old Virginia family.

John W. Green, after the death of Judge Spencer Roane, was appointed to the vacancy Oct. 4, 1822, and took his seat on the 11th day of the same month.

He died Feb. 5, 1834, and was succeeded by William Brockenbrough, Feb. 20, 1834. Judge Brockenbrough was a man of talent, who had the respect of the bar and the public. He did not live very long, having departed this life Dec. 10, 1838. He was the father of Judge John W. Brockenbrough, Professor of Law at Washington College and Judge of the United States District Court.

One of the ablest judges who ever sat on the bench in the Commonwealth of Virginia was Dabney Carr, appointed Feb. 24, 1824, to supply the vacancy caused by the death of Judge Fleming. He was a son of the Dabney Carr of Revolutionary fame, who died May 16, 1773, at the early age of thirty, and who was a rival of Patrick Henry at the bar, and a personal friend of Thomas Jefferson, having married his sister.

Judge Carr was a man of keen feelings and brilliant mind. He died Jan. 8, 1837.

He was but three weeks old at the death of his father. He was educated at Hampden-Sidney College, and after his return home read law in Albemarle County, where he met and became intimately acquainted with the celebrated William Wirt. They had access to the libraries of Thomas Jefferson and Dr. Gilmer. Carr began practice at Charlottesville, the seat of justice of Albemarle, when he was about thirty-one. His practice was confined to that county for some time. But one morning Mr. Wirt rode up to his little office, and addressing him by an appellation by which he was known among his youthful friends, remarked, "Well, Chevalier, I'm come to carry you to the State to-day," meaning Fluanna County, then and yet familiarly called the State of Flu. "But," said Carr, "I have no business." "Neither have I," said Wirt. "But I have not any money," said Carr. "Nor have I," said Wirt; "but by going there we shall get both. I won't be denied: you must go." They went, and got both; and it is said that Wirt predicted that one day Carr would be on the State Supreme Bench, and that he (Wirt) would be President of the United States. He was once the nominee of a party for that great office;[1] but the highest office he ever held was Attorney-General of the United States. Judge Carr's profound investigations of the questions which came before him for decision made him a great reputation at the time. It is likely he will continue to

[1] Southern Literary Messenger, vol iv. p. 65 et seq.

hold that reputation, except on questions of mercantile law.

In the relations of private life Judge Carr never had a superior. His gentleness of disposition and suavity of manners were on all occasions conspicuous. The integrity of his life, and the spotless purity of his morals and conduct commanded universal respect. He is buried in Shockoe Hill Cemetery at Richmond.

Richard E. Parker, on the 9th of February, 1837, was made a judge to fill the vacancy caused by the death of Judge Carr. He was a son of Judge Richard Parker of the first Court of Appeals. The son of Judge Richard E. Parker, Judge Richard Parker, now residing at Winchester, Va., was the circuit judge who presided at the trial of John Brown in 1859.

HENRY ST. GEORGE TUCKER.

Robert Stanard, a talented and brilliant lawyer of the city of Richmond, was elected to fill the vacancy caused by the death of Judge Brockenbrough, Jan. 19, 1839.

Judge Stanard was a native of Spottsylvania County. He was born Aug. 17, 1781, and died while writing an opinion in Richmond, May 14, 1846. Mr. W. G. Stanard — a relative of the judge, to whom the author of this sketch is much indebted — says that after Stanard had been at the bar several years, his professional success had been so small, he wrote his father that it was evident that he had mistaken his calling; that he was unwilling longer to be dependent upon him, and that he wished to give up the bar.

His father urged him to try for a while longer, and his practice soon increased. Though personally never a popular man, he held many public offices. He became prominent at the Richmond City Bar about the time that Wickham, Call, and their contemporaries left the field to younger men. He was a member of the famous Convention of 1829–30. He made a great impression there. He spoke upon the basis of representation, — the bow of Ulysses, which tried to its utmost the strength of every candidate for fame in that body.[1] Though he spoke after Leigh, Upshur, Doddridge, and Chapman Johnson, he made a great impression. His mind was lucid and direct. He understood no quibbling, and despised all sophistry. He carried his points by storm. He is said to have resolved in early youth to let alone declamation, and to rely solely upon common-sense. It is said that with the smallest ground to stand upon he could shake the strongest judgments of the gravest courts. Many may have surpassed him on the hustings or before a jury, but before a judge or judges his logic was overwhelming. Under a frigid exterior, he concealed a warm and generous heart.

The vacancy created by the death of Judge Allen Taylor of the Seventeenth Circuit was filled in the year 1836 by the appointment of John James Allen, who lived in Clarksburg, Harrison County, (then) Va. He was appointed by Wyndham Robertson, Esq.,

[1] Southern Literary Messenger, vol. xvii. p. 152.

then Lieutenant and acting Governor of Virginia, in place of Gov. Littleton Waller Tazewell, who had resigned in April, 1836. The reputation of Allen as a lawyer was comparatively limited, and he was not well known outside of the counties where he practised, and hardly at all in the circuit for which he was appointed judge. There was no little dissatisfaction at his selection. He held his first court in Botetourt County, Sept. 1, 1836. The grace and ease with which he presided made friends of every one from that time forward, and it was said that he wore his judicial robes with as much ease and dignity as if he had been born a judge. Naturally sedate and reserved in his manner, and ordinarily silent when in general company, he sometimes made the impression that he was cold and distant. But in the familiarity of private life he was eminently kind, gentle, and communicative. He was born in Woodstock, Shenandoah County, on the 25th of September, 1797, and was educated at Washington College, Va., and Dickinson College, Penn. He read law with his father, and after obtaining his license, settled at Campbell Court House, Va., where he remained but a short time, removing in 1819 to Clarksburg. He married in 1824, and in 1827 was elected to the State Senate, where he introduced a bill of great importance to what was then known as Trans-Alleghany Virginia, looking to the settlement of land-titles. The bill finally became a law, and was a great relief to the owners of "tax titles." In 1834 he was the Commonwealth's Attorney of Harrison, Lewis, and Preston counties, when he was elected to Congress. He was not a *speaking* member of the House, but took an active part in the national legislation of that period. He was a candidate, for re-election, but was defeated by Joseph Johnson, one of the most popular men in Western Virginia, who was afterwards made Governor of the State. After his appointment as judge of the Seventeenth Judicial Circuit, he removed to Botetourt, and resided there until his death in 1871.

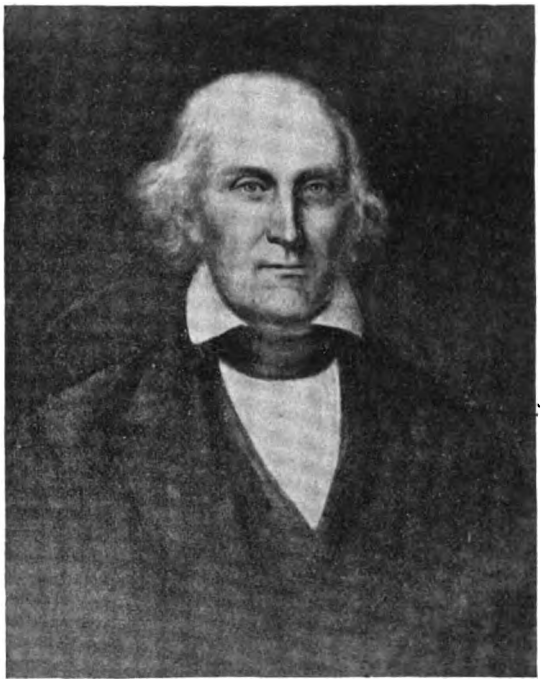
WILLIAM BROCKENBROUGH.

For the first vacancy on the bench of the Court of Appeals after his appointment as circuit judge, he was a candidate, and was defeated by Robert Stanard by a vote of eighty to seventy-six. The two members from his own county voted against his promotion, for the reason that they did not wish him to leave the circuit where he was so useful, and they did not wish to lose Mr. Stanard because of his acknowledged fitness for the position. The year following, — that is, in January, 1840,— he was again brought prominently into public view by being nominated for the United States Senate. In the General Assembly of 1839-40 the state of political parties was somewhat peculiar. On joint ballot the Whigs and *Conservatives* (the latter being known as the special followers of William C. Rives, who had abandoned the Jackson party after "the removal of the deposits" in 1833) had a small majority, —

perhaps four or five; and they could have elected Mr. Rives to the Senate if all had united on him. But some half-a-dozen Whigs, led by General Bayley of Accomac, persistently refused to vote for Mr. Rives, who was thought by these *impracticables* (as they came to be called) to have committed the unpardonable sin in voting for Mr. Benton's famous *expunging resolutions.* The protracted and bitter contest between Mr. Rives and John Y. Mason, the Democratic nominee, was apparently to continue indefinitely; so John J. Allen was placed in nomination, in the hope that he would unite the Whig factions; but the highest vote he received was eighty to Mr. Mason's eighty-one, with four scattering, and there was no choice by the Legislature. By the time the next Legislature was elected, — the same year in which Benjamin Harrison so overwhelmingly defeated the Democratic or Van Buren party, — a vacancy had occurred on the Court of Appeals, caused by the death of Judge Richard E. Parker; and on the 12th of December, 1840, Allen was elected without opposition to fill it. He rapidly gained a reputation for solid learning and ability as the associate of such men as Cabell, Brooke, Stanard, and Tucker. He survived all of his illustrious associates, and on the reorganization of the court after the adoption of the Reformed Constitution of 1851, was made its President. Thereafter, as the senior judge on the bench, he guided its judgments until the close of the war in April, 1865, when he voluntarily retired to the shades of domestic life. 11th and 12th Leigh, 1st and 2d Robinson, and the first sixteen volumes of Grattan's Reports will transmit to future generations the decisions that will make the name of Judge Allen ever memorable in the history of the jurisprudence of Vriginia and of the whole country. He was a believer in the doctrine of secession; and for a very masterly statement of that view of the Federal Constitution those interested in that once live issue may find his opinion on the subject in the January, 1876, number of the "Southern Historical Society Papers." He was a firm believer in the Christian revelation, and at the advanced age of seventy-four, in child-like and humble reliance, he entered, full of years and full of honors, into the presence of the Great Judge of the quick and the dead. A tall and beautiful marble column marks the spot in which his mortal remains lie in Lauderdale Burial-ground, by the side of his father, Judge James Allen, his predecessor on the bench of the Circuit Court.

Briscoe Gerard Baldwin, — a relative of the famous Joseph B. Baldwin, the author of "Flush Times of Alabama and Mississippi," which has grown to be one of the humorous classics of the American Bar, — the eldest son of Dr. Cornelius Baldwin and his wife Mary, who was a daughter of Col. Gerard Briscoe, of Frederick County, was born in Winchester, Va., Jan. 18, 1789. After attending a private school he entered William and Mary College, where he was the fellow-student of John Tyler, William S. Archer, and others who afterwards held distinguished public positions. After his return from college, by invitation of Judge William Daniel, Senior, the grandfather of United States Senator John W. Daniel, he went to Cumberland County, where Judge Daniel then resided, and studied law under his direction and advice. He made such rapid progress that he was licensed to practise before he had attained the age of twenty-one. He returned to Winchester, and remained some months; but in 1809 removed to Staunton, and practised his profession with diligence and success until Jan. 29, 1842. He was elected a member of the Supreme Court of Appeals of Virginia, — a position which he continued to hold until his death, May 18, 1852. He married in 1811, and devoted himself exclusively to his profession and polite literature. He had no taste for political life, and although eminently qualified for almost any public trust, and one of the most popular men of his day, he never sought to obtain any political office. He represented the county

of Augusta in 1818–20 and in 1841–42 in the General Assembly of Virginia. On the first occasion he was elected during his absence by a spontaneous uprising of the people, who did not wait to ask for his consent to serve. During his second term of service, and within a few weeks after he took his seat in the Legislature, he was elected to fill a place on the bench of the Court of Appeals. He was a member of the great Constitutional Convention of 1829–30. At the bar he was able, eloquent, and skilful. In the early years of the century the Staunton Bar was one of the ablest in the Commonwealth, as it yet is.



JOHN J. ALLEN.

At that early day its four most distinguished members were Chapman Johnson, Daniel Sheffey, John H. Peyton, and Briscoe G. Baldwin. In every important civil cause these gentlemen were arrayed — two and two — against each other; and it was an intellectual treat of a high order, to witness the forensic contests of these giants in their profession. These tilts were always characterized by the highest courtesy. Judge Baldwin possessed great and varied intellectual powers, which had been developed by careful and thorough culture. He was not only a learned lawyer but an accomplished scholar, and he always found time to keep abreast with the literature of the day. He had quick and keen perceptions; a rich and poetic imagination, and tender sensibilities, which always brought him into close sympathy with the suffering and oppressed. His great efforts at the bar often displayed wonderful versatility of talent. He would instruct and convince the court by his logic, and often delight all who heard him by brilliant sallies of wit, keen repartee, scorching denunciation of fraud and injustice, splendid declamation, and melting pathos. One of his most wonderful achievements at the bar is recorded in 9 Leigh, 434. He appealed, and rested on his petition for his brief in the Supreme Court of Appeals, unsupported by any argument. Four out of the five judges decided the case against him. After several days he asked for a rehearing, and it was granted; and on the rehearing the court reversed itself by a vote of four to one!

But his fame rests upon his ten years' service upon the Supreme Bench. He determined that whenever a cause came before the court in which questions were presented where the law was obscure from conflicting decisions, he would endeavor to sift the matter thoroughly so as to ascertain the true principles which should govern in all such cases. He carried this purpose into effect in the cases of Taylor's Devisees *v.* Burnsides, 1 Gratt. 169. and Overton's Heirs *v.* Davison, 1 Gratt. 217, on the doctrine in reference to real estate, — law of *adversary possession;* and in the famous case of Davis *v.* Turner, 4 Gratt. 422, he examined and repudiated the doctrine of fraud *per se*, deciding that retaining possession of personal property by the vendor after an absolute sale is only *prima facie* fraudulent, and allowing such

presumption to be rebutted by proof. He may be said to have codified the law on these subjects in Virginia, for these cases have never been questioned.

His early death was a great loss to the State. In all of his relations his character was without spot or blemish. He was the father of Col. John B. Baldwin, one of the greatest orators the State ever produced, who at the beginning of the late war between the States, though he was no believer in the doctrine of secession, went with the State out of the Union, because of his love for his own people.

Judge William Daniel was born in Cumberland County, Va., Nov. 26, 1806; educated at Hampden-Sidney College, he studied law in 1827–28, and, it is said, was licensed and practised before he was twenty-one, and was also elected a member of the Legislature and served while he was yet a minor. On Dec. 15, 1846, he was elected a judge of the Court of Appeals; was re-elected by the people after the adoption of the Constitution of 1851, and served until 1865. His first wife was Miss Sarah A. Warwick, a daughter of Major John M. Warwick, of Lynchburg. She was the mother of United States Senator John W. Daniel, the famous author of "Daniel on Negotiable Instruments." Judge Daniel died at Farmville, Va., March 28, 1873. He was a very manly and generous man, as his father, who was also a judge, was before him. The reports do not show it; but tradition says that while he was on the Supreme Bench engaged in hearing argument in an aggravated case of assault, he said that the d——d lie was equivalent to the first blow. It is universally believed that he so ruled, and it has since always been regarded as the correct doctrine in Virginia. No one questions its soundness, and in actual life it is accepted as the settled law of the Commonwealth.

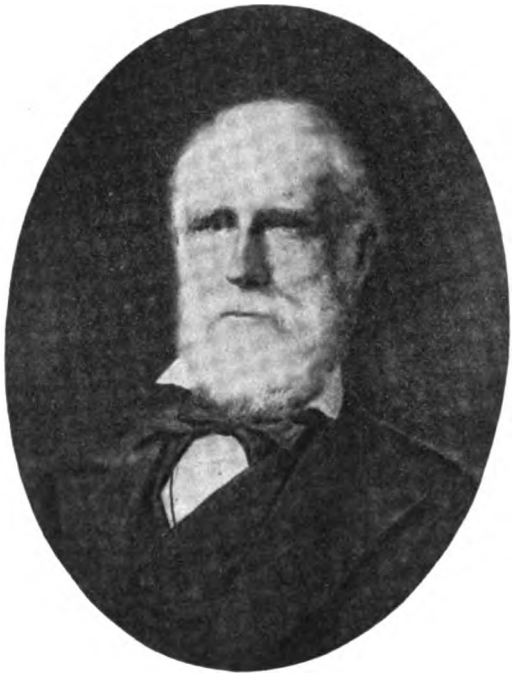
One of the most celebrated cases which he decided was that of Baker *v.* Wise, Governor, 16 Gratt. 139. The constitutionality of an act of the Virginia Legislature of March 17, 1856, entitled "An Act providing additional protection for the slave property of citizens of the Commonwealth," was drawn in question. Levi Baker was captain of a schooner called the "Nymphus C. Hall." The act imposed a penalty for any vessel not owned by Virginians "about to sail or steam from any port or place in this State for any port or place north of and beyond the capes of Virginia, to depart from the waters of this Commonwealth until said vessel has undergone the inspection hereinafter provided for in this act, and received a certificate to that effect." The penalty was $500 fine on the captain or owner of the vessel, and it was to prevent the escape of fugitive slaves. The action was brought for the benefit of the State by Henry A. Wise, Governor. The defendant pleaded *Nil debet*, on which issue was joined. The jury found for the plaintiff, and brought in a special verdict setting out the question of the constitutionality of the act, and submitting the matters to the court for decision. The case was very ably argued: a gentleman from Massachusetts, Mr. Johnson, appearing, along with a number of resident lawyers of distinction, for Baker. But the court held the act to be constitutional, and within the police powers of the State. Any one who will read the decision even on that vexed question will concede that it is ably reasoned and sound. Says Daniel, Judge: —

> "The search is required in the case of a vessel bound north, not merely because of its being so bound, but because by reason of such destination the danger of attempted escapes through the instrumentality of the vessel is enhanced. The discrimination proceeds upon no preference of the ships or ports of one State over those of another, but upon motives of State necessity, actually existing or fairly supposed to exist, in the judgment of the Legislature."

The opinion was rendered at the April Term, 1861.

R. C. L. Moncure, of a distinguished family, came to the bar at the early age of twenty.

He soon attained the front ranks in the courts in which he practised. His first public service was in the General Assembly of 1849–50. His learning and accuracy as a lawyer so impressed itself upon that body that he was placed on the committee for the revision of the law, and discharged his duty with great satisfaction. On the occasion of the death of the venerable judge, Francis T. Brooke, on the 13th of March, 1851, he was elected to fill that vacancy. The State Constitution was almost immediately afterwards changed, the judges' commissions vacated, and they were required to be elected by the people. Under that Constitution he was elected one of the five judges by the people. He held the position up to the close of the war, when for a brief period he retired to private life; but as soon as the restored government was established, he was again elected by the Legislature (the Constitution having been changed), and made President of the court. In the dark days of reconstruction, when the Ancient Dominion was "Military District No. 1," he was compelled once more to retire to private life. When the civil government was restored after the adoption of the present Constitution, he was again elected by the Legislature one of the five judges of the Court of Appeals, and was again appointed President, which position he held up to the time of his death, Aug. 24, 1882. He had the honor of being elected four times a judge of the Supreme Court of Appeals of Virginia. He was on the bench for more than thirty years. During all that time his reputation was pure and unspotted. From 7 Gratt. to 75 Va. may be found his opinions, covering a period of over a quarter of a century. Judge Joseph Christian, one of his associates on the Supreme Bench, said of him: "He was not only incorruptible, but scrupulously, delicately, and conscientiously free from all wilful wrong, in thought, word, or deed." He was a man of great firmness and moral courage, and simplicity of character. At a meeting of the bench and bar from various parts of the State, held in the court-room of the Supreme Court of Appeals, at Richmond, Nov. 9, 1882, resolutions concerning him were adopted; and Robert Ould, Esq., a distinguished member of the Richmond City Bar, was requested to communicate them to the Court of Appeals, and ask to have them entered on the records. He did so, and in closing, eloquently and touchingly said,—



R. C. L. MONCURE.

"The Roman poet says,—

'Pallida mors, æquo pulsat pede pauperum tabernas
Regumque turres;'

but Judge Moncure himself, without a tremor, knocked at the door of death, not complainingly, or indeed with any assertion of self, but in reverent submission to the will of God. The shadows had been long gathered about him, each day deepening the gloom; and the plaintive cry was wrung from him by bodily anguish, that the darkening twilight might close at once in night. But even

in this the sensitive soul feared that he might show a lack of submission to the divine will. The release came in its appointed time, welcomed by no one as by him, — 'the silver cord was loosed, and the golden bowl broken.' Let us thank God that he gave to the country such a patriot, to the State such a citizen, to the administration of the law such a magistrate, and to those that loved him such a friend. 'Crown me with flowers,' cried Mirabeau in his last hour, and loving friends brought them.[1] But our elder brother needed no human hands to bring him garlands, for God had already crowned him, and out of a pure and noble life had already sprung eternal flowers, which bloomed not only on earth, but were glorious enough to be transplanted from that quiet Stafford death-bed to the celestial gardens. Though a senior to all of us, he has preceded us but a little. The hearts of even the youngest of us are but muffled drums, beating funeral dirges to the grave. Even while we are viewing the procession of the dead, the order comes for us to 'fall in.' And now, in this moment when I am speaking the last words which I will ever utter in the presence of this court, as it is now formed, I can express no better hope for bench and bar than that when our summons comes we may receive and welcome it as did our friend and chief."

Within a week the voice of the eloquent eulogist was still in death.

Green B. Samuels, a native of Rockingham County, in the year 1852, was elected a judge of the Supreme Court by the people. He died Jan. 5, 1859.

William J. Robertson, of Charlottesville, was born in the county of Culpeper in the year 1817. He received a classical and legal education at the University of Virginia, from which institution he graduated with the diploma of Bachelor of Law. He settled in the town of Charlottesville, and began the practice of his profession, in which he was eminently successful. He served as Commonwealth's Attorney for the county of Albemarle, and was connected with some of the most celebrated civil and criminal cases throughout his section of the State, winning great reputation as a profound lawyer and brilliant advocate. In 1859 Judge Robertson was elected to the Supreme Court of Appeals by popular election, over the distinguished John B. Baldwin of Augusta, to fill the vacancy on the bench occasioned by the death of Judge Green B. Samuels. Judge Robertson served on the Court of Appeals until April 1, 1865; and his opinions delivered during that time have, in the judgment of the Virginia Bar, never been excelled, in profound knowledge of legal principles, lucid clearness of expression, and the directness and brevity with which they reached the solution of the issues involved. Indeed, it may be said that no judge ever sat upon the appellate bench in Virginia who more thoroughly left his impress upon the jurisprudence of the State. Upon the reconstruction of the court after the war, Judge Robertson returned to the practice of law, and at once commanded a most extensive one. Although located at Charlottesville, his practice really extends all over Virginia; and there are few great cases with which he has not been connected, since he left the bench. He was of counsel for Gen. Custis Lee in the famous Arlington suit, which settled the great principle that the United States agents could not plead the sovereignty of the government in bar of suit for recovery of property in which they were in possession. Judge Robertson's brief in this case has been pronounced a masterpiece of legal argument. He was counsel for the State of Virginia in the celebrated Virginia Judges cases, and in many others of almost equal importance. Judge Robertson is the general counsel for the Chesapeake and Ohio and for the Norfolk and Western Railway Companies.

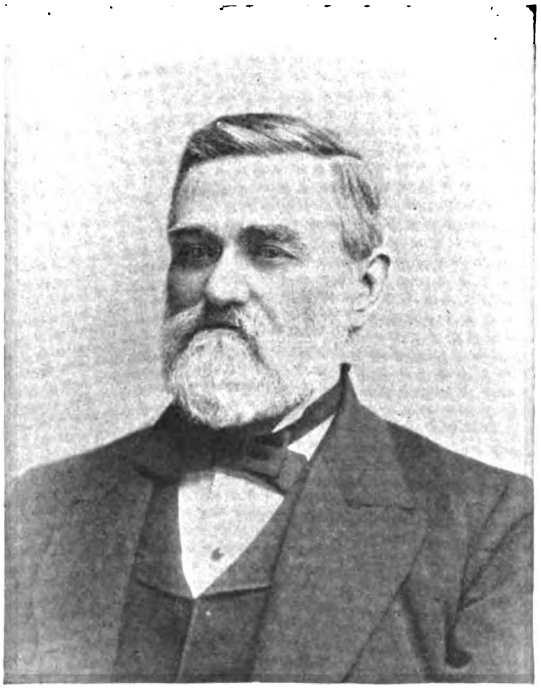
Upon the formation of the Virginia State Bar Association some years ago, he was elected its first President, and in his annual address before that body recommended the abolition of the common law forms of pleading and the adoption of the code or reformed system. Great opposition was for

[1] Mirabeau made use of no such expression. (H. Morse Stephens's French Revolution, vol. i. p. 429.)

some time manifested to the proposition; but the Association has now appointed a committee to draft such changes in the Statutes of Virginia as will effect that end.

Judge Robertson has been twice married, — first to Hannah G., the daughter of Gen. Wm. F. Gordon of Albemarle, and second to Mrs. Alice Watts Morris, the famous Virginia belle.

He still lives at Charlottesville in the full practice of his profession, but confining it to appellate and consulting practice.



WILLIAM J. ROBERTSON.

George H. Lee was a native of Winchester, Va., and was elected by the people under the reformed Constitution of 1851. At the time he was living in what is now West Virginia. He never sat after 1861, because his home was in that part of the State in the Union lines, and he could not readily get to Richmond. He practised his profession after the war very successfully. He is now dead.

Lucas P. Thompson was elected a judge of the Supreme Court of Appeals, but died before he took his seat.

Alexander Rives was made a judge of the Supreme Court in the year 1866.

William T. Joynes died in Petersburg on March 14, 1874. He was born in Accomac County, Nov. 8, 1817. He was the son of Thomas Joynes, a lawyer of ability, who is mentioned by Henry A. Wise in his "Seven Decades of the Union." Settling in Petersburg in the year 1839, he married a daughter of Judge John F. May, and by his studious habits and talents soon gained for himself an enviable reputation as a lawyer. He was appointed United States District Attorney, and discharged the duties of that office with marked ability. In the summer of 1863 he was elected judge of the First (Confederate States) Judicial Circuit, which position he held until the disastrous termination of the war. In the fall of 1865 he was elected to the Legislature of Virginia. During the following session he was elected to the Supreme Bench, where he distinguished himself by the erudition and practical good sense of his opinions. With a brief interval he remained upon the bench until March 12, 1873, when ill health caused him to resign. Upon his tendering his resignation, the whole court addressed him a letter of regret, which showed that he occupied the highest sort of position in the judgment of his associates on the bench. He never regained his health. Judge Joynes has left a name unsullied by the reproach of a single questionable act. On the 17th of March, 1874, a memorial meeting of the bench and bar of Petersburg, on his death, was held in that city; and eulogistic addresses were delivered by Major Charles S. Stringfellow and Captain (now Judge) Drury A. Hinton. Judge Joynes's style of composition was elegant, and his manner of expressing himself very forcible. An excellent instance of this may be seen in his lucid opinion in De Voss *et als. v.* City of Richmond, 18 Gratt. 338. The case, on the question of a municipal corporation

borrowing money and being responsible for the acts of its agents as a private corporation, is still quoted as authority all over the United States.

Hon. Wood Bouldin was born at Golden Hills, in Charlotte County, Va., on the 20th day of January, 1811, and died at Roanoke, his residence, in the same county, on the 10th day of October, 1876. He was the son of the Hon. Thomas Tyler Bouldin and Ann Lewis, and was, by his father, connected with the Tylers of Virginia; his grandparents on his father's side being Wood Bouldin and Johanna Tyler, the sister of Judge John Tyler of Revolutionary fame. Thomas Tyler Bouldin resided for some time in the city of Richmond, where he rose to distinction in the profession of law, and afterwards was appointed judge of the circuit which embraced the county of Charlotte. He was a man of eminent ability, and later in life succeeded the celebrated John Randolph of Roanoke, as the member of Congress from the Charlotte district. Arising to address the house during the excited debate on the removal of the deposits of the government, he commenced his speech with an allusion to John Randolph, who had lately died; and before he had finished his remarks concerning his predecessor, he himself dropped dead in his seat.

The early youth of the Hon. Wood Bouldin was spent in Richmond, where he was sent to a school conducted by Mr. Turner. Afterwards he was sent to New London Academy, Bedford County, then under the charge of Rev. Nicholas Cobb, afterwards the distinguished Bishop of Alabama. At this celebrated school he completed his academic course, and upon returning to his home, then in Charlotte County, taught a school in the neighborhood for a year. Having determined to devote himself to the law, he removed to Halifax Court House, where he prepared himself for his profession, under the direction of the Hon. William Leigh, one of Virginia's greatest jurists. That able and upright judge ever afterwards cherished a warm attachment to, and a high admiration of his pupil.

Upon coming to the bar Mr. Bouldin found his business capacity tested to the utmost in administering upon the estate of his father, who had been the personal representative of Frederick Ross, one of the most extensive traders of his day, and whose large estate had been left at his death in great embarrassment. It became the duty of the young attorney to close up the accounts of this large and complicated estate. This task was performed, however, with an integrity and ability which at once made the reputation of Mr. Bouldin, and assured his success in his profession. Settling at Charlotte Court House, he practised his profession with great success in that and the surrounding counties until his removal to Richmond, in the year 1842, where he entered into a law partnership with Robert Stanard, one of the most eminent lawyers of his day. Mr. Bouldin was personally very popular in the county of Charlotte, and some years before his removal to Richmond was the candidate of the Whig party for a seat in the Legislature; and although the county had been largely Democratic, and his opponent, William M. Watkins, was a man of great ability and influence, young Bouldin came within a few votes of election. His canvass was said to have been very brilliant, and the older citizens of the county delight to talk about it to this day.

Upon his removal to Richmond he at once took his position in the front rank of his profession in that city; and Grattan's Reports of the Decisions of the Virginia Court of Appeals record many cases which attest the ability and learning of his arguments. In 1853 he was tempted to return to his native county by the sale of the fine plantation upon Staunton River on which John Randolph of Roanoke had formerly resided. This he bought, and added to Randolph's original building a handsome residence. The return of Mr. Bouldin was welcomed by

his county-men with a warmth which might be envied by any one.

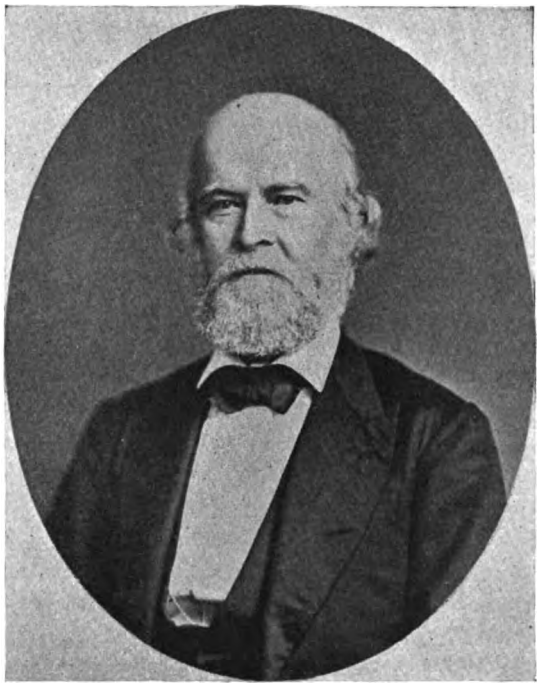
He came back with a greatly increased reputation; but while others might admire him for his talents and high character, they felt a just pride in him as one who had shed an additional lustre on the old county, and was in every way worthy to occupy the residence of the distinguished Randolph. Settling upon his magnificent estate, he devoted a good deal of his time to its cultivation, but continued to practise his profession in the county of Charlotte and the adjoining counties of Halifax and Mecklenburg. His services were eagerly sought by clients, and attorneys made haste to employ him in cases of importance. His country life and strong constitution, however, enabled him to fulfil the duties of his dual occupation of planter and lawyer. As a lawyer Mr. Bouldin was a model. He was learned, painstaking, and equally at home in chancery or *nisi-prius* practice. He was always able in his arguments, and often very eloquent in his addresses to the jury. So conspicuously fair was he as a practitioner that it could be said of him that he might be trusted to draw a bill of exceptions, and he would set forth the evidence so fairly that the opposing counsel would find no occasion to correct it. His integrity and high bearing in his profession came to be elements of great strength in his influence over courts and juries. It was hard, for the latter especially, to believe that Mr. Bouldin would advocate the wrong side, and he won many a verdict upon his reputation for honesty in his profession. He was of the most genial temperament, and one of the most charming of companions, full of animal spirits, and entertaining and instructive in all that he said. When the political storm of 1861 burst upon Virginia, she instinctively looked around for her ablest and most trustworthy citizens as her leaders. The county of Charlotte, with wonderful unanimity, selected Wood Bouldin as its member of the convention which was called to determine the course which the State would take after the secession of South Carolina. Mr. Bouldin had always been a member of the Whig party, and had never given in to the views of Mr. Calhoun and his followers. In his address to the people of Charlotte, previous to the election, he insisted that Virginia should never leave the Union until she had tried in every way to settle the difference between the different sections. As a member of the convention he refused to vote for the ordinance of secession until President Lincoln had called upon Virginia to furnish troops for the invasion of her sister Southern States. Then it was, with the great majority of the convention, that he determined that Virginia should cast her lot with the Southern Confederacy.

WILLIAM T. JOYNES.

The people of Charlotte sent Mr. Bouldin to the Legislature during the war, and he was one of the trusted leaders of that body. After the surrender of General Lee at Appomattox, Mr. Bouldin did not spend his

time in vain regrets, but acted the part of a true patriot in aiding his State to recover from the destructive results of the war.

In the year 1869 he removed again to Richmond, in order that he might devote himself more thoroughly to the practice of his profession. Here he was connected with the Hon. Hunter H. Marshall, who had been the distinguished judge of the Charlotte Circuit, and who had been long one of the leaders of the Richmond Bar.



WOOD BOULDIN.

It was during this second residence in the city of Richmond that what is known as the Capitol Disaster occurred. The room in which the Court of Appeals sat was located on an upper floor of the Capitol. On the 19th day of April, 1870, a large crowd assembled in the court-room to hear the opinion of the court in the contested election case of the mayoralty of the city, which had stirred the community to its depths; it being really a contest between the negroes and carpet-baggers on the one side, and the substantial citizens of Richmond on the other.[1] Just as the judges were filing in to take their seats, the floor of the court-room gave way, and precipitated the vast crowd to the floor below. Many of the assemblage were instantly killed, and many others seriously injured. Mr. Bouldin was in the court-room at the time, and went down with the rest. Although he was extricated, and suffered, as he thought, no serious personal injury, he soon discovered that his system had been severely shocked. After a few weeks' rest in the country, he seemed to be entirely himself again, but it is doubtful whether he ever fully recovered from the shock.

In the year 1872 Mr. Bouldin was elected by the Legislature to a seat upon the Virginia Court of Appeals, to succeed the Hon. William T. Joynes, one of the most learned members that ever graced the Virginia bench. Mr. Bouldin accepted the position with some reluctance, as it required a considerable pecuniary sacrifice, which he hesitated to make, in view of the large family which needed his support

The first opinion that he delivered was in the case of Carr *v.* Carr, reported in XXII. Grattan, and it at once won for him a high position as a jurist. The case was that of a spirited young wife who, having married a man of a penurious, selfish, and ill-tempered disposition, had left him, carrying away her young babe. The husband sued for a divorce, on the ground of abandonment and desertion. The court below granted the prayer of the bill without allowing the wife alimony, and required the mother to give up her child. The able opinion delivered by Judge Bouldin is a remarkable commingling of the firmness of the judge with the tenderness of the loving husband and father, and reflects a striking picture of the two great characteristics of the man, — firmness in the discharge of duty and gentleness and sympathy in his relations of life.

[1] *Ex parte* Ellyson *et als.* 20 Gratt. 10.

The early promises thus given were more than realized in the subsequent opinions delivered by Judge Bouldin. During his services upon the bench the court was called upon to deal with questions of the greatest importance, arising from the complications produced by the previous existence and final overthrow of the Southern Confederacy. In passing upon these questions, some of which were of first impressions, Judge Bouldin exhibited a learning and grasp of intellect which placed him in the front rank of the great jurists who had adorned the Virginia Bench. His career upon the bench, however, was destined to be short. In the year 1876 his health gave way, and he was forced to retire to his farm, where he shortly afterwards died.

Virginia has been fortunate in her long list of able and upright judges; but no name upon that list represents more faithfully what a judge should be than that of Wood Bouldin.

THE CASE OF THE PEOPLE VS. THE RING.

By Albert Clayton Applegarth.

IN these concluding years of the nineteenth century the spirit of investigation is abroad in the land. The search-light of truth is being turned on all departments of life. Many objects hitherto imperfectly known are now paraded before the eyes of men to receive merited approbation or disapprobation.

Social and administrative problems, formerly left to manage themselves, are no longer neglected. The purity of the State is receiving special attention. Indeed, this subject is recognized as a question of such tremendous importance that everything must be considered subordinate when this desideratum is in danger. In this way it has come to pass that public opinion is largely focusing itself upon the numerous abuses and the almost unprecedented amount of corruption that have been introduced into our politics, — federal, State, and municipal. Every reflecting person is eagerly inquiring, "Where does the trouble complained of reside? Is it inherent in our governmental *régime*, or is it a consequence of the perversion of that system?"

It appears to the writer that although the beast to be slain is hydra-headed, and that a giant greater than Hercules would be required to decapitate him successfully, yet one of the main difficulties will be discovered in the arrangements resorted to when nominations for public offices are to be made. Notwithstanding the fact that the vital importance of carefully guarding these is so evident, yet this work is usually performed by a coterie of choice spirits, and these generally belong to a fraternity that few right-thinking men would select as being capable of deciding upon the personnel of our governmental officers. If the people only exhibited as much interest in the nominations, in the selection of good men for all positions at the disposal of the government, as they do in elections, at least one weighty factor in this great problem of evil would be eliminated.

But the majority of persons appear to have reached the conclusion that it is scarcely worth while to trouble themselves at all about primaries. From this lamentable indifference has resulted that nominations have fallen mainly to the control of professional politicians. They are cut and dried by them, and by them alone. Outsiders have little, if any, voice in the matter. Unfortunately, this has come to be an exact statement of the case in only too many localities. At present there is absolutely no choice of candidates. So far is this autocracy carried that the politician now comes to the voter, intelligent or otherwise, and substantially declares, "This is *our* candidate. Now you know that in this free country of ours every adult male citizen has the inestimable privilege of the franchise. But, sir, although you had no part in the selection of Mr. Wirepuller, yet he is our man, and you must cast your ballot for him, otherwise your vote will be thrown away, for he will be elected."

Strange to say, these predictions are always verified. In many cases, however, this mystery is more superficial than real. A little probing makes all plain. The various methods of repeating all sorts of irregularity in the registration afford ample explanation. Sometimes, also, the victories are mainly achieved by means of the fact that, being dead, the voter yet speaketh.

But for all this trickery the writer affirms with no hesitation that the voter is more responsible than the professional politician. It certainly would be an unwarrantable exhibition of pessimism to allege that the corrupt in any community have the majority.

If then the good people are really more numerous, and in spite of this fact proper persons are not selected for official positions, it can only be that the voters themselves have been derelict in their public duty.

While this remains true, no great improvement can be reasonably expected. Of course, most communities possess laws to punish bribery and the selling of votes; but owing to the criminal neglect of the better elements in our bodies politic, these enactments serve no other purpose than ornamenting the statute-book. It is true they look remarkably well on paper, and sound extremely orthodox when read; but beyond this they possess little, if any, efficiency. They may deceive some credulous citizen of "Atlantis;" but every American school-boy is aware that their injunctions are violated every day, and that with perfect impunity. If such be not the fact, what does it mean when people so impudently talk of *working* a bill through the legislature, or an ordinance through the city council?

Amid the multiplicity of instances, it is really embarrassing to make selections for illustration. A few within my own knowledge will, however, doubtless suffice. A friend of the writer recently sat in a State Legislature. A bill was introduced by this gentleman to accomplish a reform in the management of a certain street railway. The convenience of his constituents, as well as the public welfare in general, demanded the passage of this measure; but when subsequently interrogated as to the possibilities of its success, he sadly responded that the bill was sleeping the sleep that knows no awakening. The reason soon became apparent. The case of corporation gold *versus* public interest had been adjudicated by these conscript fathers in favor of the plaintiff. The sons of darkness had been more expert in discerning the weakness of corrupt humanity than had the sons of light.

Another gentleman passed through a somewhat similar experience. The community in which he resided stood greatly in need of some municipal improvement. Being a man of influence, he was delegated to present this matter to the city council. He performed the duty thus imposed upon him in a manner that commanded admiration. As he was leaving the hall, however, a lobbyist casually remarked that his efforts would be utterly futile, intimating that he had not gone about the matter in the right way. In the innocency of his heart, the gentleman in question inquired as to this approved method of procedure. Immediately came the inelegant response, "Why, fee the boys, of course!" — presumably referring thereby to the aldermen. Naturally, the conduct thus recommended was indignantly repudiated. But as a consequence, it is almost needless to state that a motion to recommit proved the death-knell of the measure which the health of persons living in that section of the city so imperatively demanded.

On another occasion a certain well-known local politician had it in his power to break a tie in a matter involving very considerable pecuniary interests. The inducements offered on either side were very great. At last a direct offer was unblushingly made that if this gentleman would absent himself, would discover some urgent out-of-town business upon the particular day on which the voting was to be done, he would receive the sum of six hundred dollars, for which no receipt would be required.

Now, owing to the marvellous richness of our vocabulary, it is of course perfectly possible to describe such intrigues by many pleasing euphemisms. But divested of all such verbiage, if the conduct herein alluded to is anything less than downright out-and-out positive bribery, then the English language is devoid of any meaning whatever.

Another link, however, in this chain of evidence still remains to be considered. If this particular species of corruption does not exist, then why is it and how is it that some candidates will gladly spend much more than their entire salaries to be elected? I know personally the mayor of a certain town,

a man by no means affluent, who contributed three times the amount he received for campaign purposes. How was his expensive family supported during this period? Will some exegete in things political kindly explain away this difficulty? Are these gentlemen to be regarded as philanthropists, whose chief aim in life is to benefit their fellow-men? Are they so consumed with the intense desire of serving the public as to be entirely oblivious to their own interests? Certainly, if experience count for anything, no sane person will be guilty of the unpardonable folly involved in the retention of such an opinion.

On account of these abuses protests daily ascend to heaven, against ring rule, and all the other hateful paraphernalia of this despotic oligarchy. That ample occasion exists for the severest denunciations, admits of no question; but the main fault is not with the ring, despicable as that may be. The responsibility, and on this point I desire to be especially emphatic, is with the *soi-disant* fountain of power, — the dear people themselves. As long as men are allowed to be selected for office whose very names outrage the sentiment of all well-disposed individuals, just so long as the citizens of any community quietly acquiesce in the nomination of persons for responsible positions who are notoriously unsuitable for discharging any trust, public or private, they and they alone are to blame for the consequences, no matter what these may be. I put the matter in this unvarnished way, because on this point it appears absolutely necessary that all persons should have well-defined opinions.

We may rest assured that politicians, whether good or bad, simply reflect popular sentiment. I know it is fashionable in these latter days to aver that the incumbents themselves are scarcely to be censured. It is frequently said by namby-pamby moralists, with a tremendous flourish of trumpets, that it is a difficult thing to be an honest politician, and a whole lot more of this rant as meaningless as it is senseless. If this really be true, then why is it so? Politics do not make men; men make politics.

From the present showing, however, a person is almost inclined to subscribe to the proposition as above stated. No matter what the cause may be, an individual would be perfectly justified in believing that many American officials are lineal descendants of those inhabitants of Jericho who made it so lively for the unfortunate wayfarer who travelled the road from Jerusalem.

What is needed is that every functionary shall be held by public opinion to the same degree of accountability, to the same sterling integrity that is expected and demanded from the employee in any respectable mercantile establishment. Let us have done forever with the abominable and destructive notion that regards official station as a legalized opportunity of public plunder. Let us turn to the other side, and regard public office as a public trust. When that day dawns, if it should ever come, our ears will not be saluted with stories of corruption; then we will hear no more of defalcations of one sort or another.

If it once be conceded that present methods are not compatible with probity and integrity, then let us revise our constitutions and institutions if need be; but at all events, let us do something, do anything, rather than allow our bark to dash on the reef towards which it is drifting; and the quicker we set to work the better.

But right at this stage of our investigation, the objection will be interposed: "Well, allowing that all you state is true, how shall a purer administration be introduced? Have we any redress? How are we to remedy this condition of affairs you describe as so lamentable?"

In answer to these questions, I should reply, Certainly not by lying supinely on our backs, and trusting to Providence that the day will speedily dawn when purity will reign supreme in politics. The petition of those who beseech Jupiter to come down from the skies and make all men pure and

good, is a prayer hitherto unanswered. If this be our line of activity, let it be said once for all that such a time will never come. No matter what may be true elsewhere, we are certainly not justified in expecting faith-cures in this field. The application of the *laissez-faire* principle to politics does nothing to eradicate the evils against which all essayists inveigh. Some things may improve by letting them absolutely alone; but if the writer reads history aright, government has never exhibited any such pleasing tendency. On the contrary, reformers tell us that something must be done, and that speedily, if democratic government is to be preserved. Surely no observant person, conversant with the subject, will either deny or challenge the statement.

But when we come to speak of remedies, they are so multifarious as to be confusing. There is one, however, I would strongly advocate for municipal politics. It is somewhat similar to that adopted in several foreign countries. In England, for instance, slips of paper are left at the various houses in a ward, and the voter, when he has the necessary leisure, writes down the name of a person he prefers as a candidate, and drops the paper thus marked into a letter-box, or other convenient receptacle. These pieces are then collected, counted; and the person whose name occurs most frequently is the nominee for the office in question. The incontestable advantage of this method is that it emancipates nominations from the cast-iron fetters superimposed upon them by ring rule.

Of course, however, this suggestion will participate in the fate of all other attempts at improvement. No doubt it too will be stigmatized as Utopian, and other adjectives in the same uncomplimentary category will be applied to it. But whether this particular device be practicable or not on this side of the Atlantic, is comparatively of minor significance. The only point to be emphasized in this connection is the vital importance of nominations, — of selecting competent, qualified men to fill offices of public trust, be they high or low. Under our present methods the very men whose influence is recognized as prejudicial to good government declare who shall rule. Now, it is a well-established principle that like begets like. Never yet has the fountain risen higher than its source. Light has no fellowship with darkness. And if our officials prove recreant to their trusts, what more can be expected? They faithfully serve their masters in the ways marked out by these masters. What is imperatively demanded is that some method should be contrived to take nominations from the rings composed of professional politicians, men bent on their own selfish purposes, and vest them where they properly belong, in the people. To this end all loyal citizens should shake off the strange apathy that seems to chain them. They should rise in their conscious majesty, and declare, "We will not have such men to rule over us." When this determination is reached, then will come purity in politics. Never before.

By substantially adopting the suggestions contained in these pages, it seems to the writer that sentinels of such a character would be placed at the portals of office that in the future only the clean would be permitted to enter therein. In politics, as in everything else, the maxim holds true that eternal vigilance is the price of liberty. And if our freedom is to be preserved, if our country is to continue its prosperous career, then these matters which lie at the very foundation of all good government must be guarded with the most assiduous care; for to the reflecting mind it surely will not be deemed a mere figure of speech when the statement is made that herein truly lies the issue of politics.

LEGAL REMINISCENCES.

By L. E. Chittenden.

II.

IF I had not heard the following story told in open court by a Hebrew lawyer of eminence, I should not repeat it here; for I have too many friends of that persuasion whom I esteem too highly to be willing to cast any imputations upon their race. I have an impression that the Hebrews of the better class are not sensitive, and look upon some habits of their lower orders with a contempt which does not differ much from our own scorn for the jockeying, cheating, mean practices of some of our own Anglo-Saxon origin. It is too good a story to be lost through an unfounded fear that it may be taken as evidence of race prejudice in the writer.

John S. Wise, the genial Virginian whose natural electricity has made him the New York counsel of our leading Electrical Corporation, was counsel in an action between two Hebrews, in which the parties were intensely interested. After a long consultation had been closed, his client as he supposed departed. But he soon returned, and opening the door wide enough to get his head inside, interrogated his counsel thus, —

"Meester Vise! How vil dey schvare dot Isaac ven he is a veetness?"

"Swear him?" replied the counsel. "In the usual way, I suppose, upon the Bible."

"Dat's no good, Meester Vise. Ef you schvare dot Isaac on de Bible, he vil lie awful. You might just so vell schvare him on a pack of cards."

"But how can we bind his conscience? Must we make him pull off the head of a cock like the Chinese, or swear him on a toad-fish like the New-Zealander?"

"No, no! You must schvare him on the Talmud. Dot vill make Isaac tell de troot."

"All right, we will swear him on the Talmud, then," said the counsel; and again the client departed. But not for long. Again his face appeared through the door, this time with an anxious expression.

"What now, Jacob?" asked his lawyer.

"Meester Vise! Of ve make dot Isaac schvare on de Talmud, vill he make me schvare on de Talmud too?"

"I think he would," replied his counsel. "What is sauce for the goose, you know. If I make him swear on the sacred book, I do not think I could object to your being sworn on the same book; do you?"

"Dot ish bad! Dot ish very bad!" said Jacob; and he went away sorrowful.

A third time he returned, and again he was asked what he wanted.

"Meester Vise!" said Jacob, with deliberation, "I tink *ve vill schvare dot Isaac on de Bible!*"

B. was one of the kindest-hearted old fellows at our bar. He could repeat Paradise Lost, or a play of Shakspeare from memory; but he had no head for business. He had a neighbor, a sheriff, with whom he was in constant litigation, who never had a process that he did not use it to annoy him. Once he attached a herd of cows, and actually starved them, so that some of them died and others sold for less than half their value.

B. sued G. for negligence. When the trial came on, he wanted me to assist him. I did so, for I thought he was oppressed, though I never expected to see the color of his money. There was really no defence to the action; but as B. testified to the condition of the cows, G. determined to impeach him.

It was a mean thing to do. He was an old man of seventy years. True, he would promise anything and never keep his promise,

— he was loose in his business habits, — but he was as truthful as the average of his brethren. But four of them, who had all had controversies with him, testified that he did not stand upon a par with his neighbors as to truth and veracity. That was our Vermont form of impeaching a witness.

I induced him to make the closing argument. I told him that the bar were on his side, and that he could make the four lawyers wish somebody had kicked them out of court before they impeached him. He assented. Before a good jury, in the crowded court-house, he began. His descriptio.. of the cow — her usefulness, her helplessness, the stony-hearted cruelty of the brute who would starve her — was graphic. But when he came to the impeaching witnesses, he trod the mountain heights of humorous eloquence. "This wretch," he said, "starved my herd of cows. That is scarcely denied; and the defence is that four men, whom some people call lawyers, say that I don't always tell the truth.

"Now I have no ill will against these four. They don't like me, — they don't like anybody, and anybody don't like them. They are not to blame; it's their nature. They can't get rid of their bad smell; they would if they could. Why, I suppose any little black and white animal would smell sweeter if he could. Look at the poor creeturs! There is M. In some things he is great. He can lie in more languages than any man at this bar. He can lie in Greek and Hebrew, in Chinese and Choctaw, and in all kinds of Dutch, and his lie is always made from hard-wood ashes. Had he ever a friend that he did not bankrupt? Is there a man in court that likes him? If there is, let him hold up his hand. Not a hand is raised. When I get so low that no man will raise a hand for me, maybe I will go to impeaching my brothers of the bar. I will lie right down in sackcloth, as old Ahab did when Elijah caught him trying to steal Naboth's grape-vines.

"Then there is R. He has been slandered in this community. Everybody says that he has no heart, — that he is a kicker, like Ishmael. I know he *has* a heart; it's just about the size of a beech-nut, and just as sharp-cornered!

"M. is only three feet and four inches high, and by common consent the meanest man in this community. What a mercy he did n't grow bigger! When M. was born, his father said he was n't worth raising; but his mother said he could be raised on skim milk from a bottle, and would make an errand-boy. Somebody tried to change the order of Providence and make a lawyer of him. He spoiled an errand-boy and did n't make a lawyer.

"The last and least of the four impeachers is A. Now, I am not so hard-hearted as to say a word against A. I pity him. He 's a poor debilitated old man, in his second childhood, and *he always has been ever since he was a small boy!* On the other side is B., an old fellow full of faults; but he never wilfully injured a man or woman, impeached a brother lawyer or starved a cow. Here is his case, and here are the mangled remains of the impeachers. Gentlemen, judge between us!"

And they did. They gave B. so large a verdict that we had hard work to retain it against the charge of prejudice in the jury.

I have noticed recently several references to the old rule that the jury were judges of the law in criminal cases and actions for libel. He would be a bold lawyer now who should request the court to charge a jury in conformity with that rule. Yet I have heard the request made, heard it refused, and have seen a conviction reversed in the appellate court because the court declined so to charge. The rule has been abrogated by *judicial legislation.* According to my memory it was first questioned by Chief-Justice Shaw of Massachusetts about the year 1844. I do not remember a case in New England since, in which the old rule has been applied.

It was the practical application of this

rule which made the Zenger case noted in the jurisprudence of New York. A sketch of that case may be of interest.

In 1734, Zenger was prosecuted for a libel upon the Governor and Council of the Province of New York, and the numbers of his paper containing the articles were ordered by the same Governor to be, and were, burned by the hangman. Zenger was arrested, but admitted to bail to await the action of the grand jury, which failing to indict, the Attorney-General proceeded against him by information. Zenger's counsel filed a plea which questioned the legal existence of the court, for which temerity the judges promptly disbarred them.

Andrew Hamilton of Philadelphia then volunteered to defend Zenger. He pleaded not guilty, and Mr. Hamilton offered to prove the truth of the libel. The court rejected the evidence; and then Mr. Hamilton, with great courtesy but very persistently, claimed that it was the right of the jury to determine whether the article was libellous, — in other words, to determine the law. The court denied this right; and a very stormy and undignified legal battle ensued between the judges and the Attorney-General on one side, and Mr. Hamilton on the other. Disregarding the threats of the court, Mr. Hamilton persisted in reading his authorities and in making his argument, apparently to the court, but really to the jury. His vital point was that the jury should not find the respondent guilty unless *they* were satisfied that the articles were libellous. This claim was furiously combated by the Attorney-General and the judges, who instructed the jury that the articles were a gross libel. But the judges did not quite venture to take the case from the jury, who promptly acquitted the respondent. "Upon which," says Zenger in his report of the trial, "there were three huzzas in the hall, which was crowded with people, and the next day I was discharged from my imprisonment."

"Under a grateful sense of the remarkable service done to the inhabitants of the city and colony," the mayor and aldermen, on the 16th of September, 1735, voted that the freedom of the city in a gold box should be presented to Mr. Hamilton, and the presentation was afterward duly made.

The ill success of this attempt to punish a man for publishing the truth about a public officer, led to the removal of the danger by statute, permitting the truth to be given in evidence in actions and prosecutions for libel.

If all the States were as fortunate in their judiciary as Massachusetts, no counsel would desire to appeal from the decision of the court on a question of law to the jury. A murder trial has recently taken place in that State which has produced a profound impression upon the bar. A trial occupying almost a fortnight, presenting many close questions of the law of circumstantial evidence, has been tried, with scarcely an exception to a decision of the court upon questions arising in the progress of the trial. The conduct of the counsel has been marked by great ability and respect to the court and each other. The jury has returned a verdict which completely satisfies the public. The whole conduct of the trial, I think, has been marked by a spirit expressed in a remark of one of the judges, when informed that the jury had agreed upon a verdict: "God grant that they have come to a just decision!" To me the trial of Lizzie Borden appears to be a high credit to the counsel and the court, an honor to Massachusetts, and a model for the imitation of other courts and counsel in similar cases.

The Lawyer's Easy Chair.

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

BY IRVING BROWNE.

CURRENT TOPICS.

THE PARDON OF THE ANARCHISTS. — This event has excited a painful surprise throughout the country, and is generally commented on unfavorably by the press. At the time of the decision of the Supreme Court affirming the conviction we read the opinion of Judge Magruder with a a great deal of care, and derived the strong impression that the trial was fair and the conviction was proper. That impression has been strengthened by the perusal of Judge Gary's recent article in one of the magazines. It may be conceded that the evidence against those who have now been pardoned was considerably less conclusive than that against those who were executed; but the evidence that they counselled and participated in the attack in question was strong enough to warrant their conviction. It was a question of fact, and was fairly submitted to a jury who decided against the accused, and after all these years that should have been the end of it. If the Governor's pardon had been based solely on the good behavior and repentance of the accused, and had been extended as a pure act of mercy, it might have been criticised as unwise, but could not have been condemned as dangerous and wrong. But when the Governor erects himself into a court, and assumes to set aside a judicial conviction on the ground that the evidence left their guilt doubtful, and worse than that, accuses the trial judge of unfairness, prejudice, and asserts that the jury was packed and that prisoners did not have a fair trial, he goes beyond the bounds of discretion and good policy, makes a dangerous precedent, and in our opinion exposes himself to just public censure as a demagogue. The theory of pardon does not warrant the executive in setting aside convictions on such grounds. It is only in cases of no question of innocence, as where subsequent occurrences resolve doubts in favor of the accused, or in cases where there was an apparent utter lack of criminatory evidence, or where the passion and prejudice of court and jury are perfectly manifest. that a pardon is justifiable when based on any other ground than sheer mercy. Governors are not empowered to grant new trials. If they were, such an act as the present would be less reprehensible; for if these men were to be tried over again on the same evidence, after the lapse of six years, the result would again be conviction. We regard this pardon as the sowing of dragons' teeth, which will produce infinite mischiefs.

A COLLECTION OF TRIALS. — A catalogue of a collection of law trials is very suggestive reading. The late Edmund B. Wynn, a lawyer of Watertown, N. Y., made an extensive collection, which was sold at auction a few months ago, in the city of New York. We have looked over the catalogue with great pleasure It embraces 1,967 articles, but frequently one article includes several pamphlets. The great majority of these trials took place in the last two centuries, but some were ancient. Many of them are of historical interest, ancient or modern, — for example, those of Arnold, André, and Lee in our Revolutionary period; the Boston Massacre case, in which John Adams incurred the enmity of his countrymen by his successful defence of the prisoners; the Burr Treason trial; Queen Caroline's; the Cato Street Conspiracy case; King Charles First's; the Impeachment case of Judge Chase; that of Judge Barnard; the trial of Admiral Byng (London, 1757), of whom Voltaire (we believe) said "that the English executed him to encourage the others;" the three trials of the parodist Hone for libel, in which he defended himself successfully; the case of the Earl of Somerset for poisoning Sir Thomas Overbury in the Tower; a tract on the murder of Sir Edmund-Bury Godfrey; the trial of Ravaillac, who assassinated Henry IV. of France; that of Thomas Paine for libel; of Theodore Parker "for Misdemeanor in a speech in Faneuil Hall against Kidnapping" — execution of the fugitive slave act probably; of Captain Porteous "for Wounding and Killing several persons at a late Execution of a Criminal" (Edinburgh. 1736), celebrated in "The Heart of Mid-Lothian;" the Rye House Plot; the trial of Dr. Sacheverell before the House of Peers, 1710. These are only a few which strike the casual glance.

Of course there are a great number of trials of a salacious sort, such as divorce, abduction, seduction, crim. con., and many breach of promise cases. One of the most amusing of the latter is "Geo. G. Barnard *vs.* John I. Gaul and Mary H., his wife" (N. Y., 1835). The maiden Mary had jilted Georgie, and the trial came off at Hudson, N. Y. According to our

recollection the famous Elisha Williams laughed the case out of court. John was living at Hudson in contented wedlock when the writer of these lines was a law student there. It is amazing how many soldiers, clergymen, and "nobs" of both sexes are involved in this kind of fiery trials. The most astonishing article in this category is the "Apology for the Life of Major General Gunning." (London, 1792), accompanying a trial. His life certainly needed apology; for according to a note in the catalogue, it shows "a list of his conquests to the number of one hundred and forty-five, and of his known descendants to the number of one hundred and thirty-five, — the last one a republican (Thomas Paine), who is 'the crude fruit of an old maid!'" This is indeed painful. In another case the defendant is "Mrs. Robert Tighe, Esq." Sometimes a coachman or a footman is charged, and once a "footboy." In another case the erring gentleman is Dr. John Wolcot, otherwise "Peter Pindar." In another. "Frederick Calvert, Esq., Baron of Baltimore, in Ireland, for Rape on Sarah Woodcock" (London, 1768). Among the divorce cases is the Dalton case, in which Rufus Choate attained the loftiest height of forensic advocacy in America. The Beecher-Tilton case also is included.

Among famous murder cases are those of Colt for killing Adams in New York, about 1841 (the jail took fire, and Colt killed himself on the morning when he was to have been executed; and many believed a body was substituted and he escaped); Eugene Aram, the hero of Bulwer's novel, who defended himself so ably; Polly Bodine, abortionist (N. Y., 1846); the romantic case of the Vermont Boorns (1819), who *confessed* and were convicted, and the victim turned up alive in time to save them; the poisoner, Mad. de Brinvilliers (Amsterdam, 1676); Crowninshield and the Knapps for the murder of White at Salem, in which Webster made that immortal address; Dr. K. K. French, tried at Philadelphia, 1835, for manslaughter "by the administration of certain Thomsonian Remedies" (we do not find that of Thompson himself in Massachusetts on the like charge); the Guiteau case; the mysterious Connecticut cases of Hayden for the murder of Mary Stannard, and the Malley boys for the murder of Jennie Cramer; the equally mysterious case of Mary Rogers, "the beautiful cigar girl," at Hoboken, in 1841, which inspired Poe's "Mystery of Marie Roget;" also the story of the murder of Parker, at Manchester, N. H. (wrongly stated as "Vt." in the catalogue), in 1845; (the writer heard Franklin Pierce sum up to the jury in defence of somebody accused of this crime about 1851, — a beautiful piece of advocacy;) the case of Mrs. Robinson, "the veiled murderess," at Troy, N.Y.; that of Ruloff at Binghamton, N. Y., about 1871; that of Dr. Selfridge, in Massachusetts, about 1806; of Daniel E. Sickles for killing Philip Barton Key, at Washington, for the seduction of his wife, whom he afterwards forgave; of Ned Stokes, the "genial" host of the Hoffman House, New York, for killing Jim Fisk; of young Walworth for killing his father, Mansfield, a well-known novelist and son of Chancellor Walworth, for whom Charles O'Conor made the unsuccessful defence of epilepsy, — case of "survival of the fittest;" of Tirrell for killing his paramour, Maria Bickford, at Boston, in 1846, in which Choate got his man off on the plea of somnambulism; of Webster, the Harvard professor, for killing Dr Parkman; of Wirz, "the Demon of Andersonville."

Among the most famous trials in this country we find the Girard will case; the libel case of J. Fenimore Cooper against Horace Greeley, in which the novelist made it hot for the philanthropist; the Zeuger libel case in New York, in 1733, in which Andrew Hamilton, of Philadelphia, first in this country combated the maxim, "The greater the truth the greater the libel;" and the case of Croswell prosecuted for libel on Thomas Jefferson, in which Alexander Hamilton followed suit, in 1804.

We get a glimpse of a fox-hunting parson in "Earl of Essex against Hon and William Capel for Trespasses committed in hunting with the Berkeley Fox Hounds, 1810."

There are a number of articles about the disappearance of Morgan, in western New York, which caused an "Anti-Masonick" rage that dominated politics for years. Another title is "Free Masonry Unmasked, or Minutes of the Trial of a Suit wherein Thaddeus Stevens was plaintiff and Jacob Lefevre Defendant" (Gettysburg, 1835).

The "spirit of '76" is evidenced in "Life of John Gilbert, who was *executed* at Gloucester, Apl. 19, 1776, for *House Breaking*."

Richard Pepper Arden, Attorney-General, instituted a proceeding to repeal Arkwright's patent for his spinning-jenny.

Among cases illustrative of ancient history is the trial of Susan B. Anthony for illegal voting.

There are a number of peerage and family cases, like the Berkeley, Douglas, Duchess of Kingston, and Tichborne trials.

An interesting tract is "The Genuine Life and Trial of George Barrington (Manchester, 1790). He was transported for picking pockets, and became Governor of New South Wales. It was he who originated the expression, "We left our country for our country's good." This appeared (we believe) in a History of New South Wales which he wrote.

Robert Wedderburn was tried at London, about 1820, for blasphemy, — Unitarianism. How this must shock the inhabitants of our Modern Athens!

The trial of Cagliostro (1791) revives the story of the Diamond Necklace.

Trials of superstition and persecution are repre-

sented, — for example, that of Joan Darc; "A Correct Narrative of the Sudden and Awful Appearance of the Devil to certain Blasphemous Mutineers" (N. Y., 1831); "John the Painter's Ghost, how it appeared on the night of his execution to Lord Temple (1777);" "Authentic Account of the Appearance of a Ghost in Queen-Ann's County, Maryland, proved in the remarkable Trial, The State *vs.* Marry Harris, Administratrix (Baltimore, 1807);" the trial of Galileo, and a number of witchcraft cases.

Occasionally some color crops out, as in "Doctor Wm. Little, for assault on his Wife, a Black Lady" (N. Y., 1808); "Amos Broad and his Wife for an Assault on Betty, a slave, and her little female child" (N. Y., 1809); and the celebrated Whisteto bastardy case (N. Y., 1808), the most amusing case in the books, in which the speech of William Sampson, the wittiest of advocates, is given in full, as well as his encounter with the famous Dr Samuel Mitchell, who gave expert testimony on physiological questions. This case is also reported in 3 Wheeler's Criminal Cases, one of the rarest of American law books. Also the chancery suit of George Christy, to enjoin certain parties from using the name, "Christy's Minstrels" (Liverpool, 1865); also the Dred Scott case, which with John Brown's raid did more to precipitate the War of the Rebellion than all other causes. The trial of "James Napper Tandy for challenging John Toler" (Dublin, 1792), suggests "The Wearin' o' the Green," for this was the gentleman to whom "Up stepped Gen'ral Bonaparte and took him by the hand, saying, 'How is ould Ireland, and how does she stand?'"

Whether intended as a jest we know not, but in "A Compleat History of the Lives and Exploits of the most Remarkable Highwaymen," etc., is a life of Sir John Falstaff! There must be fun in "Jas. Maurice against Samuel Judd, in the Mayor's Court of the City of New York, 30 and 31 of Dec., 1818, wherein the problem, is a Whale a Fish? is discussed theologically, scholastically, and historically. Reprint by William Sampson." We take it this was the witty advocate of the Whisteto case. The theological branch of the discussion probably arose from the Jonah incident. We are left to conjecture the charge against Hon. James Boyd, of Montgomery County, Pa., — "Trial by his Colleagues of the Const. Convention of Pennsylvania (a humorous performance, not a real trial), 1874."

Such a collection as this should have been kept together, and purchased for some State or historical library, for it is in such rare publications that the history and manners of different times and countries may best be read.

THE GREEN BAG. — In the present reigning Shelley revival we have been re-reading our Shelley, and we find a distinct reference — clearly prophetic — to the "Green Bag" in his tragedy of "Œdipus Tyrannus, or Swellfoot the Tyrant." This was written in vindication of Queen Caroline. Œdipus is George Fourth; Iona Taurina is Caroline; Purganax is Lord Castlereagh. Shelley seized on the incident of Castlereagh's placing a Green Bag, containing certain supposed incriminating documents, on the table of the House of Commons, and demanding in the king's name that an inquiry should be instituted into the queen's conduct; and the poet put this speech into the mouth of Purganax in "The Public Sty, the Boars in full Assembly: —

PURGANAX.

Behold this Bag, a bag —

SECOND BOAR.

Oh! no GREEN BAG! Jealousy's eyes are green,
Scorpions are green, and water-snakes, and efts,
And verdigris, and —

PURGANAX.

Honorable swine!
In piggish souls can prepossessions reign?
Allow me to remind you, grass is green,
All flesh is grass; no bacon but is flesh, —
Ye are but bacon. This divining BAG
(Which is not green, but only bacon color)
Is filled with liquor, which if sprinkled o'er
A woman guilty of — we all know what —
Makes her so hideous, till she finds one blind,
She never can commit the like again.
If innocent, she will turn into an angel,
And rain down blessings in the shape of comfits,
As she flies up to heaven. Now, my proposal
Is to convert her sacred Majesty
Into an angel (as I am sure we shall do),
By pouring on her head this mystic water.
(*Showing the Bag.*)
I know that she is innocent; I wish
Only to prove her so to all the world."

Iona Taurina is "impatient to undergo the test." "Purganax, after unsealing the GREEN BAG, is gravely about to pour the liquor upon her head, when suddenly the whole expression of her figure and countenance changes; she snatches it from his hand with a loud laugh of triumph, and empties it over SWELLFOOT and his whole court, who are instantly changed into a number of filthy and ugly animals, and rush out of the Temple." "A MINOTAUR rises," to wit, John Bull, and beseeches her Majesty to mount him, assuring her that "At least, till you have ridden down your game, I will not throw you." She accepts his invitation, and they have a grand chase, to a tallyho chorus, and "Exeunt, in full cry; Iona driving on the Swine, with the empty GREEN BAG." We shall endeavor to have this GREEN BAG never empty, and always in pursuit of any fair game.

NOTES OF CASES.

NEGLIGENCE — "SPAWLS." — In Parish *v.* Williams, Supreme Court of Iowa (55 N. E. Reporter, 74), an action against a blacksmith for personal injuries caused by a "spawl" from defendant's hammer striking plaintiff's eye, it being alleged that defendant was negligent in working at an anvil opposite his shop-door, and six feet away from the sidewalk, it was held error to direct a verdict for defendant, as there was evidence by experienced blacksmiths that "spawls" frequently fly from their hammers, and go a long distance, and sometimes inflict serious wounds, and that they cannot control their direction. The court said: —

"If we are to sustain the action of the court, the effect of our holding will be to say that the anvil may be kept there, as a matter of law, and that passers-by are to take the chances against other like occurrences. We are not aware of any case where such a rule has been sustained. We notice a single case, cited by appellee, to indicate the line of authorities relied upon to sustain the ruling of the court. It is that of Losee *v.* Buchanan (51 N. Y. 476). By the explosion of a boiler the pieces were thrown onto the premises and into the buildings of plaintiff. Plaintiff claimed a right of recovery, even without negligence, on the ground that the casting of the pieces onto his premises was in the nature of a trespass, and that a right of recovery should be the same as in case of wrongful entry. The court refused to sanction such a rule, and rightly so, holding that negligence must be shown, to justify a recovery. The court used this language: 'We must have factories, machinery, dams, canals, and railroads. They are demanded by the manifold wants of mankind, and lay at the basis of our civilization. If I have any of these upon my lands, and they are not a nuisance and are not so managed as to become such, I am not responsible for any damages they accidentally and unavoidably do my neighbor. . . . I hold my property subject to the risk that it may be unavoidably and accidentally injured by those who live near me; and as I move about upon the public highways, and in all places where other persons may lawfully be, I take the risk of being accidentally injured in my person by them without fault on their part.' It is further said in the opinion: 'I have so far found no authorities and no principles which fairly sustain the broad claims made by plaintiff (stated *supra*) that the defendants are liable in this action, without fault or negligence on their part to which the explosion of the boiler could be attributed.' The gravamen of the complaint in this case is negligence, and there is no attempt at a recovery upon any other ground. It is said in argument — with a view, evidently, to bring it within that case — that there is no claim that the blacksmith shop is a nuisance. Not perhaps in specific terms; but the averments, if true, making the manner of its operation dangerous to the public safety, render it a nuisance, and the distinction between the cases is to be maintained throughout. We hold it to be purely a question of a right of recovery on the ground of negligence, and we are clearly of the opinion that the state of the evidence is such that the case should have been submitted to the jury."

The manifest distinction between the two cases is this, — the employment of a steam-boiler is not necessarily nor intrinsically dangerous to an adjoining proprietor; but the hammering of hot iron six feet from a thronged sidewalk is unavoidably dangerous, and thus a nuisance. We have poetical authority for the proneness of sparks to fly upward. Longfellow sings, in "The Village Blacksmith": —

> "And children, coming home from school,
> Look in at the open door;
> They love to see the flaming forge
> And hear the bellows roar,
> And catch the burning sparks that fly
> Like chaff from the threshing-floor."

WHAT IS A "FAIR"? — In Collins *v.* Cooper, Q. B. Div., 68 Law Times Rep. 450, the defendant, occupying lands within the borough of Walsall, on certain days (one being a regular fair day) without the license of the corporation, brought on to his land and used certain swing-boats, roundabouts, shooting-galleries, and many other contrivances for the amusement of the people. These contrivances were the property of different persons, and it was not proved that such persons made any payment to the defendant for the use of the land, or that there was any buying or selling of goods, or exposing the same for sale thereon. The defendant was convicted of permitting the holding of a "fair" on his land. *Held*, by Bruce, J., improper, and by Lawrance, J., proper; and Bruce, J., having withdrawn his judgment, the conviction stood. Bruce, J., said, among other things: —

"The appellant, on the 24th, 26th, and 27th Sept., 1892, brought on to land in his occupation, in the borough of Walsall, a number of swings, roundabouts, shooting-galleries, an electric light-apparatus, a wild-beast show, a ghost exhibition, a baby show, and various contrivances for the amusement of the people. There is no evidence that the appellant received any money for the use of the land by the proprietors of these contrivances, nor was there any evidence that any goods were offered for sale on the said land, or that there was any buying or selling of goods on the land. The justices, on this evidence, convicted the appellant of holding a fair on the land. In my opinion, there was no evidence to justify this conviction. The word 'fair' is a well-known term in law, and it is, so far as I can ascertain, always used in connection with the buying and selling of merchandise, cattle, or other commodities. In all the cases that I can find the right to hold a fair is a right to hold a fair for the buying and selling of goods or cattle. There is one case alluded to in the report where the Abbot of Abingdon was, in the fourteenth year of King John, summoned to show what right he had in the fair of Ealingford, which the Earl of Albemarle said was to the damage of his fair

of Wanting, and the abbot pleaded that the gathering which he held was a wake, and not a fair; yet he admitted that there was always selling and buying there. But it is not only as a law term that the word 'fair' is well defined; it is well recognized in ordinary language as a meeting of people for buying and selling. Allusion was made during the argument to 'Vanity Fair' as described by Bunyan. He was a great master of English, and he describes the fair as 'a fair wherein should be sold all sorts of vanity.' Therefore at this fair are all such merchandise sold as houses, lands, trades, honors, preferments. No doubt, in connection with the great annual or quarterly fairs, amusements and sports were provided for the people; but these were merely incident to the business of the fair. In modern times the commercial importance of fairs has greatly diminished, and the amusements which accompany the holding of fairs often excite much more attention than the buying and selling. But it seems to me that this circumstance does not alter the meaning of the word 'fair.' No doubt words may, and often do, undergo a change of meaning, and a word that was originally used to signify one thing may by usage come to be properly applied to something different. But I cannot find any authority for the use of the word 'fair' as applied to a wake, or a show, or an exhibition. A cattle fair still means a fair where cattle are sold, a fancy fair where fancy articles are sold. There are many occasions where shows and exhibitions are gathered together; for instance, at horse-race meetings, at boat-races, at great football matches, and other outdoor meetings; yet I think such gatherings cannot properly be spoken of as fairs. It is said that there are such things as pleasure fairs. I am not sure that there is any such phrase in common use. But if there is it can, I think, only mean a fair at which toys, trinkets, and such-like articles are sold. The fair mentioned in the old song to which the young man went to buy blue ribbon for his sweetheart may have been a pleasure fair, but it was a fair at which blue ribbon was sold, and I suppose other like commodities. From what I have said I should think, if the word 'fair' stood alone in the section of the Act of Parliament, that it would not apply to a mere collection of contrivances for amusement. But the words used are 'any market or fair;' and although the word 'or' is disjunctive, still I think it is interpretative or expository, and that the proximity of the word 'market' emphasizes the sense in which the word 'fair' is used."

Lawrance, J., said: —

"I may say that I asked my brother Bruce to deliver his carefully written judgment first, to see if I could be convinced by his arguments, but I still differ from the conclusion arrived at by him. I take, if I may say so, a broader and wider view of the meaning of the word 'fair.' I quite agree that the chief idea in the word 'fair' is that of buying and selling, but amusements have always been a consequence of people coming together for buying and selling, and the legislature has interfered with some fairs which were pleasure fairs. I do not think that in this case it was intended that the corporation of Walsall should have full control only over the business part of the fairs held therein. The question here is, whether the appellant, by allowing these contrivances and amusements on his land, was holding a 'fair' on his land. I think he was, and I think that this was a 'fair' in the ordinary sense of the word, and that therefore it was on the part of the appellant an interference with the rights of the corporation of Walsall. I am of opinion, therefore, that this conviction was right."

A CRAZY MAN. — In State *v.* Schaefer (Missouri), 22 S. W. Rep'r 447, a conviction of murder, the defence was insanity. The defendant appears to have been a strangely eccentric person; but as it was not made to appear that he did not know right from wrong, the conviction was affirmed. In the evidence of his father was the following: —

"*Q.* — Can you tell us of anything else he would indulge in that led you to believe he was out of his mind? *A.* — Well, I noticed him at first when he — About the hair. He did n't want to have hair on his eyebrows, and he went to pull it out, and he wanted to get the hair out altogether. He did n't want to have no beard on. He talked queerly. Get upon a chair and say that is just the size he want to be, — just like a shadow. He wanted nine foot. And then he talk like he wanted to build castles, and buy O'Fallon park, and build a castle on it. He want to buy the Visitation Convent, and build a big college, and then to learn the doctors. He wanted to build a big college and a hospital where the Visitation Convent is, and to endow it with about one million or one and one-half millions to run it. He want to cure all sickness, — leprosy, and all sickness that was going on. He wanted to learn the doctors to treat all those, and then get medicine out. He was going to teach the doctors himself. When he was vexed, he was wild all the time then. He wanted to unite all the Indians, north and south, all together, against the whites, to kill the whites; that the white race was no good; that the Indians would not molest or tease anybody. He all the time — whatever plan he had — all the time wanted to be the head or leader of it. He would let his hair grow long. He always liked long hair. He would make plans to build men-of-war — sometimes he would say one thousand or a couple of thousand — to go to Europe. He wanted to go to Ireland and be their king, and at other times he want to go to Africa. When the fight was there, he wanted to bring the Indians to fight the Zulus and conquer them, and then be their king or emperor in Africa. He thought he would go all over Europe and conquer it, and all the time he would be the head man. *Q.* — Did he ever entertain the notion of mutilating himself? *A.* — Oh, yes. We had awful trouble that time he threatened to. He wanted to do that in order to get big. He had his idea that he would then get his nine feet, and stout, extraordinarily stout, too; and he often threatened that he would pay any amount to a doctor, or to any one, to do it for him; and of course, we all the time threatened him that if he do anything like that we have to lock him up in a crazy asylum; and then I told him that any doctor that would undertake to do a thing like that, that I would prosecute him as high as I could. But then I was afraid, often and often, that he would do it himself, only I

frightened him. I say if he do it, it would kill him, kill him right off. . . . He always wanted to play the part of the villain in his play. He was to abduct the banker's daughter, and kill the banker, get his money, and escape. He was supposed to be hired by another to do this. He also attempted to create a new language, somewhat like the Volapuk, only better and easier. With this new language he was to communicate with the devil. *Q.* — Is this the language? [Exhibits B and C.] *A.* — Yes; that is the A, B, C. He said he would go to the graveyard at night, and talk to the devil. . . . When he was acting his play, he had weapons and false beard that he would put on and take off at times. . . . He had two large sheets, with three circular rings on them, and many strange figures, letters, signs, and crosses. With these things he said he would go the graveyard, and by their aid he would force the devil to appear. The devil was to make him large, take all the pimples and blotches off his face; also he would receive great power, and a horse with which he could fly in the air. All he had to do was to stamp on the ground and a big horse would appear, one that he could ride a mile a second on. He always had these notions, even when he was little."

It would however seem a great pity to hang so versatile and imaginative a person.

NEGLIGENCE IN A RIGHT LINE. — It seems to be thought in some courts that although an infant may not be negligent in playing on a railway contrivance that goes in a circle, yet he is negligent in playing on one that goes in a straight line. It is not so "enticing." But the Massachusetts court makes no allowance for difference in direction. In Gay *v.* Essex Electric St. Ry. Co. (Mass.), 34 N. E. Rep. 186, it was held that a street-car company that leaves its cars standing in the public street, with unfastened brakes, contrary to a city ordinance, knowing that the cars would be likely to attract children, is not liable for injuries, caused by the flying back of a brake, to a ten-year old boy who goes upon the cars to play. The court said: —

"If the cars had been left standing by the defendant on its own premises, near the highway, in the same condition in which they were left standing on the street, it is clear, under the decisions of this court, that however attractive they might have been to children, if the plaintiff's intestate had been injured by them while at play upon them, he would have been a trespasser, and the defendant would not have been liable. Daniels *v.* Railroad Co., 154 Mass. 349; McEachern *v.* Railroad Co., 150 Mass. 515; Morrissey *v.* Railroad Co., 126 Mass. 377; Lane *v.* Atlantic Works, 107 Mass. 104, 111 Mass. 136. In such a case the only duty which the defendant would have owed him would have been not to injure him wantonly, or by conduct recklessly careless on its part. Daniels *v.* Railroad Co., *supra*; Morrissey *v.* Railroad Co., *supra*.

"Assuming that there was evidence for the jury of defendant's negligence in leaving the cars in the street as it did (see Powell *v.* Deveney, 3 Cush. 300), we then come to the question whether plaintiff's intestate is to be regarded as a trespasser, and joint actor with the other children. If he is, then the question whether he was in the exercise of due care becomes immaterial. His wrongdoing as a trespasser and joint actor would, in such event, be a cause contributing to the injury, though in doing what he did he might be doing no more than would naturally be expected from a child of his age. We think he must be regarded as a trespasser and joint actor with the other children. Leaving the cars in the street as it did was not an invitation or license by the defendant to him to play upon them, even though defendant knew that they were calculated to attract children, and did in fact attract them. Knowledge on the defendant's part that they attracted children was not an invitation or license to them; otherwise, the fact that one knowingly maintained on his own premises an object that allured children would constitute an invitation to them. Nor could an invitation or license be implied from the negligence of the defendant, if there was negligence, in leaving the cars in the street. The most that can be said for the plaintiff is that the defendant, knowing that the cars would be and were attractive to children, was bound to anticipate what actually occurred, and to exercise a corresponding degree of care to see that the cars were securely fastened and guarded, and is liable for an injury occurring to the plaintiff's intestate through its failure to do so. This assumes that all that the plaintiff is required to show is that his intestate acted as reasonably as might be expected of him. But he might do that, and still be a wrongdoer and trespasser, and contribute by his conduct to the injury which he received. If he did, then the fact of his youth, and the fact that the defendant's negligence also contributed to it, would not render the defendant liable. If the cars had been set in motion by other children, and the plaintiff's intestate had been injured by them while lawfully upon the highway, the defendant clearly would have been liable. Lane *v.* Atlantic Works, *supra*. But he was using the highway and the cars for play, and was a joint actor with other children in causing that to happen which resulted in his injury. We might fairly assume, if it were necessary, that a boy ten years of age, and of ordinary intelligence, would know that he had no right to play upon cars which a street-railway company had left standing in the streets. Upon the declaration, as we interpret it, we do not think that under the decisions in this State the plaintiff is entitled to recover. See cases, *supra*; also McAlpin *v.* Powell, 70 N. Y. 126. It is possible a different result might be reached in the English courts, though the law does not seem to be finally settled there (Lynch *v.* Nurdin, 1 Adol. & E. [N. S.] 29; Hughes *v.* Macfie, 2 Hurl. & C. 744; Mangan *v.* Atterton, L. R. 1 Exch. 239; Clark *v.* Chambers, 3 Q. B. Div. 327), or in other courts in this country (Railroad Co. *v.* Stout, 17 Wall. 657; Keffe *v.* Railway Co., 21 Minn. 209; Railway Co. *v.* Fitzsimmons, 22 Kan. 686)."

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 following comments on the derivation of the words "grass widow" will be read with interest: —

CAMDEN, N. J., June 28, 1893.

Editor of the "Green Bag":

Mr. Browne, in a recent issue of the "Green Bag," has some remarks on the derivation of the phrase "grass-widow." I have not read the articles on that subject in the "Nation," and do not know the conclusion, if any, reached in that paper; but it strikes me that the phrase is used in precisely the same sense that we use the phrases "man of straw," "straw bond," and "straw bail," the "straw" having been changed to "grass," perhaps on the principle that, as we say in Jersey, "all flesh is grass." At any rate, the German has it "strohwitte," and the French "veuve-de-paille," both meaning "straw-widow." The fact that so many languages use an equivalent expression seems to put the "grace-widow" derivation out of the question. The Century Dictionary says it is certainly wrong, as not applicable to non-English forms

Yours truly, G. A. VROOM.

COMMUNICATIONS from our "Disgusted Layman" are always welcome; and though he is an inveterate "kicker," there is much wisdom in his words.

———, PA., June 12, 1893.

Editor of the "Green Bag":

Your "Disgusted Layman" is now both disgusted and pleased at the law: he is disgusted at a lot of idolaters rearing around about a recent decision of our Supreme Court that the first deed or mortgage recorded takes precedence, no matter which was dated first. As a layman understands it, a purchaser could have kept his deed or mortgage secret for six months, and thus cut out an honest subsequent purchaser who could have no way of knowing whether a previous deed or mortgage was in existence except by asking every man, woman, or child in the civilized world, and it does n't make a particle of difference which Rustyfustyian laid this down as the law, the layman knows it is rot. The records are for the purpose of informing anybody whether a title is clear of incumbrance; if they don't, what in the name of sense is the good of them? Now the idolatrous lawyer raises a great stir because this decision "unsettles the law," which sounds very pretty; but if "the law" is nonsense, why not unsettle it?

Whether your "Disgusted Layman" has the facts exactly right as to what the decision was, he does n't know; but he has got the substance of it, and is pretty sure that that bogie "The Common Law, Sir!" is at the bottom of the bobbery the lawyers are kicking up.

Now, as to being pleased. As he understands the matter, our Supreme Court has sustained the opinion of a trial judge, that if a man wants to go to another's house, he is lawfully on the other's premises if he goes to the front door only; that when he knocks or rings, and fails to get a reply, it is his business to go out the way he came in; that if he goes poking around back doors, etc., etc., he is a trespasser. If the dog bites him at the front door, the owner of the dog is liable, if he knew or had reason to know that the dog was vicious; but if the dog bites the trespasser while poking around back doors, the owner is *not* liable. Now, a doggy layman like "yours truly" is much pleased to find that the law agrees with the good, sensible watchdog; and when it is in such company as that, the law must be right, beyond question. Any thoroughly wise watchdog will permit a stranger to go to the front door without molestation, but is very suspicious if the visitor sneaks around back ways; and it is refreshing to note that the law is as wise as the dog. I must confess that the dog has a dissenting opinion on a point that I think he is in error as to, — he objects to the visitor leaving the grounds if none of the family are present; but great minds do not *always* think alike in *all* details.

Your Disgusted Layman.

A KENTUCKY correspondent sends us the following: —

Editor of the "Green Bag":

DEAR SIR, — About 1870 Judge Jas. O'Hara was Circuit Court Judge of the Twelfth Judicial District

of Kentucky. One morning while court was in session at Brooksville, the following communication was handed up to the judge.

"Honorable Judge O'Harry, your honor, Dear Sir, — In the case of Martin McClanahan against Sam Murphy, and John Lenix, witness — I will state here as thoe I was on oath — John, so far as boddy & fisical strength is concerned he is able to go to Brooksville — Thoe here lies the whole thing — *he have no nerve* — it have failed him — His complante lays in the neck and head with a jerkin. He cannot speake at these time, and wood be a very poor witness for the Plaintiff, and this occurs when there is a crowd, at present his actions is something similar to what is called snakes in the boots, and is compeled to get away off to hisself before he recovers — he can't help this as it is inherited from both sides of the family he may be talking with you in good sense, and in one moment he is gone and will not return as long as you stay — such is the case.

"P. S. — I am summins to attend court in a case between John Candy and John Gillispy — I have been confined to Bed and house sence October last with Rumatism. I can git about with the aid crutchs & canes — about the yard — not able to go from home. S. B. S.

"P. S. — Ask John Candy what he wants to prove by me — John Candy has brought suit for work his boy done for John Gillispy. *That* I no *nothing* about — They are 10 miles from me. John Gillispy wants to prove by me John Candy stole 2 par of sox out of my store he can't get me to *swar* to that — I am no benefit to him only pine blank agin him on oath."

S. B. S.

LEGAL ANTIQUITIES.

PLUTARCH carries the legislation of Lycurgus to the year 900 before Christ, or earlier; for he says that the laws of Lycurgus had continued to be used without alteration for 500 years, to the reign of Agis, who began to reign in the year 427 B. C. But he reckoned to that year of Agis when he restored the use of gold and silver money, which was contrary to the laws of Lycurgus. If it was the last year of Agis, who reigned twenty-seven years, then it was in the year 400 before the Christian era; and the legislation of Lycurgus is placed ten or twelve years too early by his own reckoning in other places. For he says (*Vit. Lycurg.* p. 58) the Ephori were set up with the consent of King Theopompus, 130 years after Lycurgus. This was the year 760 B. C.; by which account Lycurgus gave his laws in the year 890 B. C. This agrees exactly with what Cicero (*Orat. pro L. Flac.* c. 26) writes to the effect, that the Lacedæmonians lived under their own laws only, which had not been altered for more than 700 years, that is, before Philopæmon abrogated them, and substituted those of the Achæi in their place. So this places the laws of Lycurgus a little before the year 888 B. C.; for Philopæmon abrogated them in the year 188 B. C.

FACETIÆ.

SYDNEY SMITH said: "There is a New Zealand attorney just arrived in London, with 6s. 8d. tattooed all over his face" (probably on his chest also). He called the railway whistle "the attorney," because it is suggestive of the shriek of a spirit in torment, "and we have no right to assume that any other class of men is damned." Of the court of chancery he said it was like a boa-constrictor; it swallowed the estates of English gentlemen in haste, and digested them at leisure.

THURLOW attended a representation of *Pizarro*, but sank into a deep sleep during Rolla's celebrated address to the Peruvians. "Poor fellow!" said Sheridan, "I suppose he fancied he was on the bench."

EARLY in this century Judge Lowry was holding a term of the Superior Court in Onslow County, N. C. A case was on trial in which the amount involved was small, the evidence conflicting, and the law intricate. When the judge came to charge the jury, he astonished counsel by saying, "Gentlemen of the jury, this is a *very shackley* sort of case anyhow. Take it and do the best you can with it." Counsel probably saw the force of the remark, as no appeal was taken, though "very shackley cases" do sometimes get into appellate courts, as we all know.

IT was the same learned judge, who while a practitioner at the bar unexpectedly lost a case for a client who was a justice of the peace, and in his own opinion a very learned one. The judge was at a loss how to explain the cause satisfactorily to

him when they met, but he did it as follows: "Squire, I could not explain it exactly to an ordinary man, but to an intelligent man like you, who are so well posted in law and law phrases, I need only say that the judge said that the case was *coram non judice.*" "Ah!" said the client, looking very wise and drawing a long breath," if things had got into that fix, Mr. Lowry, I think we did very well to get out of it as easy as we did."

In 1868 Judge Little, an old man but a good lawyer, was suddenly appointed to fill a vacancy on the Superior Court bench in North Carolina. He had a habit of swearing which could not be so suddenly laid aside. At one of his first courts a counsel nettled at one of his decisions said in a rather emphatic way, "We will appeal from *that.*" The old judge forgot the proprieties of his new post, and promptly replied to the startled counsel in the same tone, "Appeal and be d——d!"

One of the "gems from examination papers" which the *Indian Jurist* publishes, saying they were sent by a friend at Tanjore, is the following: "If the tenant refuses to accept the puttahs, the collector will cause him to eject the land, and he will be imprisoned till the landlord supplies him with food." The food is to be furnished evidently as a substitute for the land which he is forced to "eject."

NOTES.

We have received from Gilbert J. Clark, Esq., manager of the Lawyers' International Publishing Co., of Kansas City, copies of two superb engravings of "Eminent American, English, and Canadian Lawyers." Mr. Clark must have given a vast amount of time and research to the collection of the original portraits of this host of legal celebrities, and he has been fortunate in securing such admirable reproductions. The grouping is admirably done, and the engravings are real works of art. Possessed of these two pictures, the lawyer will have constantly before him the faces of nearly all the great leaders of the English-speaking bar. Valuable as these engravings now are, their value will be much enhanced as the years go by.

The meeting of the American Bar Association, at Milwaukee, on August 30 and 31 and September 1, promises to be of unusual interest. The following is the official programme: —

Wednesday Morning, 10 o'clock.

The President's Address, by John Randolph Tucker, of Virginia.
Nomination and Election of Members.
Election of the General Council.
Reports of the Secretary and Treasurer.
Report of the Executive Committee.

Wednesday Afternoon, 3 o'clock.

A paper by Henry Wade Rogers, of Illinois, on "The Treaty-making Power."
A paper by W. W. MacFarland, of New York, on "The Evolution of Jurisprudence."
Discussion upon the subjects of the papers read.

Thursday Morning, 10 o'clock.

The Annual Address, by Henry B. Brown, of Michigan.
Reports of Standing Committees.
(1) Jurisprudence and Law Reform.
(2) Judicial Administration and Remedial Procedure.
(3) Legal Education and Admission to the Bar.
(4) Commercial Law.
(5) International Law.
(6) Award of Gold Medal.

Thursday Evening, 8 o'clock.

A paper by U. M. Rose, of Arkansas, on "The Law of Trusts and Strikes."
Report of Special Committee on Uniform State Laws, etc.
Report of Special Committee on Expression and Classification of the Law.
Report of Special Committee on Salaries of Federal Judges.
Report of Special Committee on Indian Legislation.
Report of Special Committee on Adoption of Uniform Maritime Bill of Lading.
Report of Special Committee on Federal Code of Criminal Procedure.

Friday Morning, 10 o'clock.

Nomination of Officers.
Unfinished business.
Miscellaneous business.
Election of Officers.
The annual dinner will be given at the Hotel Pfister at 7 30 o'clock on Friday evening.
A parlor in the Hotel Pfister will be open as a reception room, for the use of members of the Association during the meeting.

Recent Deaths.

SAMUEL BLATCHFORD, Associate Justice of the Supreme Court of the United States, died at Newport, R. I., on July 7. He was the son of Richard M. Blatchford, a famous lawyer of New York City, where he was born March 9, 1820; he was graduated from Columbia College when seventeen years old. Three years after he was chosen by William H. Seward, then governor, as his private secretary, and was military secretary on the governor's staff until 1843. He was admitted to the bar in 1842, and in 1846 removed to Auburn, N. Y., where he entered into partnership with Christopher Morgan, W. H. Seward being the counsel of the firm. Clarence A. Seward afterward joined the firm, and its quarters were transferred to New York, where with Burr W. Griswold the firm of Blatchford, Seward, & Griswold was formed. Mr. Blatchford was appointed by Judge Samuel Nelson reporter of the Circuit Court for the second judicial circuit, and began in 1852 the compilation of Blatchford's Reports, which was continued down to the time of his appointment to the Supreme Court of the United States. On the resignation of Judge Betts, Mr. Blatchford was appointed his successor by President Johnson, May 3, 1867. It was during this service of nearly eleven years that he won his high judicial standing. President Hayes, in the spring of 1878, appointed Judge Blatchford to the United States Circuit Court, which position he held until President Arthur appointed him to be Associate Justice of the United States Supreme Court. He was especially noted as an equity judge; he was an eminent authority in admiralty law, and also in patent cases, where his clear perception of mechanical principles gave him great advantage. His decisions stand the test of time as models of learning, perspicuous reasoning, and concise statements of principle, and are quoted repeatedly, and in England as well as in this country.

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The Cosmopolitan.

The midsummer number, the first at the new price of twelve and a half cents per copy, though unchanged in size, excels any other issue of that magazine in

the number of its distinguished contributors, in the interest of its contents, and in its overflowing illustrations by famous artists. François Coppée, William Dean Howells, Camille Flammarion, Andrew Lang, Frank Dempster Sherman, H. H. Boyesen, Charles DeKay, Thomas A. Janvier, Colonel Tillman, Agnes Repplier, and Gilbert Parker are a few of the names which appear on its titlepage. Three frontispieces, all by famous artists, furnish an unusual feature; and among the artists who contribute to the hundred and nineteen illustrations adorning its pages, are Laurens, Reinhart, Fenn, Toussaint, Stevens, Saunier, Fitler, Meaulle, and Franzen. The midsummer number is intended to set the pace for the magazine at its new price of twelve and a half cents a copy, or $1 50 a year. The magazine remains unchanged in size, and each issue will be an advance upon its predecessor.

Harper's.

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Lippincott's.

The Troublesome Lady (illustrated), Patience Stapleton; Fanny Kemble at Lenox, C. B. Todd; On the Way (illustrated), Julian Hawthorne; An Old-Fashioned View of Fiction, Maurice Francis Egan; Chicago Architecture (illustrated), Barr Ferree: The Reprieve of Capitalist Clyve (illustrated), Owen Wister; What the United States owes to Italy, Giovanni P. Morosini; "The New Poetry" and Mr. W. E. Henley, Gilbert Parker; A Wild Night on the Amazon, Morgan S. Edmunds; Point *vs.* Truth, Robert Timsol; Truth *vs.* Point, Frederic M. Bird; Certain Points of Style in Writing, Edgar Fawcett: Men of the Day, M. Crofton.

Review of Reviews.

This number very fitly calls attention to our entrance on a new age — the age of electricity — in its three absorbing articles on the newest marvels and the even more incredible things to be expected. The great electrical exhibit at the World's Fair is described by Mr. J. R. Cravath. This paper is followed by two more under the title "Two Giants of the Electric Age." Mr. C. D. Lanier tells of the personality and sketches the picturesque career of Thomas A. Edison. The interview with Mr. Edison presents fully the great inventor's views of the further triumphs in electrical science that are about to come to us. A striking and picturesque contrast to the Edison article is Mr. J. Munro's character sketch on Sir William Thomson, Lord Kelvin. Mr. Munro tells how Lord Kelvin made the Atlantic cable possible, and how he invented the best mariner's compass; and the personality of the great Scotch professor is a theme of no less absorbing interest than his wonderful achievements in science. All these articles are profusely illustrated with portraits and pictures.

Scribner's.

The Life of the Merchant Sailor (illustrated), W. Clark Russell; Personal Recollections of Two Visits to Gettysburg (illustrated), A. H. Nickerson; Foreground and Vista at the Fair (illustrated), W. Hamilton Gibson; The Opinions of a Philosopher, Chapters III.–V. (illustrated), Robert Grant; Arabian Nights Entertainments, W. E. Henley; Musical Societies of the United States, and their Representation at the World's Fair (illustrated), George P. Upton; An Amateur Gamble, Anna Fuller; Trout-fishing in the Traun (illustrated), Henry Van Dyke; Aspects of Nature in the West Indies: From the Note-book of a Naturalist (illustrated), W. K. Brooks: The Copperhead, Chapters I. and II., Harold Frederic; The Prevention of Pauperism, Oscar Craig.

New England Magazine.

Mount Washington (illustrated), Julius H. Ward; John Ballantyne, American, XI.–XII., Helen Campbell; Where our Flag was first Saluted (illustrated), William Elliott Griffis; The Man who Lived a Plot (illustrated), Everard Jack Appleton; In the Footsteps of Jane Austen (illustrated), Oscar Fay Adams; The Wooden Peg, W. Grant; Experiences during many Years, III.-IV., Benjamin P. Shillaber; A Frontier Army Post (illustrated), Price Collier; The Common and Human in Literature, Walter Blackburne Hart; Influence of Physical Features on New England Development, Edmund K. Alden; Forests and Forestry in Europe and America, Henry Lambert; Diet, Samuel R. Elliott.

BOOK NOTICES.

THE LAW OF INCORPORATED COMPANIES operating under Municipal Franchises, such as Illuminating Gas Companies, Fuel Gas Companies, Electric Central Station Companies, Telephone Companies, Street Railway Companies, Water

Companies, etc. By ALLEN RIPLEY FOOTE. Robert Clarke & Co., Cincinnati, 1893. Three Vols. Law Sheep. $15.00 net.

For this new work of Mr. Foote's we have only words of commendation and praise. In method and purpose it is in every way admirable. The laws of all States pertaining to Franchise Corporations are intelligently presented in a form admitting of ready comparison, and the author has been very fortunate in securing the editorial services of able lawyers in each State, so that the statements of law and the true holdings of the several State courts are given by capable practitioners, and their correctness can be absolutely relied upon. The magnitude and extent of the work can be inferred from the statement that it has required the labors of an editorial staff of forty-eight experienced writers, extending over a period of three years; consists of over 3,000 pages; cites over 4,000 cases (as shown by the table of cases covering sixty-three double-column pages); and makes over 5,000 references to constitutional and statutory provisions. The work will, we believe, prove indispensable to all corporation lawyers as well as to all Franchise Companies. We cannot speak too highly of Mr. Foote's discussion of the principles of economic legislation which prefaces the work. It is a deep study of the nature and needs of the modern municipality, and will well repay a thoughtful reading. The leading features of this treatise may be summed up as follows. The work presents: 1. A discussion of the basic economic principles essential to securing the best service in connection with these industries, — a fund of suggestive thought for the student of political economy, the legislator (state or municipal), and all others having to deal practically with these important subjects. 2. A general consideration of the underlying principles of the law upon which the legislation of the State, and the rulings of the courts relative to these industries rest, — principles which are not confined by State lines or to any considerable extent limited by local legislation. 3. A specific and exhaustive consideration by States of all the provisions of law affecting these industries, whether constitutional, statutory, or judicial, — each State section prepared by a thoroughly capable practitioner of the State interested in the questions considered and fully equipped to discuss them. 4. A very full analytical index of the entire work arranged with special reference to the ready comparison of the provisions of law of each State upon any given question. 6. Appendices supplemental to these discussions, giving a complete list of reports of the courts of each State and their method of citation, both by States and alphabetically; specimen ordinances enacted by some of the more important cities and operated under by franchise companies; a topical index of State sections, giving the subdivisions, heads, and subheads discussed therein; and brief sketches of the attorneys engaged in the preparation of the work.

THE LAW OF COLLATERAL ATTACK ON JUDICIAL PROCEEDINGS. By JOHN M. VANFLEET. Callaghan and Company, Chicago, 1892. Law Sheep. $6.50 net.

There is no point upon which the profession has felt more perplexity than that of deciding whether a decree or judgment can be avoided or defeated by collateral attack; and this treatise by Judge Vanfleet will prove a valuable assistant in determining such questions when they arise. The decisions have been so conflicting that a vast amount of research and patience on the author's part must have been necessary to reduce the varied judicial reasonings to anything like order. Judge Vanfleet has accomplished this task in a most satisfactory manner, and gives us a clear, comprehensive, and scholarly work, one which will long hold its place as a standard upon a most intricate subject. The conflict of authorities forced the author to criticise the courts and their decisions in many cases, and the impartiality and discernment of the subject here shown by Judge Vanfleet must win for him and his work very high approval. More than 1,700 decisions in the English courts and those of the United States are criticised and condemned on principle and authority. Among the weighty decisions by the United States Supreme Court thus criticised and condemned by the author, may be mentioned: Rose *v.* Himely, 4 Cranch, 269; Thompson *v.* Whitman, 18 Wall. 457; United States *v.* Winchester, 99 U. S. 372; *Ex parte* Siebold, 100 U. S. 371; United States *v.* Walker, 109 U. S. 258; *In re* Snow, 120 U. S. 274; Hassall *v.* Wilcox, 130 U. S. 493; Nielsen, Petitioner, 131 U. S. 176. We heartily commend this treatise to the profession, as one of the most valuable which has been offered to them by any law writer.

DONALD MARCY. By ELIZABETH STUART PHELPS. Houghton, Mifflin, & Co., Boston, 1893.

This is an admirable book for boys. The pictures of college life are stirring and exciting, and at the same time truthful portrayals of experiences in some of our universities in years not long since gone by. "Rushing" and "hazing" are now happily things of the past; but the accounts of them will be read with interest by the rising generation, and to many an older reader they will bring vivid memories of his college days. A strong healthy tone pervades the book, and it should be an inspiration to boys to strive to be earnest and manly in life.

The Green Bag.

VOL. V. No. 9. BOSTON. SEPTEMBER, 1893.

JASPER YEATES.

By BENJAMIN CHAMPNEYS ATLEE.

A LAWYER'S vocation is ever running into new fields of usefulness. The flight of time changes the customs and manners, and they in turn the conduct of men and women. Old laws pass out; new ones come in. Old decisions are rejected; new ones made, quoted in a hundred cases, and then overruled, all before the ink with which they have been printed is fairly dry.

But though the outward forms may change, there are, connecting the lawyer of this decade with the lawyer of a century ago, the old unchanging principles and bases. These all must study, all must know; they stand above and beyond the changing forms and matters which go to make up a modern lawyer's life, so that, aside from the public eminence and standing a lawyer of a century ago may have attained, his professional brethren of to-day feel an almost personal interest in his life and doings; and if that life has been twofold in its usefulness, — a life of service to the profession and a life of service to the State, — we are the more interested, and feel the more repaid for our investigation.

The times following the Revolution were even more trying than the years of war. Even after the Constitution had been adopted and fully ratified, the restlessness of the people was permitted to work in channels reaching into the most vital parts of the government. Not that there were numerous or dangerous acts of force, not that riot and robbery ran rampant, but the machinery of government started with so much jarring and jolting, amid so much confusion, that even the builders themselves well-nigh despaired of ever seeing the machine stand together long enough to do any practical work.

Strong and straightforward indeed must be the man who could stand the temptations and trials of the time.

As his contemporaries estimated him, Judge Yeates was one of the most brilliant men of his day. Strong and intellectual in mind, placed by his own labors in a position where he could show his ability, he made his work part of the history of law in Pennsylvania.

Jasper Yeates was born in Philadelphia, April 7, 1745. His early boyhood days were spent in the best schools of his State. In 1761 he graduated with high honors (B.A.) from the College of Philadelphia; the degree of A.M. came soon after.

Natural gifts and personal desires caused the study of the law to be taken up, and for some years a thorough course of study in the laws of his native State was followed assiduously; then realizing that a study of the foundations of law at the fountain-head would be of great benefit to him, he went to London, and resided for some time at the Inns of Court.

The year 1765 saw his return to the Colonies, and his admission to the Lancaster Bar. The profession at once felt the influence of the brilliant young lawyer, and a large practice was soon established; in his hands were placed many important cases, all of which were treated in a most remarkably brilliant

manner. But no matter how great the press of business, Judge Yeates was, at all times in his life, methodical and studious. Inside of ten years after his admission to the bar, Jasper Yeates became known throughout Pennsylvania as a distinguished advocate. His specialty seemed to be Orphans' Court work and Decedents' Estates.

In 1774 the people of Boston were suffering much from General Gage's oppressive conduct; associations for their relief were formed in nearly every colony, and the inhabitants of Pennsylvania were not behind in the good work. In June of that year a letter from the "Committee of Correspondence" of the city of Philadelphia, and directed to the freeholders of Lancaster, was received by Judge Yeates. After announcing a meeting of the inhabitants of the city and county of Philadelphia to be held in the State House, Wednesday, June 15, the committee requested that a meeting of the people of Lancaster County be held for the purpose of ascertaining their sentiments in the matter. A meeting was therefore held in the Court House on June 15. At this meeting "Jasper Yeates, Esq., Edward Shippen, Esq., George Ross, Esq., Mathias Slough, Esq., James Webb, Esq., William Atlee, Esq., William Henry, Esq., Mr. Ludwig Lanman, Mr. William Bausman, and Mr. Charles Hall" were appointed a committee "to correspond with the general committee of Philadelphia." In pursuance of a general notice sent out in November, 1774, an election was held, December 15, to elect "sixty proper persons for a committee to observe the conduct of all persons touching the general Association of the general Congress." At this election Jasper Yeates was elected a delegate from the borough of Lancaster. We find his name on the records of "the Committee of Observation" as present regularly, and as always taking an active part in the proceedings; and on Nov. 8, 1775, he was duly elected chairman, with George Ross — whose name was afterwards to stand in solemn attest on the Declaration of Independence — as secretary. Jasper Yeates's work on this committee was earnest and successful; he had a trying position to fill at a trying time, but he none the less gave entire satisfaction.

In the summer of 1776 he made a journey to Western Pennsylvania to the scene of Braddock's defeat. He thus describes the field: —

PITTSBURGH, Aug. 21, 1776.

DEAR SIR, — We yesterday made a party to visit Braddock's Field. We went in a large canoe, with six oars, fourteen persons in number. A platform was raised on each end for a place to sleep, and then hoop poles bent over about four feet in height, on which blankets were stretched to keep off sun or rain. We were well supplied with provisions and refreshments. One of our companions played delightfully on a German flute; our time, therefore, did not pass heavily while we ascended the Monongahela. We arrived at the field in about four hours; we made a hearty dinner not far from the battle-ground, near a fine spring. It was wise in eating before we visited the field, for I would have had but little appetite if we had pursued a different course. When we commenced our ramble, our hearts sickened; the skulls and bones of our unburied countrymen met our eyes, and we contemplated in imagination as an event but recently happened. Any person of common humanity would have experienced pain from the reflection that between five and six hundred brave men fell victims to the merciless savages. The marks of cannon and musket balls are still to be seen on the trees; many of the impressions are twenty feet from the ground. My indignation was greatly excited against the commander of the British army in suffering so many brave men to perish from an obstinate adherence to European rules of war. The observations I heard Sir Frances Halket make of the disasters of that bloody day, and his filial expressions of affection to the memory of his worthy father, Sir Peter Halket, rushed to my recollection. My feelings were heightened by the warm and glowing narration of that day's events by Dr. Walker, who was an eyewitness. He pointed out the ford where the army crossed the Monongahela (below Turtle Creek eight hundred yards). A finer sight could not have been beheld: the shining barrels of the muskets, the excellent order of the men, the cleanliness of their appearance, the joy depicted on

every face at being so near Fort Du Quesne, — the highest object of their wishes, — the music re-echoed through the mountains. How brilliant the morning, how melancholy the evening! The savages and French had hardly an idea of victory when they made the attack. Braddock appeared almost to have courted defeat. Against every remonstrance of Sir Peter Halket, Major Washington, and other of his officers, he refused to let a man leave his rank. They fired in platoons against no object (how very dispiriting to a gallant soldier!); they were shot down in whole ranks. The enemy, observing the *infatuation* of the General, felt assured of victory, redoubled their exertions, and fired with such fatal precision as to cause our men to throw away their guns, and run off in the greatest disorder. The officers in vain attempted to arrest their course; they were compelled to follow their example. How differently did they cross the river now, — without arms, order, or music, the hellish yells of the Indians, and the groans and shrieks of the dying and the wounded falling upon their ears! I will not pain you by a further recital; suffice it that the enemy pursued them no farther than the ford. The dead bodies of our troops were suffered to remain a prey to wolves and crows. When the English took possession in 1758 of Fort Pitt, a party was sent out, who buried upwards of four hundred and fifty skulls. Many have since been buried, and many remain as monuments of our shame. That the enemy derived any advantage from the ground I cannot believe; their real advantage consisted in their mode of fighting and the blunder of Braddock. We returned home late in the evening; the music of the flute was delightful and solemnly impressive.

What a waste of blood and treasure has this little spot cost France, England, and America! The prospects around here are most charming on the Allegheny and Monongahela, the walks pleasant beyond description. I had often heard of the celebrated Fortress of Du Quesne in my youth. What is it now? A little irregular ground, a few graves, and the fosse of the fort are only visible. I remarked the grave of Colonel Clapham. Fort Pitt stands one hundred yards from Fort Du Quesne, fronting the junction of the waters. A garrison and guard reminds me that we are still in a state of warfare. May God grant that peace may soon be restored to us, and the Liberty of our country placed beyond the arm of Tyranny to reach!

Yours, etc.,

J. YEATES.

Mr. Yeates returned to Lancaster shortly after the date on which this letter was written.

He still, while following his large practice, entered into public life with zealous patriotism. In 1787 he was a delegate to the convention which ratified, on the part of Pennsylvania, the Constitution of the United States, and was one of the committee of three who reported a form of ratification. In 1791 he was appointed an Associate Justice of the Supreme Court of Pennsylvania; now it was that the harvest of Judge Yeates's years of study, research, and practice was to come.

Calm, earnest, and thoughtful in disposition, of great natural mental powers, he possessed the ideal judicial temperament. His decisions were prompt, earnest, studied. Clearly delivered, they expedited the business of the court in a most creditable manner. Always methodical in his habits of business, the assurance his clients placed in him as a counsellor was turned into admiration and respect for him as a judge.

In 1794 President George Washington appointed him one of a commission of three "to repair to the western counties and confer with such bodies as they may approve, in order to quiet and extinguish the insurrection." (This was the notorious "Whiskey Insurrection.") The other members of the commission were James Ross and William Bradford. These commissioners went to Pittsburg, and were there joined by the Hon. Thomas McKean and William Irvine, Esquires, who were commissioners on the part of the executive of Pennsylvania. After holding several conferences with the committees of the insurgents, the United States commissioners reported at length, under date of Sept. 24, 1794. The work of this committee was arduous and troublesome;

but Judge Yeates and his associates filled their posts with strength and dignity.

In 1805 Judge Yeates, together with Chief-Justice Edward Shippen and Justice Smith, was impeached — but afterwards acquitted — before the Senate of Pennsylvania. The facts in this case were: On Feb. 28, 1803, in the House of Representatives, a memorial from one Thomas Passmore, of the city of Philadelphia, was presented. This memorial set forth that the said Thomas Passmore had been subjected to fine and imprisonment for a contempt of court by the justices of the Supreme Court, without trial by jury. He also pleaded that the offence was not at all a contempt of court. An inquiry was asked.

This memorial was referred to the next session of the Legislature, on account of the lateness of the session. In the next session, therefore, on Jan. 17, 1804, this memorial was referred to the Committee of Grievances; this committee reported on March 13. They recited the facts in the case at length. These facts were that Thomas Passmore had, on Sept. 8, 1802, posted in a public coffee-house a notice derogatory to one Andrew Bayard. This man Bayard, it had been decided in a case before the Justices of the Supreme Court, owed Passmore some hundreds of dollars. But for thus libelling his opponent in the suit Passmore was fined fifty dollars, and committed for thirty days.

"It appears, moreover," said the committee, "from the evidence, that the usual course of proceeding was, in the first instance, departed from by the court. Immediate sentence, or atonement to Mr. Bayard, was the only alternative."

"Although the said Thomas Passmore had complied with every request of the said court, except that he refused to make an apology to Andrew Bayard, he was fined and imprisoned by the said court as aforesaid."

The committee then suggested that a committee be appointed to draft articles of impeachment against the Justices "for a high misdemeanor in their official capacity, by arbitrarily fining and imprisoning Thomas Passmore." It was resolved to impeach the Justices; the trial was fixed for the first Monday in January, 1805.

Accordingly, on Monday, Jan. 7, 1805, at eleven A. M., the Senate, as a Court of Impeachment, convened in the chamber of the House of Representatives. There were present the Speaker of the Senate, who acted as President of the Court; twenty-three Senators; the counsel for the prosecution, Cæsar A. Rodney, Esq., of Delaware; and the impeached, with Jared Ingersoll, Esq., and A. J. Dallas, Esq., as their counsel. The trial was long and severe, the evidence exhaustive, the speeches of the counsel long and eloquent; and on Friday, January 25, the last speech was finished. It was decided to adjourn until the next day for the taking of a verdict; then another adjournment was made to Monday, 28th; then in answer to the question, "Guilty or not guilty?" the Senators voted eleven for acquittal, thirteen for impeachment. The Constitution requiring a vote of two thirds to convict, the Justices were acquitted.

It can easily be seen that but three votes more against them would have been sufficient to convict the accused Judges. This large vote against them is attributed to political envy rather than to any belief in their guilt.

It was, however, very unusual for the whole Supreme Bench to be indicted at one time, though individual justices were impeached as many as three or four times in their administrations.

Judge Yeates remained on the bench, with honor both to his country and himself, until his death, March 13, 1817.

Now, what was he who served so well the many demands upon him?

It has been said that if you would know a man, you must know his books; they are not only comrades of his own choosing, but associates in those hours when his personality stands least obscured.

Judge Yeates's private library was large and comprehensive; chosen not for amusement or for pastime, but carefully put together, — showing the touch of a master-hand in letters; it was just such a library as a large-minded *littérateur* would revel in. Going on to the other cases, what do we find his legal library to be, — for it is still in existence? An almost complete collection of the then existing works on legal subjects, numbering one thousand and forty-three volumes. Do we need a further insight into his character? Studious, methodical, indeed, must be he who would spend so much time and money on his library, and what is more, spend so well.

Further: while on the bench Judge Yeates made copious notes of all cases brought to his notice; these he has embodied in the well-known series of Reports bearing his name. These cover the period from 1791 to 1808, and are models of style and diction.

Personally of impressive stature and bearing, all who knew Jasper Yeates at once admired and respected the genial host, the wise counsellor, the earnest advocate, the learned judge.

His was a large share of the honors of his country; but seldom, since his day, have those honors been borne so well.

He did not, it is true, wield the sabre or carry the musket; but his heart was his nation's, and whether in public or in private life, he ever gave himself for the good of his countrymen.

Judge Yeates's remains were interred at Lancaster, Pennsylvania. On his tombstone may be read — and passing years but cut each letter clearer — this well-won tribute: "He left behind him a name which will perish only with the judicial records of his country."

THE TRIAL AND CONDEMNATION OF JESUS AS A LEGAL QUESTION.

I.

By Hon. Edward W. Hatch.

IT is not the purpose of this paper to consider its subject as a theological question in any sense, but placing ourselves in the position occupied by Judæa and its people at the time when Jesus was tried and condemned, to examine it as a legal question governed by the law and practice of the Jewish Theocracy as it was then administered. For this purpose we do not consider the divine attributes of Jesus, but consider him alone as a Jewish subject, bound by the laws of his nation and subject to the jurisdiction of its properly constituted tribunals. The Jews have ever rejected Jesus as the Messiah, and have ever contended that, however much his condemnation and death is to be regretted, yet that treating him as a citizen of the Jewish nation he was an offender against their laws, was guilty of a capital offence, was regularly tried, condemned, and executed; that while the blunders of the Hebrews may be pitied, they should not be condemned. It is the purpose of this paper to examine this question tested alone by the standard claimed by some Jewish authority. Mr. Joseph Salvador, a physician and learned Jew, in a history of the Institutions of Moses, and the Hebrew people, attempts to justify the trial, condemnation, and execution. The question stated in his language is: "But since they [the Jews] regarded him only as a citizen, did they not try him according to their law and its existing forms?" In answering this question Mr. Salvador states: "This is my question, which can admit of no equivocation. I shall draw all my facts from the Evangelists themselves, without inquiring whether all this history was developed after the event, to serve as a form to a new doctrine, or to an old one which had received a fresh impulse." Taking this therefore as our standard, let us make inquiry. It has been, and is at the present day, quite a prevalent impression that the putting to death of Jesus was the work of a mob of irresponsible persons, without reference to law, its forms or practice. Such a view is erroneous, as Jesus was charged with a specific offence, was arraigned before a constituted tribunal, had a trial, and was sentenced. Sitting in review now, we may examine, as upon appeal, whether or not the law was complied with. As we shall hereafter see, under the Jewish law there were four essential things necessary to concur in order to authorize the carrying out final sentence in a capital case:—

(1) There must have been a capital crime committed;

(2) There must have been a jurisdictional tribunal to try, regularly organized, sitting at an authorized time and place;

(3) Competent proof by two qualified witnesses to establish the crime; and

(4) A sentence of condemnation regularly pronounced.

We will examine these in the order stated. The crime of which Jesus was accused was that of blasphemy. This was a crime punishable with death, according with, and based upon the direct command of Jehovah given to Moses as recorded in the twenty-fourth chapter of Leviticus, where it is related that the Egyptian, son of an Israelitish woman, strove with a man of Israel, and the Israelitish woman's son blasphemed the name of the Lord.

"12. And they put him in ward, that the mind of the Lord might be shewed them.

"13. And the Lord spake unto Moses, saying:—

"14. Bring forth him that hath cursed without the camp: and let all that heard him lay their hands upon his head, and let all the congregation stone him.

"15. And thou shalt speak unto the children of Israel, saying, Whosoever curseth his God shall bear his sin.

"16. And he that blasphemeth the name of the Lord, he shall surely be put to death."

Also in the commandment as stated in Exodus, chapter xx., and in Deuteronomy, chapter xiii., where it is provided: "If there arise among you a prophet, or a dreamer of dreams . . . saying, Let us go after other gods which thou hast not known, and serve them, thou shalt not hearken unto the words . . . and that prophet or that dreamer of dreams shall be put to death." Blasphemy embraced not alone cursing "by the ineffable name of God," but included claim made to the possession of divine power, or equality with God. It was under the latter charge that Jesus was tried. This was the Mosaic law, and as such was codified in the Mishna, which it is claimed was delivered to Moses upon Mount Sinai, and by Moses transmitted, passing through forty receivers, until the time of Rabbi Judah, the Holy. These receivers were qualified by ordination, and handed it from generation to generation. It was considered unlawful to reduce it to writing; but after the Captivity, for political purposes, it was formulated in a written code, and furnished the course of judicial procedure of the Jews so long as they remained in Judæa. By this code blasphemy was punishable with death by stoning, and also by post-mortem hanging, the latter ignominy being applied to but two cases, — the one mentioned, and idolatry.

Our next inquiry is, Does the testimony of the Evangels show Jesus to have been guilty of this offence?

It is not only not claimed by the Christian that Jesus was not the Son of God, but on the contrary it is the basic groundwork of the Christian faith. Some writers have said, in order to overthrow the charge that Jesus committed any offence against Jewish law, that for a person to call himself a Son of God was not blasphemy as understood by the Jews, since it was a common appellation, indicating that the person was a follower of the Most High, and that it was in that sense that Jesus used it, consequently he was not a blasphemer within the Mosaic law. Such reasoning cannot stand unless there fall with it the divinity of Christ. The question naturally arises, If Jesus did not claim to be the Son of God and one with the Father, why then is he believed equal with God? Jews and Christians alike believe that Jesus claimed to be sent of God, and one with the Father. That the Jews so understood him does not admit of doubt.

The first direct accusation of blasphemy was after the first Passover feast, when, being at Galilee, Jesus healed a man sick of the palsy, saying: "Son, be of good cheer: thy sins be forgiven thee. And behold, certain scribes said within themselves, This man blasphemeth: who can forgive sins but God only?" And again on the Sabbath day, as written by John, at the pool of Bethesda he cured a man of an infirmity, and directed him to take up his bed and walk. The Jews sought to slay him, "because he not only had broken the Sabbath, but said also that God was his Father, making himself equal with God." Violating the Sabbath was also punishable with death by stoning.

The complaints of the Jews for violation of the Sabbath day, for the forgiveness of sins, for eating with unwashed hands, and eating with publicans and sinners, occur frequently in the records of all the Evangelists, and such complaints were based upon violations of the Jewish law. At the Feast of the Dedication at Jerusalem, in Solomon's porch in the Temple, the Jews came around about him and said: "How long dost thou make us doubt? If thou be the Christ, tell us plainly. Jesus answered them, I told you, and ye believed not: the works that I do in my Father's name, they bear witness of me . . . I and my Father are one.' Then

the Jews took up stones again to stone him. Jesus answered them, Many good works have I showed you from my Father: for which of these works do ye stone me? The Jews answered him, saying, For a good work we stone thee not; but for blasphemy, and because that thou being a man makest thyself God."

In the reply to this statement of the Jews it is noticeable that Jesus makes no attempt at denial of the fact that he claimed to be the Son of God, but justified this claim, as he said: "Is it not written in your law, I said ye are gods? If he called them gods unto whom the word of God came . . . say ye of him whom the Father hath sanctified and sent into the world, Thou blasphemest, because I said, I am the son of God? If I do not the works of my Father, believe me not. But if I do, though ye believe not me, believe the works: that ye may know and believe that the Father is in me and I in him." This reply called their attention to the Jews' scriptural law as it appeared in the Eighty-second Psalm: "I have said, Ye are gods: and all of you are children of the Most High." And its evident object was to show that God had designated his people to whom the Scriptures came as gods, and that the Jews were inconsistent in charging him with blasphemy, when he but used the same title, inasmuch as his claim was substantiated and upheld by the character of his works, which indicated the intervention of superhuman power, and should convey to their minds that God was in him. "Believe the works, that ye may know . . . that the Father is in me, and I in him." From these accounts it is evident that the conclusion may be drawn, and so far as the Jews, honestly rejecting the divine mission and character of Jesus, acting under their law as interpreted by the Rabbins, were warranted in drawing the conclusion, that Jesus claimed to be God, and was therefore guilty of the offence of which he was accused. Thus far two facts are disclosed. There was by Jewish law the crime of blasphemy; its punishment was death. In the character of a citizen Jesus had offended.

We now come to a most interesting phase in the history of this momentous tragedy. Upon the basis now established we may decree guilt. But such decree may not be pronounced, or be executed arbitrarily, in the case of guilt, any more than in the case of innocence. When it rests for its sanction upon power and that alone, it becomes murder; and judicial murder is the most horrible that can be committed. Nor need we invoke the aid of modern authority in support of this statement; for, as we shall see, under the administration of law by the Jewish Theocracy as it existed when Jesus lived and died, no modern judicial tribunal has ever thrown its protecting arm over accused persons with such exacting care and such scrupulous, rigid adherence to form. At the coming of Jesus, Judæa was a conquered province, under the domination of Rome, which still left to them their religious worship and jurisdiction of offences committed against their laws. The governing power was a Hierocracy, composed of a High Priest, associated with him seventy other priests: this was called the Great Sanhedrim, or Synhedrion, and was the Municipal Council of Jerusalem. It is with this body that we have to do. No tribunal has ever existed, and in all human probability none ever will exist, to whose hands shall come such a momentous task. It is fraught with awful interest, for it was the tribunal that tried and sentenced to death the Saviour of the world. The Sanhedrim had unlimited jurisdiction in the trial and sentence of offenders, but it had no authority to execute in a capital case until authorized by the Roman Procurators. This last is denied by many respectable authorities as to religious offences, but it was asserted by the Jews as applicable to Jesus. There were three well-authenticated tribunals of the Jews: one composed of three judges, who had jurisdiction over the recovery of debts, damages, beating, robbery and slander, which did not include the judgment of souls; one

composed of twenty-three judges, who had jurisdiction of judgments in souls, in which are included crimes punishable with death, although some authorities say only with stripes; and one composed of seventy-one judges, some say seventy-two. The first was called the Court of Three; the second the Council of Twenty-three, or Lesser Sanhedrim; and the third the Great Sanhedrim, or Synhedrion. Provision was made for adding judges to the Council of Twenty-three. Jesus was tried before the Great Sanhedrim. It is stated by the Rabbins that to become an ordinary member of the Sanhedrim, "a man must have been wise, handsome, aristocratic, old, a magician, and able to speak seventy languages,[1] that the Sanhedrim might not need an interpreter." The law, the course of procedure, and the character of the tribunal is set forth in the Mishna Treatise. From it we learn that the members of the Sanhedrim for judgment in souls, when in session, were seated upon the floor on carpets or raised cushions, in a semicircle, that they might observe each other. The High Priest was President: it could also elect a presiding officer, with a first and a second vice-president, who sat respectively upon the right and left of the High Priest. The Talmudist writers state that their sitting was in the Temple; but Josephus places their meeting-place upon Mount Zion, not far from the Temple. Mendelsohn says they held their sessions at the entrance to the Temple mound; other writers place it between Xystes and the Temple, on Temple Hill, but not in the inner court. But all agree that its place of meeting in the palace or house of the High Priest was exceptional and irregular; and Mendelsohn states that unless domiciled in the usual place, which was regarded as sacred, no jurisdiction existed to pronounce judgment in a capital case. Two of the scribes of the judges stood before them, — one on the right, and one on the left, — and Rabbin Judah said three, one of whom wrote the sentence of acquittal, the other of condemnation, and the third wrote both. It is quite evident that these scribes also wrote down the testimony taken upon the trial, as it appears that they were upon occasion required to refer to it. Before the Sanhedrim also sat three rows of disciples, or probationers, — persons who were eligible to appointment as judges; but no probationer could be appointed until he had served in some branch of all the lower courts. If it became necessary to appoint, the judges took one from the front row, one stepped forward in order and filled his place from the rear row, and one was selected from the probationers to fill the rear place thus advanced. At first the judges were not paid, the position being regarded as one of honor. It does not appear that bribery ever stained the record. The time of trials was in the morning, and it was not lawful to try causes of a capital nature in the night, or to examine a cause, pass sentence, and put it in execution the same day. The last particular was very strenuously insisted upon, nor could trials be held on festival days or Fridays. "Judgments in souls are finished on the same day for clearing, and on the day after it for condemnation, wherefore there can be no judgments on Friday, or on the eve of a festival," says the Mishna. Trials were public. Both the accused and the accuser made their appearance before the judges. The accuser was denominated Satan, or the Adversary; and after the captivity he appeared with dishevelled hair and in mourning. In order to establish the charge, two witnesses were necessary, and including the accuser, three. The witnesses were examined separately, the accused having the right to be present when the testimony was given. The witnesses were brought in separately, and cautioned that the witness bear in mind the solemnity of the occasion, the subject of the trial, and that before speaking they be absolutely certain of the truth of what they speak as a fact within their personal knowledge. The Mishna thus states the process of intimidating or cautioning as carried on

[1] This doubtless means dialects.

by one of the judges, or by each of them separately, if they were so disposed: —

"Perhaps you are speaking from guess? Or from hearsay? Witness from witness? Or from a trustworthy man you heard it? Or perhaps you don't know that at the last we shall proceed to inquire into your own character and investigate it. Have a knowledge that the judgments of money are not as judgments of souls. In judgment for money, when the man pays the money he has atoned. In judgment for souls, his blood and the blood of his posterity are suspended till the end of the world. So we find it with Cain when he slew his brother. It is said of him, 'The voice of thy brother's bloods crieth.' It does not say thy brother's blood, but bloods of thy brother, — his blood and the blood of his posterity. Another thing is also meant, that thy brother's bloods are spattered on wood and on stones. Therefore man is created single, to teach thee that every one who destroys one soul from Israel, to him is the verse applicable, as if he destroys a full world. And every one who supports one soul from Israel, to him is the verse applicable as if he supports the full world. And it is also said, for the peace of creation, that no man may justly say to his companion, 'My father is greater than thine,' and that the Epicurean should not say that there are more creators in the heavens, and it is also said to show forth the greatness of the Holy One, blessed be He! When man stamps many coins with one stamp, all are alike. But the King of Kings, the Holy One, blessed be He! stamped every man with the stamp of the first Adam, and no one of them is like his companion: therefore every one is bound to say, 'For my sake the world was created.' But perhaps the witnesses will say, 'What is this trouble to us?' But is it not already said? And is a witness whether he has seen or known of it: if he do not utter it, then he shall bear his iniquity. But perhaps the witnesses will say: 'What is it to us to be guilty of this man's blood?' But is it not already said, when the wicked perish there is shouting? God will demand of thee an account as He demanded of Cain an account of the blood of Abel. Speak."

No tribunal of modern times has ever by any system of practice brought to the mind of the witness such a sense of the awful responsibility which weighs upon him when he speaks words upon which hangs the thread of a human life like this. Who can doubt but that such examination makes the witness careful to speak of a fact only of which he absolutely knew the truth? The judges also inquired with severe investigation as to when the crime was committed, by asking "In what Sabbatical year? In what year? In what month? What date in the month? What day? What hour? What place? Did you know him? Did you warn him?" Failure to warn a person often excused the criminal, for ignorance of the law was a defence: there was no presumption, as with us, that he knew the law. Not only must he be warned, but he must acknowledge it, and express a desire to commit the crime notwithstanding it.

Every judge was considered praiseworthy who extended examinations. They also made a distinction between examination and investigation. In investigation, if the witness said, "I don't know," he was set aside as worthless; that is, if he did not know the year, month, day, hour, or place of the occurrence or person who committed the offence, he was regarded as not sufficiently accurate to make it safe to take his testimony as a basis for judicial condemnation, and this for the reason that only direct testimony was permissible. But if upon examination or caution he said, "I don't know," or the two witnesses so say, their testimony was taken, if qualified in other respects, as it related rather to information possessed regarding the penalty for false or mistaken testimony, and might be explained to them; but if upon examination or investigation the witnesses contradicted each other, upon any material question, both were declared worthless. This rule was applied with great strictness; for the Mishna declares: —

"One witness said on the second of the month, and another witness said the third of the month; their witness stands, because one knows of the intercalary month, and another does not know of the intercalary month. One said on the third, and

another said on the fifth; their witness is worthless. One said on the fifth hour, and another said on the seventh hour; their witness is worthless, because at the fifth hour; the sun is in the east, and at the seventh hour the sun is in the west."

The second witness was examined separately from the first, and they must agree as to verbal statements, and technically as to the character of the crime and the manner of its commission, and that the witnesses not only saw or heard the crime committed, but saw each other at the time. No torture was ever used to extort confession of guilt. Voluntary confession was not admitted, unless corroborated minutely by the legal number of witnesses. The evidence in, they proceed to consider the case. In this respect the Mishna provides: —

"They open the case with clearing. One of the disciples says, 'I possess information to clear him.' Another of them says, 'I possess information for condemning.' They order the latter to keep silence. One of the disciples of the Sanhedrim says, 'I possess information to clear him.' They bring him up and seat him between the judges; and he did not go down during the whole day. If there be substantial information, they give him a hearing; and even when he [the accused] says, 'I possess information for clearing myself,' the judges give him a hearing, only there must be substantial information in his words. If the judges cleared him, they released him; but if not, they deferred judgment until the morrow. They conversed in pairs, and reduced their eating, and they drank no wine all the day, and discussed the matter the whole night."

A summary conviction without this consultation amounted to an acquittal, and the prisoner could not again be tried. "And on the morrow they came early to the judgment hall. He who was for clearing said, 'I was for clearing, and I am for clearing in my place;' and he who was for condemning said, 'I was for condemning, and I am for condemning in my place.' He who pronounced for condemning could pronounce for clearing, but he who pronounced for clearing could not turn around and pronounce for condemning." Mendelsohn modifies somewhat this statement, but leaves it practically to stand.

"If the judges erred in a matter, the two scribes of the judges recalled it to their memory. If they found him clear, they released him; but if not, they stood to be counted. Twelve cleared him, and eleven condemned: he is clear. Twelve condemned him, and eleven cleared him; he is clear; and even eleven clear, and eleven condemn, and one said, 'I don't know,' and even twenty-two cleared or condemned, and one said, 'I don't know,' they must add judges. How many do they add as judges, two by two up to seventy-one; that is, they added two judges, and then voted. Thirty-six cleared him, and thirty-five condemned him: he is clear. Thirty-six condemned him and thirty-five cleared him: they disputed with each other until one of the condemning party acknowledged the statement of the clearing party."

It thus appears that in the Sanhedrim of twenty-three it took the concurrence of thirteen judges to convict; and in that of seventy-one, it took thirty-seven. It also appears that all the judges must be either for clearing or condemning, and that an undecided opinion called for the addition of judges. If the judgment was of condemnation, "they brought him forth to stone him. The place of stoning was outside the judgment hall . . . One stood at the door of the judgment hall with flags in his hands, and another man rode a horse at a distance from him, but so that he might see him. If one said, 'I have something to tell for his clearing," this one waved the flags, and the other galloped his horse, and stopped the accused; and even though he himself said, 'I have something to tell to clear myself,' they brought him back as many as four or five times, only there must be substance in his words. If they found him clear, they freed him; but if not, they took him forth to stone him. And a herald preceded him, crying, 'Such an one, the son of such an one, is brought out for stoning, because he committed such a transgression, and so and so are witnesses: let every one who knows aught for clearing him come forth and tell it.'"

THE CRINOLINE CASE.

(61 N. Y. 621.)

By Francis Dana.

GREAT Justice, Goddess of the Sword and Scales! —
And thou, O Themis of disputive tongue,
Supplant the Muse, who lamentably fails
To sing this matter as it should be sung,
Take up her lyre, and bid her hold her jaw,
And hear *you* talk, — for what knows *she* of Law?

In 61 N. Y. 621,
(*Poulin against Broadway and Seventh Avenue Company*), after his last fight was done,
The counsel for the Railroad moved to have a new
Trial, because the Court had had the gall to
Charge in a way he thought there was no call to.

It was a case that cast into the shade
All past proceedings, — civil, yea, and criminal:
On one side angry Beauty stood arrayed
(In hoop-skirts) warring for the right of women all
To dress as suits 'em, — warring very properly
Against the tyranny of a brute monopoly.

Dame Fashion had that year decreed a *fat* form
For ladies, and that hoop-skirts must prevail:
Thus clad, the Plaintiff from a horse-car platform
Alighted, heedless of Defendant's nail,
Which, peeping forth, its rusty head entangled
In the wide hoop that round her person dangled.

Unconscious of the danger, she descended;
When the Defendant's negligent conductor,
Ere her catabasis was fully ended,
Started the car, — the nail held fast, and chucked her
Heels overhead, and calling on her gods,
On the hard road, and yanked her several rods.

Defendant's counsel asked the Court to charge
(His mien more mandatory was than prayerful)
That when young women wore their skirts so large
They 'd got to get around uncommon careful,
Or bear the *damnum* (*!*) consequent on wearing
Things that scare horses and set men-folks swearing:

That when a nail sticks out, enough to pester with
Its undue prominence the female skirt,
Woman must use the eyes that Heaven has blest her with
To look about her lest she come to hurt;
That people who can't see impending dangers
Must n't get mad and lay the blame on strangers:

That "*a hoop-skirt is not a needful article*
Of ordinary feminine apparel;"
That there 's no sense nor use, the slightest particle,
Of rigging out one's person in a barrel, —
"Folks that tempts Providence the way that some does
Should n't sue *us* for what the wrath-to-come does!"

That horse-car companies have rules which go
With ordinary cases, and provide
How high loose nails shall be allowed to grow,
And what to do when skirts are *not* too wide;
But *are n't* to be enslaved to female passions
For dress, or change their rules to fit the fashions.

The Court, however, did not so agree,
But urged it strongly on the Jury's sense
That crinoline and hoops are not, *per se*,
Proof of contributory negligence;
That skirted dames shall have an even chance
For damages with them that dwell in p—ts.

The jury then, without prolonged debate,
To soothe the Plaintiff's bumps and smooth her bangs,
Brought in a verdict adequately great
To obviate all reminiscent pangs:
The counsel, whose objections still remained,
Excepted, — his exceptions were n't sustained.

For Woman, lovely Woman! hath her right
To wear what doth, or what doth *not*, become her,
Whether of wings, hoops, humps, or laces tight,
Or men-folks' galluses, or furs in summer, —
And Blackstone comments on the fact that "Lex
Makes a great favourite of the Gentler Sex."

THE SUPREME COURT OF APPEALS OF VIRGINIA.

By S. S. P. Patteson, *of the Richmond, Va., Bar.*

III.

JUDGE JOSEPH CHRISTIAN, now a distinguished member of the Bar of Richmond, served twelve years on the Supreme Bench, having taken his seat in 1870 and retired in 1883.

Judge Waller R. Staples is the son of Col. Abram Staples, of Patrick County, and was born at Stuart in that county in the year 1826. His collegiate education was commenced at the University of North Carolina, where he spent two years, and was completed at the College of William and Mary, of which he is an alumnus. Having attained his majority, he removed to the county of Montgomery, Va., where he commenced the practice of the law in the office of the Hon. William Ballard Preston, Secretary of the Navy under the administration of President Taylor. In 1853 and in 1854 Judge Staples was elected to the Legislature of Virginia from Montgomery County. He was a Whig in politics, and was an elector on the ticket in 1856 and 1860. When the State of Virginia adopted the ordinance of secession in April, 1861, the Convention appointed four Commissioners or Representatives to represent the State in the Provisional Congress at Montgomery, Ala., — Hon. William C. Rives, R. M. T. Hunter, Judge Brockenbrough, and the subject of this sketch. Judge Staples served in the Provisional Congress until the termination of its existence, Feb. 22, 1862. On that day the new government went into effect; and Judge Staples, having been elected by the people by a large majority one of the members of its House of Representatives, was triumphantly re-elected in 1863, and served in that body till the close of the war. He then resumed the practice of his profession in Montgomery County, and so continued until he was elected a Judge of the Supreme Court of Appeals in February, 1870, by the Legislature of Virginia. He received the highest vote given in that body, for any one of the candidates except the Hon. R. C. L. Moncure. When in 1882 the Re-adjuster Party obtained control of the State, Judge Staples and his associates on the bench were not re-elected, that party having a large majority in the Legislature. In 1884 the Hon. E. C. Burks, Maj. John W. Riely, and Judge Staples were appointed a committee of revisers to revise the civil and criminal laws of the State. The work was completed in three years, and is embodied in what is known as the Code of Virginia, 1887.

Judge Staples has been, since the war, an ardent Democrat in politics; has several times canvassed the State, and has been twice a presidential elector.

It is well known that during his term on the Supreme Bench he could have received the nomination as governor on two occasions, and for attorney-general; but he has steadfastly adhered to the resolution of not being a candidate for any political office.

For two years he was the counsel of the Richmond and Danville R. R. Co. in Virginia, but resigned the place. He is now engaged in the active practice of his profession in the city of Richmond, being the senior member of the firm of Staples & Munford, and one of the acknowledged leaders of the bar.

Judge Francis T. Anderson.

In January, 1870, "the restored government" of Virginia was inaugurated. Following upon the disastrous period of war, revolution, and reconstruction, every department of the new government was confronted with

conditions and questions as complex and difficult as ever engaged the attention of statesmen and jurists.

This was particularly the case as to the new courts then organized.

A multitude of new and difficult cases, growing out of war transactions, and the adjustment of the rights of parties under war contracts to a shifting and variable currency, and to the phenomena of a novel and unprecedented civil convulsion, and the vexed questions arising under legislation in reference to the settlement of public and private debts, and the readjustment of the body politic to new social, political, and business conditions, were awaiting adjudication and settlement by the new courts. Practically a new code of laws had to be enacted and construed.

In this critical era a General Assembly, composed largely of young men without legislative experience, had been placed in control of public affairs; but they were generally men of remarkable intelligence, of education, of great industry, and bent upon rendering their State the best service in their power.

This Legislature chose as the Judges of the Supreme Court of Appeals of the State, — the tribunal which was finally to determine many of these novel and difficult questions, — five lawyers, whose profound learning, varied experience, thorough acquaintance with public affairs and with the history and condition of the people of their State, and, above all, whose unswerving rectitude, broad patriotism, exalted courage, and strong common-sense eminently fitted them for the efficient discharge of their important duties.

Perhaps no court which ever sat had, in the course of thirteen years, to deal with so many difficult, important, and far-reaching questions of first impression; and certainly no court ever solved and settled such questions with more ability or more fidelity to the principles of right and justice.

Francis T. Anderson, the subject of this sketch, was chosen in March, 1870, one of the original five members of this court. The other judges elected were R. C. L. Moncure, the President of the court, W. T. Joynes, Waller R. Staples, and Joseph Christian.

The great learning and ability of Judge Joynes were lost to the court by his resignation on account of failing health, in the early part of 1872; and he was worthily succeeded by Judge Wood Bouldin in April of that year, and Judge Bouldin dying in October, 1876, was succeeded by Judge Edward C. Burks. Both Judges Bouldin and Burks fully came up to the measure of their great duties and responsibilities, and maintained the high standard of judicial purity and ability which had been established by their associates.

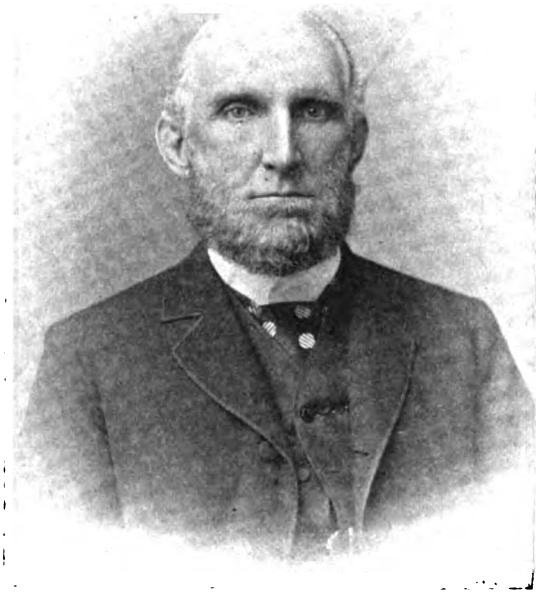
The venerable and honored president of the court died in August, 1882, and was succeeded by Judge L. L. Lewis, who became president of the succeeding court, which was organized in January, 1883, — a position which he still fills with marked ability.

Francis T. Anderson, son of William and Anne Thomas Anderson, was born at Walnut Hill, Botetourt County, Va., on the 11th of December, 1808. His father was of that heroic Scotch-Irish stock which in the last century settled and held the valley of Virginia, and whose unsurpassed valor, hardihood, and feats of arms conquered Kentucky and the West. His mother was a daughter of Col. Francis Thomas, of Frederick County, Md. His father and mother were devoted Christians. He was reared upon an upper Virginia farm under influences and in the daily presence of exemplars that imbued his youthful mind with lofty ideas of duty to his God and to his country. It was a life with wholesome surroundings, — a life, in his boyhood and youth, spent largely in the open air.

He belonged to a generation which constituted a connecting link between the

Revolutionary era and the modern era of American history, — between the times of Washington, Patrick Henry, and Jefferson, and the times of Lincoln, Jefferson Davis, and Robert E. Lee.

He received his education first and chiefly at his father's fireside, under the tuition of his devoted mother; then at the school of Curtis Alderson; then for one session at the school at Ben Salem, Rockbridge County, Va., during which time he lived at Greenforest, the home of his brother-in-law, Robert Glasgow, Esq.; afterwards for several years at the Fincastle Classical School, conducted by the Rev. Robert Logan; and subsequently at Washington College, at which institution he graduated with distinction at the age of nineteen.



WALLER R. STAPLES.

He read law under the direction of Fleming B. Miller and Chancellor Allen Taylor, and came to the bar when just twenty-one years of age; and within a year afterwards, on the 8th of December, 1830, he was married to Mary Ann Alexander, daughter of Andrew Alexander of Rockbridge. He always realized that whatever of success he achieved was largely due to the sweet influence which she cast over his life and home.

Following in the parental footsteps, he united with the Presbyterian Church at Fincastle, in which he succeeded his venerable father as a ruling elder. His faith in God was the absolute and confiding trust of a child.

His three brothers — Col. John T. Anderson of Botetourt, Dr. Wm. N. Anderson of Greenbrier, and Gen. Joseph R. Anderson of Richmond City — were all men of great force of character, and great distinction in their respective professions and spheres of duty. It is rarely that a single household has given to the world four men of such marked characteristics, ability, and usefulness; and their sister, Mrs. Robert Glasgow, was as admirable as a woman as they were as men.

In his early professional life he for several years had a small class of young law students to whom he gave instruction. Among those who belonged to this class, and were trained by him for the bar, were Eli Phlegar and Daniel Hoge, of Montgomery County.

In a few years the demands of his practice were so engrossing that he had to give up his law class; but he derived advantages from his systematic study in order to prepare himself for his duties as an instructor, the benefit of which he realized throughout his professional and official life.

He was an earnest and laborious student of the law, — of law as a science, a science of broad principles and profound philosophy. He was a lawyer of few books, but those were of the best, and were faithfully studied and mastered.

He entered upon his profession with that earnestness and enthusiasm which usually characterizes successful effort; and in its practice he always adhered strictly to an elevated code of ethics. At the bar he

achieved an early success and distinction. To the study and work of his profession he devoted himself assiduously for twenty-five years. During that time, as always, he took a lively interest in public affairs, but cared very little for political distinction.

In politics he was a Whig of the Henry Clay school; and while he preferred the rewards and distinctions which are the fruits of professional endeavor to political preferment, he was several times brought forward as the candidate of his party, — then largely a minority party in Virginia, and in the section of the State in which he lived.

In 1855, his health having been somewhat impaired by the labors and confinement of his profession, and important business interests requiring his attention, he removed to Rockbridge County, and settled at Glenwood, where he resided until 1866, and devoted himself chiefly to the supervision of his iron property and farm.

He continued, however, to be a studious observer of the events and measures of that critical period, and devoted much of his leisure time to reading and study.

In 1860 he was one of the electors of the Constitutional Union Party, was elected, and was chosen president of the Electoral College which cast the vote of Virginia for Bell and Everett, — the first occasion in her history when the vote of the State was cast against the presidential nominees of the Democratic party.

He took a profound interest in the events and controversies which led up to the war between the States, cherished an hereditary devotion to the Union, and earnestly urged the adoption of such measures and policies as would prevent civil war and the threatened disruption of the Union; but when what he believed to be an unconstitutional and unjustifiable war of coercion was precipitated upon Virginia, he justified and advocated the course which her convention adopted, and throughout the struggle which followed, gave his warm and active adherence to the Southern cause.

In May, 1861, he was elected, with Col. S. McD. Reid, to represent Rockbridge in the Legislature of the State; and in that body was distinguished for his zeal and ability in devising ways and means for the support of the armies in the field and protecting the people at home.

In 1863, owing to impaired health, he declined a re-election, but in 1865 was again chosen one of the delegates from his county to the Legislature; but owing to the overthrow of the Confederate Armies, and the refusal of the Federal Government to recognize the then Government of Virginia at Richmond, he never took his seat.

In 1869 he returned to the practice of law, and in March, 1870, was chosen by the General Assembly one of the Judges of the Supreme Court of the State, which position he held until Jan. 1, 1883.

He was always the devoted friend of education. In 1853 he was elected one of the Trustees of Washington College, and thereafter gave much of his time and labor to the service of that venerable institution. He participated in the action of that board in 1865, in the reorganization of the college, which resulted in securing the services of Gen. Robert E. Lee as its President; and he co-operated with that illustrious patriot in his plans for enlarging the usefulness of the institution. In 1879 he was chosen Rector of Washington and Lee University, — a position which he held until his death.

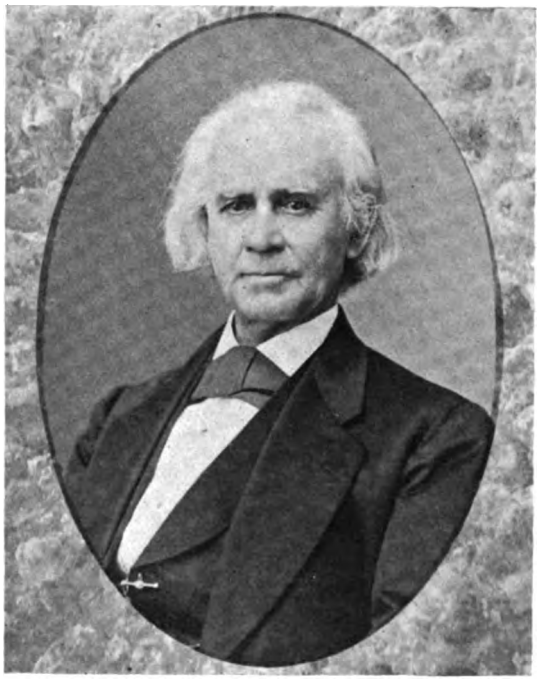
His career as a judge was in some respects a surprise to some of his acquaintances, who supposed that it would be impossible for one who had been for so long a time largely engrossed in the business of a manufacturer and farmer, and whose attention had been so largely given to public affairs, to adjust his mind to the labors of a high judicial position.

He had doubtless forgotten something of the details of the statute and common law; but the great principles of that science, which he had mastered with painstaking fidelity, and which he had made his guide

for so many years, were so impressed upon his mind that they had become parts of his intellectual being.

The years which he had devoted to other pursuits had served but to enlarge his acquaintance with men and affairs, to broaden his views, and to ripen and strengthen his judgment and render it less technical.

He came to the consideration of the multitude of novel and important questions which speedily engrossed the attention of the new court, with a mind unbiassed by participation in their discussion as an advocate, and ready to consider them dispassionately and judicially.



FRANCIS T. ANDERSON.

From the first he took rank as an able and fearless judge, even along with the great jurists who sat with him on that distinguished court.

The thing that was soon found to be his controlling guide in his decisions was "the very right of the case." That he sought always to discover; and, once determined, it would require overwhelming authority of precedent to swerve him from the result which his conscience approved. His motto was "Fiat justitia, ruat cœlum."

Another striking thing about his work upon the bench was the vigor, clearness, and power of his written opinions. Some of them will live among the ablest expositions of the law which are found among the records of that illustrious tribunal.

Among these were notably his opinions in Griffin *v.* Cunningham, 20 Gratt. 55; Miller and Franklin *v.* Lynchburg, 20 Gratt. 335; Antoni *v.* Wright, 22 Gratt. 871; Harris *v.* Harris, 23 Gratt. 737; Latham *v.* Latham, 30 Gratt. 307; Clarke *v.* Tyler, 30 Gratt. 150; Noble *v.* City of Richmond, 31 Gratt. 271.

By his force of character as well as by his power of logic, he made an impress upon the jurisprudence of Virginia.

His work as a judge was simply enormous. His naturally vigorous constitution, strengthened by years of active life, enabled him to devote an average of not less than ten or twelve hours daily to study and work. He examined every case submitted to his court with exhaustive care, and he always gave courteous and considerate attention to the arguments of counsel, holding his judgment in abeyance upon all debatable questions until both sides were fully heard. To the young and inexperienced advocates he was especially considerate; and all over the Commonwealth he was regarded by them with sincere affection and veneration.

After the expiration of his term of office, at the age of seventy-three, he retired to private life, devoting himself to his family and to the settlement of his private business.

She who had been for more than fifty years the sharer of his joys and sorrows was taken from his side in December, 1881. From that time the shadow of a great sorrow hung over his life; but he bore up cheerfully to the last.

On the 30th of November, 1887, in the seventy-ninth year of his age, after a brief

illness caused by a cold contracted from great exposure in very inclement weather, he peacefully breathed his last in the assured hope of a blessed immortality, and two days afterwards was laid beside the wife of his youth and his life-long devoted affection, in the quiet cemetery at Lexington.

The sense of the public loss sustained by his death, and of the respect entertained for his memory in his native State, found expression in resolutions adopted by the Faculty and by the Board of Trustees of Washington and Lee University, by the Bar of Lexington, and by the Bar of Virginia at a memorable meeting held in the court-room of the Supreme Court of the State at Richmond, in April, 1888.

At the latter meeting eloquent addresses were delivered by Judge W. W. Crump, Messrs. Wm. Wirt Henry, J. H. H. Figgat, and James Lyons. Among other things Judge Crump said of him: —

"Upon that bench for twelve years he was a magistrate, wearing the ermine with dignity and honor, and dispensing justice with impartial diligence and spotless integrity. . . .

"His judicial manner was formed upon the models of Marshall and Taney. Gentle, kindly, patient, he was especially considerate and attentive to an advocate who needed aid in conducting his cause. No glow of oratory or mere strength of argument was permitted to overwhelm the right. His intellect and his imagination were both proof against false reasoning or brilliant phrases. He gave to each case careful investigation and conscientious thought.

"His opinions when formed, resting upon thorough conviction, were rock-fastened, embedded in that steadfast integrity of purpose upon which his judicial life was founded. . . .

"He did not encumber his mind with a multitude of incongruous cases, which rather tend to increase the perplexity of the situation, and are generally valueless in solving the controversy in hand,—which serve only as crutches to reach the point of difficulty, and there being discarded as useless, leave those who relied upon them groping in doubt and obscurity. His learning was deeper and more valuable than that which comes from cases.

"Versed in the great principles of jurisprudence, which he had studied thoroughly, aided by a vigorous common-sense, a clear intellect, and a generous heart, he was fully armed in defence of justice and of right.

"We may not find in his opinions the dissertations or essays,— often tedious, generally irrelevant, — which give pleasure chiefly to the writer or to the curious student; but for sound principle, vigorous reasoning, apt definite conclusion, they will compare with any of his compeers.

"It is not claimed that he was infallible, but we know he was always governed by his own sense of the real justice of the case; and those who stood at this bar felt absolute confidence that he would decide for the right as the right appeared to him, and causes were argued with perfect knowledge that he sat in judgment unbiassed, firm, and pure, anxious only to be just.

"In his social bearing his demeanor was of that engaging character which belonged to gentlemen of the old school, of which he was a conspicuous type.

"Bland and courteous, of sterling integrity and stainless life, wise, able, just, the bench and bar alike will warmly cherish his memory."

And the Hon. J. H. H. Figgat, the distinguished representative of Judge Anderson's native county, in his remarks upon that occasion, among other things said of him: —

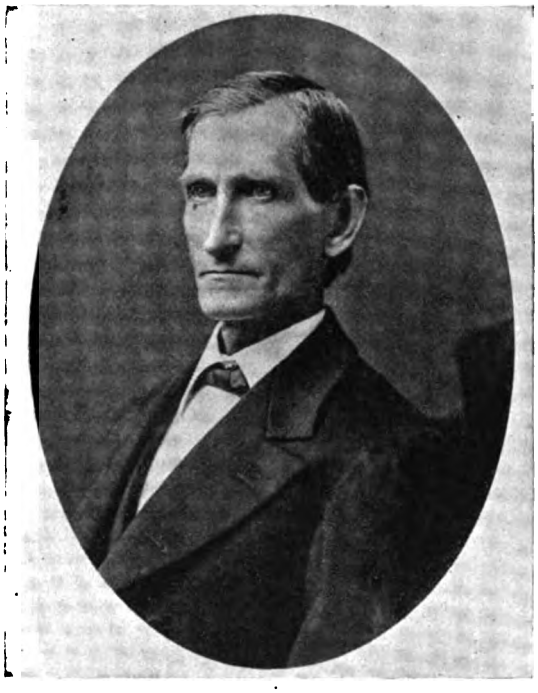
"But it is not as the able and accomplished solicitor and advocate, or the fearless and bold politician, or astute and far-seeing business man, or even as the learned and upright judge as he was, that I delight to remember Francis T. Anderson; but to think of him as I knew him in my boyhood,— the upright citizen, the genial gentleman, the kind-hearted neighbor, the Christian nobleman, who by precept and example encouraged others to be better. Ah, sir, how many a poor young man has he taken by the hand and urged to a nobler and higher life! How many a struggling neighbor has he helped and encouraged to battle with life and conquer adversity!"

And the Hon. William Wirt Henry in his remarks upon that occasion said: —

"The scene to-day forcibly reminds me of the first time I ever entered this hall, when I found

upon the bench, among the members of the court, Judges Moncure, Bouldin, and Anderson, all three of whom have left us to appear before the Judge of all the earth. I may safely say that not alone in the history of this, but of all other countries, no purer or more upright men ever graced the judicial bench. . . .

"Judge Anderson's characteristics as a judge have been aptly described in the admirable resolutions that have just been presented. In recalling him seated upon that bench, I am reminded of the utterance of a great judge who said, 'Show me the right of a cause, and I will show you the law of the case.' If this is to be, as it certainly should be, the great search of a judge, then I am sure that no one ever more faithfully performed his duty than Judge Francis T. Anderson. Not only was he possessed of an absorbing love of the right, but he was remarkably endowed by nature with the faculty of distinguishing between right and wrong, of drawing the dividing line with distinctness along that dim border, upon which the right and wrong are so apt to mingle. But what was more, when he once made up his mind as to the right, he was as firm as the rock of Gibraltar. With these great traits, and a sterling integrity above the breath of suspicion, he became a judge that all good men delighted to honor, and all bad men feared. . . .



EDWARD C. BURKS.

"It was not alone, however, as a jurist that his memory should be revered, but in all the relations of a citizen, and especially in his private relations, his example cannot be too highly honored. No one could look upon the manly beauty of that face without recognizing his benevolent nature shining through his countenance as through a window. And if it were permitted, as it was to me, to see the curtain withdrawn which sheltered the family circle from the gaze of the world, then indeed a just appreciation would be had of all that is lovely in a Christian husband and father. Such was the privilege of those who read the touching memorial which he penned of the companion of his life, which did no less honor to him than to his sainted wife."

The memorial adopted by the meeting of the bar of the Court of Appeals of Virginia, after giving a brief review of Judge Anderson's life, declares: —

"Judge Anderson was the highest type of our profession. He was a Christian jurist, singularly fair and upright as a man. He had studied the human heart, and that law 'whose seat is the bosom of God, and whose voice is the harmony of the world.' His high character gave him an instinctive sense of right and justice, and he thus wrought out from his own mind what the law of any particular case ought to be, and then his earnest desire to do right generally enabled him to reach a proper conclusion; and whenever he came to a conclusion that he believed to be right, no precedent, persuasion, or power could swerve him one iota from it. He would cheerfully have gone to the stake for a principle, or before he would have done aught that he believed to be wrong.

"One of the most striking characteristics of Judge Anderson was his love for his native State, Virginia. He loved her history, traditions, institutions, and customs. He was an 'Old Line' Whig before the war, and, like most of that political party, was strongly attached to the Federal Union, as it then existed. But when Virginia took her position in the Southern Confederacy, he never hesitated to follow her fortunes, and in peace, as in war, she never had a more devoted or loyal son. He believed the South was right in the principles for

which she contended; that they were those in which this government was founded by our fathers, and the only ones on which constitutional liberty can ever safely rest in this country.

"But whilst his devotion to the South was so ardent, and he avowed it whenever and wherever occasion demanded, yet no man accepted the results of the war in better faith, or was more loyal and true to the Federal Government when the Union was restored than he was.

"Indeed, Judge Anderson was a true patriot, a useful citizen, a firm friend, and true in every relation of life."

This imperfect outline of Judge Anderson's life cannot be better concluded than by the closing sentences of the eloquent address of Judge Joseph Christian, one of his surviving colleagues, of the Court of Appeals in presenting to that court the memorial adopted by the bar of that court: —

"His devotion to his native State was that of a patriot worshipper who could have no other idol; and when the time came when he had to side with his State or with those who came as her invaders, he was quick to range himself under her flag, and to do all he could to save her from degradation and conquest. After the close of the war, and when the dark days of reconstruction were over, and Virginia was permitted to re-establish her own government, Judge Anderson was appointed one of the judges of this court.

"How honestly and ably and faithfully he discharged the duties of his high office, is fully attested in the sixteen volumes of the reports of the decisions of this court, as well as by the profound impressions his death made upon the bench and bar and people of this State, as shown by the great meeting which assembled to honor his memory, and illustrated by the eloquent and touching memorials to his private virtues and public services which we all listened to with so much pleasure on that occasion.

"Judge Anderson brought to the bench a strong, active, and well-balanced mind, — well stored with the great principles of the law, and a heart full of the innate love of justice, with a dauntless courage that would carry him to the stake for his convictions.

"It was fortunate for the State that a man of such firmness, such courage, such high sense of justice, such desire to do right, should be placed on the bench of the highest court at a time when all was chaos; when the times were out of joint, and cases arose that were without precedents; when the debris of revolution covered up decisions and statistics, and when the court had to blaze its way through an unbroken forest without a tree or a star to guide it. Then was a time to bring light out of chaos, and to mould judicial decisions so as to declare the very rights of the case where there was no statute to guide and no precedent to follow.

"In this crisis in judicial affairs Judge Anderson was the right man in the right place. His innate sense of justice, his fearless courage to do right, his strong practical sense, enabled him at once to solve, upon equitable principles, all the difficult and perplexing questions arising out of the multiform contracts made under Confederate statutes and in Confederate currency. The conduct of fiduciaries, of personal representatives, guardians and agents, public and private, — his masterly opinions upon these difficult subjects do credit both to his head and his heart. In these cases, and indeed in all the cases he considered in his careful, thoughtful, and laborious way, the polar star which guided him to his conclusions was the question, 'What is right?' and such was his high sense of justice that he would break through the meshes of the technicalities of the law to get at and declare for the very right of the case, and when convinced where the right lay, nothing could move him from his conclusions. He had the spirit of a martyr, and would have sacrificed his life, rather than give up his honest convictions of duty and of right.

"I sat by his side for nearly thirteen years, and I can truly say of him that he was one of the bravest men I ever knew. Courageous to do right, his only fear was that he might do wrong. Not conceited or bigoted in his opinions, he would always listen patiently and respectfully to the views of others, and would cheerfully yield his own views if convinced he was wrong. He had wonderful capacity to labor. He patiently and thoroughly investigated every case, — always seeking light, always pursuing the right, never weary in his tireless work. When convinced of error, he was quick to correct it; but when he felt he was right, no power could move him from his purpose.

"I should say of him, as I had the opportunity to observe his character as a man and a judge, he

was as brave as he was true; he was as courageous as he was gentle; he was as conscientious as he was just. With a strong and active intellect, with the power to labor, and the love of work such as are found in few men, he investigated patiently and thoroughly every case submitted to him. His opinions, to be found in sixteen volumes of this court's reports, will stand for all time as the best monument to his memory.

"It is not the language of eulogy, but the words of simple truth, to declare that the striking characteristics of his judicial career were his patient labor, his integrity, his incorruptibility, his sense of justice, his sublime courage, which would always dare to do right against all opposition.

"In private life Judge Anderson was unexceptionally pure, and in all its relations as husband and father and citizen his whole life was an example worthy of all imitation. God impressed upon his very face the noble virtues which shone from his heart. Gentleness, kindness, charity — not only to his own household, but to all mankind — was exhibited in his every-day life. The poor never went empty-handed from his door; and many a young man who was struggling against poverty, and reaching in his aspirations to a higher and more useful plane in society, was encouraged and aided in a substantial way by the charity and sympathy of this noble benefactor of struggling youth.

"To the graces of a kindly and gentle nature were added the Christian graces of a godly life. These graces softened and adorned the strength and dignity of his character, like a blossoming vine entwined around a column of granite. He was a Christian in the highest sense of the word. His daily life, his private life, and his public life were guided and moulded by Christian principle. An ardent and zealous Presbyterian, he was no bigot, but recognized a brother in every Christian church.

"He lived and died in the faith of his fathers, and after a long life of honor and usefulness, has gone to his reward.

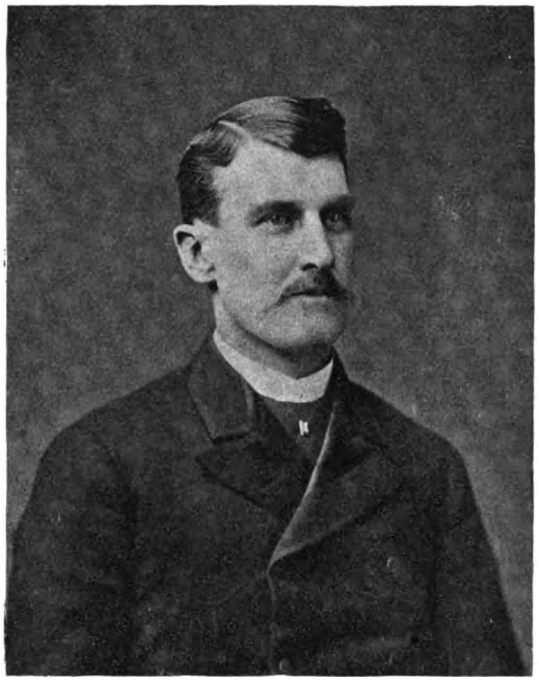
"Few of us can hope to live to his green old age, but we may emulate his virtues and seek to follow his noble example, if we always remember that —

'We live in deeds, not years; in thoughts, not breaths;
In feelings, not in figures on a dial.
We should count time by heart-throbs. He most lives
Who thinks most, feels the noblest, acts the best.'"

Edward C. Burks was born in Bedford County, Va., on the 20th day of May, 1821, and has resided in that county ever since. He is of a highly respectable family of Irish origin. At a very early age, when he only knew his A B C's, he was sent to school and kept there until he attained his majority. He was sent to at least nine different schools, most of them "Old Field" schools, as they were formerly called in the country in Virginia. When ten or eleven years of age, the classics were taught him. He attended several sessions at the New London Academy in Bedford County, a part of which time Henry L. Davies was the principal, then George E. Dabney, afterwards a professor at Washington College, Lexington, Va. In the fall of the year 1838 he matriculated as a student at Washington College, now Washington and Lee University, and graduated in June, 1841, delivering the Cincinnati oration, the highest honor in the graduating class. In the latter part of that year he entered the Law Department of the University of Virginia, and graduated in 1842. Immediately commencing the practice of his profession in Bedford and the surrounding counties, he steadily rose, by his honesty, ability, and industry, until, in December, 1876, he was surprised by being elected by the Legislature a judge of the Supreme Court of Appeals of Virginia. Judge Burks remained in that position for six years, when the Readjuster Party having come into power, with which party he was not in sympathy, a question was raised as to whether he had been elected for a full term of twelve years or for an unexpired term, and the question was decided against Judge Burks, in Burks *v.* Hinton, 77 Va. 1. As has been before stated, he was one of the revisers of the Code of Virginia of 1887, along with Judge Staples and Major John W. Riely. Since that time, with his office in Bedford City, he has been engaged in the practice of his profession, chiefly in the Supreme Court of Appeals of Virginia.

He was a member of the House of Dele-

gates of Virginia in 1861 and 1862, and a part of 1863. This is the only political office he has ever held, and he declined a re-election. Judge Burks's judicial opinions are reported, in 28 Gratt. and the succeeding volumes of the Virginia Reports, down to 76 Va. A very able opinion of his may be found in 80 Va. 718–783, delivered in the celebrated case of P. Epis. Ed. Society *v.* Churchman's Representatives. Washington and Lee University has conferred on him the title of LL.D., and in 1891 he was President of the Virginia State Bar Association, delivering that year at the White Sulphur Springs a very able annual address, of which one thousand copies were printed for the use of the association.



LUNSFORD L. LEWIS.

Judge Lunsford L. Lewis, President of the Court of Appeals since Aug. 28, 1882, to which position he was appointed by Gov. William E. Cameron, was born in Rockingham County, March 17, 1846; studied law and graduated in the Law School of the University of Virginia. He settled in Culpeper County. After being at the bar for two years, Judge Lewis was elected Commonwealth's Attorney of that county, and afterwards re-elected. Before, however, the second term began he was appointed by Gen. U. S. Grant, then President of the United States, District Attorney for the Eastern District of Virginia, and continued to serve in that capacity until he was made President of the Supreme Court of Appeals, filling the vacancy caused by the death of R. C. L. Moncure. Immediately afterwards the Legislature elected him to the same place for the term of twelve years, and on the 1st of January, 1883, his associates made him President, in which position he still continues to serve. Upon the creation by Congress of the Federal Circuit Courts of Appeals, Judge Lewis was endorsed by the bar of the whole State for appointment by President Harrison.

No more popular judge ever sat on the bench in Virginia, both with the bar and the people. He is a man of incorruptible integrity.

Judge Benjamin Watkins Lacy, of the Supreme Court of Appeals of Virginia, was born, Jan. 27, 1839, at Ellsworth, the family-seat, in New Kent County, Va., in which county he has always lived. He is the son of the late Hon. Richmond T. Lacy, his law preceptor, who was a graduate of William and Mary College, in 1825, receiving the degree of A.B. and L.B., a prominent lawyer and legislator of East Virginia. His mother was the daughter of Col. John Lane, of Vauclause, in Amelia, and grand-daughter of Francis Eppes, of Eppington. Judge Lacy was taught by his mother until sufficiently advanced in Latin and mathematics to enter the academies of such renowned educators as Pike Powers of Staunton, and "Brown and Tebbs" of Albemarle; and his education was completed at the University of Virginia, when he entered the law office of his father. Hence he was quickly drawn by Virginia's call to arms. He joined the

New Kent troop of horse, on the 17th of April, 1861, as a private, and went to the front. He was three times disabled by wounds, and except when thus incapacitated, was with his company in all the battles of General Lee's army. He was made first lieutenant, and for the last years of the war was in command of his squadron of two companies, and was with General Lee at Appomattox Court House. After the war he settled in his old county, reviewed the law course, and was admitted to partnership by his father; and the law firm of Lacy and Son was only dissolved by the elevation of the junior member to the bench in 1870. He declined further service on the bench in 1873, and was chosen that year to the House of Delegates of Virginia, to which he was elected for four terms; was on the committee of courts of justice every term until the last, when he was chosen Speaker of the House of Delegates. While the Speaker, he was elected to the bench of the Circuit Court, in 1880; from which he resigned, in 1883, to go upon the Court of Appeals, where he is now serving. His opinions will be found in 77 Virginia Reports to 88 Virginia Reports, inclusive, and will attest the character of his service.

BENJAMIN W. LACY.

When elected to the bench, he received every vote in the house over which he presided, and every vote but two, in the Senate, without regard to party lines. He still resides at his home in his native county, with his wife and three children. He is a Democrat, but does not concern himself actively in politics.

Thomas T. Fauntleroy was born in Winchester, Va., Dec. 20, 1823. He is, maternally, a great-grandson of Col. Charles Mynn Thurston, and a grandson of Col. Charles Magill, — eminent Virginians and officers in the Revolutionary War. His father was Gen. Thomas T. Fauntleroy, a son and citizen of Virginia, who promptly resigned his commission as colonel of the 1st United States Dragoons, at the call of his native State, and who was the ranking officer in the line of the United States Army of all who sided with the South.

He was educated at the celebrated high school of Benjamin Hallowell in Alexandria, Va., and graduated in the law class of 1844, at the University of Virginia, with John Thurston Thornton, John Page of Hanover, J. Randolph Tucker, John C. Rutherford, William C. Rives, Jr., and others, as his classmates.

In 1847 he began the practice of law at the Winchester Bar; and in 1850 was elected Commonwealth's Attorney in the District Superior Court of Frederick County. In 1857 he was elected to represent Frederick County in the Legislature. In 1859 he participated in the capture of John Brown and his followers at Harper's Ferry; and in 1861 was commissioned a lieutenant in the military service of Virginia. Upon the passage of the "Sequestration

Act" of the Confederate Congress, he was chosen one of the "Receivers" to execute the difficult and delicate responsibilities of that law, along with some of the ablest lawyers of Virginia.

At the close of the war he resumed the practice of law, with broken health, accumulated burdens, and a numerous family. In 1877 and 1878–1879 he again represented Frederick County in the Legislature. In 1879 he was elected, by the Legislature, Secretary of the Commonwealth; and in 1883 he was elected, for a term of twelve years, one of the five judges of the Supreme Court of Appeals of Virginia. Upon the organization of the court, he was chosen by his brother judges to be the Resident Judge of the court at Richmond, as required by law.

The Virginia Reports, from 1883 to 1893 inclusive, contain many elaborate opinions delivered by Judge Fauntleroy; and among them are the celebrated and interesting cases of Cluverius *v.* The Commonwealth; Davis *v.* Strange; Thomas' Administrator *v.* Bettie Thomas Lewis; and Colbert & Kirtley *v.* Shepherd, — the Mary Washington Monument case.

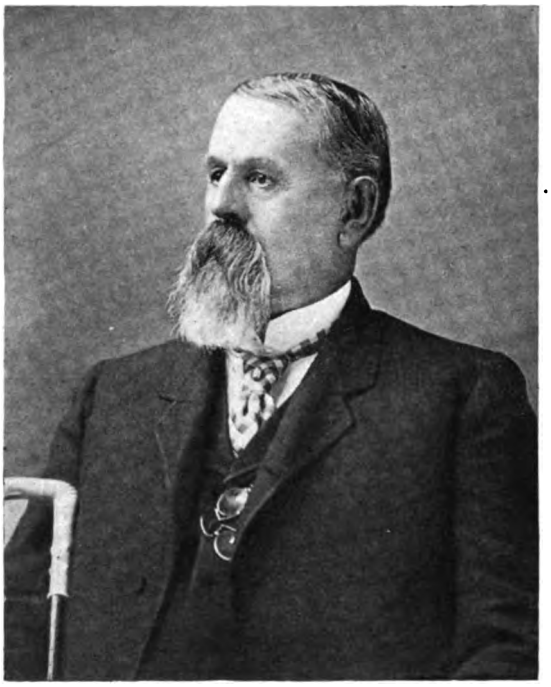
The circumstances of the death of the youthful Capt. Henry Fauntleroy at the battle of Monmouth, are narrated by G. W. Parke Custis in his "Reminiscences;" and the death of Major Griffin Fauntleroy of Washington's Cavalry at the battle of Guilford Court House, is mentioned in a letter of Governor Jefferson of Virginia to General Washington, dated March 21, 1781. They were great-uncles of Judge Fauntleroy, and of Norman descent.

Judge Fauntleroy has been for forty years a communicant in the Episcopal Church. He has been twice married, and has raised and educated a family of ten children, to whom he has set the example of never using in any way tobacco or intoxicating liquors; to which abstinence he attributes the unimpaired vigor of his mind and body, and his capacity to endure the unremitting and severe labors of his office.

Drury A. Hinton was born in Petersburg, Va., where most of his ancestry have resided since the year 1653. On his father's side he was descended from Maj. Gen. A. Brown Wood, who received a patent in that year for the land on which the city of Petersburg is built, and from Major Peter Jones, from whom the city derives its name; and on his mother's, from Capt. John Stith, who was the ancestor of William Stith, the historian. He was sent to the best schools in his native town until 1857, when he was sent to that famous teacher Lewis Minor Coleman, at Taylorsville, Hanover County, where he remained two years. Coleman was afterwards a professor at the University of Virginia. At school he was a very hard student, and injured his health by allowing himself no more than four hours' sleep in the twenty-four. This over-work afterwards showed itself at the University of Virginia, so that he was not able to remain longer than four months in any one session during the period he remained there. While studying law in March, 1861, Mr. Hinton left the University of Virginia to enter the Confederate States Army, which he did as first lieutenant Co. G, 41st Regiment Va. Infantry. He served through the war, and was paroled at Appomattox. In 1866 he reviewed the study of law under the distinguished Judge William T. Joynes, and in August of that year was admitted to the bar. In 1872 he was by the people elected Commonwealth's Attorney, and by the Common Council corporation counsel for the city of Petersburg, both of which positions he held continuously until he resigned in 1882 to take his seat on the Supreme Bench of the State. It is said that in his capacity as Commonwealth's Attorney he never had an indictment successfully demurred to, and during his time as corporation counsel no verdict was had against the city of Petersburg. He was the only dissenting judge in the famous case of Commonwealth *v.* Cluverius, 81 Va. 787. One of the believers in the innocence of Cluverius has since published a book on the sub-

ject, dedicated to Judge Hinton. Judge Hinton is an unostentatious and kindly natured man. He is a great admirer of the common law, and is as familiar with the English as he is with the American cases.

Judge Robert A. Richardson is a native of the county of Smyth, and is the only member of the court from Southwestern Virginia. He is a manly judge, very much liked by the bar. The last five named judges who have been briefly sketched — to wit, Lunsford L. Lewis, Benjamin W. Lacy, Thomas T. Fauntleroy, Drury A. Hinton, and Robert A. Richardson — constitute the present Supreme Court of Appeals of Virginia. They were all elected in 1882 for terms of twelve years, and these terms will expire Jan. 1, 1895. Their decisions commence in 77 Va., except Judge Lewis's. He was appointed Aug. 28, 1882, and some of his opinions can be found in 76 Va.



ROBERT A. RICHARDSON.

Up to the date of this publication Virginia has had forty-eight judges of its court of last resort regularly elected in the mode prescribed by law. Their lives and the places of their nativity are all mentioned in the preceding pages of this sketch. It appears that but three of them were born outside of the present limits of Virginia. This is not only singular, but it shows a very interesting effect of the basis of representation in the State Legislature allowed the white inhabitants of the Commonwealth from June 29, 1776, the date of the adoption of the first Constitution, until 1860, nearly one hundred years. The effect of the extension of the right of suffrage to its whole white population was never felt inside of the Commonwealth, because the extension was made and the principle of manhood suffrage was recognized only under the pressure of an impending and "irrepressible conflict."

"The White Basis Question" had nearly torn the State asunder in the famous Constitutional Convention of 1829–30. But that convention is famous more for great names than for great leadership. Madison, the father of the Federal Constitution, and Monroe, and Marshall, the great Chief-Justice of the United States, were all there. But the President's voice on Friday, Jan. 15, 1830, declaring the convention adjourned, had scarcely died away before grievous signs of discontent began to show themselves. The chief cause of the failure of that Constitution was that representation was not based upon the free white population of the State — "the only true basis," as was declared on the floor of the convention. The reason this was not made the basis of representation was because of slavery. Under the first Constitution slaveholders were given a representation for their slaves on a principle similar to the celebrated "Federal number." A great writer speaking of "the three-fifths compromise," and how it came about in the Constitution of the United States, says:

"The strife broke forth over the question of representation and of direct taxation. Wilson of

Pennsylvania, a man of clear, statesmanlike ways of thinking and a determined opponent of slavery, suggested that in regard to representation five slaves should be considered equal to three freemen. He who draws his political inspiration simply and solely from his bible of principles plays Don Quixote. Political policy is a necessity. But a concession which involves a principle that can be neither morally nor politically justified is a heavy weight, which sooner or later becomes too heavy for the strongest political swimmer."[1]

The formation of the Supreme Court at every period prior to the late war was affected by the slavery question. It excluded from that bench absolutely every native of the white portion of the State, — the mountainous region now forming the State of West Virginia. The same jealousy was felt of that portion of the State as was afterwards felt of Northern interference. The dominant slaveholders who were in control would make no concessions to the white people of Virginia. The issues which were afterwards those wiped out in blood were the real controversies in the Commonwealth in 1829–30. Slavery then divided the State, and it was never afterwards heartily united. Freedom on a white basis was unfortunately overpowered at the date of the adoption of that Constitution. Said Lewis Summers of Kanawha, now West Virginia, in that famous convention on the question of representation on a white basis: —

"Can the world believe that the protection of property has been the object sought for here? Will not the disguise be thrown off? Will not this question show the most determined effort ever made in the American States to render the *many* the vassals of the *few*?"[2]

The Constitution was adopted by a majority of the persons who were permitted to vote. In the counties of the eastern portion of the State, which were those in which slaves were numerous, the vote was largely in its favor; but in the western or white portion of the Commonwealth the vote was overwhelming against it. Accomac County, on the Atlantic, gave 266 in favor of, and 70 rejecting the Constitution.

Ohio County, in the extreme west, gave 3 votes in its favor and 643 against it. Brooke County unanimously rejected it by 371 votes.[1] These returns foreshadowed the war. The abolition societies had gained no foothold anywhere. It was *the people* of Virginia struggling to free themselves from the horrible curse of slavery. The question was clearly and fully understood, but never dealt with in a statesmanlike manner by the dominant faction in control of the destinies of the State. Its settlement was knowingly committed to the accidental Utopia of the future. It was plain to every one that the owners of the slaves were soaring on Icarian wings. The evil grew worse, and on the 20th of January, 1832, it had become so unendurable that the Legislature attempted to solve it. What was to be the policy of the Commonwealth with respect to its slave population was the absorbing problem before that body. The Hon. Charles James Faulkner, of Berkeley County, the eloquent leader in the cause of freedom, said:

"If there be danger, let us know it, and prepare for the worst. If slavery can be eradicated, in God's name let us get rid of it. If it cannot, let that melancholy fact be distinctly ascertained; and let those who we have been told are now awaiting with painful solicitude the result of your determination, pack up their household gods, and find among the luxuriant forests and prairies of the West that security and repose which their native land does not afford. . . . The spirit of free inquiry is abroad upon the earth; and governments and all of the institutions connected with them must be sustained, not by any mystical and superstitious reverence for them *as existing institutions*, but as they are ascertained after a severe and searching scrutiny to subserve the great ends of *popular* weal. . . . The Gordian knot must be untied, — if it is by the sword; Asia must be vanquished, the country must be saved."[2]

[1] Von Holst's Constitutional and Political History of the United States, vol. i. p. 289.

[2] Debates of Convention, 1829–30, p. 664.

[1] Ibid. p. 903. Brooke County is in West Virginia.

[2] "Slavery Debates" of 1832, Virginia State Library.

At that day not one voice was raised, either within or without the Legislature, in Virginia in advocacy of slavery. It was thoroughly understood that cheap labor would ruin the State. Faulkner was the bold and manly advocate of freedom. But the slave-owning party had refused to accept a white basis of representation; and when a vote was reached, they succeeded in defeating any further investigation by a majority of eight. There is no doubt at all that the white people of Virginia, had they been allowed proper representation, would have set the slaves free. A writer[1] in the "Richmond Enquirer" of Feb. 4, 1832, reviewed the debates on this momentous question, and severely criticised the speeches favorable to freedom over the fateful *nom de plume* of Appomattox! Thus ended the struggle inside of the State for emancipation.

DRURY A. HINTON.

The dreadful question affected every white man in the Commonwealth. Slavery was unsuited to the genius of our institutions. It caused population in the black counties either to stand still or decrease. The Constitution of 1851 extended the right of suffrage to every white citizen; but the slaveholding faction was still able so to arrange in that Constitution itself the basis of representation in the General Assembly as to preserve its majority in the government. It held on to its power, but allowed the sceptre to depart from Virginia. No man who disagreed with it was ever allowed a place on the Supreme Bench.

The military genius of the war first saw the light in that portion of the State which was free from slavery. When it was all over, Gen. U. S. Grant, then President of the United States, was serenaded at Staunton by the famous "Stonewall" Band. He raised his hat, and eloquently and laconically said, "The immortal Jackson!"

In the year 1848 the number of cases on the docket of the Supreme Court of Appeals (then the court of last resort other than in criminal cases) had increased to such an extent that the average pendency of an appeal was seven years. An act was passed, March 31 of that year, establishing a special Court of Appeals at Richmond to remedy the evil. Under some circumstances the decisions of this special court are not regarded as authority. 1 & 2 Patton, Jr., and Heath's Reports cover its decisions up to the year 1857. Its judges were Richard H. Field, Lucas P. Thompson, John B. Clopton, George H. Gilmer, and John W. Tyler. Judge John W. Nash sat for Judge Gilmer, on account of illness, during the year 1857.

Horace B. Burnham, O. M. Dorman, and W. Willoughby formed what was called the Military Court of Appeals, from October, 1869, to January, 1870, when Virginia was Military District No. 1, in the days of Reconstruction, so-called. Their decisions (?) are to be found bound up with the decisions of the

[1] B. W. Leigh.

true court in Nineteenth Grattan, pp. 545–669. Where these parties came from and to what place they have departed, no one now knows. A judge on one of the circuits in the mountains of Virginia, where the writer once practised, told a callow young member of the bar that he must not refer in his court to any of the alleged decisions of these scalawags, for they were not *law*, and never should be quoted as authority in his circuit. He had stuck together the leaves containing them with mucilage, so that no one could ever read them in his honor's Grattan.

The present Court of Appeals sits at Richmond, Staunton, and Wytheville.

On the 13th of February, 1864, a number of persons claiming to represent Virginia assembled in convention at Alexandria, just outside of the smoke of the guns of the contending Union and Confederate forces, and adopted what they were pleased to call a Constitution for the State. This Constitution recognized the separation of West Virginia; and the boundary-lines it made have never yet been changed. By the nineteenth section of the Fourth Article, slavery was forever abolished.[1] A convention which assembled on the 3d of December, 1867, adopted another constitution, which was submitted to the people July 6, 1869, by order of Gen. Edward R. S. Canby, commanding military District No. 1 (Virginia); and it was ratified.[1] This is still the Constitution. Section 2 of Article XII. provided that in the year 1888 the question "Shall there be a convention to revise the Constitution and amend the same?" should be submitted to the people. This was done, and a new convention voted down by an immense majority. All of the constitutions vacated the commissions of the judges of the Supreme Court; but whenever they sought re-election they were reinstated on the bench. 1 & 2 Va. Cases (reports of the decisions of the General Court) are splendid authority on criminal law, and the decisions of the Supreme Court of Appeals on constitutional questions deserve and receive high consideration everywhere.

Virginia is again united and prosperous, without a cloud to obscure the brightness of the future, as well for her people as her judiciary. Her history all the world knows; and if once "the few ruled,"[2] one must not lament at all over the past conditions of a State that gave us Washington and Jefferson and Madison and Monroe and Henry and Mason and Marshall and Richard Henry Lee.

[1] Acts 1866–67, p 764.

[1] Code of Virginia, 1873, pp. 26, 27.

[2] Prof. Andrew C. McLaughlin, of the University of Michigan.

CROSS-EXAMINATION AS AN ART.

By A. Oakey Hall.

EVERY lawyer of only five years' practice has discovered what an art cross-examination has become, — to rank with sculpture and painting. May not the tools of the expert cross-examiner be figuratively described as the mallet of manner giving the adroit stroke; the chisels of rhetoric or of tone of voice for delicate incisions? Must not the touches of the cross-examiner be not less delicate than those of a Praxiteles or a Powers? Does he not before exercising his art of cross-examination and all during the direct examination carefully scan and study the witness produced in the aspect of a model? Has he not in such a study — rapid as it must necessarily be — borne in mind maxims of Lavater and Spurzheim, as the sculptor remembers many of Canova? For like the chiselling sculptor, the cross-examiner knows that he must carefully bear in mind the features and form of the model's testimony, and carve these to his own ends, — especially the features of his own theories applied to the evidence given.

During a dozen years of continuous service as district attorney of New York City, and of a score of years in civil actions as counsel for seven sheriffs in whose litigations fraud of debtors was examinable, I possessed very fair opportunities of studying the art of cross-examination as practised by bar-leaders, who as against the people or as retained by claimants against the sheriff were generally employed. This gave opportunity for testing the saying: "Fas est ab hoste doceri." Seven years of a subsequent residence in London, while frequently attending its courts, furnished further opportunity for studying cross-examination as an art and as practised by eminent solicitors before magistrates and by Q. C.'s in the Supreme Court of Judicature, and in that best court for testing the art, the Bankruptcy Court.

Of those in England whom I found to be what I may term professors of the art, I mention George Lewis, who confessedly heads his profession as solicitor; Attorney-Generals Webster and Sir Charles Russell; Solicitor-General Sir Edward Clark, and a battalion of Q. C.'s, who by promotion from the Lord Chancellor, cross-examine in what William Black the novelist in his popular romance entitles "In Silk Attire," and who wear wigs such as covered — I can hardly use the word "adorned" — the brows of two King Henries of the bar, Erskine and Brougham.

While I was a student in the Harvard Law School under Greenleaf and Story, whose memories and learning have worthily graced brilliant successors, I often and in company with such classmates as Rutherfurd B. Hayes and George Hoadley, both of whom became eminent in public life — listened to and studied, in connection with Greenleaf's fitting chapter in his "Evidence," the artful cross-examinations of Rufus Choate, whose art is well "kept green" by his nephew Joseph in New York.

While afterward pursuing the study of civil law in New Orleans, I had occasion to hear cross-examinations of such advocates as John R. Grymes, Alfred Hennen, George Eustis, — father of the Minister at Paris, and who was afterward Chief-Justice of the State, — Thomas Slidell, and Judah P. Benjamin, into whose brilliant eyes all suspicious witnesses found it difficult to look when he practised upon them his art that he masterfully knew, and which, when he became an English Q. C., stood him in great regard from bench and bar and at all the Inns and Temples.

At the New York Bar I had opportunities of studying the cross-examination arts of Charles O'Conor, Ogden Hoffman, John

Van Buren, Edward Sandford, Daniel Lord, James T. Brady, the brothers David Dudley and Stephen J. Field, the brothers David and John Graham, Henry L. Clinton, Lewis B. Woodruff, — who afterward died as Federal Circuit Judge, — Attorney-General Ambrose L. Jordan, and Wm. Curtis Noyes, — only three of whom survive. Their successors in the art at the New York City Bar were undoubtedly William Fullerton, Joseph H. Choate, Robert J. Ingersoll, Clarence A. Seward, and Messrs. Root, Rollins, Coudert, James, Fellows, Cochran, Nicoll, Holmes, and Parsons. Of those in my list who have passed away, my best representative of the art was, by all odds, David Graham, who can only be remembered by the later generation of the bar as author of a treatise on new trials. I select him as my model of a XX examiner.

When he arose to cross-examine a hostile witness, he was like a duellist during the time when seconds were measuring the ground. Calm, suave, not exhibiting acerbity in look or tone, ready however, like a good surgeon, to use lancet or probe with full knowledge of the strength of the witness in muscles of prevarication, or of the exact situation of the nerves of the witness, Mr. David Graham's furtive study of the witness during the direct, as well as of the judge and jurors, as determining what effect the adverse testimony was having upon them, presented a fine forensic picture. Nor did he, for a similar purpose, omit to scan auditors also. While the direct proceeded, he was an actor, who could conceal emotion, express surprise, doubt, or dissent, with a facial gesture in a timely glance at the jury. Like the duellist of the foregoing illustration, he was ever courtesy itself, never losing temper or presence of mind. He never committed the average error of counsel in arguing with the witness, or over the witness forestall summing up to the jury through some question. He reserved his appreciation of a telling or of a random shot of evidence, and his comment of facial expression or of rhetoric, to his address to the jury. He never proposed to allow a witness to understand fully the motive of a question. If the witness was subtle, he fought him with suavity, and soon threw him off guard. The too willing or rapid witness he encouraged into quicksands of contradiction or a slough of misstatement. He never assumed risks with questions that might bring hostile answers. He never threw bait or fly, as 't were into a stream of inquiry, unless he knew the stone under which lay the pike, nor where he suspected that trout were absent.

One of his maxims to students was, "Never on cross-examination ask a question the answer to which in any one possible way might aid the other side and place your own side in jeopardy of dangerous comment." Like a keen marksman, he accommodated his aim of inquiry to the direction in which the wind was blowing. He did not waste time on immateriality for his client by cross-questions.

He had studied the very bull's eye of his case, and tried to bury at times his own bullet in the very opening made by his adversary's bullet. Like the French swordsman, he sought his adverse witness while off guard. His whole play was a standing rebuke to Old Bailey practitioners, who bullied witnesses. He could be severe with hostile witnesses, but preferred to strike them with the gloved rather than the mailed hand. Another Graham maxim was: "If your adverse witness becomes forewarned by your manner or address, he is likely to be aroused to greater antagonism of evidence." On one occasion a witness examined by David Graham was heard to say, "If any one testifying could be persuaded into perjury or contradiction or inconsistency, David Graham is the lawyer to accomplish it." He was throughout cross-examination a master in realizing the maxim *ars celare artem*. His especial aim was in the main to convert the hostile witness into a witness for his own client. This was a purpose even beyond

the ordinary purpose of destroying or weakening the direct.

Above all, he knew when and where to refrain from cross-questions, — a great incident in the art. He reminded one of the skater who never ventures on or near thin ice, although there were no visible signs of "dangerous." In this adroit refraining he probably remembered the anecdote accredited to Curran and his horse-stealing client. The latter said after acquittal: "No thanks to you, John Philpot, and I ought to have the fee returned, for you never cross-examined a witness nor made a speech in my favor." "If I had even opened my mouth under the circumstances, the possibilities are, under the view judge and jury seemed evidently taking of your case, that you might then have been convicted." Plausible as David Graham was with the hostile witness, he was equally plausible in commenting to the jury upon the testimony of that witness. He was a thorough disciple of Henry Brougham's celebrated definition of an advocate's duty to his client, that was enunciated in his address to the Lords when defending Queen Caroline, — the doctrine of which definition several strict ethical writers have impugned.

It may be observed that the brother, John Graham, still in active practice, seemed to rival the elder by his own methods of adroit and successful cross-examination.

At the New Orleans Bar, as far back as the era of the Mexican War, Judah P. Benjamin seemed to possess and excel in most of the traits in the art of cross-examinations already imputed to David Graham. Benjamin especially possessed celerity of thought and ready aptitude in dealing with the demeanor and expressions of a hostile witness. Like single-speech Hamilton in the traditions of the House of Commons, Mr. Benjamin knew when to quit talking; and like a good stage manager, he always arranged a good exit from the witness chair for his actor, who may have there endured forgetfulness of his cues.

Without attempting to distinguish, or to extinguish, by mention any of the barristers or Q. C.'s of the London Bar excelling in the art in question, — beyond a passing tribute to the careful and meritorious cross-examinations of Messrs. Charles Mathews, Poland, and Gill,—it may be observed that in this art not one of those cross-examiners can equal the excellence in it of those best known at the American Bar, from Maine to San Francisco; and for the reason that the former are nationally slower and less elastic than the latter. Is not the cross-examiner who "deliberates," like the woman commemorated by the Pope of poets, — "lost"? The average American cross-examiner is in the battle of testimony like the Zouave, and the Englishman like a heavy dragoon by comparison, — the one alert in action and quick with rifle, while the other takes time for drawing his sabre. Moreover, the former thinks for himself, while the other is compelled to think more or less through a solicitor, and is fettered more or less by iron-clad instructions.

It takes the lawyer who joins the bar as a fledgeling a long time often to acquire the art. He finds that he has to cultivate, for success in it, celerity of thought, close observation of human nature, and a study of its various phases, rapid exercise of judgement on the occasion sudden, command of feature and temper, and above all he must know when to stop cross-examination. Playwrights and actors learn how to value the good exit; and the lawyer who is adept in the art of cross-examination arranges an exit for his hostile witness that shall tell in favor of his own client. The young advocate's most frequent short-coming in cross-examination is avidity at it, and eagerness to press questions. His self-sufficiency and indeed conceit will too often tempt to precarious questioning or too much detail in queries. Then how often at Nisi Prius one witnesses a rash although keen "encounter of wits" between cross-examiner and witness, wherein the latter gets the advantage as Beatrice did over Benedict?

For cross-examination that makes much ado about nothing degrades the art of it. The lawyer, young or old, must never risk the fate of a client by attempts at merely showing off his art to bench, witness, jury, or audience. Yet how often such a spectacle is witnessed in courts!

Success in the art of cross-examination comes oftenest from happy possessors of a genius for it. Great lawyers have failed in the art, while mere "case lawyers" and those of mediocre learning have succeeded in it, — quite as there is a difference between Thorwaldsen and the Italian constructor of plaster casts. Yet the art may be measurably acquired by observation of the ways and means and methods of masters at the bar, and sometimes from the bench itself, in the art of cross-examination, — an alchemy for testing truth or falsehood.

THE GENESIS OF THE LONG VACATION.

THE long vacation of the English Courts of Law has had a curious and instructive history, the early stages of which are admirably described by Spelman and Blackstone. "Throughout all Christendom," we are told, "the whole year was originally one continual term for hearing and deciding causes; for the Christian magistrates, to distinguish themselves from the heathen, who were extremely superstitious in the observation of the *dies fasti et nefasti*, went into a contrary extreme, and administered justice upon all days alike." At length the Church interposed to moderate the zeal of her children, and during certain holy seasons — Christmas and Advent, Lent and Easter, Pentecost and harvest-tide — the striving of rights and wrongs, with noisy clatter of lawyers' tongues, was peremptorily hushed, and the peace of God was kept throughout all the Christian world. When our own legal constitution came to be settled, the judicial year was, says a writer in the "Standard," divided into terms, the commencement and duration of which were fixed with reference to the old canonical prohibitions. It was ordered, by the laws of King Edward the Confessor, that "from Advent to the octave of the Epiphany, from Septuagesima to the octave of Easter, and from three in the afternoon of all Saturdays till Monday morning," no litigious business should be done; and so extravagant was the regard that was paid to these holy times, that down to the reign of King Edward I. "no secular pleas could be held, nor any man sworn on the Evangelists, in the times of Advent, Lent, Pentecost, harvest and vintage, in the days of the great litanies, and in all solemn festivals." Gradually, however, both lawyers and laymen became weary of these periodical interruptions to their profitable labors; the commercial and industrial development of England refused to stand still at the bidding of Church or State; and Church and State accordingly united, with timely wisdom, to regulate the agitation which they could not suppress. The Bishops granted dispensations, enabling "assizes and juries to be taken in some of the holy seasons;" the Statute of Westminster the Second closed this exercise of episcopal dispensing power with legislative authority; and the scope of the canonical prohibitions was narrowed, till, in course of time, the Courts of Assize and Nisi Prius were generally held, and all proceedings in an action out of court, which did not require the actual presence of the judges themselves, could be transacted during the intervals between the legal terms. To this rule the interval — allowed for haytime and harvest — between Midsummer and Michaelmas, which corresponds roughly with our modern Long Vacation, constituted an exception, and dur-

ing that period the wheels of litigation practically ceased to revolve. But the causes that produced the old episcopal dispensations and the Statute of Westminster the Second were still at work; and the anomalous privilege of the Long Vacation could not stand before them. Under the Judicature Act of 1873, — which gave legislative embodiment to the recommendations of the Judicature Commission, — the division of the legal year into terms was abolished so far as the administration of justice was concerned, and it was provided that the High Court of Justice and the Court of Appeals and the Judges thereof respectively, should have power to sit and act, "at any time and at any place, for the transaction of any part of the business of such courts respectively, or for the discharge of any duty which, by any Act of Parliament or otherwise, is required to be discharged during or after term." The Rules of the Supreme Court, 1883, continued the work which the Judicature Act had begun.

The holy season of haytime and harvesttide had lasted from Midsummer to Michaelmas; the Rules of 1883 provided that the Long Vacation should commence on the 10th August, and terminate on the 24th October, — limits which were soon afterwards altered by Order in Council to the 13th of August and the 23d October respectively. Again the Long Vacation had been, at first in fact, and always in theory, a real and entire Recess; the rules provided for the constant presence in town of vacation judges "for the hearing in London or Middlesex during vacation of all such application as may require to be immediately or promptly heard."

Such, in brief outline, has been the external and legislative history of the Long Vacation. Its inner life has undergone not less radical change. There can be no doubt that Dickens's brilliant picture of the annual exodus of lawyers from the captivity of Coke and Blackstone to France, Switzerland, Italy, and other lands of promise, was true and faithful when it came from the great master's pen. But its resemblance to actual legal life is fast fading, and it will erelong possess literary and antiquarian interest alone. In spite of the advent of the Long Vacation, the activities of the County Courts are not permanently arrested; the Vacation Judges remain in town; preparations for the commencement and renewal of litigation in the coming legal year go ceaselessly on; the revising barristers hover about their chambers, and make ready for holding their Registration Courts; crime, and the efforts of society to cope with it, buying and selling, marrying and giving in marriage, contribute their quota to the annually increasing volume of vacation work, and whole squadrons of the junior bar, forsaking the delights of continental travel — now stay at home and divide the spoils. — *The Irish Law Times.*

THE ORATORY OF THE BAR.

THE merits of the forensic orator are peculiarly his own. The qualities which most attract the admiration of the world are by no means those which best conduce to his own success in his own proper sphere. An Erskine succeeds where a Burke would fail. A Coke takes precedence of a Bacon.

The inevitable effect of reasoning day by day upon a great multitude of insulated facts, is to narrow the mind, and render it more and more incapable of those general classifications which are the boast and glory of philosophy. Were the study of the law pursued as it should be, — the student looking at precedents but as the exponent of principles, separating that which has its origin in accident or caprice, and is therefore mutable and temporary, from that which is founded in the nature of man, and is therefore permanent and unchanging; understanding as well the scope of the whole as the practical working of the parts; in a word, regarding law as the science of legislation, — it would, in Burke's words, be the noblest of all the sciences. That it will be so studied, except here and there by some master-mind, we have no reason to expect or hope. Most students will be satisfied when they have found a case in point, and *sic ita lex* terminates all further investigation.

If, indeed, law books and reports continue to multiply with the same appalling rapidity that they have done for a few years past, it will be absolutely impossible for the most powerful mind to do more than master the details. To look for stability and permanence in our jurisprudence is to look for fixed landmarks among the shifting sand-hills of the desert. The last legislature outruns the acts of its predecessors. The last volume of reports can alone be looked upon as settling what is the existing law. So long as this shall continue, the great body of our lawyers will be acute practitioners and but little more. Pre-eminent in their own department, they will make but little figure out of it. Ceasing to be learned and intellectual men, standing forth in the full development of all their faculties, and enriched with the treasures of all knowledge, they will sink to mere professional drudges. This is to some extent already the case.

We see the man of most profound professional learning, ignorant of the elements of literature and philosophy, and boastful of his ignorance. We see the man of what is called "business habits" arrogating to himself a superiority over those, the extent of whose knowledge is, as compared to his, like the ocean to the smallest island that sleeps upon its bosom; we see Congress filled with third and fourth rate men. But the evil will, in time, cure itself. From the very womb of darkness will spring forth light; the innumerable dark, winding passages which lead to the temple of justice, will give place to plainer paths. The axe of reform will hew down the venerable trees which have so long shaded the recesses, and will let in the clear light of day. When this has been done, when law shall cease to be an art and become a science, then will our country find among the members of the profession her greatest ornaments. — *Knickerbocker.*

The Lawyer's Easy Chair.

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

∴ ∴ ∴ ∴ ∴ BY IRVING BROWNE. ∴ ∴ ∴ ∴ ∴

CURRENT TOPICS.

THE FRIENDSHIP OF BOOKS. — Now is come the season when the busy lawyer usually hopes to find an opportunity for a little miscellaneous reading. Our own experience, however, has been that we have done the most reading when we have been the hardest at work, and that leisure relaxes the mental energies. The law library of the late Nathaniel C. Moak, of Albany, — one of the finest in this country, — was purchased, after his death, by the widow and daughter of the late Judge Boardman, dean of the law school of Cornell University, and given by them to that law school as a memorial of their deceased husband and father. At the dedication of the new law school building — Boardman Hall — Judge Finch, of the New York Court of Appeals, the present dean, made an address on the presentation of the Moak library, in which he said of Mr. Moak: —

"Brusque and abrupt, and even sometimes rough in his speech; with a voice metallic and resonant and scorning all modulations; hating what was false and mean with a temper that had some dynamite in it; with a frame heavy and solid and almost massive in its structure; a born fighter at the bar and fearless of all adversaries, — one would hardly have picked him out as the gentle student, dearly loving his books. And yet that he surely was. How early he began to gather them about him I do not know, but year by year the fruit of his industry and energy, in volume after volume, in choice editions and rare selections, crept along the shelves of his office and those of his library at home, until his partners and his wife envied him the room which his favorites absorbed. And this busy man put his chief fortune not into law books alone. Thousands of volumes of history and biography, of science and philosophy, of fiction and poetry, of the drama and of art, were steadily amassed, and as steadily read and studied. And with use of it all he began the work of author and annotator, and wore his life out in the labor he loved. His books were his friends. *There are none more faithful and true*, and he loved them dearly and guarded them well."

Restricting the application of the words which we have italicized to miscellaneous books, we heartily agree with the sentiment, but the fashion of common-law books passes away. Mr. Moak was, as depicted by Judge Finch, a rough and pugnacious man; but many fighting men have loved books and accumulated libraries. To say nothing of the literary and rhetorical tastes of Cæsar, "the foremost man of all time," Frederick the Great had libraries at Sans Souci, Potsdam, and Berlin, in which he arranged the volumes by classes without regard to size. Thick volumes he rebound in sections for more convenient use, and his favorite French authors he sometimes caused to be reprinted in compact editions to his taste. The great Condé inherited a valuable library from his father, and enlarged and loved it. The hard-fighting Junot had a vellum library which sold in London for £1,400; while his great master was not too busy in conquering Europe, not only to solace himself in his permanent libraries, and in books which he carried with him in his expeditions, but to project and actually commence the printing of a camp library of duodecimo volumes, without margins and in thin covers, to embrace some three thousand volumes, and which he had designed to complete in six years by employing one hundred and twenty compositors and twenty-five editors, at an outlay of about £163,000. St. Helena destroyed this scheme.

To many peaceful men of the robe the companionship of books is inexpressibly dear. What a privilege it is to summon the greatest and most charming spirits of the past from their graves, and find them always willing to talk to us! How delightful to go to our well-known book-shelves, lay hands on our favorite authors, — even in the dark, so well do we know them! — take any volume, open it at any page, and in a few minutes lose all sense and remembrance of the real world, with its strife, its bitterness, its disappointment, its hollowness, its unfaithfulness, its selfishness, in the pictures of an ideal world! The real world, do we say? Which *is* the real world, that of history or that of fiction? In this age of historic doubt and iconoclasm, are not the heroes of our favorite romances much more real than those of history? Captain Ed'ard Cuttle, mariner, is much more real to us than Captain Joseph Cook; Cooper's Two Admirals than the great Nelson; Leather-Stocking than the yellow-haired Custer; Henry Esmond than any of the Pretenders; Hester Prynne and Becky Sharp than Catherine of Russia or Aspasia or Lucrezia; Sidney Carton than Philip Sidney. Even the kings and heroes who have lived in history live more vividly for us in romance. We

know the crooked Richard and the crafty Louis XI. most familiarly, if not most accurately, through Shakspeare and Scott; and where in history do we get so haunting a picture of the great Napoleon and Waterloo as in Victor Hugo's wondrous chapter? Happy is the man who has for his associates David, Solomon, Job, Paul, and John, in spite of the assaults of modern criticism upon the Scriptures! No one can shake our faith in Don Quixote, although the accounts of the knight "without fear and without reproach" are so short and vague. There is no doubt about the travels of Christian, although those of Stanley may be questioned. The Vicar of Wakefield is a much more actual personage than Peter who preached the Crusades. Sir Roger de Coverley and his squire life are much more probable to us than Sir William Temple in his gardens. There is no character in romance who has not or might not have lived, but we are thrown into grave doubts of the saintly Washington and the devilish Napoleon depicted three quarters of a century ago. We cast history aside in scepticism and disgust; we cling to romance with faith and delight. "The things that are seen are temporal; the things that are not seen are eternal." So let the writer hereof for himself sing a song in praise of

MY FRIENDS THE BOOKS.

FRIENDS of my youth and of my age
  Within my chamber wait
Until I fondly turn the page
  And prove them wise and great.

At me they do not rudely glare
  With eye that lustre lacks,
But knowing how I hate a stare,
  Politely turn their backs.

They never split my head with din,
  Nor snuffle through their noses,
Nor admiration seek to win
  By inartistic poses.

If I should chance to fall asleep,
  They do not scowl nor snap,
But prudently their counsel keep
  Till I have had my nap.

And if I choose to rout them out
  Unseasonably at night,
They do not chafe nor curse nor pout,
  But rise all clothed and bright.

They ne'er intrude with silly say,
  They never scold nor worry;
They ne'er suspect and ne'er betray,
  They 're never in a hurry.

Anacreon never gets quite full,
  Nor Horace too flirtatious,
Swift makes due fun of Johnny Bull,
  And Addison is gracious.

Saint-Simon and Grammont rehearse
  Their tales of court with glee;
For all their scandal I'm no worse, —
  They never peach on me.

For what I owe Montaigne, no dread
  To meet him on the morrow;
And better still, it must be said,
  He never wants to borrow.

Paul never asks, though sure to preach,
  Why I don't come to church;
Though Dr. Johnson strives to teach,
  I do not fear his birch.

My Dickens never is away
  Whene'er I choose to call;
I need not wait for Thackeray
  In chill palatial hall.

I help to bring Amelia to,
  Who always is a-fainting;
I love the Oxford Graduate who
  Explains great Turner's painting.

My memory is full of graves
  Of friends in days gone by;
But Time these sweet companions saves, —
  These friends who never die!

LITERARY FORGERIES. — In Falconer Madan's "Books in Manuscript," published just now in London, are given accounts of two remarkable trials for forgery. The first is of Constantine Simonides, a Greek, the most audacious and learned forger in history, who was born in 1824. He acquired many genuine MSS. at Mount Athos and mixed his forgeries with them, and thus imposed them on collectors, mainly in England and Germany, for large sums of money. He came to wreck however in the incident narrated by Mr. Madan as follows: —

"In 1855 he visited Berlin and Leipzig, and when in July he met Wilhelm Dindorf, he informed him that he owned a Greek palimpsest, containing three books of records of the Egyptian kings by Uranius of Alexandria, son of Anaximenes. Dindorf offered a large price for it, but Simonides loftily replied that he intended to publish it first himself, and then to give the original to the library at Athens. By persistence however Dindorf obtained temporary possession of the precious palimpsest and sent it to Berlin, where it deceived all the members of the Academy except Humboldt; and the King of Prussia offered £700 for the seventy-one leaves. Further, Dindorf's representations induced the Clarendon Press at Oxford to take up the treatise, — and indeed it could hardly have done otherwise, — and actual specimens were printed, with a preface by Dindorf, and early in 1856 published. Only seven copies were sold, besides the eleven sent to the delegates of the Press, when the news came that Uranius was a most uncelestial forgery. It was found (1) that the ancient writing of Uranius was *on the*

top of the later twelfth-century writing, as could clearly be seen by the help of a microscope; (2) that the Greek was far from correct; and (3) that the coincidence between the most recent views of Lepsius and other Berlin Egyptologists and the new-found treatise was a little too striking. After this, Uranius was very little heard of; but Simonides continued to be in evidence, for he was put on his trial at Leipzig, to answer two distinct charges, — that he had stolen the MS. from the Turkish Royal Library, and that he had forged it himself. To the first he triumphantly replied that if it was stolen, it was at least not a forgery; that they were bound to show in what library and in what catalogue it was marked as missing; and finally, that the Turks had no libraries, and did not know what they were. To the second plea he replied by a threat, which must have carried conviction to the dullest of his judges, to the effect that if they would prove it was a forgery, he would forthwith print, under his own name, the other works of Uranius which he possessed, and achieve fame as the cleverest of authors by exhibiting a knowledge of details which reached far beyond existing evidence! In the end he was banished from Saxony, — a kingdom which he was probably, on other grounds, not unwilling to quit."

After this rebuff he was heard of only once more, when in 1861 he declared that he himself wrote the whole of the famous Codex Sinaiticus, acquired by Tischendorf in 1856 from the monks of St. Catherine on Mount Sinai, and now owned by the Czar. He asserted that he had placed certain private signs on particular leaves. On inspection of the manuscript at St. Petersburg every leaf so designated by him was found imperfect at the point where the mark was to have been found! His friends said this was the result of mutilation by an enemy; but it is generally supposed that he had acquired information through friends of these imperfections, and had established his marks at the missing parts. The other trial was that of Vrain-Lucas, of which Mr. Madan gives the following account: —

"The most celebrated trial in connection with literary forgeries was perhaps that of Vrain-Lucas in 1870, for the most unblushing manufacture of autograph letters. The chief interest attached to the dupe and not the forger; for M. Chasles, besides being a collector of autographs, was a celebrated geometrician and a member of the French Academy. It is hardly credible that Vrain-Lucas between 1861 and 1869 supplied M. Chasles with no less than 27,000 autographs, for which he received 140,000 francs. These included letters of Julius Cæsar, Cicero, Socrates, and Shakspeare, and six were from Alexander the Great to Aristotle. After this we can receive with calmness the information that one was from Pontius Pilate to Tiberius, and one from Judas Iscariot to St. Mary Magdalene! The cream of it was that nearly every letter was in modern French and on paper, and that the water-mark of the paper was in many cases a *fleur-de-lys*. However, M. Chasles was prepared to receive any number in addition, when a circumstance induced him to submit some of his collections to wiser men than himself. He was engaged in writing a book to prove that the discovery of the principle of gravitation was not due to Sir Isaac Newton, but to Pascal. Vrain-Lucas, knowing this, supplied him with a correspondence between Pascal and the Hon. Robert Boyle, and finally between Pascal and Newton himself, on the deepest questions of geometry, although the latter was at the supposed date just eleven years old. This was too interesting to be concealed, and was accordingly exhibited with pride to the Academy. But M. Prosper Tangère and Sir David Brewster, who was a foreign correspondent of the Academy, denounced the letters at once on general grounds as a forgery, and after a short investigation the whole edifice collapsed. To illustrate a scientific principle, a cup of coffee was introduced in a letter, some years before coffee was known in Paris. French letters of Galileo were produced, though Galileo was never able to write that language; and in the end Vrain-Lucas was brought to trial and condemned to imprisonment. The only redeeming feature about the affair was that, with the exception of a very few letters, the whole of the forgeries had been purchased by M. Chasles, and none escaped to disseminate the deception."

Mr. Madan also gives interesting accounts of the forged letters of Phalaris, out of which sprang the famous dispute between Boyle and Bentley, about 1695, and of the Chatterton and the Ireland-Shakspeare forgeries.

Speaking of Court Rolls, Mr. Madan says: —

"Human nature is recognizable as much in the matter of Essonia (excuses) for not coming to take part in the Court, as in any other part of these records. For there were five recognized excuses — 1. *Ultra mare*, 'I have gone abroad;' 2. *De Terra Sancta*, 'I am on my way to the Holy Land;' 3. *De malo viviendi*, 'I can't manage to come;' this was called the 'common excuse;' 4. *De malo lecti*, 'I am confined to my bed;' and 5. *De servitio Regis*, 'the king requires my services.'"

The common excuse in respect to jury duty in these days should be *De prospiciendi Albam Urbem*. The little book is of unique interest. It is furnished in this country by Messrs. Scribner.

NOTES OF CASES.

A Hot Springs Case. — It would be more agreeable in this warm weather to read of icy sidewalk cases, and to "think upon the frosty Caucasus;" but we have to take such current cases as we can find, and we find this: In Gaines *v.* Bard (Arkansas), 22 S. W. Rep. 570, plaintiff, while taking a hot vapor bath at defendant's bath-house, was burned because defendant's servant failed to remove him from the bath at the proper time. *Held*, that defendant was liable for such injury, although plaintiff permitted the servant to absent himself, where such consent was

on condition that he would promptly return on being called, which he failed to do. The main question was whether the attendant was the servant of the bath-house keeper or of the bather. The court said:

"Martin was one of several persons connected with the defendants' bath-house in the capacity of attendants upon persons who desired their assistance in taking baths. These attendants were selected by the manager of the bath-house, and during the period of their service enjoyed the exclusive privilege of administering baths and of receiving the fees allowed therefor. In consideration of this privilege they not only attended at the bath-house for the purpose of performing their duties in assisting bathers, but kept the bath-rooms clean, and made the halls between the rooms comfortable by keeping them properly heated. It resulted, from the nature of their employment and from the supervision essential to the usefulness of the bath-house, that the attendants should be subject to the general control of the manager, and to dismissal by him for any sufficient cause. The manager had power to assign either of them to the service of any visitor who had not selected an attendant for himself, and they could earn no fees otherwise than by using the rooms and other bathing appliances belonging to the defendants. Their labors were all in furtherance of the business enterprise in which the defendants were engaged, and it was entirely inconsistent with the interests of the latter, and with the duty they owed to the public as lessees and proprietors of the bath-house, that attendants upon bathers should be allowed to pursue their calling as independent contractors, or as persons conducting a business not subordinate to the business of the defendants. This being so, we think the position of the attendants was such that the law, in affording a remedy to third persons for their negligence, will regard them as the servants of the defendants, whether they served under an actual contract with the defendants or not. Cooley Torts, 623; Wood Mast. & S. § 304. But we think they acted under a contract with the defendants, and it is not speaking accurately to say that the administration of baths was the only service they rendered for the fees they received. The fees were paid to them by permission of the defendants, and were accepted as compensating them for all their labors at the bath-house, including their services in keeping the rooms and halls in a cleanly and comfortable condition. That they received no compensation except as it came to them in fees paid by the bathers they were selected or assigned to wait upon, and that bathers had the privilege of selecting their own attendants, and paying the fees directly to them, are facts which go to show that the amount of the fees to be paid each attendant was uncertain and contingent; but such facts are entirely consistent with the proposition that the right to earn any fees at all grew out of a contract with the defendants. Martin's position, then, was similar to that of a servant at a hotel, to which reference is made by way of illustration in the case of Laugher *v.* Pointer, 5 Barn. & C. 579."

LIBEL ON CANDIDATE FOR OFFICE. — It seems that candidates for office have some rights that newspapers are bound to respect. In Hallam *v.* Post Pub. Co., 55 Fed. Rep. 456, the action was for libel by reason of the publication of the following article in the "Cincinnati Evening Post" of the 14th of October, 1892: —

"Berry paid Expenses of Theo. Hallam in the Sixth (Ky.) District Contest for the Nomination of a Democrat for Congress. — The Berry-Hallam congressional fight in the sixth Kentucky district is still on. That is to say, Banquo's ghost bobs up now and then, to the annoyance of the congressional nominee, Berry, and the mortification of the defeated candidate, Theo. F. Hallam. The Boone County Recorder delivers a broadside at the Kenton county delegates, and naïvely asks, 'Why don't they come out, and tell the truth about what induced them to go to Berry? The world knows.' Yes, the world knows, and you might say Mars and the other planets know it also. Proprietor Roth, of the St. Nicholas Hotel, has an inside 'cinch' on this information. Every one knows Colonel Berry. He is a monopolist, corporation controller, millionaire speculator, political wire-puller, first-class hustler, and a pretty good sort of fellow. Hallam is a successful lawyer at Covington; but legal eminence there does not mean the fat incomes that are its synonyms on this side of the Ohio. Hallam is one of the 'bhoys,' loves ward politics for the fun, if not the emoluments, and is about as poor as a church mouse. In fact, he owes several hundred dollars for taxes. The two counties, Kenton and Campbell, threw out their hooks for the congressional nomination. Kenton swore by Hallam, while Campbell vowed that the political friend and chum of Carlisle, Cassius M. Clay, Jr., and Charles J. Helm, their own millionaire and boss, Albert S. Berry, should be the nominee. The fight waxed hot. The convention was held at Warsaw, commencing on September 27th, and ending September 30th. The Kenton boys prepared for the fray. The principal preparations consisted in engaging the steamer 'Henrietta' to carry the delegates to Warsaw, and the *carte blanche* orders to Mr. Roth, of the St. Nicholas hostelry, to fill her up from truck to keelson with the best the cellar and the larder of the house afforded. As one delegate remarked: 'Why, the champagne flowed off the decks so much that even the "Henrietta" was swimming in it. Hallam and his crew did all the feasting and the drinking. The Campbell men were not in it' But the bill was made out to Colonel A. S. Berry. Here is the bill: 'St. Nicholas. Edward N. Roth. Cincinnati, Oct. 10, 1892. Colonel A. S. Berry, per Theodore F. Hallam, to the St. Nicholas Hotel Company, Dr.: For meals, service, wine, and cigars served on board steamer "Henrietta," $865.15.' Then again: At Warsaw the battle raged four days. On the last day Colonel Berry and Lawyer Hallam were seen to go arm in arm to the rear of the court-house where the convention was held. They had a quiet and confidential chat. At its conclusion Hallam called his warriors about him, and spoke to them in whispers. Immediately thereafter the whole Kenton county delegation cast its vote for Colonel Berry, and he received the nomination. Is Colonel Berry carrying out all and every of the promises he made? Ah, there 's the rub! Mr. Roth, of the St. Nicholas, has sent a bill of

$865.15 to Colonel A. S. Berry. That bill is for 'dry' and wet provisions ordered by Hallam, and disposed of by Hallam's supporters. Such generosity on the part of the victor to the vanquished is truly touching."

There was a verdict of $2,500, and this was sustained. The court said, among other things: —

"But it was contended for the defendant that the privilege covers not only comments, but also statements of fact, and that the American rule is, by reason of the difference in government and institution, broader than the English rule. The English rule, as stated by Cockburn, C. J., in Seymour *v.* Butterworth, 3 Fost. & F. 377, is that if a writer asserts that a member of Parliament had bargained to sell his vote upon a corrupt contract, or that a member would not have voted or spoken as he did but for a corrupt understanding that he should receive a reward, such would not be excusable as fair comment. See, also, Davis *v.* Shepstone, L. R. 11 App. Cas. 187, where Herschell, L. C., notes the distinction between comment or criticism and allegations of fact, and limits the privilege to the comment or criticism. See also Ogden Sland. & L. 33 *et seq.*, under the title 'Criticism.' The American rule, according to the weight of authority, is substantially the same. In Smith *v.* Tribune Co., 4 Biss. 477, the rule is stated to be that a public journal has no right to make specific charges against a public man unless they are actually true, and mere honesty of motive is not a sufficient defence. Judge Drummond said that if the rule were otherwise, every public man would be at the mercy of every journalist, and they could launch charges against him with impunity. So it has been held that the privilege of fairly canvassing the acts or conduct of public men does not include or imply a license to vilify or defame them. Snyder *v.* Fulton, 34 Md. 128; Palmer *v.* Concord, 48 N. H. 211. The Supreme Court of Massachusetts in Curtis *v.* Mussey, 6 Gray, 273, held that published charges against a public officer of corrupt and improper motives were not privileged, and that without a plea of justification there was no complete defence, and legal bar to the action. In Hamilton *v.* Eno, 81 N. Y. 126, Chief Justice Folger, announcing the opinion of the court, said that the truth concerning a public officer might be published in good faith, but for what was false and aspersive the publisher was liable, however good his motives. In Seely *v.* Blair (decided in 1833), Wright (Ohio), 358, 683, — one of the early cases, — the Supreme Court of Ohio held that nobody has a right to slander, or utter falsehoods of, a public officer, or of a candidate for office; and in Publishing Co. *v.* Moloney (decided January 31, 1893), 33 N. E. Rep. 921, the same court said that the defence of privilege must be pleaded (which has not been done in this case), and, recognizing the right of free and full comment and criticism on the official conduct of a public officer, denied the doctrine that the press is privileged to speak as freely of the private character of the person holding the office as of his official conduct and character. The court says: 'In our opinion a person who enters upon a public office, or becomes a candidate for one, no more surrenders to the public his private character than he does his private property.' The defendant in the case now before this court was the plaintiff in error in that case, represented by the same counsel, who apparently argued the same points, and presented the same authorities, as here. The court cited with approval Seely *v.* Blair, *supra*, and held that 'while it is the right of the press, as it is of individuals, to freely criticise and comment upon the official action and conduct of a public officer, false and defamatory words spoken or published of him, as an individual, are not privileged on the ground that they related to a matter of public interest, and were spoken or published in good faith.'"

NEGLIGENCE EXCUSED IN THE HUNGRY. — The law is tender toward nursing infants and railway passengers in search of wayside meals. Thus in Atchison, etc., R. Co. *v.* Shean, 33 Pac. Rep. 108, it was held, that where a train stops at an eating-station, and there is a track between the train and the station, a passenger alighting from the train has the right to assume that the railroad company will so regulate its trains that its tracks between the car and the eating-station platform will be safe for him to pass over in going to and returning from the eating-house, and his failure to look and listen for an approaching train is not negligence. The court said:

"The same duty, we think, is imposed upon the company towards a passenger while, on a continuous journey, he is going to and returning from the eating stations provided by the company for the accommodation of passengers. While leaving the train for this purpose he does not cease to be a passenger, or lose the protection of those regulations that the company is bound to provide for his safety while on its cars, or when rightfully upon its depot grounds. The same rules of law can be invoked for his protection under such circumstances as are afforded to passengers going to and from its cars. Their duty in the latter respect is well settled." Citing Railroad Co. *v.* White, 88 Pa. St. 333; Terry *v.* Jewett, 78 N. Y. 338; Brassell *v.* Railroad Co., 84 N. Y. 241; Archer *v* Railroad Co., 106 N. Y. 589; Jewett *v* Klein, 27 N. J. Eq. 550; Baltimore & O. R. Co. *v.* State, 60 Md. 449. "By the foregoing and other well-considered cases it is settled that a passenger on a railroad, while passing from the cars to the depot, is not required to exercise that degree of care in crossing a railroad track as is imposed upon other persons, and that he has the right to assume that the company will discharge its duty in making the way safe; and, relying on this assumption, may neglect precautions that are ordinarily imposed upon a person not holding that relation; and this distinction is to be taken into consideration in determining the propriety of his conduct. Under all the facts shown in evidence and the circumstances surrounding the accident, whether the person injured was guilty of contributory negligence at the time is a question within the province of the jury to decide, and one that the court cannot rightfully take from them."

A DEFINITION. — The Federal judges, in passing upon questions of customs duties, have created quite a dictionary from first to last. Just now it is de-

cided, in Erhardt *v.* Hahn, 55 Fed. Rep. 273, that agate and tiger-eye stones, cut in parts, and ground into shapes of penholder-handles and other articles, and known to the trade by the names of "agate penholder handles," "tiger-eye penholder handles," etc., are dutiable at twenty per cent ad valorem, under the tariff act of 1883, as non-enumerated manufactured articles, and are not admissible duty free, as "agate unmanufactured," nor assessable at ten per cent, under Schedule A of the same act, as non-dutiable crude minerals which have been advanced in value by refining, grinding, or other processes, nor at ten per cent, under Schedule N, as "precious stones." This is held by the Circuit Court of Appeals, reversing 46 Fed. Rep. 519. Judge "Curiam" said:

"We agree with the learned trial judge that the real question in the case is whether they were 'precious stones' within the meaning of Schedule N of the act, and therefore enumerated otherwise than as manufactured articles Undoubtedly, agate stones and tiger-eye stones are 'precious stones,' within the common acceptation of the term; certainly, some varieties of them are; and of course they were known in trade and commerce, as to the lexicographers, by that generic term. But it does not follow that agate penholder handles, agate shoe-hook handles, etc., are the precious stones of the statute. If it could be shown that these articles, at the date of the tariff act, were bought and sold as precious stones, or were commercially known as such, then no doubt they would have to fall under that classification for duty. Not only had these articles no such commercial designation, but the stones themselves, when imported in the form of stones, were bought and sold as were rubies, diamonds, and other precious stones, by their respective distinctive names We think the term as used in Schedule N applies to all stones known as precious, whether in their original condition, or advanced beyond it by cutting, polishing, etc, so long as they remained 'stones' in the commercial sense of the word."

WHAT IS A BUILDING? — The London "Law Journal" says: —

"Lawyers who try to answer this question may find themselves in the position of the casuists who attempted to fix the number of stones requisite to form a heap or of hairs to form a horse's tail. 'What is a "building" must always be a question of degree' (Stroud's Dictionary) In Pocock *v* Gilham, 1 Cab. & Ell. 104, a lease contained a covenant that the lessee would not without license in writing alter or vary the demised dwelling-house, nor erect or make any other building or erection upon any part of the demised premises In spite of this, the lessee erected wooden hoardings for the purpose of advertisement against the side of the house and on the top of the parapet wall by nails and holdfasts driven into the walls. Mr. Justice Mathew held that the lessee had broken his covenant, and that the lessor was entitled to the injunction which he sought Mr. Justice Kekewich has come to a somewhat different conclusion in Foster *v.* Fraser (noted *ante*, p 439). A purchaser of freehold land covenanted that any building to be erected on a part of the land should be of a certain height, and should have a stuccoed or a cemented front and a slated roof, and any building to be erected on other parts of the lands should be of a particular kind, and such buildings should be used only as dwelling-houses. The purchaser let the land to an advertising company, who erected a large wooden hoarding, supported by struts and outposts, of the height of twelve to fourteen feet, and covered it with posters and advertisements. The vendor's devisee asked for an injunction against this user of the land. The learned judge, while admitting that the covenant was a reasonable one having regard to the residential nature of the property, refused to grant the injunction on the ground that the hoarding was not a 'building' within the purchaser's covenant We cannot help respectfully doubting whether in this particular case an advertising hoarding is not within the mischief aimed at by a covenant of this nature, but conveyancers will be wise in making such restrictive covenants expressly refer to hoardings."

This point has been variously decided in this country. In the Supreme Court of New York (Wright *v.* Evans, 2 Abb. Pr. [N. S.] 308), it was held that the erection of a fence twenty feet high, extending from the wall of a house to the rear of the lot, is a breach of a covenant against the erection of buildings On the other hand, the Massachusetts Supreme Court held the contrary in respect to a wall seven feet high (Nowell *v.* Boston Academy, etc., 130 Mass. 209). The subject is somewhat amusing. In this country it has been held that swings and seats in a dancing-hall are not subject to a mechanics' lien, that a cemetery vault is not a "building" within the statute of burglary; and that a steamboat is not a "building" nor "premises" within an excise act. See Browne's Common Words and Phrases, p. 48.

PIETY AND MANSLAUGHTER. — It is noteworthy that in Murphy *v.* Commonwealth (Kentucky), 22 S. W. Rep. 649, it was held that where deceased, a boy eleven years old, went to carry defendant his dinner, and defendant pointed his pistol at him, and told him he would shoot if deceased would not preach, and continued pointing the pistol at deceased until he hid under a log, and afterwards they started away together, and when about a hundred and fifty yards away, the pistol went off and the deceased killed, this was manslaughter, although defendant claimed that the shot was caused by his finger accidentally slipping on the trigger. It will be instructive in connection with this to read a note on fatal practical jokes in 31 Am. Rep. 606.

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 dignity of the law seems to suffer somewhat at the hands of certain justices of the peace, as witness the following communications: —

REIDSVILLE, N. C, July 22, 1893.

Editor of the "Green Bag":

Your communication in July issue from Williamsburg Township, Kansas, brings to mind the following which took place in Williamsburg Township, N. C. In justice's court a prisoner was charged with the larceny of a bottle of beer from a bar-room. He objected to being tried before the justice, and asked that his case be heard by some other J. P. The court demanded his grounds of objection, to which the prisoner replied that he did not propose to be tried for stealing beer from a bar-room before a magistrate who was in the habit of dead-beating for drinks around the bar-rooms of that township. To this the court with great dignity and emphasis replied, "You accuse me of doing that? Then you are a d——d liar, and I fine you $5.00 for contempt of court."

Yours, &c., H. R. S.

OTTAWA, ILL., July 25, 1893.

Editor of the "Green Bag":

DEAR SIR, — In the good old days when it was not so easy to find a parson as it is now, a couple called upon a newly elected J. P., of Peoria County, in this State, who had not received his commission, and stated their desire to be duly spliced. He informed them that he had not received his commission, but they insisted that they must get married, and asked him to find a way to help them out. At length a bright idea seized him, and he gave them a certificate, a copy of which you will find below verbatim et literatim et punctuatim. This is no fiction but the certificate is now actually on file.

State of Illinois :
Peoria Co : Know all men by this presents that John Smith and Polly Myers is entitled to go together and do as all folks does anywhere in Coperas precinct and when my commission comes I am to marry em good and date em back to kiver accidents

J—— M——
Justis of Peas

The justice was elected for Coperas precinct.

Very respectfully, C. B. C.

THE following is an interesting addition to the specimens of letters received by lawyers heretofore published in the "Green Bag": —

TROY, N. Y., July 29, 1893.

Editor of the "Green Bag":

DEAR SIR, — A subscriber to and appreciative reader of your "useless but entertaining" "Green Bag," I note you "will be glad to receive . . . anything in the way of . . facetiæ, &c." Therefore, I beg to enclose for your editorial consideration, with reference to deposit in the "Bag," a verbatim copy of letter I actually received from a Hebrew client. The mem. shows the circumstances. The transaction occurred in Albany, N. Y.: —

MEM. — The writer of the letter is husband of partner of Mr. *B.* The husband acted as agent for his wife in conduct of the business. Suit was begun (by myself as attorney) in behalf of the wife, for dissolution of the partnership, Mr. A., defendant's attorney, called (as the copy letter shows) and I received the letter of July 5, 1893, a copy of which is annexed. I hope you see the meat of the "goak" in last sentence.

—— Esq. —— July 5, 1893.
N. Y.

SIR: — I would hereby most respectfully inform you, that Mr. A., the attorney of B., appeared in my place of business to-day and informed me, that I were discharged from the employ of Mr. B., and that I should leave the place at once, as he is a partner yet and that he would engage another man on my place, besides he told me that I would be expelled from the city, now I want to know, what laws there is in the Statutes of the State of New York or else the U. S. to expell me from this City. I am a legal naturalized Citizen of the U. S., my papers having

been obtained as a Citizen in this very City and I think there is no power on earth to expell me from here, I think the whole matter is only arranged to scare me and drive me away from here, I have commited no act, even if there should be such a law, as to drive a man away from a City, where he is a legal Citizen, to warrant such a thing, as that, as I have commited no crime or anything to make me amenable to the law, I think the whole affair is nothing but a piece of blackmail and I hope you will use your most possible efforts, to deliver me out of this stigma.

Yours Obdt. Servt. ——

Yours truly, G. G. S.

FOR "high-flown" language commend us to the following: —

LYNCHBURG, VA.

Editor of the "Green Bag":

DEAR SIR, — I send the "Green Bag" the following sample of judicial pyrotechnics. It is the entire syllabus of the case of Bonsack Machine Co. *v.* Woodrum, as reported from the Court of Appeals of Virginia, including italics: —

"A contract is endorsed and signed, 'and this contract is, for value received, declared ended and settled.' The word 'ended' means *final, definitive, complete, conclusive.* It imports what will be, when the Apocalyptic Angel, with one foot on the sea and the other upon the earth, shall lift his hand to heaven, and swear by *Him* that liveth forever and ever, that there shall be 'Time no longer.' It will not then be admissible to offer *parol testimony* to *alter, vary,* and *contradict* the *explicit terms* of the awful *declaration;* and to prove that *non obstante* the *unambiguous words* themselves, 'Time still rolls his ceaseless course,' for *some* of the *provisions* of man's tenure upon earth."

Seeing that the aforesaid "awful declaration" will be a parol declaration, the court fails to show upon what ground the parol testimony will be ruled out. Still it is well to be warned against a waste of breath in offering such testimony.

VIRGINIAN.

LEGAL ANTIQUITIES.

IN the year of the city 300, the Romans, who had hitherto been governed by very imperfect laws, sent three deputies to Greece to make an exact collection of the laws of Solon, the law-giver of the Athenians. On the return of the deputies, the decemviri were elected; that is, ten of the most distinguished citizens were appointed with sovereign authority to dispose these laws under proper heads, and propose them to the people. They were at first summed up in ten tables, but in the following year two more were added. Hence they were called "The Laws of the Twelve Tables," — the foundation of Roman jurisprudence.

FACETIÆ.

A VERY stupid foreman asked a judge how they were to *ignore* a bill. "Write *'Ignoramus for self and fellows'* on the back of it," said Curran.

"No man," said a wealthy but weak-headed barrister, "should be admitted to the Bar who had not an independent landed property." "May I ask, sir," said Mr. Curran, "how many acres make a wise-acre?"

"WELL," said the man who handed his last cent to the lawyer, "I suppose turn about is fair play: I broke the law and the law broke me."

LORD COLERIDGE tells this story of Browning: Browning lent him one of his works to read, and afterward meeting the poet the lord chief justice said to him, "What I could understand I heartily admired, and parts ought to be immortal; I admired it or not, because for the life of me I could not understand it." Browning replied, "If a reader of your calibre understands ten per cent of what I write I think I ought to be content."

A PROMINENT lawyer of Buffalo tells of a compromise he once made on behalf of a certain railway company with an Erie county farmer whose wife had been killed at a railroad crossing. A few months after the terrible bereavement, the husband, who had sued the company for $5,000 damages, came into the office and accepted a compromise of $500. As he stuffed the wad of bills in his pocket, he turned to the lawyer and cheerily remarked, "Vell, dot 's not so bad after all. I 've got fife hundret tollar, and goot teal better wife as I had before."

ONE of the sovereign people broke a chair over his wife's head. When taken to jail and conversed with by the chaplain, he displayed a good deal of repentance. He said he "was very sorry

that he had permitted his anger to obtain the mastery of him, and to suffer him to do such an act, for the chair was a good one, an heirloom in his family, and he knew he never could replace it."

During the trial of an action at the Orleans County Circuit, at Albion, N. Y., recently, the following amusing incident occurred: —

A negro was being examined as a witness for the plaintiff. On his cross-examination the defendant's attorney in a loud voice and threatening manner asked, "Were you not convicted, sir, for the crime of non-support of your wife?" "Sur," answered the witness, "I consider dat question a slur upon the court."

It is needless to add that there was much laughter, in which the court himself heartily joined.

In the old days of the circuit riders in Illinois there was a good deal of queer testimony first and last. On one occasion there was an assumpsit suit before old Judge Ford. The plaintiff's attorney proved the debt in a conclusive way. There was no cross-examination, and a verdict seemed to be a matter of course, until the defendant produced a witness, who testified that on a certain day he was riding between two towns forty miles apart, that half-way between he saw the defendant meet the plaintiff and pay to him the exact sum in question, but he was unable to tell whether the plaintiff was tall or short, what kind of a horse he rode, how he was dressed, or anything like that. But of the main fact he was sure.

The judge without hesitation gave a verdict for the plaintiff. The defendant's counsel was aroused. "Your Honor," he began, "did you not hear the testimony of the witness?" "I heard it," responded the judge. "But, your honor, I shall have to take an appeal." "That is your constitutional right," said the judge. "And I shall have to file a bill of exceptions. And will your honor sign the bill of exceptions, including the testimony of this witness?" "Certainly!" said the imperturbable judge; "and I will add below that the judge did not believe one word of it!"

There is a certain member of the Chicago bar who is noted for his low, weak voice, and unobtrusive way. On one occasion the gifted Emery A. Storrs came into the office and inquired for this man. A clerk said he was out. "Oh, no!" said Mr. Storrs, "he is in the inner room." "How do you know that?" asked the clerk, alarmed by the guess. "How do I know it?" answered Storrs, "Why, it is so damn still!"

NOTES.

The legal profession is one of the most dignified of all others, and to be a good lawyer a man must be a gentleman and a scholar. But in nearly every town and city there are men who write themselves as lawyers who are no more fit to follow that profession than a hog is to be a saddle-horse. They prance around the streets and work up cases that have no business in the courts, and in some mysterious means manage to eke out a living. They flaunt themselves in the courts, impede the progress of justice, and embarrass lawyers who have a right to follow the profession. Their methods in dealing with the public beget distrust, and cast reflection on the whole bar. Men who entertain the proper conception of what a lawyer should be often wonder how they got license to practise; but as fast as the old ones drop out, new ones of the same class rise up to fill their places. Thus it is that professions founded on the grandest principles enunciated by divine authority are disgraced and brought into disrepute by unworthy representatives, — men who are better fitted to sling a sledge-hammer in a blacksmith-shop or pull the bell-cord over a good stout mule.

The same rule applies to all the professions in a more or less degree. Men who are too lazy to work and too worthless to enter the real battle of life, where nothing but merit succeeds, enter some profession where the greatest imposition can be practised, frequently the ministry. They adopt it as a means of livelihood, and struggle through in an indifferent sort of way, bringing reproach upon their calling. In all other professions this state of affairs will be found to exist. It is refreshing to note that occasionally the better element of a profession, driven to desperation, will cast off one of these barnacles. If the number disbarred were greater, the good men in all professions would suffer less for the lack of public confidence. — *Nashville Banner*.

THE original manuscript of Magna Charta was rescued by Sir Robert Cotton from a tailor who was on the point of cutting it up for measures.

IN view of the multitude of cases now reported, we think the profession will agree that what is needed is some definite responsible head who shall be able and powerful enough to say that this or that case shall or shall not be reported; some one in fact to stand between those who wish their cases to be reported and the unfortunate lawyers who have to read them. Our volumes of Reports could be cut down at least one half and be all the better for the process.

OUR countrymen of America, as might be expected from their quick, nervous temperament, with their famous proclivities for "money-making," lead the world in the time devoted to business pursuits, during a given year, as fixed by statute law, with the exception of the Dutch and Hungarians. The Dutch Statute gives the people but five legal secular days for pleasure, making their work days 308. The poor Hungarians get but one of the world's secular days, and work the greatest number of days during the year of any nation.

The inhabitants of Central Russia labor the least number of days per annum; the same being 267. Our neighbors across the St. Lawrence, who get their taste for "taking things easy" from the "Old Country," in exchange for the privilege of certain contributions to the exchequer of her Majesty's government, which they are annually permitted to make, come next in order of leisure-loving folks, with 270 days, during which they pay the penalty fixed by the Archangel of God, when man was driven in disgrace from Eden, with his feminine partner a *particeps criminis*, whose weak curiosity led them both into evil.

England and Scotland are, as one might naturally expect, satisfied with a less number of working days, and a corresponding greater number of days on which they neither "toil nor spin." They get in about 275 days of hard work during the year, providing they keep the Fourth Commandment and do not work holidays, which no sane Englishman will.

The Portuguese follow with 283 days, and Russian Poland with 288.

The land of Cervantes and "Don Quixote," weak-kneed, proverbially, as she is in all governmental policy, shows a stronger grasp on the idea of "what makes the world go round," in modern times at least; and according to her proverb, "The foot of the owner is manure for his land." So if the ease-loving Spaniard works at all, according to his statutory year he will "tread his winepress" 290 days, to round up the full measure of the legal year.

The Austrians, "bearded" or clean-shaven, and the people of the Baltic Provinces owing fealty to the Czar, are satisfied to labor 295 of the 365 days of man's thraldom.

Italy, fair, enchanting land of imagination, — who would think to find here a craze for sordid greed and earthy existence? — a people whose character comes from such moulds of sentiment as, "It is better to be without food than without honor," and also "Little wealth, little care." Modern practicality requires even "the noblest Roman of them all" to tread the wine-press of life 298 of the 365 diurnal revolutions of time, if he wishes to be credited with the full statutory time.

These require 300 days to satisfy the law: Bavaria, Belgium, Brazil, and Luxembourg. "Noblesse oblige," says le bonne Frenchman. If any reference is intended herein to those duties generally regarded as pertaining to business relations with his fellows, then our frog-loving neighbor must attend to such obligation some time within the 302 days allowed by law, or Code de la France. As to the other days, particularly as they are spent within "the world's gayest capital," to use a Frenchman's words, "All that time is lost which might be better spent."

Saxony, Finland, Würtemberg, Switzerland, Denmark, and Norway agree with the French notion, or rather English, that "all work and no play makes Jack a dull boy;" so 302 days is considered enough to make a year's work.

Sweden adds two more to her "time for work," and 304 days fill the statutory requirement. "Besser ohne abendessen zu Bette gehen, als mit Schulden aufstehen," says the thrifty hard-working German; and he soon learns the force of his "Geld regiert die Welt," and so 305 days he labors in his youth to gain the repose of old age.

Ireland, last, but not least, — the witty, but emerald Irishman, — man of inconsistent virtues, it is safe to say that he is not responsible for being

obliged to work 305 days to satisfy an insatiable landlord, when his cousins across the Channel get off with 30 less, and "be gorra no betther mon, bad luck to the likes of them!"

LAW-OFFICE LYRICS.

I

Cujus Solum.

"WHO owns the ground owns up to the sky,"
Saith the old law book;[1] therefore build high,
Ye Babelites, nor heed the warning
That once confounded Pagans, scorning
Nature's just great law of gravity.
"Fire-proof," quotha? Earthquake-proof? oh, no!
A little tremble, and down you go; —
Dame Nature 's not to be cheated so.
But worst of all, weariness to eyes,
The tiresome bricks tier on tier arise;
Dwarfing the homes of modest people,
O'ertopping venerated steeple:
Monopolizing sun, air, and skies;
Leaving below damp obscurities, —
What shall I call 'em?
(Problem most solemn,)
Ah! *cujus solum monstrosities.*

A MOST curious rent-audit takes place yearly, on November 11, at Breitemberg Castle, near Itzehoe. Long ago a Count Rantzan, whilst hunting, nearly sank into a morass. He was rescued by a peasant, whom the count rewarded by the gift of the boggy piece of land, upon the condition that he paid a rent of one Danish silver penny every year. The land, arable now, goes by the name of "Penny Meadow." As Danish silver pennies are becoming very scarce, the peasant's descendants will probably some day find it difficult to pay the tribute.

IT is reported that the Attorney-General of Indiana, in submitting his brief on appeal to the Supreme Court in a recent murder case, said that an examination of the record had left him in doubt as to the prisoner's guilt, and therefore he did not feel it his duty to make any special effort to procure an affirmance of the conviction. This unusual action on the part of the official representative of the State was naturally followed by a reversal of the judgment.

This Attorney-General's conduct will, in the popular mind, offer a sharp contrast to that of the District Attorney in the Borden case. On account of the baseless prosecution of Miss Borden, the current of feeling is now running somewhat against public prosecutors, and the opinion is entertained that they should be more judicial and less like paid advocates in the discharge of their duties.

In the Borden case very probably undue zeal of advocacy was shown, and undoubtedly a besetting fault of District Attorneys is to "make a personal matter" of the case. But, considering the constitution of human nature, a certain amount of failing in this direction is almost inseparable from the discharge of the duties of their office. The Borden case would seem to demonstrate that a District Attorney, who presses a weak case with all the energy due to a strong one, loses in professional standing, and, in the end, in popular prestige. — *N. Y. Law Journal.*

[1] Cujus solum est, ejus usque ad cœlum.— BLACKSTONE

THE career of Seymour D. Thompson, ex-judge of the St. Louis Court of Appeals, reads like a romance. Twenty-five years ago he was an obscure policeman wearily treading the streets of Memphis, Tenn., and to-day he is the best known law-book writer in the world, and enjoys a yearly income of $25,000 from his books. Wherever you go in England or America Thompson's law text-books are a familiar sight on every prominent lawyer's table. — *St. Louis Chronicle.*

Here 's to you, brother Thompson! *We* wearily tread the streets of Boston, and we have written some books, but there the comparison ends. The $25,000 yearly income has been diverted from *us* into another channel. We wondered where it had gone, and are glad to find it in such worthy hands.

CONTENTS OF THE AUGUST MAGAZINES.

The Atlantic.

His Vanished Star, III., IV., Charles Egbert Craddock; Washington the Winter before the War, Henry L. Dawes; The Meeting of the Ships, Walter Mitchell; Little Boy Blue, Olive Thorne Miller; The Teaching of the Upanishads, William Davies; A Strategic Movement, Ellen Olney Kirk; Jonathan Belcher, a Royal Governor of Massachusetts, George Edward Ellis; A Boston Schoolgirl in 1771, Alice Morse Earle; The First Principal of Newnham

College, Eugenia Skelding; The Breakers, Charles Washington Coleman; "The Ogre of Alewife Cove," Edith M. Thomas; Studies in the Correspondence of Petrarch, II., Harriet Waters Preston and Louise Dodge; Ben, A. M. Ewell; Relations of Academic and Technical Instruction, Nathaniel Southgate Shaler.

The Century.

Fez, the Mecca of the Moors (illustrated), Stephen Bonsal; Phillips Brooks's Letters to Children, with notes on his home life (frontispiece portrait), Phillips Brooks; The Prince and Princess Achille Murat in Florida (portrait of Louis Napoleon), Matilda L. McConnell; Cup Defenders Old and New (illustrated), W. P. Stephens; The White Islander, Part III., Mary Hartwell Catherwood; Balcony Stories, One of Us, The Little Convent Girl (illustrated), Grace King; Breathing Movements as a Cure, Thomas J. Mays; Farmer Eli's Vacation, Alice Brown; The Famine in Eastern Russia, Relief Work of the Younger Tolstoy (illustrated), Jonas Stadling; An Artist's Letters from Japan, Yokohama, Kamakura, John La Farge; Contemporary Japanese Art (illustrated), Ernest Francisco Fenollosa; A Swedish Etcher (Anders Zorn; illustrated), Mrs. Schuyler van Rensselaer; Mr. Jones's Experiment (illustrated), James Sager Norton; The Poet, Frank Dempster Sherman; The Philosophers' Camp, W. J. Stillman; A Sister of Saints, Marion Libby; Benefits Forgot, IX., Wolcott Balestier; At Niagara, Richard Watson Gilder; The Redemptioner, Edward Eggleston; August, John Vance Cheney.

Harper's.

The Cock Lane Ghost (a story; illustrated), Howard Pyle; Greenwich Village (illustrated), Thomas A. Janvier; The Handsome Humes, a novel, Part III., William Black; His Bad Angel, a story, Richard Harding Davis; The Dead Lover, a Roumanian Folk-song, R. H. Stoddard; Italian Gardens, Part II. (illustrated), Charles A. Platt; Riders of Tunis (illustrated), Colonel T. A. Dodge, U. S. A.; Horace Chase, a novel, Part VIII., Constance Fenimore Woolson; Bride Roses, Scene (illustrated), William D. Howells; A Queer Little Family on the Bittersweet (illustrated), William Hamilton Gibson; A Cast of the Net, a story (illustrated), Herbert D. Ward; Black Water and Shallows (illustrated), Frederic Remington; A Landscape by Constable, a story (illustrated), F. Mary Wilson; At the Hermitage, a story, E. Levi Brown; A Lament for the Birds, Susan Fenimore Cooper.

Lippincott's.

"In the Midst of Alarms," Robert Barr; Zachary Taylor, his Home and Family (illustrated), Annah Robinson Watson; The National Game (illustrated), Norton B. Young; Jane's Holiday (illustrated), Valerie Hays Berry; The Lady of the Lake (at the Fair), Julian Hawthorne; A Philadelphia Sculptor (illustrated), E. Leslie Gilliams; Supermundane Fiction, W. H. Babcock; Men of the Day, M. Crofton.

Scribner's.

The House on the Hill-Top, a Tale of Modern Etruria (illustrated), Grace Ellery Channing; The Newspaper Correspondent (illustrated), Julian Ralph; A Sin-Offering, W. G. Van Tassel Sutphin; Beneath the Mask, Howard Pyle; Tiemann's to Tubby Hook (illustrated), H. C. Bunner; Types and People at the Fair (illustrated), J. A. Mitchell; The Copperhead, Chapters III.–V., Harold Frederic; Her Dying Words, Thomas Bailey Aldrich; The Flight of Betsey Lane (illustrated), Sarah Orne Jewett; The Opinions of a Philosopher, Chapters VI.–VIII. (illustrated), Robert Grant; The Wedding Journey of Mrs. Zaintree (Born Greenleaf), William Henry Shelton.

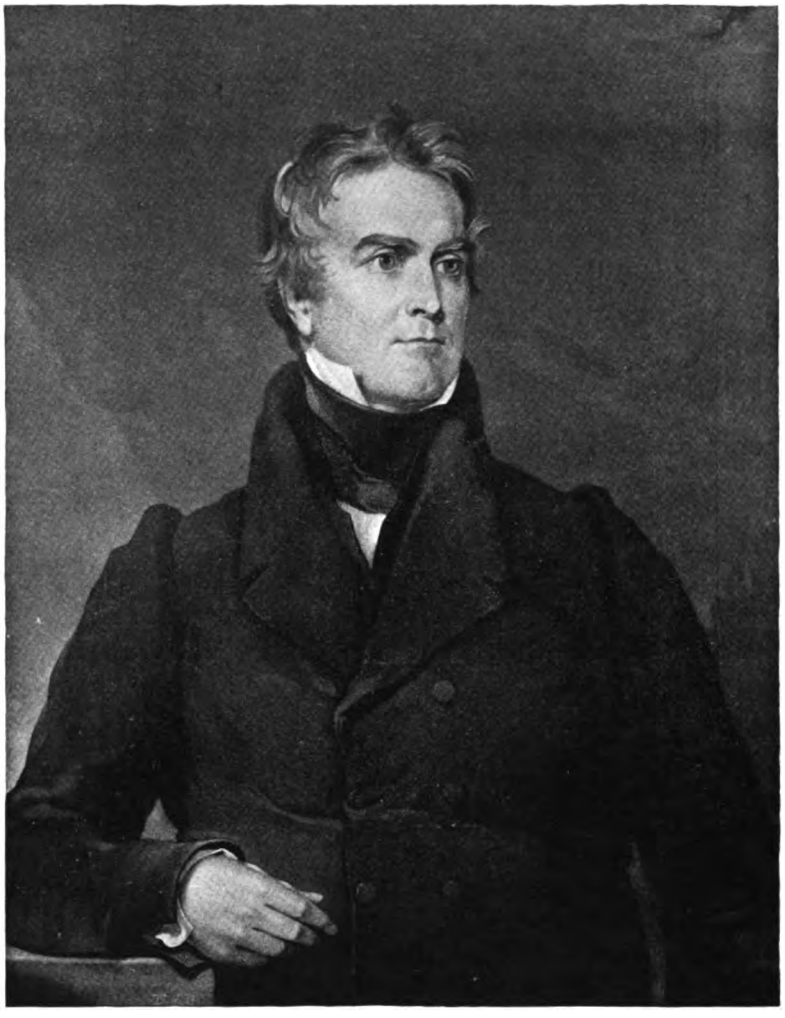
BOOK NOTICES.

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

The excellence of the selection of cases, and the full and valuable annotations which accompany them serve to make this series of reports of unusual interest to the profession. The present volume is in every respect up to the high standard of its predecessors.

BOSTON ILLUSTRATED. Houghton, Mifflin, & Co., Boston, 1893. Paper. 50 cents.

More than twenty years ago a guide-book with the title "Boston Illustrated" was published, with a map and a number of illustrations. The present work, while following the same general lines as the original, has been entirely rewritten and re-illustrated. The editor, Mr. Edwin M. Bacon, possessing unusual qualifications for work of this nature, has given us altogether the best guide-book to the "Modern Athens" which has ever been published. It is filled with valuable and interesting matter, and the maps and illustrations are most excellent. The citizen will find the book of great historical worth, while to the visitor to Boston it will be invaluable.



(AT THE AGE OF 53.)

Hon: Burney

The Green Bag.

VOL. V. No. 10. BOSTON. OCTOBER, 1893

HORACE BINNEY.

By HAMPTON L. CARSON.

FEW names stand higher among the leaders of the American Bar in the olden days than that of Horace Binney. Twenty years ago I had a conversation with him when he was in his ninety-third year, and never shall I forget the impression made upon me by the legal veteran. His form, though bent by years, was tall and commanding; his head, covered by a black velvet cap, was large and massive; his eye was bright and intelligent; his voice deep and melodious; his enunciation distinct, and his diction precise and orderly. His memory seemed but slightly clouded, as he glided easily from topic to topic without hesitation or confusion. Some hours after my visit I made a few notes, and from these I produce the following extracts:—

Of the study of the law he said: "It is a noble study, and worthy of the most ardent devotion. You will find the road to success a hard one to travel; harder than in my day, for methods have changed and competitors are more numerous. But do not suffer yourself to become discouraged. For more than eight years after my admission to the Bar I could not afford to stir my porridge with a silver spoon."

Speaking of statesmen, he remarked: "Alexander Hamilton was the greatest man this country ever produced. He did more than any man of his day to give us a government; and Chief-Justice Marshall, in expounding the Constitution, applied Hamilton's principles and borrowed his language Read Hamilton's report, as Secretary of the Treasury, upon the Funding Scheme, and then read Marshall's opinion in McCullough *v.* The State of Maryland."

He spoke of Washington and John Adams and the Federalist party. "After all," said he, "it was the most honest party we have ever had."

He enjoyed flowers as well as books, and invited me to look at his garden, which was visible from the library window.

I watched him frequently during the remaining three years of his life, as he descended the steps of his residence on fine days, to take the air in his carriage, but never spoke to him again. Few, if any, of the passers on the busy street recognized in the feeble old man the renowned advocate who had vanquished Daniel Webster in the famous controversy arising under the will of Stephen Girard. But of this hereafter.

He was born in Philadelphia on the 4th of January, 1780, and was old enough to have remembered the appearance of some of the statesmen who framed the Constitution of the United States, as they met in Federal Convention in Independence Hall of the historic State House. He was of English and Scotch descent, his grandfather having been a shipmaster and merchant of Boston, of English extraction, and his father a surgeon in the Continental army, who was transferred from the Massachusetts to the Pennsylvania line, and settled in Pennsylvania, where, in 1777, he married Mary Woodrow, the daughter of a gentleman of Scotch ancestry. It was from his mother that he inherited a

talent for ease and elegance as a speaker, as well as a turn for wit and humor.

He was educated at the school established by Friends in the immediate neighborhood of the Quaker Alms House, the scene of the closing pages of Longfellow's "Evangeline," and subsequently entered the grammar-school of the University of Pennsylvania. His father died when he was but eight years of age; and upon his mother's second marriage with Dr. Spring, a physician of Boston, he left Philadelphia, attending school at Medford, and from there entered the Freshman class at Harvard, graduating in 1797, and dividing the first honors of his class. For a time he studied medicine, but subsequently sought employment in a mercantile house in Philadelphia. Fortunately for the law, if not for himself, the counting-room was supplied with clerks, and he entered the office of Jared Ingersoll, Esq., then Attorney-General of Pennsylvania, one of the framers of the Federal Constitution, and an acknowledged leader of the bar. Of "my learned master in the law," Mr. Binney himself wrote many years afterwards, "in his full vigor, which continued for nearly twenty years after the year 1797, I regard him as having been without comparison the most efficient manager of an important jury trial among all the able men who were then at the bar of Philadelphia." Among "the able men" alluded to in this connection, was William Lewis, the fearless advocate who braved the rough and overbearing Justice Chase, of the Supreme Court of the United States, who presided at the trial of John Fries, convicted of treason during the John Adams administration, his conduct in this case being made the basis of one of the articles of impeachment of the Judge brought forward by the eccentric John Randolph in 1805. Other leaders were Edward Tilghman, the most consummate real-estate lawyer of his day, who could untie a knot in a legal limitation of lands "as familiarly as he could unloose his garter;" William Rawle, the author of an early work upon the Constitution, and the celebrated A. J. Dallas, who was Secretary of the Treasury under Madison. These men led the bar of the old Supreme Court of the United States before its removal from Philadelphia to Washington.

Closely observing the combats of such antagonists, and with the celebrated John Sergeant as a fellow student, whose speech in Congress upon the Missouri Compromise has ever been regarded as the ablest in that memorable debate, Mr. Binney sedulously improved the unusual opportunities afforded him for study and observation. On the 31st of March, 1800, he was admitted to the bar of the Common Pleas, and at the March term of 1802 was called to the bar of the Supreme Court of Pennsylvania, at that time presided over by Chief-Justice Shippen, who had acquired wealth in the colonial days as a Judge of the Vice-Admiralty, of marked Tory proclivities during the war, and the father of the renowned belle, Peggy Shippen, whose portrait in the dress of the Meschianza was sketched by the unfortunate Major André, and who subsequently became the devoted wife of the traitor Benedict Arnold.

For some time Mr. Binney had a most meagre clientage; but he had patience and industry, and for several years discharged the duty of reporting the decisions of the State Supreme Court. Mr. Binney's reports are well known to the profession, containing, as they do, many of the decisions of Chief-Justice Tilghman, a master of Equity jurisprudence, and the earliest opinions of the young but legally gigantic John B. Gibson. They are marked by rigid and accurate analysis, clearness of statement, a comprehensive grasp of facts and principles, and a skilful arrangement of matter. Indeed, they stand as models of reporting.

When Mr. Binney had been seventeen years at the bar, he had argued about thirty cases before the Supreme Court of his State, and one (Bank *v.* Deveaux, 5 Cranch, 61) before Chief-Justice Marshall, a case establishing a principle of much importance; that

a corporation aggregate, composed of citizens of one State, could sue a citizen of another State in the Federal Courts. By this time his high moral character, — a trait which always distinguished him, and for which in later life he was much revered, — his clearness and force, his persuasive advocacy, and the thoroughness of his preparation were fully recognized.

It is curious to note some of the controversies of that early day. Comm. *v.* Eberle (3 Serg. & Rawle, 9) grew out of a prosecution for an illegal conspiracy to prevent by means of armed resistance the introduction of the English language into the service of the German Lutheran Church, and the principle contended for by Mr. Binney, — that the government of religious bodies should not be determined by conspiracies to resort to bloodshed and violence, — was fully sustained. In Carson *v.* Blazer (2 Binney, 272) the English legal definition of a navigable stream, as one in which the tide ebbs and flows, was rejected as being too narrow to apply to the water highways of this country. Several cases relating to the status of slaves arose; while lotteries — then a common means of promoting charitable, social, literary, and religious enterprises — were protected. In Updegraph *v.* Commonwealth (11 Serg. & Rawle, 394), upon an indictment for blasphemy, Christianity was declared to be a part of the common law; while in James *v.* Commonwealth (12 Serg. & Rawle, 220) an attempt to punish a common scold by the use of the ducking-stool was declared to be illegal, and contrary to the mild and humane principles of American law.

It was in the discussion of such questions, as well as those of the law-merchant, and law maritime, prize law and insurance, growing out of the War of 1812, and also those affecting titles to real estate, both legal and equitable, that Horace Binney gradually attained the foremost place at the bar. In Lancaster *v.* Dolan (1 Rawle, 231) the court broke away, much to Mr. Binney's regret, from the bonds of English precedents, and held that in a settlement for the use of a married woman the *feme covert* had no powers of disposition or of management except such as were expressly given to her by the settlor in the instrument of settlement itself. Nothing was to be taken as granted by implication. And in the famous case of Ingersoll *v.* Sergeant (1 Wharton's Rep. 336), which settled in a manner never since doubted the nature of the Pennsylvania ground rent, the admiration of the profession was aroused by the profound learning displayed by Mr. Binney in discussing the character and extent of our indebtedness to the feudal system for our titles to land.

Before he was fifty years of age he had been twice offered a seat upon the bench of the Supreme Court of the State, but had firmly declined. There can be but little doubt that he would have made a great judge. His written opinions had almost the authority of judicial decisions, and are marked by the most striking features of the best judicial style. Calm, unswerving, and unprejudiced judgment, sagacity, ample learning, close and logical reasoning, and language, luminous and exact, predominate. No heat or passion, no sympathy, no delusive imagination, no inability to adhere to "the pinch of the case," are discoverable. His utterances were those of the law, and hence he was consulted as a veritable oracle.

But once did he turn to public life, if we disregard a short service in the State Legislature when a very young man. In 1832 he was elected to Congress, and defended the Charter of the Bank of the United States with a dignity of demeanor and a strength of argument which commanded the admiration as well as respect of the foes of that doomed institution. "He was very severe upon you, but he spoke like a gentleman and a jurist," was the report of his speech which Andrew Jackson received from a friend whom he had sent into the gallery of the House to note the utterances of this renowned leader of the Philadelphia Bar.

Retiring to private life, after a single term,

he again applied himself to his profession; but in 1840, at the age of sixty, abandoned the active labors of the forum. But once did he suspend his determination not to appear in the courts. It was upon a most notable occasion, and he stepped forth from the seclusion of his office, a giant fully armed, to win the crowning triumph of his professional career.

Stephen Girard, a Frenchman by birth, a Philadelphia merchant, banker, and philanthropist, had left an enormous fortune to charity. By one clause in his will sectarian religious teaching was forbidden; and clergymen of every denomination were inhibited the college buildings and the grounds. Lay-religious instruction was expressly enjoined, and the testator had expressed his anxiety that the boys whom he sought to befriend should be free to form their own religious opinions.

An attack was made upon the gift by alien plaintiffs, who sued in the United States Courts. Walter Jones, in that day a most able and active practitioner of the District of Columbia, led the assault, while John Sergeant represented the city of Philadelphia, the trustee under the will. The judges were in doubt. English precedents appeared adverse to the charity as being impious and pagan, while certain expressions of Chief-Justice Marshall exercised a persuasive influence over the mind of Mr. Justice Story. The most unique and princely charity in America was in peril. A re-argument was ordered. The heirs retained Daniel Webster, the undisputed monarch of the bar of the Supreme Court of the United States. The city of Philadelphia turned to Mr. Binney. He yielded to the call of duty, and after a year's most thorough preparation entered the court-room with a complete and absolute mastery of every Chancery precedent, ancient or modern, and bore down upon his illustrious opponent with a weight of learning and a strength of argument which proved crushing and overwhelming.

Mr. Webster declared that it would be the crowning mercy of his professional career if he could defeat this alleged charity. Mr. Binney, with infinite tact, disarmed prejudice against the testator by reciting the number and character of his benefactions, his gifts to the dumb and blind, the Orphan School, his employees, his relatives, and even his old negro slave. Gradually he worked his way up to a definition of charity which formed the keynote of his argument, — that whatever was given from a love of God or a love of one's neighbor, in the broadest and most catholic sense, was a charity. He made a majestic appeal for religious toleration, and vindicated the right of Mr. Girard to guard his trust from narrow and sectarian interpretation. Mr. Webster's reply was inadequate. It was eloquent and declamatory, but the criticism of the authorities was cursory and superficial. His study had been hasty and partial. Mr. Binney had won solely through that which was his most conspicuous trait, — absolute mastery of all the law relating to the case, — thoroughness of preparation. Mr. Justice Story delivered the opinion, and showed in every line how completely he had been subjugated (Vidal *et al.* *v.* Girard's Executors, 2 Howard (U. S. Rep.) 127).

The admiration excited by this argument led President Tyler to offer to Mr. Binney the seat upon the bench of the Supreme Court of the United States made vacant by the death of Mr. Justice Baldwin. It was declined on account of infirm health and years.

Such in mere outline was the professional career of Mr. Binney. No sketch of his life, however, would be complete without reference to his labors as eulogist, biographer, historical critic, and legal disputant. In these departments of literature he is entitled to the highest rank. In learning, in skill in portraiture, in purity of style, and eloquence of expression, they equal any of the discourses pronounced by Kent or Story. He handsomely paid the lawyer's debt to his profession. In 1827 he delivered an eulo-

gium upon the character of Chief-Justice Tilghman, and traced the growth of American jurisprudence through a course of fifty years. His next judicial portrait — and it is a masterpiece — was that of Chief-Justice Marshall, painted with exquisite art in 1835.

In 1849 Mr. Binney, in the presence of a meeting of the bar presided over by Mr. Justice Grier, of the Supreme Court of the United States, and Hon. George M. Dallas, but lately Vice-President, acting as Secretary, pronounced an impressive estimate of the services of that eminent lawyer Charles Chauncey. In 1852 he spoke in the same manner of his great rival but warm friend, John Sergeant. In 1858 he prepared and published an elaborate review of the judicial character of Bushrod Washington.

During the next year, when he had attained the advanced age of seventy-nine years, he published a classic in legal biography, "The Leaders of the Old Bar of Philadelphia," a work which attracted the attention of Sir John Coleridge, who reviewed it in terms of admiration. Within a few months afterwards he wrote and published "An Inquiry into the Formation of Washington's Farewell Address," a remarkable specimen of analytical skill and historical information. The conclusion reached by him — and it is fortified by the most abundant proofs — is that while Washington supplied the fundamental thoughts, the political sentiments, the body and substance of the address, yet the honor of authorship, in the prevalent literary sense, belonged to Alexander Hamilton.

As if in scorn of age, Mr. Binney threw himself with aggressive ardor into the controversy which raged in 1861 over the power of the President to suspend the Habeas Corpus Act, and published a critical and trenchant review of the opinion of Chief-Justice Taney in the Merryman case. He arrayed himself with Joel Parker, of Massachusetts, upon the side of the President, and waved his glittering blade over the heads of a host of distinguished adversaries, among whom was such a man as Benjamin Robbins Curtis, with a vigor born of the sincerity and depth of his convictions. Whatever view jurists may take of this controversy, — and there now appears to be but one from a Constitutional standpoint, — no one can withhold his admiration from this legal patriarch, contending almost single-handed in defence of the President, and casting his ancient but unrusted sword into the scale of a tottering government.

Such, then, was Mr. Binney, — as a lawyer, accomplished and profound, never disappointing and often surpassing expectation; as an advocate, eloquent, earnest, and self-possessed, of fine figure, rich and melodious voice, graceful and animated in gesture, winning the confidence of courts by entire freedom from tricks and the low arts of cunning, disdaining strategy and artifice, and truckling to no prejudices: a man of intuitive judgment, a wise and safe counsellor, an incorruptible trustee, a model citizen, and an earnest Christian. Shadows there were upon this character, which without them would be more than human; but they are trifling, and serve but to give tone to the picture. He was cold, reserved, and unsympathetic. He had no impulsive warmth or impetuous generosity of temperament. He viewed everything dispassionately and calmly, and sought nothing but the legal truth, by methods which seemed impersonal. Thus he became the more admirable as a lawyer, while less lovable and popular as a citizen. Here fair criticism must end. His exalted rank in the profession was won by merit and hard work; and the veneration in which he was held by all who knew him, and the reputation which his name enjoys, constitute a monument to his integrity and virtues, which will not perish but endure.

He died on the 12th of August, 1875, aged ninety-five years seven months and eight days. *Fortunate senex, tua rura manebunt.*

LEGAL REMINISCENCES.

By L. E. Chittenden.

III.

I FREQUENTLY notice decisions by our judges in criminal cases which involve matters which have transpired in the presence of the Grand Jury. Quite recently, in the State of New York, on the motion of a public officer who was not indicted, but whose name was mentioned in a presentment, stenographic reports of all the evidence before the Grand Jury were ordered by the court to be furnished to him, though I believe he was not permitted to have the advice of the prosecuting attorney to the body upon matters of law.

I do not question these decisions. I suppose they are in conformity with modern codes and practice; but they imply such different ideas of the office of the Grand Jury from those that once prevailed, that it may interest younger members of the bar to know what the views of their fathers were upon this interesting subject.

The fathers looked upon the Grand Jury as the safeguard of the citizen against malicious prosecutions, and the almost certain means of putting the real criminal upon his trial. Hence they were careful to place their best men upon the panel. At the town or March meeting it was the practice in one State at least, for the selectmen and the justices who constituted the board of civil authority to select three or four names of good citizens, which were put into a box, and from them the sheriff drew one name, or, in large towns two names of those, who served from that town on the panel. This proceeding in all the towns brought together on the first day of the term of court twenty or more of the best men of the vicinage, eighteen of whom made up the Grand Jury, and the concurrence of twelve was necessary to the finding of a bill of indictment.

The presiding judge appointed the foreman, and the members were sworn. The most conspicuous part of the oath was that in which each man swore to preserve inviolably the secrecy of all the proceedings before them. The charge was then delivered by the presiding justice, who seldom failed to point out and impress upon them the reason and the necessity of this secrecy. Witnesses would be more willing to disclose important facts if they knew that no one could criticise their conduct or know that they had given testimony. If a sufficient number concurred, the foreman would write the words "A true bill," and sign his name as foreman. If twelve did not concur, he would write "This bill not found," and sign his name as foreman. There were certain cases in which the statute required the names of the witnesses to be indorsed upon the bill. These names and the words to be indorsed were the only information ever to be disclosed of the proceedings before the body. It could make presentment of the condition of the public buildings and in a few other cases, but these must be limited to facts found, and should not disclose anything further.

By the charge the jury were usually told that the prosecuting attorney was permitted to be present, but he acted as the servant of the body in the preparation of bills of indictment and procuring the attendance of the witnesses, who were to be sworn and examined by the foreman. If the attorney conducted the examination of a witness in whole or in part, it was by favor of the panel and not as a matter of right. The court might at any time

be called upon for instruction in matters of law.

Under this practice the independent action of the body and the absolute secrecy of its proceedings were secured. So inviolable was this secrecy and so important was its preservation regarded, that any disclosure of its proceedings was esteemed a crime of as high a grade as any form of perjury. Such a body was in fact as well as in name the *Grand Inquest of the County*, which presented no man for lucre or malice, and left no real criminal unpresented for any cause.

As no such case ever occurred, if I should suggest how the court would have treated a motion to give some one leave to inspect the minutes of evidence before a Grand Jury, it would be the merest speculation. Very certain I am that the attorney who ventured to make such a motion would have brought his service as an officer of the court to a sudden and violent termination.

There must be, I suppose, some good reason for this change of practice and the estimate of the office of the Grand Jury which it implies. I do not know what that reason is, and I fear I am too old to learn. I believe, and probably always shall believe, that the Grand Jury system as I was taught and the judges of old time used to administer it, was and is the terror of criminals, the safeguard of the citizen, and one of the most invaluable elements of our jurisprudence.

How many of our young lawyers have ever read the formidable Bill in Equity with which an unfortunate mortgagor was attacked by a creditor who wished to foreclose his mortgage? I doubt whether I could now draw such a Bill of Complaint from memory, in the common case of the foreclosure of a mortgage given to secure the payment of a promissory note. As well as I can remember, after setting out the execution and delivery of the note and mortgage, alleging its maturity and non-payment,— all the facts which would seem to be necessary, — instead of simply concluding with a prayer for the foreclosure of the mortgage or a sale of the property, the document wandered into regions of the imagination somewhat after this wise: —

"But now so it is, may it please this honorable court, that the said defendant [the mortgagor], contriving and intending to deceive and defraud your orator [the complainant], and to cause him to lose the whole sum of money in the said promissory note mentioned, combining and confederating himself with divers evil-disposed persons, whose names are at present unknown to your orator, and whose names when discovered your orator prays may be inserted in this Bill of Complaint, with apt and proper words to charge them, doth pretend and give out in speeches sometimes that he never signed the said promissory note, and that if his name appears thereon, it is a forgery, and at other times that the note was given for an usurious consideration, and is void, or that he has fully paid the same, and it ought to be delivered up to be cancelled, — whereas your orator charges, and so the said defendant and his confederates well know the facts to be, that he the defendant did sign and deliver the said note, that the same is not usurious, and that the same has not been paid nor any part thereof, and that all and every the facts and allegations set forth in the said Bill of Complaint are true according to the best knowledge, information, and belief of your orator.

"And now forasmuch as your orator is remediless in the premises by the strict rules of law, and cannot have any discovery or relief touching the matters aforesaid but in a court of equity, where subjects of this description are properly cognizable.

"To the end, therefore, that equity may be done, your orator prays that your honor's writ of subpœna may be issued under the seal of this court, directed to the said defendant and his confederates, commanding them and each of them under a sufficient penalty therein to be named to be and appear before this honorable court on the next rule day of said court, then and there upon their and each of their corporal oaths to make answer to this Bill of Complaint and all the allegations thereof as fully and particularly as if each of said allegations were herein again repeated, and he and each of them thereto specifically interrogated, and that he and each of them may

particularly answer whether said defendant did not sign the said promissory note, and whether any part of it has been paid, and whether the same is not due and unpaid, — all as set forth in this Bill of Complaint; and that your orator may have such other and further and additional relief in the premises as to equity and good conscience appertain."

I have abbreviated the formal parts of such a bill, but the foregoing is all that I can now remember of them. Such a formidable document was quite sufficient to carry terror to the heart of an unfortunate debtor whom it assailed for the first time.

It is a long time since several young lawyers were commencing practice in a New England town in which there was a college. The professor of mathematics therein was a man without imagination, who never made or appreciated a joke, and who supposed that every one else used words with his own mathematical precision. He was indebted upon a promissory note secured by mortgage which he could not pay at maturity, and which fell into the hands of a young lawyer to be foreclosed, who has since become eminent in his profession, in diplomacy, and by the closing argument before the International Behring Sea Tribunal in Paris. He prepared the bill to foreclose the mortgage, omitting no word of its formalities, and giving especial attention to the pretences charged upon the defendant in the conspiracy and interrogatory sections. The bill was served by giving a copy to the professor.

"I think," said my friend P., "that the most thoroughly angry man from sole to crown that I have ever seen was the professor when he entered my office the next morning. He gave the paper a violent twist, threw it on the floor, and set his heel upon it. 'Are you a gentleman?' he began; and giving me no opportunity to reply, he continued: 'I have lived in this town fifty years; I supposed I had some reputation as a respectable man. What have I done to deserve such treatment? I tell you, sir, this paper is full of lies, — awful, horrible lies! Yet your client makes oath to this paper. He does not stop at a little thing like perjury. I wonder the earth did not open and swallow him up when he called Almighty God to hear his wicked false oath. He ought to be punished as a libeller and as a perjurer. He says I am a conspirator with *evil-disposed* persons, and admits that he don't know the name of one of those evil persons. He swears that I deny the note, and then that I claim that I have paid it. In the very last conversation I had with him, I told him how mortified I was because I could not pay the note, and that I would pay it just as soon as I could get the money. Is the man crazy? What could have induced him to invent and make oath to such falsehoods? And, Mr. P., I did expect better things of you. Before you wrote such libels upon a fellow-townsman why did you not ask him whether they were true?'

"'If you can restrain your wrath long enough to hear a word of explanation, Professor, you will see that there is no occasion for your anger. Those statements mean nothing, — they are merely the formal parts of the bill —'.

"'Mean nothing, sir? Does it mean nothing to call a man a conspirator, an evil-disposed person, — to write a lot of infamous lies about him?'

"'But can't you understand, Professor, that these statements are parts of a very old form, and are wholly immaterial?'

"'If they are immaterial, why in the name of common sense don't you omit them? What reason was there for putting them into the bill, as you call it?'

"The professor was too many for me," said P. when he told the story afterwards. "I had to confess and avoid, — to admit that there was no excuse for all that mass of nonsense. I satisfied the professor that I had not intended to insult him, and that as the fact was I had a high esteem for his many excellent qualities."

THE TRIAL AND CONDEMNATION OF JESUS AS A LEGAL QUESTION.

II

By Hon. Edward W. Hatch.

BLASPHEMY was an offence so odious to the Jews that they conducted the trial in all its aspects in such a manner that the words used by the offender, constituting the crime, were not spoken by the witnesses; but fictitious words and personages were introduced. As they could not execute under the fictitious name, they finally excluded the public, and calling the principal witness said to him, "Tell us clearly what thou hast heard;" and then the witness, naming the person, stated the words constituting the offence. Then the judges stood upon their feet and rent their garments, which were never sewn again. The second and third witnesses were not allowed to speak the words, but said, "Even I [heard] as he." The Mishna also provided that judgments in souls should not be held for the purpose of condemning, but for clearing, and this is evident from its provisions. The Hebrew lawyers expressed the opinion that "a tribunal which condemns to death once in seven years may be called 'sanguinary.'" And Dr. Elizer said, "It deserves this appellation when it pronounces a like sentence once in seventy years." Rabbis Tryphon and Akiba, Jewish leaders, declared that they would not pass sentence of death. The boasted nineteenth century will search its judicial practice in vain to find such safeguards thrown around an offender as were contained in this Jewish code. Certainty in evidence, presumption of innocence, humanity in procedure, hedged it about until a false conviction was almost impossible. England may well blush with its blood-stained code of the eighteenth and early part of the nineteenth centuries in comparison with such humane rules and course of procedure followed out by centuries of practice. It seems incredible that they should have been utterly violated in letter and spirit upon the occasion to which we now call attention. Bear well in mind these rules while we follow the course of the present trial.

From the time that Jesus commenced to teach, after his temptation, it was early discovered by both Pharisees and Sadducees that his was not a religion of forms, whose ostentatious observance fulfilled the highest law; and in consequence they became arrayed against him, and the whole record shows that they sought his life for the reason that his teaching tended to the destruction of their ceremonial religion and the power of the priesthood. Thus it was that they refused to recognize Divine Power in his works, seeking to inculpate him by questions in a violation of law that they might find excuse to destroy him. John says, Chap. V., that they tried to slay him for directing the man healed at the pool of Bethesda to take up his bed and walk, it being on the Sabbath. He healed the withered hand, and they held counsel with the Herodians how they might destroy him. When he ate without washing and denounced the Pharisees for their hypocrisy, they tried to provoke him that he might say that of which they could accuse him. They also asked for a sign, not to be satisfied that Jesus was the Christ, but because by their law one who showed a sign was to be tried as a false prophet and punished by death. At the feast of the Tabernacle, as Jesus taught in the Temple, they sent officers for him; but at that time there was a division of the people concerning him, and no man dare lay hands upon him. The officers make reply to the Chief Priests and Pharisees: "Never man spake like this man." And when the Phari-

sees and Priests condemned him, Nicodemus called their attention to the law: "Doth our law judge any man before it hear him, and know what he doeth?" They brought the woman taken in adultery, also the law of Moses, which commanded that she should be stoned, and asked, "What sayest thou?" Came the answer, "He that is without sin among you, let him first cast a stone at her." He raised Lazarus from the dead in violation of no law, but in conjunction with the Father rising superior to all law. And Caiaphas, with the Council of the Chief Priests, prophesied that Jesus should die for that nation; and from that day forth they took counsel together to put him to death. What for? Not for blasphemy, for which he was tried and sentenced, but in the language of the Sanhedrim, "For this man doeth many miracles. If we let him thus alone, all men will believe on him; and the Romans will come and take away both our place and nation." Thus for the law of the New Commandment, "Love ye one another," was he to die. It is not necessary to note the other occasions when they counselled together how they might take him. The instances noted are sufficient to show, and none others contradict them, that his life was not sought as the lawful forfeit for crime, but through a conspiracy, itself unlawful, to prevent the loss of place and power. Not only did they conspire among themselves, but through Judas, who was corrupted by money to betray him. Jesus had taught openly in the synagogues and Temple; but they did not dare, for fear of the populace, to arrest him, but counselled to use subtlety that they might take and kill him. And finally upon the night before the Feast of the Passover, Judas having received a band of men and officers from the Chief Priests, led them to the Garden of Gethsemane, and there indicated Jesus to the officers by a kiss; the band took Jesus and bound him. Thus we see that the arrest of Jesus was in furtherance of a conspiracy of the High Priest and Sanhedrim, consummated by the corruption of Judas by the use of money.

There is a slight difference in the account of the Evangelists as to where Jesus was immediately taken after his arrest. Matthew, Mark, and Luke state that he was taken to Caiaphas, or to the house of the High Priest, where the Sanhedrim was assembled; and John states that he was taken to the house of Annas in the first instance, and was by him sent bound unto Caiaphas. It is alleged by some that the only reason for taking him to Annas is that he was father-in-law of the High Priest, and by others, that Annas having been High Priest possessed more influence than Caiaphas. However this may be, it is only material as bearing upon the number of irregularities committed in the transaction. It is clear that Annas had no more jurisdiction over the person of Jesus than any other unofficial person in Jerusalem, and it is equally clear that the house of the High Priest was not the place of meeting of the Sanhedrim, so that in either aspect this proceeding was exceptional and fatally irregular; for by Jewish law no verdict of guilty could issue from such place. It is, however, in harmony with the theory of conspiracy to commit a crime under the form of law. It further appears by Matthew and Mark that immediately the Chief Priests, elders, and all the Council sought false witnesses to put him to death, but found none; and at last came two witnesses, and said, "This fellow said, 'I am able to destroy the Temple of God, and to build it in three days.'" Mark says, "But neither so did their witnesses agree together." And it is evident that the testimony of these witnesses was disregarded, as the High Priest said, "'Answerest thou nothing? What is it which these witness against thee?' But Jesus held his peace." It is noticeable that the testimony disclosed no crime. It was no offence to say he could destroy the Temple of God and in three days rebuild it, and that Caiaphas so understood it is made plain when he asked, "What is it which these witness against thee?"—allowing the inference to be drawn that by

any answer which Jesus might make something would appear upon which he could lay hold, as he could not upon anything the witnesses had said. In this Jesus disappointed him, and he was driven to take another course. "And he said unto him, 'I adjure thee by the Living God, that thou tell us whether thou be the Christ, the Son of God.' Jesus saith unto him, 'Thou hast said it; nevertheless I say unto you, Hereafter ye shall see the Son of Man sitting on the right hand of power, and coming in the clouds of Heaven.' Then the High Priest rent his clothes saying, 'He hath spoken blasphemy; what further need have we of witnesses? Behold now ye have heard his blasphemy, what think ye?' They answered and said, 'He is guilty of death.' . . . When the morning was come, all the Chief Priests and elders of the people took counsel against Jesus, to put him to death."

Luke's account is somewhat different. He makes no mention of their calling witnesses, and also states that, "As soon as it was day, the elders of the people, and the Chief Priests, and the Scribes came together, and led him in to their council, saying, 'Art thou the Christ? Tell us.' And he said unto them, 'If I tell you, ye will not believe. And if I also ask you, ye will not answer me, nor let me go. Hereafter shall the Son of Man sit on the right hand of the power of God.' Then said they all, 'Art thou then the Son of God?' And he said unto them, 'Ye say that I am.' And they said, 'What need we any further witnesses? For we ourselves have heard of his own mouth.'"

John omits all account of what was done before Caiaphas and Annas, except that Jesus had been sent bound by Annas to Caiaphas, and "The High Priest then asked Jesus of his disciples, and of his doctrine. Jesus answered him, 'I spake openly to the world. I ever taught in the Synagogue and in the Temple, whither the Jews always resort; and in secret have I said nothing. Why askest thou me? Ask them which heard me what I have said unto them. Behold, they know what I said.' And when he had thus spoken one of the officers which stood by, struck Jesus with the palm of his hand, saying, 'Answerest thou the High Priest so?' Jesus answered him: 'If I have spoken evil, bear witness of the evil; but if well, why smitest thou me?'"

We have been thus particular to quote all, that the points of difference might clearly appear. Applying to these narratives the test of judicial observation, their differences furnish very high evidence of the truthfulness of the essential fact in the narration, and the truthfulness of the witnesses; for universal experience has taught that witnesses always vary in their statement of facts from a variety of causes, like the lack of the same power in expression, the failure to fix the mind upon detail alike, the retention of one fact and the loss of another, imperfection in hearing or seeing, the position from which observation was made at the time of the transaction. The description of an elephant by seven blind men, as related by Saxe, the poet, is a very terse illustration of this fact. The narratives do not, as we shall see, differ in any essential particular save one, and that relates to time. Matthew and Mark relate that the trial took place in the night, and that Jesus was immediately condemned. If this be so, then the direct command of the Jewish law was violated in three particulars. First, they were commanded not to hold such a trial in the night-time; second, they could only acquit upon the same day of the trial, not condemn; and in the latter case, they must consult, abstain from drinking wine, eat little meat, and defer judgment until the next day; third, the judgment was pronounced summarily, which was not authorized by law. Luke says that as soon as it was day the Council assembled. If this be so, then they are relieved so far as holding it in the night was concerned; but it is worthy of attention that Luke does not mention the formal condemnation, while Mark and Matthew each mention an assembling in

the morning, but that was not for the purpose of condemnation, but for the purpose of conselling how they might put him to death. Matthew says, "When the morning was come, all the Chief Priests and elders of the people took counsel againt Jesus, to put him to death." Upon this subject Luke says nothing, contenting himself by relating it all as one occurrence. John also is silent as to the time, and also the condemnation, but he does say, "Then led they Jesus from Caiaphas unto the Hall of Judgment, and it was early." But this was when they took him to Pilate, as was Luke's account. We think therefore that the inference and previous statements, coupled with the requirements of the law, indicate that Matthew and Mark give a more detailed account of the trial, and that the Sanhedrim held two meetings, one in the night when they condemned, and one in the morning when they sought to devise a plan for carrying out the sentence. But if we say that the court was held in the daytime, the vice of the condemnation upon the same day of the hearing is not cured, and the sentence becomes void for want of jurisdiction in the court to pronounce it when they did and as they did. Aside from all this, it was forbidden by the law to hold court for the trial of offences upon the eve of a festival, or upon the day of a national festival. And the time when Christ was arrested, and the day of his condemnation and execution was upon the eve of the Feast of the Passover. Here, then, we have a court held at a time and place in direct violation of law, pronouncing a summary sentence not authorized by law. Instead therefore of a trial before a properly constituted tribunal, we find one wholly unauthorized, whose judgments were of no more validity in law than the headstrong impulse of a mob.

But of the trial. What has become of the carefully organized tribunal to assert innocence and not find guilt? Where are the careful examinations and investigations of witnesses by the judges? Matthew and Mark give answer. They sought for false witnesses to put him to death. Where was the lingering mind of the judge that he said not to the witness, "If thou speakest not the truth, God will demand of thee an account, as he demanded of Cain an account of the blood of Abel"? Swallowed up in the blindness of human passion. Mr. Salvador says Caiaphas, the High Priest, whose dignity compels him to defend the letter of the law, observed that Jesus excited dissensions, both political and religious, which would furnish an excuse to the Romans for overwhelming Judæa, and that the interests of the whole nation must outweight those of a single individual; he therefore constitutes himself the accuser of Jesus. We by no means admit this statement, except for present purposes. But taking it now as true, what must we think of the judge, and of the argument which justifies it, when we find the accuser, who had already pronounced guilt, sitting in judgment to try the accused? Relation and interest with the Jews excluded the judge even in money matters, and yet we find Caiaphas the accuser; and the associate judges, each of whom had consulted with the accuser, and each of whom had counselled how they might take Jesus by subtlety and kill him, associated as a court to try him.

What of the evidence? The witnesses had failed; and for their failure had been substituted a gross infraction of law and morals, — Jesus was called upon to criminate himself. "I adjure thee by the Living God, that thou tell us whether thou be the Christ the Son of God," — thus placing him in a position where an answer in the affirmative was at once to admit what they were seeking to obtain, if in the negative, to deny his divine mission and teachings. No tribunal instituted by the Jews ever authorized such testimony, any more than modern Christian tribunals. This position was exactly stated by Jesus when he said in reply, "I spake openly to the world: I ever taught in the Synagogue and in the Temple, whither the Jews always resort; and in secret have I said

nothing. Why askest thou me? Ask them which heard me what I have said unto them. Behold, they know what I said." But this was held sufficient for the court, which immediately pronounced him guilty, although the law was not so satisfied unless two witnesses testified to guilt. They also violated another law when he was removed, and continued to violate it in every step of the proceedings before Pilate. When a prisoner was led away for execution, if any one asserted his innocence, he was to be brought back and the evidence heard. When Jesus was led away to Pilate, Judas had said, with the bribe of the Jews, in his hand, "I have sinned in that I have betrayed innocent blood." The answer was, "What is that to us? See thou to that." After consulting how they might put Jesus to death, he was finally led away to Pilate and delivered unto him bound.

There is a somewhat erroneous impression in regard to the proceedings before Pilate, and the great painting of Christ Before Pilate by Munkacsy deepens the impression. Those who have been fortunate enough to see it, will recollect that Pilate is represented as seated upon a throne in the Judgment Hall; a Jew in the garments of a High Priest is declaiming before him, while others of the Chief Priests are seated on the steps leading to the throne, and still others are standing on either side; while Jesus is represented as standing clothed in white, surrounded by a multitude, who, with upraised hands and gestures, indicate a clamoring mob within the hall. But the fact is that the Jews went not into the hall, as related by John, lest they should be defiled, and thus be precluded from eating the Passover; so they remained upon the outside, and Pilate went out to them and said, "What accusation bring ye against this man?" Notice the significant and evasive reply: "If he were not a malefactor, we would not have delivered him unto thee." No suggestion is made that Jesus had been tried, convicted, and sentenced to death for the crime of blasphemy. Indeed, the impression left upon the mind of Pilate was that he had had no trial, as Pilate replied, "Take ye him, and judge him according to your law." The Jews said, "It is not lawful for us to put any man to death." Then Pilate entered into the Judgment Hall, and called Jesus, and said unto him, "Art thou the King of the Jews?" It is evident that John has here omitted the charge which the Jews finally made against Jesus when questioned by Pilate. This is supplied by Luke, who says, "And they began to accuse him, saying, We found this fellow perverting the nation, and forbidding to give tribute to Cæsar, saying that he himself, is Christ, a king." Thus are the overt acts of the priests committed in pursuance of the original conspiracy to put Jesus to death. For here we find them charging Christ not with blasphemy, but with treason, in that he advised the people not to pay tribute to Cæsar, and claiming to be Christ, a king. This was done evidently in order to escape the responsibility for his death, and throw it upon Pilate. The first charge was a falsehood pure and simple. They had employed those meanest of all instruments, spies and informers, in order to find against him something that was an offence against the Roman Laws, in order that he might be arrested by them; but it had failed, for when the informers came with a lying statement, "Master, we know that thou sayest and teachest rightly. Neither acceptest thou the person of any, but teachest the way of God truly: Is it lawful for us to give tribute unto Cæsar, or not?" He asked for a penny, and when they said it was Cæsar's image and superscription, he had said, "Render therefore unto Cæsar the things which be Cæsar's, and unto God the things which be God's." Instead of thus committing any offence, he had counselled submission to the laws of Rome. The second statement was equally untrue, for the Jews knew that Jesus never claimed temporal power, but spiritual power alone; and it was for this they desired his life. They thus falsified with respect to both charges.

It is evident from the records, that Jesus did not hear the charge made by the Jews against him to Pilate, for he was at that time in the Judgment Hall; and when Pilate came in he called to Jesus, and said, "Art thou the King of the Jews?" Jesus answered him, "Sayest thou this thing of thyself, or did others tell it thee of me?" As this was the first that Jesus had heard of this charge, it is clear from the question that he desired to know whether it came from the Jews or Pilate. He was answered by Pilate's statement that his own nation and the Chief Priests had delivered him, and asked, "What hast thou done?" Jesus answered, "My kingdom is not of this world; if my kingdom were of this world, then would my servants fight that I should not be delivered to the Jews: but now is my kingdom not from hence." Pilate therefore said unto him, "Art thou a king, then?" Jesus answered, "Thou sayest that I am a king. To this end was I born, and for this cause came I into the world, that I should bear witness unto the truth. Every one that is of the truth heareth my voice." Jesus thus explained to Pilate his mission, and also that he disclaimed any intention to assert temporal power; for as he says, if such had been his purpose his servants, by which he meant his followers, would have fought to prevent his delivery to the Jews. He thus satisfied Pilate that he meant no offence, had not offended the laws of Rome, and was not inimical to its interests. As to the spiritual kingdom Pilate cared nothing. Therefore Pilate went out again to the Jews and said to them, "I find in him no fault at all." Pilate in ordinary examinations acted in a quasi-judicial capacity. So far as concerned offences committed against the religion of the Jews he had no interest in the execution of the sentence, beyond seeing that its execution did not affect the interests of Rome. But of offences committed against Rome he stood in the position of being sole judge, independent of any action taken by the Sanhedrim. It therefore follows that the charge of treason, which was examined by him, failed of substantiation, and his decision, announced to the Jews, was one of acquittal; and by Roman authority no man could be placed in jeopardy twice for the same offence. So that Jesus should have been then and there released. The law of the Jews required the same thing. As we have seen, it expressly required that a judge once announcing an opinion for acquittal was not allowed to change it to condemnation. The charge then preferred by the Jews against Jesus before Pilate had failed, and the prisoner, by the law of Rome, of Judæa, and of all people since the dawn of civilization should have gone free. Had Pilate been a great man, had he been an honest man, this great crime would not have been committed. Instead of being either, he was a truckler to public favor, a fawner to present clamor; destitute of moral courage, he bowed his head and turned his course, as a weather-vane, to every wind that blew. He was afraid of his dark and bloody master, Tiberius; and when the Jews, in furtherance of the conspiracy, became more fierce, saying "He stirreth up the people, teaching throughout Jewry, beginning from Galilee to this place," with the cunning of a sycophant, he thinks a way opens by which he can escape the responsibility of shedding innocent blood, satisfy the Jews, and run no risk of incurring displeasure with Tiberius for failing to execute a person charged with treason.

We need not go back to the first century to find Pilates. They may be found in all degrees, colors, previous and present condition of servitude, in this year of grace, twisting their conduct, trimming their sails to catch the breeze of public favor in even the meanest and pettiest offices of life. So Pilate, catching at Galilee, seeks to shoulder the responsibility upon Herod, whose jurisdiction extended there; but notwithstanding this cunning move of Pilate, backed by the vehemence and venom of the Chief Priests and Scribes, Herod disclaimed jurisdiction, and clothing Jesus in a gorgeous robe, mocked

him with his men of war, and sent him again to Pilate. But Pilate's resources were not yet exhausted. What little conscience he had having been pricked by the adjuration of his wife, "Have thou nothing to do with this just man," he called to his mind the custom of the Passover Feast, that of releasing unto them a prisoner; and he then had a notable one called Barabbas, recommended by the fact that he had committed a murder and was guilty of robbery and sedition, — the latter a crime they had been trying to fasten upon Jesus, which Pilate knew to be false. So Pilate asked which he should release, Barabbas or Jesus, but the crafty priests persuaded the multitude to clamor for the murderer and robber. Still Pilate attempted to stem the popular clamor by the use of the time-server's remedy, a compromise, saying that as both Herod and himself had examined Jesus touching the crime of which he was accused and found nothing worthy of death, he would therefore chastise him and let him go. Poor, weak, human nature, that in the presence of opposing force sinks courage, manhood, justice! If Jesus was innocent, as Pilate declared and believed, why was he not set free? If guilty, why proclaim his innocence and then scourge him? The Jews did not ask that he be scourged; they asked that he be crucified. Yet Pilate trying to compromise with wrong, where the eternal principles of right demanded that right be done, did both scourge and crucify. His soldiers, — for the Jews took no part in this — at the instigation of Pilate took Jesus, scourged him, plaited a crown of thorns and put it on his head; they put on him a purple robe, a reed in his hand, smote him with their hands, and said, "Hail, King of the Jews!" We may better understand the cruelty and inhumanity of this proceeding by understanding what scourging was. With the Jews it was a comparatively harmless and merciful punishment. The number of blows were not allowed to exceed forty, and for fear of mis-count it was reduced to thirty-nine; they were inflicted in the presence of a judge, with a three-plaited lash, and thirteen blows were delivered. With the Romans it was called *horibillia*, and was inflicted with thongs set with sharp iron points or nails; there was no limitation to the number of blows, and it was usually administered with such extreme cruelty that many died under it. Crowning with thorns was not a usual attendant of crucifixion nor of scourging. The imagination of this generation is not adequate to picture the appearance of the Saviour with bleeding head and crown of thorns, the marks of nails and stripes upon his person, the agony of torture written upon his brow, as he was brought forth by Pilate. "I bring him forth to you, that ye may know that I find no fault in him. Behold the man!" The Jews only cried, "Crucify him! Crucify him!" But Pilate intent yet on escaping criminal guilt, and evidently with some temper, said, "Take ye him and crucify him, for I find no fault in him."

It was here for the first time that the Jews asserted the crime for which they had condemned him. In answer to Pilate they said, "We have a law, and by our law he ought to die, because he made himself the Son of God." Pilate again examines: "'Whence art thou?' But Jesus gave him no answer. Then saith Pilate unto him, 'Speakest thou not unto me? Knowest thou not that I have power to crucify thee, and have power to release thee?' Jesus answered, 'Thou couldst have no power at all against me, except it were given thee from above,' and from thenceforth Pilate sought to release him." Here again came the craftiness of the Jews, for neither the charge of treason nor the final one of blasphemy moved Pilate to any other belief than that of innocence. But the Jews knew of a power stronger with Pilate. It lay in the heart of self-interest, and they therefore said, "If thou let this man go, thou art not Cæsar's friend. Whosoever maketh himself a king, speaketh against Cæsar." This decided the issue in favor of

the Jews. Obeying, as a coward, Pilate sunk himself below the level of the Jews; afraid of complaints to Cæsar, by which he might be deposed from his place, he consented to murder; and bringing forth Jesus, he said, "Behold your king! . . . Shall I crucify your king?" And in the true spirit of successful, infinite meanness, as it is ever exhibited, the Jews swallowed their hatred of Rome, and with servile truckling the Chief Priests answered, "We have no king but Cæsar." Jesus was then delivered to be, and was, crucified; and they wrote upon the Cross, as was the Roman custom, the accusation, the crime for which he died: "This is Jesus, the King of the Jews." If he had been executed for blasphemy, he should have been stoned. We may now draw our conclusions.

(1) There was by the Mosaic law the crime of blasphemy, the punishment for which was death, not by crucifixion, but by stoning.

(2) Stripped of all attributes of divinity, Jesus offended against this law.

(3) While in form he had a trial, yet the law was violated, and the court existed as an organized conspiracy to condemn him.

(4) He was convicted of blasphemy, and sentenced in violation of law. The offence was not proved, and the court had no jurisdiction to sit or pronounce sentence.

(5) He was charged before the Roman Procurator, Pilate, who sat in revision of the sentence, with the crime of treason against Roman authority, and was acquitted.

(6) He was acquitted, according to Pilate, by Herod upon a like charge.

(7) He was again acquitted by Pilate of the crime of blasphemy.

(8) And was finally delivered by Pilate to be crucified, and was crucified, for the crime of treason, in claiming to be a temporal king.

Thus we see that if every act of the Jews had been regular, in the arrest, trial, and sentence, they were still guilty of homicide by inducing Pilate to execute Jesus for a crime of which they had not convicted him, and of which they knew he was innocent.

THE FOUR COURTS, DUBLIN, IN 1800.

THE HALL OF FOUR COURTS.

By Dennis W. Douthwaite.

I.

BEFORE the building of the Four Courts in 1796, justice was dispensed in a house within the precincts of the Cathedral of Holy Trinity, now called Christ Church. The Courts were brought thither in 1605 from Dublin Castle, where sittings had been held since 1401.

In 1606 Lord Deputy Chichester, finding that their establishment in the Castle made it an object of attention to the rebels who swarmed on the Dublin hills, made application that the Courts be removed, since "they are over the store of munitions which, by the using of fire for burning of prisoners in the hand, and by other methods, may be fired, to the exceeding detriment of the State," — not to mention the personal inconvenience of the Lord Deputy, who had his dwelling in the immediate neighborhood.

In the Cathedral precincts a habitation was found, though not before the good rulers of the Church had driven an exceeding hard bargain for the privilege; and here for over one hundred years the Courts remained.

Among other trials for which the place is famous are those of Sir Phelin O'Neill, Ireland's arch-rebel in 1652, and Annesley *v.* Annesley, which gave to Sir Walter Scott the plot of his novel of "Guy Mannering;" while the last and perhaps the most memorable was that in which Curran defended the Rev. William Jackson, indicted for projecting

a French invasion. Jackson committed suicide in the dock as the death-sentence was about to be pronounced.

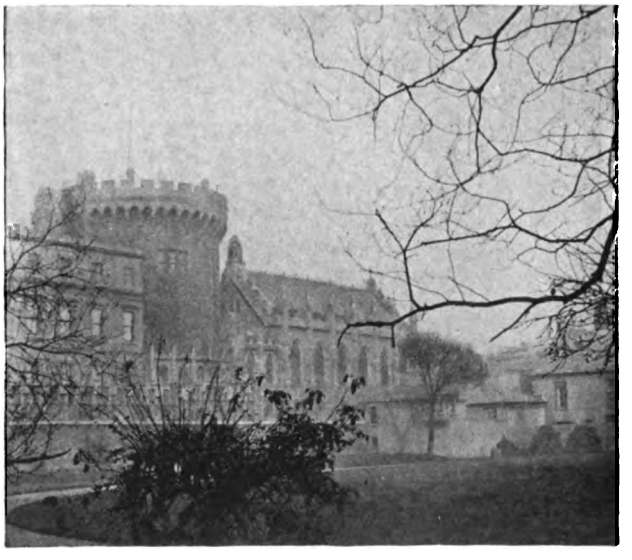
Much local history is connected with the place, not all in accord with its sacred position. The Courts were entered through a narrow passage having on its walls the singular legend, "Hell." This was no nickname, but one properly authorized, and finished by a representation of his Satanic Majesty, *rampant*, crowning the arched entrance. The newspapers of the time advertise it with a cynical appreciation of its frequenters. Not even the enterprising blacking-manufacturer who, on the authority of Rogers, "kept a poet" for the purpose, ever evolved a more taking advertisement than that which appeared in a Dublin newspaper of the time, —

"To be let, furnished apartments in Hell. N. B. They are well suited to a Lawyer."

We doubt if merely their proximity to the Courts prompted that addition. There lurks in it a suggestion of an action for non-payment of rent, a vanished lodger, or an unsuccessful suit.

To-day every vestige of the Courts and the passage is gone. His Majesty has left for a less variable climate, and the dignitaries of the Church may once again lay claim to Pope's sarcastic encomium, and "never mention Hell to ears polite."

In the latter end of the eighteenth century another move was made. Within two minutes' walk of the old Courts, just on the other side of the river Liffey, the present stately pile was raised, at a cost of two hundred thousand pounds.



DUBLIN CASTLE.

In a city famous for the magnificence of its buildings the Four Courts may vie with the best. On the river bank it rears a square-set lofty front of cut stone over a hundred yards in length. The centre pile, crowned by a dome, divides off the various law-offices to east and west. This middle structure contains the Hall (immediately under the dome), and what were in old days the four Courts of Judicature of the Chancery, Queen's Bench, Exchequer, and Common Pleas, — the quartette which gave to the building its name. On the pediment over the portico stands a statue of Moses, — a happy combination of the law and the prophets, — with Mercy on the one side and Justice on the other.

Passing under the portico from the Quays, we enter the Hall, — a circular court with a diameter of about seventy feet. It is ornamented with frescos, medallions of famous law-givers, and various emblematic statues in high relief.

Over the entrances to the Courts which open out of the Hall are bas-reliefs of historic scenes such as James I. abolishing the Brehon laws — the first legal code of the country, — more honored in the breach than the observance. Statues of Sheil, Plunket, O'Loghlen, Joy, Whiteside, and O'Hagan stand round the floor of the Hall. The symmetry of the whole is perfect, and

almost justifies the ecstasies of the old chronicler who writes, —

"No verbal description can convey an adequate idea of its beauty! 't is simple! 't is elegant! 't is grand!

In one sense, however, the change of site was for the worse. In quitting the Cathedral close, the lawyers exchanged the "odor of sanctity" for an effluvium of a more pronounced and less attractive kind. The stench from the river, at all times and in all places, has become a byword through the three kingdoms. It rises to its greatest height, perhaps, opposite the Four Courts, and the unsavory flood has at various times invaded the basement. Indeed, a few years ago there appeared in a Dublin paper a letter from an exasperated lawyer suggesting the suspension of the judges' salaries and sittings until the matter had received attention.

The enthusiasm which marks the description of the building just quoted may certainly be pardoned in any attempt to sketch the annals of the place.

Within the little circle are crowded memories of many of the greatest and noblest of Irishmen. Well might any new-fledged, reverend barrister (save only that new-fledged barristers are not prone to reverence) take his shoes from off his feet, remembering that the place was holy ground.

Here Curran, like any other briefless and aspiring junior, walked the Courts the while he —

". . . hoped for declarations and anon for special pleas;
Thought on all the sad ejectments of that injured ancient Doe,
Felt his indignation swelling at the deeds of lawless Roe."

Here, in after years, he stood, day after day, the bright particular star of a constellation greater than any Ireland has seen. With him was Charles Kendal Bushe, of whom Grattan said that he spoke with the lips of an angel, —who rivalled Curran in wit and Plunket in eloquence, and who left the Hall to hide, as an Irish Chief-Justice, talents which should have been famed throughout Europe.

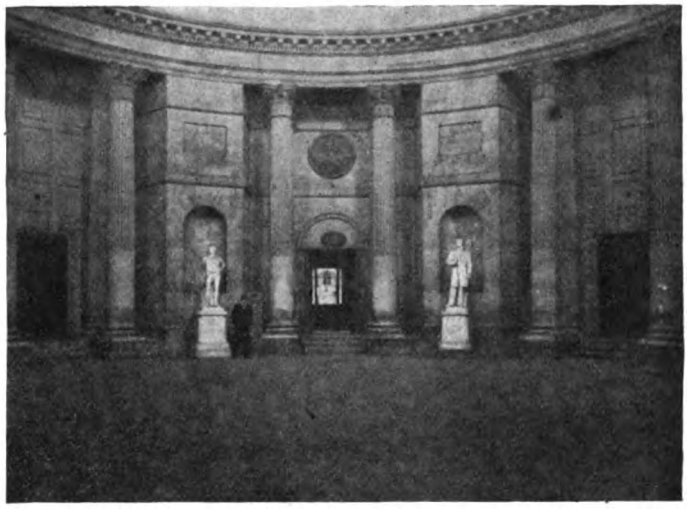
In this little world, but not of it, Plunket walked alone, deep in thought, his ascetic face seeming to defy intimacy and to rebuke intrusion. Yet those who knew him tell how the severe aspect would vanish and the face light up with kindliness and enthusiasm when any challenge called forth his genius, wit, or patriotism. Scarcely had the Hall lost the echo of his footsteps ere Sheil had come to occupy, if not to fill, his place, and to practise that power of stinging epigram and sarcasm which drove his Catholic audiences to a frenzy of delight.

With another coterie, Daniel O'Connell, Sheil's colleague on the Catholic question — "Magnæ spes altera *Romæ*" — with his humor, ridicule, and round abuse made the place ring with laughter. There were many lesser wits, unfortunate in the day of their uprising.

There was John Toler, afterwards Lord Norbury, who was commonly said to have shot his way to the bench in the absence of any more satisfactory reason for his advancement. A noted duellist, and as ready with his tongue as his pistol! He it was who in reply to counsel's entreaty that he would for once have the courage to non-suit, made the pertinent rejoinder that he had "courage both to shoot and to non-shoot," — and counsel did not press the point. The Court of Common Pleas, under his guidance, was one of the sights of town. Aloft sat the Judge, short, pursy, scant of breath and dignity; while beneath him, as opposing counsel, Goold, Grady, or O'Connell bandied recrimination and abuse across the Court. Openly cheered by their supporters in the gallery, covertly excited by the Judge (who loved a fight as much as he hated law), the combat would grow hotter and hotter, until "Lord Norbury, the witnesses, the counsel, the parties, and the audience were involved in one universal riot." Small wonder that pious clergy, forbidden the theatre, flocked

to his Majesty's Court of Common Pleas to indulge their taste for farce.

Where such men gathered, the talk must, of necessity, have risen above things legal; and so the Hall became the rallying-point of the wits of town rather than the ante-chamber to a Court of Justice. Much the same crowd of dandies, politicians, and men of genius who gathered at night with the women of fashion in the *salon* of Lady Morgan, were found in the morning under the dome of Four Courts. Here the *flâneur* of Dublin strolled and lounged away the morning. The political Athenian, "anxious to hear some new thing," sought it here, and was, we may suppose, not often disappointed, since each man had his budget of always amusing and occasionally veracious gossip to unload. With these various groups were, of course, others using the hall for its legitimate purpose. For it was the meeting-place of lawyer and client, of barrister and solicitor, and of witnesses waiting to be called. The litigant then came to the Hall of Four Courts knowing that he could interview his counsel and hear the latest news of his case. Nowadays most of these latter functions are transferred to the Library, and the Hall has lost much of its old-time bustle and activity.



THE HALL OF FOUR COURTS.

There was yet one other use to which the Hall of Four Courts was put. Had any man been the victim of an injustice which he wished to revenge by methods more summary than those the common law allows, it was here, if possible, that the chastisement took place. Not only do many historians allude to this custom, but the last year or two has proved that it has not altogether died out. Nor is the reason of the choice of *locale* far to seek. In the first place the aggressor was sure of an audience, — in itself no small inducement. Moreover there was probably a keener satisfaction in taking the law into his own hands in the outer court of the Temple of Justice.

The Bar itself was remarkably prone to invoke other than legal aid in the settlement of disputes. When the duel was at its zenith, no barrister was thought to have completed his legal training unless he had been "out." Few reports were more commonly in use than those of the pistol. To demur to a declaration was, in some eyes, a personal affront, and the wigs which nodded defiance at one another in a court of law might meet "on the green" in the morning.

It might have been thought that they who achieved distinction in the one practice would be unknown to fame in the other. But proficiency in both was by no means unusual. Curran went out four times, his opponents comprising a Lord Chancellor, a Major, a victimized witness, and a brother barrister. This last affair, in which his antagonist was "Bully" Egan, had a certain air of farce about it. The Bully was a man

of huge proportions, and felt keenly the disadvantages of his "too, too solid flesh" as a mark for his small antagonist. But Curran was prompt with a remedy. He suggested that an outline of the size of his own body should be chalked on Egan's ample front, — "hits outside not to count."

Clonmell, afterwards Chief-Justice, fought four duels, and divided his attentions equally between two lords and two commoners. Baron Medge fought three, his own brother-in-law being one of the number. Toler, afterwards Chief-Justice, fought three also, lack of opportunity alone preventing an extension of the list. Chief-Justice Patterson fought four times, — "all hits," as his biographer unctuously observes. Finally, Grattan put a bullet through an embryo Chancellor of Exchequer, what time his second held a too obtrusive sheriff's officer in a neighboring ditch.

STATUE OF SHEIL.
(In the Hall of Four Courts.)

Two only of the bar, wise in their generation, declined the appeal to arms, — one on account of his wife, the other because of the affection he had for an only daughter.

Bushe has immortalized them as they deserve, —

"Two heroes of Erin, abhorrent of slaughter,
Improved on the Hebrew command:
One honored his wife, and the other his daughter,
That their days might be long in the land."

When the flame of rebellion broke out in 1798, more than one member of the Irish Bar was prominent in its kindling, and suffered the penalty of its extinction.

The loyalists raised a volunteer corps from among the members of the bar, and the majority were enrolled; but many, and among them Curran, declined enlistment, and incurred the suspicion of being friends of the rebels.

The Hall of Four Courts must have become a dreary place. The bar was divided against itself, its leader was under a cloud, and the cluster of brother wits which was wont to hang on his every word was replaced by a handful of silent, dogged men. And even among these there were whispers of treason, — whispers lately shown to have been well founded. The man who fought defence on defence under Curran's guidance, who incurred with him the reproach of being a little more than kind to the men of the rising, has lately had his popularity established in somewhat grewsome fashion.

Leonard McNally, "the genial Momus of the Bar," who was both loved and laughed at by his colleagues, and hailed as a "Patriot" by the people, has been proved a "Government agent," otherwise and roughly called a spy.[1]

There were others who, too hot and bitter to be content with the silent protest of inaction, joined the rebel standard. Wolfe Tone and John and Henry Sheares were among them.

These left their colleagues for a time, and were active workers in organizing French assistance and in trying to direct the whirlwind they had helped to raise.

[1] Fitzpatrick's Secret Service under Pitt, London, 1892.

Within a few months they were to return to the Four Courts, their project a failure, and themselves criminals for whom Curran was to plead.

Theobald Wolfe Tone was called to the bar in 1789, being twenty-six years old; but he was never in earnest in his profession, and spoke with contempt of his "silly wig and gown." In 1795 he was expatriated for participation in the Revolutionary movement, and went to America. From that time he lived through a romance before which fiction pales into commonplace. Desolate and friendless, he conceived the project of inciting France to the invasion of Ireland. The conception was the vision of a madman; its fulfilment was the work of a genius. He left Philadelphia and landed in France in 1796, a pauper and unknown. He left Paris in ten months a chief of brigade, and one of an army of 15,000 men raised for the invasion of his country. The failure of the three expeditions is matter of history. We meet Tone again when, having been captured on board a French frigate, he was taken to Dublin, tried by court-martial, and sentenced to death. Curran at once moved before Lord Kilwarden for a writ of *habeas corpus* to bring him up for civil trial. The writ was granted, but arrived too late. During the previous night Tone had opened an artery in his neck with a penknife. He lingered for eight days in great agony, and died in prison at the age of thirty-four.

The trial of the Sheares in 1798 was in many ways the saddest and most solemn of any held in the Four Courts. Both men were rising juniors, as the phrase goes. To both of them rebellion seems to have been a romantic theory; they dabbled in treason as dilettanti, and only the arrest of the leaders of the movement and the lack of men of position to fill the gap made the brothers rebels in deed.

Their trial lasted a continuous twenty-four hours, and was marked throughout its weary length by the sympathy which the prisoners excited. It was at midnight in a dense-packed court that Curran rose to reply for the defence. Worn out in body and mind, he appealed to the judge for rest until he should have regained sufficient strength to combat the weight of evidence set out against him. His application was opposed by the Attorney-General and refused. Moved almost beyond himself by his old intercourse with the prisoners, his indignation at the haste of the prosecution, with no little sympathy, perhaps, with the conduct he was called on to defend, Curran made an appeal to the jury almost awful in its impressiveness. But the charge was proved beyond hope of rebuttal, a verdict of "guilty" was brought in, and, on the application of the Attorney-General, the prisoners were hanged on the following day.

Five years later Robert Emmet was brought up in the same court for instigating the rebellion in which Lord Kilwarden was murdered while on his way to the Four Courts. It is the last and perhaps the most remarkable of the list. Emmet knew that life was closed to him when he entered the dock. He had as his judge Lord Norbury, who when Attorney-General had conducted the prosecution of the Sheares. His one care was to deliver his *Apologia*, meant, as he said, for posterity, and unchecked by any fear of injuring his case.

Hence we have the strange sight of a prisoner on trial for his life using the dock as vantage-ground from which to deliver a scathing attack on his judge and on the law of which he was the dispenser and head.

Emmet was the only rebel of note at this time whom Curran did not defend. The secret attachment which existed between the young rebel and Miss Curran is an old story. It was unknown to the father until a government search at the house revealed a mass of correspondence between the two. It has supplied whatever romance is lacking in the plain story of these trials. There is no doubt that Emmet might have escaped from the country, had not the longing to say

good-by banished what little prudence his enthusiasm had left him.

In the dock he was only too eager to avow his guilt. He was heard without any great interruption, and when his defiance was over, was sentenced and executed next day.

Several of the past leaders of the bar are worthy of more than the scant allusion which has been made to them in this sketch of the Four Courts and their traditions. Foremost among this group stands the subject of the following brief memoir.

JOHN PHILPOT CURRAN.

The father of John Philpot Curran was seneschal of the Manor Court at Newmarket. Every biographer is wont to descant on the magnitude of this office (although Newmarket was but a village, and other village seneschals are not accounted great). One is perforce reminded of Lowell in a like case, and his cynical uprooting of the Keats family tree. Those who, with him, are not accustomed to measure genius by genealogies will accept Curran's own statement that his father gave him nothing but "an unattractive face and person like his own." Curran was born on July 24, 1750. He was, ere he was in his teens, known as the young wit of the parish, "serving an apprenticeship to every kind of idleness and mischief." His chances of education seemed poor until one day, as he was holding a review of his young army of admirers, ragged as Falstaff's and as dangerous to the peace, the rector of Newmarket, attracted by his waggery, stopped and questioned him. Rector Boyse was a rough Mæcenas, but withal a kindly one. Some sweets easily lured the young Horace to the Rectory. Here he began a more systematic education, and was soon sent to a grammar-school at the expense of his patron. In 1769 he entered Trinity College, Dublin. As his biographer observes, he passed through it at once "the glory of the college and its shame," — a periphrasis of the fact that, like Goldsmith, his relations with his Alma Mater were not of that cordial character to be wished for so distinguished a son. Thence he went to London, and entered at the Middle Temple in 1773. Prior to his return to Ireland and his call to the bar, Curran married his cousin Miss Creagh,—a union which, if its after results were unhappy, seems to have made him abandon a projected emigration to America, and so saved for Ireland a man whom she could ill have spared. In 1775 he was called to the Irish Bar, and began to haunt the Four Courts and to sigh, like the young Princess, for the suitor that never came. The friendship of such men as Barry Gelverton (afterwards Lord Avonmore) and Arthur Wolfe (Lord Kilwarden), who saw in the ill-looking little orator talents which wanted pushing to the front, gave him at last the opening for which he had waited.

He received briefs in one or two important cases, and almost at once sprang from poverty to affluence and from obscurity to fame. Curran defended almost every political pris-

oner of note through the years of terror which ran from 1790 to 1805.

After the Union his interest in politics waned. The discovery of the truth of the French statesman's estimate of the commercial value of a man's opinions was not one that brought to "honest Jack Curran" a desire for further political insight. He was content to wait till the change of government in 1806 put his party into power and himself into place.

Some discussion seems to have taken place ere Curran's future position was determined. Grattan suggested, with unwonted levity, that he should be raised to the episcopal bench. He was, in fact, made Master of the Rolls, and it is doubtful which office was less suitable.

We have the authority of his mother that "Jacky was born to be a bishop," and on this point she is certainly entitled to a hearing. We have the opinion of all his biographers that on the Equity bench he was manifestly out of place.

CHARLES KENDAL BUSHE.

The political enmity of the Chancellor Lord Clare had driven Curran to the Nisi Prius and Criminal courts. It was almost impossible that the Advocate should at the end of such a life take up with success the unimpassioned task of weighing points of Equity. Hence Curran took with him to the Rolls Court something of the atmosphere of his earlier years.

Many of his judgments read like appeals to a jury, and some of his decisions come with a shock to the judicial mind. They are magnificent; but they are not law. In 1812 he resigned his office and retired to London, where he died in 1817.

Curran's is by far the most interesting personality haunting the Four Courts. Some of his competitors have excelled in cross-examination, others in denunciation, others in persuasive reasoning. Curran alone excelled in all. He could unravel the most ingenious web which perjury ever spun, could seize on every fault and inconsistency, and build on them a denunciation terrible in its earnestness; could cajole a jury into a verdict when every point of common law and common-sense seemed arrayed against him.

Chief among Curran's contemporaries was Charles Kendal Bushe, who has almost entirely escaped the biographer. Bushe had every talent save that of self-advertisement, and so became nothing greater than a Chief-Justice, — a post generally reserved for those who have just fallen short of greatness. The son of a clergyman in a lucrative living, Bushe knew nothing of the *res angusta domi* which hampered and crippled Curran. In 1782, being fifteen years old, he entered Trinity College; and when he left it no one, save Bushe himself, doubted that a few years would see him high in place and power. He was called to the bar in 1790, and at once sprang into fair practice.

Seven years later he entered parliament, and in 1799 was offered a seat in the Cabinet

in exchange for the promise of his support to the scheme of union. But Bushe was one of the few men at that time worth buying who were not to be bought. He declined the bribe, and it was not until 1805 that he became Solicitor-General. In 1822 he was made Chief-Justice, his predecessor having at last shown himself possessed of the only Christian virtue which, according to Bushe, he lacked, — that of resignation. He held this post for twenty years, and died in the year following his retirement. His, above all other specimens of Irish forensic oratory, are worth reading. The wit is pure, caustic, and refined; the imagery powerful and never extravagant; the pathos deep, and the narration clear and distinct.

BARON DOWSE.

Nor must Richard Lalor Sheil be omitted from the group. Born in 1791, the son of a prosperous but speculative merchant, Sheil was educated mainly at the English Jesuit College at Stonyhurst. Here, doubtless, he imbibed the opinions which made him afterwards famous as the exponent of the Catholic claims. He returned to Ireland in 1807, and entered Trinity College, where, like Curran, he devoted himself to classical reading to the neglect of every other study. He joined the Irish Bar in 1814, and, since his father's speculations had gone amiss, took to the writing of plays to ease his briefless years. Opportunely he conceived a platonic affection for Miss O'Neill (Ireland's greatest Juliet), and under this influence wrote several fairly successful tragedies, in most of which Miss O'Neill played the heroine. In 1816 he married Miss O'Halloran, niece of the Master of the Rolls, — a match looked on as another prudent attachment, although the connection seems to have brought him little profit.

Again he turned to play-writing, and produced three more tragedies. Thence he wandered into literature, using his knowledge of things legal and his dramatic insight in some admirable "Sketches of the Irish Bar."

All this time he had been steadily gaining a practice; and when the Catholic Association was started, it found in its leaders, Sheil and O'Connell, two of the leaders of the Bar. Sheil filled the gaps in O'Connell's oratory. "The Kerryman" inflamed the gallery, Sheil inspired the stalls, and the two set Ireland in a blaze. He was never a very great lawyer, but he was at the last a well-feed advocate, and in knowledge of practice was supreme.

In 1830 he received his silk gown, and in the next year took his seat in the House of Commons. Christopher North's description of him at this time is (as were all North's descriptions) a perfect pen-picture:—

"He's another of your little fellows, — a more insignificant person as to the bodily organ I never set spectacles on. Small of the smallest in stature, shabby of the shabbiest in attire, . . . and his voice is as hoarse as a deal board, except when it is piercing as the rasp of a gimlet. But Nature has given him as fine a pair of eyes as ever graced

human head, — large, deeply set, dark, liquid, flashing like gems. And these fix you presently like a basilisk, and before he has spoken ten minutes you give yourself up to the feeling that you are in the presence of a man of genius." His parliamentary career was one long success, marred for a time only by his quarrel with O'Connell consequent on his refusal to go to the length of "The Liberator" on the Catholic question. He died at Florence in 1851, and was buried there.

Among these sketches of past leaders of the Irish Bar a man of a more recent generation may well serve as the last example.

Richard Dowse was an Ulsterman by birth, and by birth alone. The Ulsterman, like his Scotch progenitor, "jokes wi' deeficulty." Dowse would probably have found it hard to be serious ; but it is not on record that he ever tried. Life seemed one huge extravagance to him, Law a farce in which he played a leading part, the House of Commons and the Bench a theatre for the exercise of his wit. Yet Dowse's life was one long success. As a Nisi Prius leader he was unsurpassed ; no man was more readily listened to in parliament, and the Court of Exchequer twenty years ago owed much of its high reputation to his presence.

Dowse was born in 1824, when men had just begun to hear of Sheil and O'Connell, and gained a scholarship in Trinity College in 1848. He graduated B. A. in 1850, and was called to the bar in 1852. For a few years he devoted himself to the building of a great reputation at Nisi Prius, and he was soon known as a man to be feared, — a man with a pitiless knack of detecting his opponent's weakness, and a gift for holding up an adverse witness to ridicule. He was never an especially eloquent orator. The fact of his being a dangerous man to have against any but the strongest case brought Dowse most of his business ; and when in 1868 he was elected member for Londonderry, he was the leader of the Nisi Prius Bar.

The House of Commons usually takes to its wits in somewhat tentative fashion ; but it welcomed Dowse with open arms. His dictum that "because some judges are old women is no reason why every old woman may be a judge" is a tradition that will live in the House as long as that hardy annual, the women suffrage question, comes up for inspection and defeat. Having served the apprenticeship of Solicitor-General, Dowse became a Baron of the Court of Exchequer in 1872. His appointment was hailed with some misgiving. The Exchequer Bench is not a sphere for a humorist, and it was prophesied that either his reputation as a lawyer or a wit was doomed. Had Dowse been a mere buffoon, this might have come to pass. But he was more. He was a man of culture, of clear common-sense, and possessed of a gift for piercing through all the outside circumstances, and coming to the core and essence of the case. His colleague, the present Chief Baron Palles, had law enough for two, and hence it came about that no fairer or more competent tribunal ever sat in the Court of Exchequer.

Baron Dowse died in 1890. No one realized, until his death, what a high place he held in popular favor. The deep, rich voice with its inimitable accent, the shrewd and laughing eye, the portly, comfortable frame have become an institution through the assized towns of Ireland.

His death eclipsed the gayety of the Court of Exchequer, and it has never recovered its tone. It is perhaps more decorous ; it is certainly more dull. It was fitting that the "Times," in pronouncing a panegyric on the dead man, should end with a bull which would have made the heart of its subject rejoice, —

"A great Irishman has passed away. God grant that many as great, and who as wisely love their country, *may follow him!*"

LICENSE OF SPEECH OF COUNSEL.

By Irving Browne.

I.

PRETTY nearly all the evils of human existence have come through over-exercise of the tongue. It is such a very convenient and agile weapon of offence or defence that men are extremely apt to employ it instead of fists or feet or natural or manufactured agencies. I have often wondered whether this world would not have been a great deal pleasanter and more peaceful if all men had been born deaf and dumb, and it has always shocked my sensibilities to read those poetical pictures of the future state of existence which represent immortal beings as not having repented of excess of speech on earth, and as singing psalms to all eternity. Perhaps men would have found some other way of expressing their feelings and opinions if they had not been endowed with this fiery little member. I believe it is said that the deaf and dumb are worse-tempered than those who can hear and speak, on account of the lack of this natural vent. But at all events a very wise man has recorded that "Speech is silver, but silence is golden." Let it be understood that no reflection is here intended against those eloquent and long-winded gentlemen who have just finished (let us hope it!) the discussion of the bearings of the seal-fishing business. They have wisely been getting themselves into training for eternity, and now that they have ceased from troubling for a time, the world will shout, "Selah!"

Very great license of speech has always been vouchsafed to counsel. This is necessary, because they are required to talk so much more than any other class of men except auctioneers, and are not tolerated within the safe and inoffensive limits of those iterative persons. Lawyers inevitably "slop over" a good deal, unlike George Washington, — although it is now said that he did relax considerably at Monmouth. The business of advocacy and the inevitable failings of human nature are taken into the account. Suitors expect and demand that council shall grow very vehement and loquacious and red in the tongue — so to speak — in their behalf. That is what they are paid for doing. And counsel, not only as a matter of business and from an earnest desire to give the client his money's worth, but through a natural propensity, are much more apt to wax loud and angry and careless in speech in the client's cause than they would in their own. An acquired taste (like that for Katishaw in the opera) is always stronger than a natural appetite, and it seems easier for advocates to lash themselves into professional fury than into personal indignation. That is the reason why lawyers so seldom have personal quarrels. Consequently courts have uniformly protected counsel against liability to respond in damages for slanders uttered at the bar. But although counsel are thus individually protected, their clients are sometimes made indirectly to suffer on account of their intemperance of speech. New trials are frequently granted for this reason.

It is a noteworthy fact that such new trials are much more frequently awarded in the West and South, in the new and comparatively wild parts of our national domain, than in the older and more cultivated States. This is certainly not because the offence is any less common in the latter. I have often listened to objurgations and denunciations and accusations on the part of counsel in the State of New York, which went in at one judicial ear and out at the other, and did not even raise the eyebrows of oppos-

ing counsel, for which a new trial would inevitably have been awarded in the wild and woolly West, even if they did not lead to a competition of agility in the drawing of weapons outside the court-room after adjournment. The lawyers of the East, clad in black cloth and decorous boiled shirts and white cravats, are apparently a great deal more reckless in professional speech, and with impunity, than their brethren of the West, in their flannel shirt-sleeves and with no neckties. This seems quite anomalous. Many an Eastern lawyer excites the admiration of the populace and of a sensational class of legal biographers by indulgence in "scathing sarcasm" and "appalling denunciation," which would simply get the other side a new trial in the States which we are too apt to regard as less cultured and polite.

I believe that the field of new trials for intemperate utterances of counsel has never been systematically gleaned, and that going over it may afford some amusement and possibly some useful instruction to the profession.

The points of error of counsel in the particular in question are generally their commenting on evidence which they assume to be in the case, but which is not; their unwarrantable abuse and inflammatory language; and their remarking upon the failure of prisoners to take the stand on their own behalf.

The privileges of counsel in comment are well stated in an early case (Mitchum *v.* State, 11 Ga. 615): "The counsel represents and is a substitute for his client; whatever therefore the client may do in the management of his cause may be done by his counsel. The largest and most liberal freedom of speech is allowed, and the law protects him in it. The right of discussing the merits of the cause, both as to the law and the facts, is unabridged. The range of discussion is wide. He may be heard in argument upon every question of law. In his addresses to the jury it is his privilege to descant upon the facts proved or admitted in the pleadings; to arraign the conduct of the parties; impugn, excuse, justify, or condemn motives, so far as they are developed in evidence; assail the credibility of witnesses when it is impeached by direct evidence, or by the inconsistency or incoherence of their testimony, their manner of testifying, their appearance on the stand, or by circumstances. His illustrations may be as various as the resources of his genius; his argumentation as full and profound as his learning can make it; and he may, if he will, give play to his wit or wings to his imagination."

The foregoing language of Nisbet, J., must have been admired by Fowler, J.; for in Tucker *v.* Henniker, 41 N. H. 323, he reproduced it as his own, without quotation marks or credit, with more, to the extent in all of a page, — "plagiarized" it, as Judge Thompson says (1 Thomp. Trials, p. 747, note), although I do not find the "slight omissions and rhetorical improvements" which that eminent author detects. In respect to this very remarkable coincidence one could hardly adopt the poet's expression, —

> "Vainly the fowler's eye
> Might mark thy distant flight to do thee wrong."

Although it is not precisely germane to my topic, I cannot forbear quoting Judge Nisbet's admirable and eloquent vindication of the lawyer, in the same opinion. He says: "It is not foreign to the subject to say that it is the duty of counsel to guard, by the most scrupulous propriety of demeanor, in the conduct of a cause, the dignity and honor of the profession. Connected as it is most intimately with the administration of justice, it should be protected most vigilantly from falling into popular disrepute. It ought, as I verily believe it does, to command the respect of the wise and the reverence of the good. Power and place, heredity, wealth, stupidity in high social position, and even genius, pandering to a popular taste for caricature, jealous of the power which it wields upon governments, have labored to degrade it. Still in this country and in

England, if nowhere else, the bar is the ladder upon which men mount to distinction; the lawyer is the champion of popular rights; the class to which he belongs is more influential than any other; and counsel, yes, feed counsel, is indispensable to a fair and full administration of justice. When learning, and character, and practised skill, and eloquence, and enthusiasm chastened by discretion, are enlisted in behalf of the litigant, he may rest assured that he holds in his counsel the very best guarantee against all forms of wrong and oppression in the administration of the law. It is true that he is paid for his services; and what of that? Are not princes and premiers, presidents and priests, also paid? One thing never yet was bought with money, and that is the soul-engrossing identification of counsel with his client. It is the gratuitous bestowal of his sympathy, drawing forth the masterly powers of his genius and the rich treasure of his learning, that makes the great lawyer the honored and influential citizen. The approval of his conscience, the respect of good men, are his reward, far richer than the stipulated fee of these days or the *honorarium* of the Roman advocate. If I thus magnify the office of the counsel, it is for the purpose of saying that its very importance makes indispensable the exclusion of the habit which we now condemn. But I proceed, claiming the indulgence," etc. (No apology is necessary, Judge!)

The only exception I would take to these remarks is to the intimation that "fees" are essential. Counsel not infrequently put forth their noblest efforts without reward or hope of reward.

Lumpkin, J., also gave the bar great compliments in Berry *v.* State, 10 Ga. 522, while reprimanding the practice of undertaking, "by a side wind, to get that in as proof which is merely conjecture." He called them "a profession which is the great repository of the first talents in the country, and to whose standard the most gifted habitually flock, as offering the highest inducements of reputation, wealth, influence, authority, and power, which the community can bestow. . . . No one witnesses with more unfeigned pride and pleasure than myself the effusions of forensic eloquence daily exhibited in our courts of justice. For the display of intellectual power, our bar speeches are equalled by few, surpassed by none. Why then resort to such a subterfuge? Does not history, ancient and modern, — nature, art, science, and philosophy; the moral, political, financial, commercial, and legal, — all open to counsel their rich and inexhaustible treasures for illustration?" (They does, Judge, they does.) "Here, under the fullest inspiration of excited genius, they may give vent to their glowing conceptions in thoughts that breathe and words that burn. Nay, more; giving reins to their imagination, they may permit the spirit of their heated enthusiasm to swing and sweep beyond the flaming bounds of space and time, — *extra flammantia mœnia mundi.* But let nothing tempt them to pervert the testimony, or surreptitiously array before the jury facts which, whether true or not, have not been proven." After all this eloquence, it is curious to observe that the court did not deem it error to admit in evidence a confession extracted from a negro slave, an accomplice, by whipping! The eloquent Lumpkin observed: "It is immaterial from what source, or under what circumstances the accusation was made, whether by a negro or a white man; whether it was voluntary or induced by the flattery of hope or the pain of punishment; whether it came from a talking ass or a talking snake, a stock, a stone, man, beast, or reptile, animate or inaminate object, — it is admissible as a key to or explanatory of what was said and done by the prisoner."

In Fry *v.* Bennett, 3 Bosw. (N. Y. Superior), 200, counsel said: "The 'Herald' by and by began to find that it could not live without doing something to attract public attention; and about the days of Ellen Jewett it came out as one of the most infamous sheets that ever existed since man was allowed by the Almighty to handle a

pen." The judge having charged the jury to "leave out of view anything that has been said as to the character of his newspaper, about which there is no evidence before us," it was held that the remarks were not error. (This is an amusing case. Fry was a manager of Italian opera, who had the usual quarrels with his singers; and the comments of the "Herald" were in respect to his conduct therein. The report covers fifty pages.)

In Turner *v.* State, 4 Lea (Tenn.) 209, a prosecution for larceny, the district attorney told the jury that there was a regular band of thieves in the neighborhood in question; that the defendant was one of them, naming others known to the jury to have been recently convicted; and added: "If the jury fail to convict the defendant in this case, I would not blame the people for taking the law in their own hands." The conviction was reversed on this account. On the other hand, in Scott *v.* State, 7 Lea, 236, the attorney's remark that "if the juries don't punish the crime, the people will rise up and punish it," was held not material error. And in Northington *v.* State, 14 Lea, 424, a prosecution for bringing stolen mules into the State, it was held that references to the crimes of Guiteau and Buford were not fatal to the conviction, as those crimes were not facts not in proof, "but only matters of current history used by way of enforcing an argument." So a reasonable amount of historical scholarship is tolerated.

THE PARDONING OF THE ANARCHISTS: IS GOVERNOR ALTGELD LIABLE TO IMPEACHMENT?

By George H. Shibley.

ON the evening of May 4, 1886, in the city of Chicago, a dynamite bomb was thrown into a squad of policemen, numbering one hundred and eighty, whereby seven policemen were killed, and sixty more wounded. In the endeavor to find the guilty party or parties, several arrests were made, and an indictment returned against eight persons, charging them with being participants in a conspiracy having for its object the destruction of the police and militia of the city of Chicago, and that in pursuance of such conspiracy the bomb was thrown which did the killing. At the end of a lengthy trial the jury returned a verdict finding seven of the defendants guilty of murder, and fixing death as the penalty; the eighth man, Oscar W. Neebe, guilty of murder, and fixing the penalty at imprisonment in the penitentiary for a term of fifteen years. The case was by the defendants appealed to the Supreme Court of the State. The judgment was affirmed. The court, in a unanimous opinion of one hundred and sixty-seven pages (122 Ill. 100 — 267), reviews the evidence and discusses the principles of law which properly govern the case. The findings as to the *conspiracy*, and the defendants' connection therewith, are, in short, as follows: First, that the bomb thrown was made by Lingg, one of the defendants; second, that Lingg was a member of the "International Association," the members of which entered into a conspiracy having for its object "the destruction of the police and militia of Chicago;" third, that all of the defendants were members of the association, and took an active part therein; fourth, that the bombs constructed by Lingg and his associates "were made under the auspices of the International Association, and in furtherance of its objects and purposes;" fifth, the bomb was thrown by a co-conspirator, and in furtherance of the conspiracy. The evidence of this being that the bomb was one made by Lingg (see first finding), and

that on the evening of May 4th Lingg and his associates carried a large number of bombs to a place "known as Neff's Hall," and "that as soon as the trunk was opened and deposited in the hall-way, men came forward and took bombs therefrom, indicating an *expectation* that bombs would be found at that place at that time." The circumstances under which the bomb was thrown, and the discharge of firearms immediately following the throwing of the bomb, corresponded with the plan of attack previously agreed upon by the conspirators; the court saying: "If a bomb had been thrown into the station itself and the policemen had been shot down while coming out, a part of the conspiracy would have been *literally* executed just as it was agreed upon. It could make no difference in the guilt of those who were parties to the conspiracy that the man who threw the bomb and his confederates who fired the shot waited before doing their work until the policemen in the station had left it and had advanced some three hundred feet north of it."

The findings of the Supreme Court as to the *fairness of the trial* are as follows: First, that a juryman accepted by a defendant while he has unused peremptory challenges estops him from complaining that such juror was incompetent (the first eleven jurymen were accepted by the defendants while they had unused peremptory challenges); second, that the twelfth juror (who was by the court accepted after the defendants' peremptory challenges were exhausted, and after a challenge by them for cause was overruled) was a competent juror.

The two last-mentioned findings were, by writ of error, carried to the Supreme Court of the United States, and by it unanimously affirmed (123 U. S. 131, 168).

Before the time set for the execution of the condemned men, Governor Oglesby commuted the sentences of Fielden and of Schwab to imprisonment for life; there were hanged defendants Spies, Engel, Fischer, and Parsons, Lingg having killed himself by holding a bomb in his mouth and exploding it.

On June 27, 1893, Governor Altgeld, in the exercise of the power conferred by the Constitution of the State of Illinois in the words, "The Governor shall have power to grant reprieves, commutations, and pardons, after conviction, for all offences," gave the imprisoned men their liberty, giving, as his reasons for so doing: First, that *the State failed to show that the prisoners had committed a crime;* second, that "*the trial was not fair.*"

It is remarkable that the reasons assigned by the Governor, in a paper of at least twelve thousand words, are not that the circumstances of the case call for *mercy*, but that the pardoning power is exercised that *justice* may be done; in short, that the judicial Department of government imprisoned unjustly those who are pardoned, and judicially murdered those who were hanged. Two questions are by this pardon and the reasons assigned brought prominently forward: First, were the so-called Anarchists unjustly condemned? Second, Is the Chief Executive of a State, under the power to *pardon*, authorized to review the facts and the law whereby a prisoner is by the Judicial Department of government condemned, and declare officially that the duly constituted courts of justice are dispensing injustice?

The first question is answered by the findings of the Supreme Court of the State and of the United States, as above quoted, together with the fact that no *newly discovered* evidence is brought forward which tends to disprove the facts found by the jury to be true. Governor Altgeld, it is true, quotes an affidavit which relates to the action of a special bailiff who served the *venire*; but as the first eleven jurors were accepted by the defendants, and the twelfth was by the Supreme Court of the State and of the United States held to be a competent juror, the affidavit does not show that the defendants did not have a fair trial; it follows that the Governor's argument is

fallacious,— an untruth, — a fact which he must have known, he having been a circuit judge. Other affidavits are quoted, not as being in their nature newly discovered evidence, but as tending to prove a theory which the Governor advances to the effect that the bomb was thrown by a personal enemy of Chief Inspector Bonfield. This evidence is, by well-recognized principles of justice, entitled to no weight

The second question is an important one; if allowed by our form of government, it permits the Chief Executive to officially brand a *co-ordinate* department of government as being corrupt, without first giving the accused parties the right of a trial, and the bringing forward of proof to sustain the correctness of their position. The facts are that the Constitution of the State provides that "the Governor and all civil officers of this State shall be liable to *impeachment* for any misdemeanor in office." It also provides that, "The powers of government of this State are divided into three distinct departments, — the Legislative, Executive, and Judicial, — and no person or collection of persons, being one of these departments, *shall exercise any power properly belonging to either of the others*, except as hereinafter expressly directed or permitted."

The Judicial Department is given the power to *interpret* the law which the Legislative Department enacts, and *apply the law to the affairs of the inhabitants* whenever a case is properly brought before it; in other words, to administer justice, — redress wrongs.

The Governor is given the power to "*pardon after conviction;*" in other words, show mercy, forgive, remit the punishment inflicted by the Judicial Department. This power is subject to no restraints, but it does not confer upon the Governor authority to interpret the law in a case *where the Supreme Court has interpreted it*, or to *apply the law* to the affairs of an inhabitant in a case *where the Supreme Court has applied it*. The Anarchists' case had become *res judicata*, and therefore could not properly be questioned by the Executive Department. If the Justices of the Supreme Court of the State have violated their oaths, they are liable to impeachment; but *until* such time as the interpretation of the law, as made by the Supreme Court of the State, is by it reversed, or reversed by the Supreme Court of the United States, or repealed by legislative action, it is *the law of the land*, which the Governor in his oath of office has sworn to uphold and to execute. For example, an ambiguous statute is interpreted by the Judges; when they have ascertained and announced the meaning which the Legislature intended to convey, the statute as interpreted is the expression of the legislative will, and therefore the law which the Governor is to uphold and to execute; for him to re-interpret the ambiguous statute is for him to say that he will not be bound by the legislative will, — that he acknowledges no co-ordinate department of government, and therefore that he is Governor, Legislature, and Judge.

Governor Altgeld, in declaring officially that "it is here that the case for the State failed," and "the trial was not fair," has, the writer believes, exercised a power properly belonging to the Judicial Department of government. If the Governor has exercised a power prohibited to the Executive Department, he has committed a misdemeanor, and is, therefore, liable to impeachment. (See constitutional provision, *ante*.)

The object of impeachment is simply to remove an unfit person, and to set the seal of disapproval upon unauthorized acts. That the seal of disapproval should be set upon the statement to the effect that the Anarchists who were executed were judicially murdered by the State, is evidenced by the many public utterances since made, among which are the following: Herr Most has proclaimed, "We must have a reckoning with this blood-sucking crowd!" A club in Chicago, on the Sunday following the pardon, passed a resolution of which the fol-

lowing is a clause: "*Whereas*, The records show that police-captains, bailiffs, and judges anarchistically violated established precedent and justice in imprisoning those Governor Altgeld recently released." And the editor of the Grand Forks "News" (N. D.) finds solace in Altgeld's assault upon the Judiciary by saying: "He shows that the man who threw the bomb was never found, and that there was no way of legally connecting the men who were prosecuted, with the bomb-thrower. In fact, the Governor makes out a clear case of murder and conspiracy against Judge Gary and the Chicago police that could not have been more strongly fortified, or more truly professed by the most radical Anarchist."

There is no great cause for complaint that three misguided men who now doubtless see the error of their way are pardoned; certainly the Governor is clothed with absolute power to pardon; but when he in exercising the pardoning power — the remission of a penalty inflicted by a court of justice — usurps judicial powers, and in his official capacity declares that the Supreme Court of the State and of the United States have affirmed the sentence of men who have not committed a crime, then it is that society must, by its duly constituted machinery, brand as untrustworthy such utterance, — untrustworthy because, in addition to its being a usurpation of power, it is the passing of judgment by one man without the presentation of both sides of the case, or the assistance which the argument of counsel gives.

LONDON LEGAL LETTER.

LONDON, Sept. 9, 1893.

I MENTIONED in a former letter the vacancy that had occurred in the professorate at Oxford, through the resignation of the Chair of Civil Law by Mr. Bryce, now Chancellor of the Duchy of Lancaster. After much delay the Government made an appointment which occasioned great surprise in every quarter; they selected Professor Goudy, the occupant of the Civil Law Chair in the University of Edinburgh, a Scottish advocate, who had not even been educated at Oxford or Cambridge. Mr. Goudy was admirably qualified for the duties of his office at Edinburgh, where the lecturer does not require to do much more than give a plain statement of the principles of Roman law in daily prelections, continued through a winter session of five months and a summer session of two; the results of original research would be out of place, and certainly quite beyond the grasp of the majority of the students, very few of whom attend the class of Civil Law for any reason except the requirements of their professional curriculum. In Oxford it is far otherwise. The professorial chairs are not agencies for ordinary tuition; this service is performed by tutors and lecturers. The ancient seats of English learning reserve their chairs for scholars and thinkers, who enjoy distinction superior to the mere possession of competent knowledge. These illustrious professors break the silence of the cloister seldom; their position is not demeaned by daily toil, and therefore the greater need that on the infrequent occasions when their voices are heard by small and select audiences, a new idea, a fresh fact, should be contributed to the sum of human knowledge. We wish Professor Goudy well in his new sphere; but if he wishes to be more than an academic stipendiary, he must invent a hypothesis. Can none of our foremost jurists take a hint from the fruitful labors of Biblical critics, and demonstrate that few, if any, of the great treatises on the Law of Rome are really from the pen of the writers with whose names they have hitherto been identified? Mr. Goudy might profitably commence such an onslaught as we have indicated on the obscure and frequently unintelligible writings of which Gaius is the reputed author. As I stated in my previous reference to this matter, Mr. Thomas Raleigh, Fellow of All Souls College and Vinerian Reader in Law, was, on all hands, regarded as the man most highly qualified for the position, and keen regret was felt when it was found that his claims had not been recognized. Several other Oxford and Cambridge men possessed the necessary equip

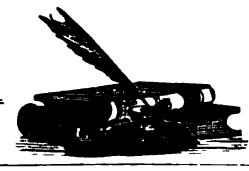
ment of knowledge; but Mr. Raleigh is more than an exact and accomplished lawyer. Versed in modern law and the ancient systems out of which it has grown, he is imbued with a general culture, for which exponents of jural science are too frequently inconspicuous.

Lord Hannen, who represented England in the Behring Sea Arbitration at Paris, has resigned his seat as a Lord of Appeal. Your readers will remember him as President of the Parnell Commission, of which his conspicuously successful superintendence led to promotion from the presidency of the Probate Divorce and Admiralty Court to a Lordship of Appeal in the House of Lords. His successor is Lord Justice Bowen, one of the most cultivated lawyers on the bench. I feel that an elaborate description of these luminaries would be tedious repetition, after the excellent and exhaustive sketches of their careers which have appeared in your columns. I need not expatiate on the possible appointments to the vacancy in the Court of Appeal; next month knowledge will replace speculation.

A good story about Sir James Fitzjames Stephen and Mr. Waddy, Q. C., who is a popular Methodist preacher as well as a prosperous and eloquent advocate, is going the round at present, — an old one revived, but none the worse on that account. One day, during the Northern Assizes, Mr. Justice Stephen, the presiding judge, returned to court before the conclusion of the luncheon hour, that he might quietly peruse his notes of the case in the trial of which he was then engaged. A juryman, munching sandwiches, was also in court, and being of a genial and conversational turn, he observed to his lordship that it was a fine day; his lordship gruffly assented. Our juryman, being minded for a cosey chat with the judge, proceeded to inquire if his lordship had ever heard Mr. Waddy preach. Upwards glanced Sir James Fitzjames in grim inarticulate amazement. "Because," pursued his thoughtful companion, "if you have not, I should be pleased to place my seat in our Chapel at your disposal next Sunday." "No, I have never heard Mr. Waddy preach," hoarsely thundered the greatest of England's criminal lawyers, "and please God, I never will, unless conveyed to hear him by force." Another *bon mot* regarding Mr. Waddy's preaching experiences has, I fear, seen the light in your pages before. On ascending the platform in a chapel in some circuit town, the learned gentleman espied in a front seat the facetious and scornful countenance of Mr. Frank Lockwood, the unrivalled humorist of the bar. Instead of yielding to timorous impulse, the valiant Waddy seized the situation by the horns, so to speak. He gave out a hymn in the usual manner, and added that it gave him great pleasure to welcome that day to the service his friend and professional brother, Mr. Lockwood, on whom, after the hymn had been sung, he would call to lead the meeting in prayer. Panic-stricken at the appalling prospect, Mr. Lockwood seized his hat and withdrew precipitately.

A great number of our outstanding lawyers, notwithstanding their profession, have been deeply interested in religious matters. Three Lords Chancellors in succession have been famous in this respect, — Lord Hatherley, Lord Cairns, and Lord Selborne. I really ought to say five in succession, for Lord Herschell and Lord Halsbury have an almost equal title to such a reputation. Lord Selborne is one of the greatest of living hymnologists; Lord Cairns, I have been informed, seldom gave a garden party without distributing hymn-books among the guests ere their departure, that a tuneful devotion might preserve his hospitality from the faintest savor of dissipation. Most of these five ornaments of the Woolsack have dabbled in Sunday-school teaching, although I fancy Lord Halsbury's own preference, for instance, is to preside at meetings where the importance of this branch of philanthropic ministry is pointed out to others. Lord Herschell is the enemy of religious bigotry. He was once a Presbyterian, but some years ago felt himself constrained to enter the fold of the Anglican Church. Then I must not forget the redoubtable Lord Grimthorpe, once leader of the Parliamentary bar, who loves to read the lessons in his parish church, All Saints, Langham Place, London, who is restoring at his own expense St. Albans Abbey, who warmly fosters all the onslaughts of the Low Church party on their opponents, and who lately crowned his services to the cause of religion by designing a new clock for St. Paul's Cathedral. The late Attorney-General, Sir Richard Webster, not so long ago sung in a church choir. I could multiply instances, but enough has been said to evidence the eminence of our respectability. As this is the long vacation, current news is scanty.

The Lawyer's Easy Chair.



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

∴ ∴ ∴ ∴ ∴ BY IRVING BROWNE. ∴ ∴ ∴ ∴ ∴

CURRENT TOPICS

THE AMERICAN BAR ASSOCIATION. — By way of vacation the Easy Chair rocked itself out to Chicago, taking in as much of the great Show as could be absorbed in six days, and thence to Milwaukee to attend the annual meeting of the American Bar Association, and the conference of the State Commissions on uniform legislation. The meetings of the Bar Association were attended by about the same number as usual, which is not large, but highly respectable in quality. The Easy Chair was enabled to hear the address, by Mr. Justice Brown, of the United States Supreme Court, on "Distribution of Property." This was a model in matter and in delivery. The speaker reviewed the modern causes and phases of discontent with the prevailing laws of tenure of property, and the proposed substitutes. He spoke of socialism, anarchism, communism, the strifes between labor and capital, the history and policy of "trusts," the right to dispose of property by will, and the question of taxation. His observations were judicious and conservative, and in the main did full justice to the claims of the opposing schools and classes. We are inclined to believe that he hardly did justice, however, to the theoretical claims of the anarchists, although he properly estimated the practical result of their teachings. He dismissed this class of persons quite summarily as undisguised bandits, outlaws, and enemies to social order, without attention to the fact that many of their public advocates and teachers, while opposing all forms of government, deprecate the overthrow of the present forms of government by violence, but argue in favor of peaceful revolution, and predict that men without government will prove friendly and harmonious. This is a specious view, but it is unfair to anarchists to pass it by without recognition. The speaker showed that this country is more liberal than most in allowing testamentary dispositions of estates, and urged that some restriction in this regard, when the claims of family or kindred intervene, would be advisable, — a question quite susceptible of discussion, with possibly the advantage on the side of the speaker. The address was a model in another and important respect, — it was not too long: the eminent speaker stopped when his hearers wished that he would go on. This mastery of the art of knowing when to stop is admirable, and not too common. The Easy Chair also listened to a paper by Judge Rose, of Arkansas, on strikes and trusts, — a labored and exhaustive history and discussion, very instructive and useful, but too long for the occasion. An hour and a half is too much for one reader, at such a time, for the reasons that the paper can be read by each person in print in a much shorter time, and oratory is either lacking or does not add to its effect. Print, but do not publicly read, such papers, we should advise. This essay was succeeded by a very lively and amusing discussion on Professor Baldwin's proposed act of Congress to secure to foreigners a criminal redress at the hands of the general government, for violence in person or to property, in case none is granted by the particular State, as for example in the case of the New Orleans lynching of Italians. The bill provides, in effect, that in case the State does not proceed to punish the offender in six months, the President, on complaint of the foreign ambassador, and in his discretion, may direct criminal proceedings in the Federal Court. Several gentlemen agitated the American eagle in a violent manner over this proposition, arguing that no greater privileges should be accorded to aliens than to our own citizens. The evident answer was very effectually made that our federal government cannot evade responsibility under the law of nations by reason of the dual form of our State institutions. National *dual* will inevitably lead to international *duel*. If a citizen of England, mobbed in the streets of the city of New York, is denied redress by the State, England may justly and very likely will make war on that State, by laying her ironclads off Long Island and reducing the city to ashes. That complete justice is denied to the citizens of different States under our dual form of government is no reason why justice should be denied to citizens of other countries. The essence of the matter is international justice, and the result is public peace or international war. It is humiliating and disgraceful that the federal government should be compelled to buy its peace with money, at the general expense, on account of the crime of citizens of one of its States and the refusal of that State to do justice. Our government bought off a

war with Italy in the New Orleans matter, and unless it is afforded some means of offering reparation in its courts, this condition of things will continue. There may be some objection to the powers proposed to be conferred on the President by Professor Baldwin's bill, but of the justice, propriety, and imperative need of some such scheme there can be no reasonable doubt.

The foregoing were the only exercises of the Association that the Easy Chair was able to attend. We are informed that the Association kept up its well-earned reputation for "larking" by attending a concert and taking an excursion on the lake. Milwaukee's chief product was procurable at both; and then there was the usual concluding "banquet."

The Association did two well-advised things: it abolished its annual gold medal, and it elected Judge Cooley president for the coming year.

UNIFORM LEGISLATION. — The Easy Chair was more especially interested in the proceedings of the conference of the State commissions on uniform legislation. This scheme, represented by these bodies, probably originated in the American Bar Association. At any rate we are quite willing to give it the credit. But the first practical outcome was the appointment by Governor Hill, of New York, in 1890, of a commission of three lawyers to consider the practicability of obtaining uniform legislation throughout the country on any subject, especially marriage and divorce, and suggest measures to that end. Several other States followed this example, and the first conference of the commissions was held at Saratoga, in August, 1892, at which were represented the States of New York, Massachusetts, New Jersey, Pennsylvania, Delaware, and Georgia. Mississippi had also appointed commissioners, but none were present. The second conference was held at the city of New York in November, 1892. At these two conferences several measures were recommended. The third conference was held at Milwaukee in August last. Meantime the States and Territories of Connecticut, Wisconsin, Kansas, New Hampshire, North Dakota, South Dakota, Montana, Wyoming, Minnesota, Nebraska, and Illinois had also appointed commissioners, and at this conference the States of New York, Massachusetts, New Jersey, Michigan, Pennsylvania, Georgia, Connecticut, Wisconsin, New Hampshire, North Dakota, Minnesota, and Illinois were represented. The conference adopted and recommended the work of the first two conferences, and laid out work for committees, to report next year at the annual conference. The conference recommended a scheme of uniform laws on the following subjects: the acknowledgment and execution of deeds: sealing and attestation of deeds, the solemnization and recording of marriages and fixing the age of consent; jurisdiction in suits for divorce, making the co-respondent a party, and permitting re-marriage after divorce, execution of wills; probate of foreign wills; abolition of days of grace: uniform standard of weights and measures. Forms of legislative acts were also submitted in respect to all these matters except marriage and divorce, and weights and measures. The committees appointed were intrusted with the subjects of forms of conveyances: forms of notarial certificates; commercial paper; marriage and divorce; mode of choosing presidential electors; descent and distribution; and wills.

The following is a complete list of the commissioners, with their residence and post-office address:

New York. — Henry R. Beekman, *President*, 111 Broadway, N. Y. City; Irving Browne, 16 Court St., Buffalo; Wm. L. Snyder, Temple Court, N. Y. City; Albert E. Henschel, *Secretary*, 214 Broadway, N. Y. City

Massachusetts. — Edmund H. Bennett, Taunton; Leonard A. Jones, 209 Washington St., Boston; F J. Stimson, 53 State St., Boston.

New Jersey. — Richard Wayne Parker, Newark; G. D. W. Vroom, Trenton; Otto Crouse, Jersey City.

Michigan. — C. W. Casgrain, Detroit; S. M Cutcheon, Detroit; A. C. Maxwell, Bay City.

Delaware. — Thos. F. Bayard, Wilmington; Geo V. Massey, Dover; A. P. Robinson, Georgetown.

Pennsylvania. — Robert E. Monoghan, Westchester; Chas. R. Buckalew, Bloomsburg; Ovid F. Johnson, 608 Chestnut St., Philadelphia

Georgia. — Peter W. Meldrim, Savannah; Walter B. Hill, Macon.

Mississippi. — R. H. Thomson, Brookhaven; S. S. Calhoun, Jackson; W. V. Sullivan, Oxford.

Connecticut. — E. Henry Hyde, Jr., Hartford; Erlias P. Arvine, New Haven; Lyman D. Brewster, Danbury.

Wisconsin. — J. E. Dodge, Racine; G. M. Woodward, La Crosse; G. E Green, Green Bay.

Kansas. — T D Thacher, Lawrence; R. A. Sankey, Wichita; Jud. J. W. Fitzgerald, St. Marys, J. O. Wilson, Salina.

New Hampshire. — J L. Spring, Lebanon; Jos. W. Fellows, Manchester; H. E. Burnham, Manchester.

North Dakota. — Burke Corbet, Grand Forks; Chas F. Amidown, Fargo; Geo. W. Newton, Bismark. Also State Revising Commission.

Montana. — J. B. Clayberg, Helena; T. C. Marshall, Missoula; J. W Strevell, Miles City

Wyoming. — C. E. Blydenburgh, Rawlins; J. C. Heeneen, Evanston; M. L. Blake, Sheridan.

Minnesota. — Chas E. Flandran, St Paul; Chas M. Start, Rochester; W. S. Pattee, Minneapolis; W. W. Billson, Duluth; C. E. Chapman, Fergus Falls.

Nebraska. — J. M. Woolworth, Omaha; H. D. Estabrook, Omaha; T. M. Marquette, Lincoln

Illinois. — John C Richberg, 605 Opera House Building, Chicago; Arthur A. Leeper, Virginia, Cass Co.; E. Burritt Smith, Room 6, 59 Dearborn St., Chicago.

South Dakota. — A B Kittridge, Sioux Falls; L. B. French, Yankton; I. W. Wright, Clark.

This is the most important general legal movement ever set on foot in this country. It has been delayed by waiting for the biennial legislatures to appoint commissioners; but now that nineteen States and Territories, embracing the greatest and most influential, except Ohio, have joined in it, satisfactory results may be predicted. The great desideratum now is to press the measures recommended upon the attention of the legislatures.

It is to be regretted that only four of the States have made provision for paying even the expenses of the commissioners. Full attendance cannot be expected until this is remedied.

The Easy Chair feels like rocking on the toes of the Milwaukee newspapers, not one of which seemed to have any adequate appreciation of the importance and dignity of the purpose and the work of this conference.

"RAISING THE DEVIL" WITH ONE'S WIFE. — In his very entertaining volume of reminiscences, "Hic et Ubique," Sir William Fraser thus retells, with some additions, the story of the murder of the Duchess de Praslin: —

"Shortly before the fall of Louis Philippe a fearful crime was perpetrated in Paris, which, no doubt, shook the King's already tottering throne. The Duke de Praslin had led for some years a very unhappy existence, in consequence of the over-attachment of a neglected wife. He appears to have been a man of a highly nervous temperament; and his wife, most unfortunately, a woman of great sensitiveness, who deeply felt his abandonment. It was suggested, of course, that the cause of the quarrel was a governess, Mademoiselle de L.; this was proved not to have been the case. It ultimately became clear that the incessant letters written by the unhappy duchess to her husband had so worked upon his nature as to drive him almost to frenzy. The first facts known were that the Duchess de Praslin, the daughter of Marshal Sebastiani, had been found on the floor of her bedroom, wounded in numerous places, covered with blood; her bed, the carpet, the furniture, and the walls of the room all flecked with it; the bell-ropes had been cut, and marks on the wall gave evidence of the unfortunate woman's attempts to escape. At first a carpenter was suspected. Suspicion soon turned upon the duke. It was remarkable that, notwithstanding the desperate conflict which had obviously taken place, there was no trace of blood upon any garment worn by him, nor in his sleeping-room. The evidence, however, was sufficiently strong for him to be committed for trial In a few days we heard of his death, and it was believed that previous to being taken to prison he had swallowed poison; some thought the poison was given to him in the prison. No doubt a public execution would, in the state of political feeling, have done desperate mischief to the reigning dynasty. One theory was that, having held high office in the household of one of Louis Philippe's family, he had been permitted to escape.

"So far the story is well known; what follows is not. I have it on first-rate authority, that of the late Mr. Laurence Peel, the brother of the Premier, who at the time was residing in Paris, and was intimate with the best French society. It was well known to the relations and friends of the Duchess de Praslin that from childhood she had had a constant fear of the Devil; that is, the Devil incarnate. Her imagination pictured him with the conventional horns and hoofs of the Middle Ages, — what Cuvier defined him at an interview, 'graminivorous.' A year before her murder she told a few of her most intimate acquaintances, fearing no doubt ridicule, that on the previous night the Devil had appeared at her bedside; that he placed his right hand upon her throat. She awoke, screamed violently, and the fiend disappeared. This was smiled at by those who heard her story. Some years after her murder, in a secret closet of the Maison Sebastiani, was found a complete masquerade-suit of the devil, having the horns and hoofs and the hairy covering, and *drenched in blood*. Mr. Peel added that no doubt the Duke de Praslin had contemplated the murder a year earlier, but was prevented from accomplishing it by the awakening of his wife, and her screams, which drove him from the room."

From another entertaining autobiographical book, by T. Adolphus Trollope, the Lawyer's Easy Chair learns two striking facts: that Garibaldi was in favor of killing all priests, on the ground that they were the worst kind of "assassins, — assassins of the soul;" and that Walter Savage Landor dropped his *h*'s. Dickens, in his caricature of this learned man as "Boythorn," in "Bleak House," does not commemorate this singularity.

IN RE GRANDFATHER. — The Lawyer's Easy Chair has discovered, in the last three years, a new and satisfactory occupation for vacation, and that is rocking grandchildren. Victor Hugo said that the best and surest friendship is that between grandfather and grandson, and for once Victor was sound. Men live their lives over again in these little creatures, and can spoil them without feeling any responsibility. We are carrying on the grandfather business quite successfully, and recommend it to others as very remunerative. Recently we wrote in the "Albany Law Journal" as follows: —

"Our amiable friends, Judge and Mrs. Bradwell, of the 'Chicago Legal News,' publish a beautiful little picture of their small grandchildren, boy and girl. We believe the mother of the girl is a lawyer We want it distinctly understood that in the character of grandfather we take water from nobody, and challenge all comers at catch weights, — bar none, not exceeding three years old and three months old respectively. The parties can be interviewed at Buffalo. Now, by Saint Paul, the work goes bravely on! But we grow afraid of kidnappers."

That paragraph was inclosed to us in a letter from one of the reverend justices of the United

States Supreme Court, with the following comment: —

July 1, 1893.

DEAR GRANDFATHER BROWNE, — I received and read with great pleasure your charming verses on the advent of a second grandchild; but I was pained to see in a late paragraph in the "Journal" a bit of unseemly boasting from your pen. I do not want to say anything in disparagement of the condition of one having only two grandchildren. I have myself been through that chrysalis state of existence; but you should modestly remember that while once a grandfather a man is entitled to consideration, and twice a grandfather to respect, yet it is only when he is three times a grandfather that he becomes an object of veneration. Come up from the hill-tops, where you live, to the mountain summits, where I dwell, surrounded by the three finest babies ever born into this world, all shouting in the mystic language brought from the unseen shore, "dear grandfather!" and you will begin to appreciate the real affluence of life. Have patience, my progressive friend, and you may yet know, though some months hence, how exalted a position he occupies who is three times a grandfather.

Yours in bonds of grandparental dignity.

We entertain strong hopes, founded on experience and observation, that we shall attain that triple dignity in a much shorter period than it requires to reach a cause for argument in the learned gentleman's court. Meantime our affections are broadening in watching the growth of our two grandbabies, and our wits are sharpening under the cross-examination of the elder, — son of a lawyer, grandson to two lawyers, and nephew of a fourth, — who asks more unanswerable questions than the amiable justice would be apt to propound. We are celebrating the great Columbian discovery in a domestic way. Let us sing to our elder brethren — none under fifty are expected to sympathize with us — of

MY NEW WORLD.

My prow is tending toward the west;
Old voices growing faint, dear faces dim,
And all that I have loved the best
Far back upon the waste of memory swim.
My old world disappears;
Few hopes and many fears
Accompany me.

But from the distance fair
A sound of birds, a glimpse of pleasant skies,
A scent of fragrant air,
All soothingly arise
In cooing voice, sweet breath, and merry eyes
Of grandson on my knee.
And ere my sails be furled,
Kind Lord, I pray
Thou let me live a day
In my new world.

NOTES OF CASES.

A MALICIOUS FENCE. — It is held by the Michigan Supreme Court, in Kirkwood *v.* Finegan, 55 N. W. Rep. 457, following Flaherty *v.* Moran, 81 Mich. 52, that an injunction will issue to restrain the erection of an unsightly fence, six to seven feet high, on the boundary between complainant's and defendant's lots, in the residence portion of a city, depreciating the value of complainant's property, and constructed maliciously as the outcome of a quarrel between the parties. We extract the following from the statement: —

"This fence consists of posts set in the ground about seven feet apart, the whole distance between the lots of the parties hereto, and spiked to them are stringers on the top and towards the bottom. These posts were formerly railroad ties, and for a long time used for that purpose, containing large spike holes, in some cases decayed by their former use. Defendant placed between these posts certain other railroad ties, with pieces of brick between them, and up as high as the terrace, leaving these old ties as support to the bank uncovered on complainant's side, and began nailing on boards close together at the front of these lots, and within six or eight inches of the sidewalk, and had built back about forty-five feet north when she was restrained from going further. The boards were nailed to the fence on defendant's side, leaving the fence posts and stringers uncovered on complainant's side. The first twenty-one feet of this fence was built six feet four inches high, and the balance, as far as built, was seven feet eight inches high. The twenty-one feet mentioned extends back and opposite complainant's sitting-room window. The higher portion of the fence is opposite complainant's dining-room and kitchen windows. This fence not only cuts off complainant's view to the north, but darkens his sitting-room, hall, and dining-room. The boards with which this fence is built are old boards, and the cull boards seem to have been selected from them and used to build the front of the fence, — that portion which is immediately opposite complainant's sitting-room.

"Defendant attempts to justify the building of this fence upon several grounds: (1) That she did it that she might live without being harassed and molested by complainant's wife; (2) For the reason that the quarrelling of her children, and the chastisement of them by words of complainant's wife, tormented, harassed, and disturbed her to such an extent that the building of such fence is necessary; (3) That said fence is necessary to keep complainant's wife from quarrelling with defendant's husband, and because of unneighborly, malicious, and cruel treatment of defendant's family by complainant and his family."

It does not appear whether the structure was wholly on the defendant's land; but even if it is, we incline to regard the decision as sound, although we believe no other court in this country has gone so far. Such a fence is a malicious and useless nuisance.

EXEMPLARY DAMAGES AGAINST CORPORATIONS — We are quite in sympathy with the "American Law Review" in its criticisms upon the decision of the United States Supreme Court in Railroad Co. *v.* Prentice, 147 U. S. 101, that a corporation is not liable in exemplary damages for a wanton and malicious tort committed by its servant, unless it authorized or approved the commission of the tort, although the servant would have been liable in such damages This is substantially equivalent to absolving corporations in such cases. A carrier corporation ought to be held at all hazards in exemplary damages in such cases, in order to teach it the duty of protecting helpless persons, who have entrusted themselves to its care, from dangerous attacks at the hands of its employees. Possibly, however, the evil of this decision is cured by the concession of the court that damages in such cases may be awarded for mental suffering, for juries are quite apt to regard this means of vindicating the citizen's rights. But in theory we regard it as erroneous to say that a corporation is not liable in exemplary damages unless it has in some official way authorized or ratified the wrong act.

DELIVERY OF GOODS; WHEN TITLE PASSES. — In Kelsea *v.* Ramsey and Gore Manufacturing Co., the New Jersey Court of Errors and Appeals held, in June last, that under a contract for the manufacture and sale of goods, with instructions by the purchaser to the vendor to send them to the purchaser at another town, title passes on delivery to a common carrier to be transported, so that the vendor may maintain an action for the price, and is not limited to an action of damages for breach of contract if the purchaser refuses to accept the goods. The court said: —

"Although the cases upon this subject are not entirely in accord, the authorities generally hold that a delivery to a common carrier of the goods, properly addressed to the vendee, is a delivery to the vendee, subject to the vendor's right of stoppage *in transitu*, and to the vendee's right to reject for nonconformity to the contract. (Brown *v.* Hodgson, 2 Camp. 37; Dutton *v.* Solomonson, 3 Bos. & P. 582, Dunlop *v.* Lambert, 6 Clark & F. 600; Fragano *v.* Long, 4 Barn. & C. 219; Dawes *v.* Peck, 8 Term R. 330; Krulder *v.* Ellison, 47 N. Y. 36; Silver Plate Co. *v.* Green, 72 N. Y. 17; Spencer *v.* Hale, 30 Vt. 316; Stanton *v.* Eager, 16 Pick. 467; Hunter *v.* Wright, 12 Allen, 548; Hall *v.* Richardson, 16 Md. 396, Magruder *v.* Gage, 33 Md. 344, 1 Benj. Sales, §§ 161, 181; Story Sales, § 306; 2 Kent Comm. 499) The distinction is made in some of these cases, that, in order to give to the delivery to the carrier the effect of a delivery to the buyer, the carrier must be selected or named by the buyer. When the contract of the manufacturer is simply to make the goods at an agreed price, he has fully executed the agreement on his part when the goods are produced at his factory, ready to be delivered on demand. In that case, however, he is not authorized by the vendee to deliver them for transportation. But when the purchaser instructs the vendor to send the goods to him, it does not appear how it makes any difference in the rule applicable to the case whether he names the carrier or not If the carrier is not specified, the vendor, acting in this respect under the order of the purchaser to forward the goods, is his agent in the selection of the carrier, and in either case the carrier is, in contemplation of law, chosen by the purchaser In this case the purchasers expressly instructed the plaintiff to send the goods from New Hampshire to Paterson. When the goods passed out of the possession of the plaintiff into the hands of the carrier, who must be regarded as the agent of the purchasers to transport them, the transfer of the title to the purchasers became complete, and all the rights of ownership in them passed to the purchasers. If the carrier had converted the goods to his own use, the defendants could have maintained an action for them; or, if there had been a loss in transit, it would have fallen on them."

WIDOWS NOT FAVORED. — It is generally supposed that women are practically, although not theoretically, favored in the law. A New York judge once justified a very doubtful ruling on a question of evidence in a railroad accident case, on the ground that "this court will always lean strongly toward the widow." But it seems that widows are not quite so leniently viewed in South Carolina; for in Herndon *v.* Gibson, 17 S. E. Rep. 145, the Supreme Court held, that where on a mortgage sale of lands a widow, dependent upon the property for her support, requested the bystanders not to bid against her, and she bought in the premises without opposition, the sale was void. It seems to have been differently held in Woody *v.* Smith, 65 N. C. 116, in the absence of proof that the auctioneer connived with the widow But this is only one of a considerable number of radical differences between the Carolinas in legal notions. The "American Law Review" observes on this case that "the Supreme Court cannot compel the people of South Carolina to bid against a widow in humble circumstances," and asks, "How many successive sales will the Supreme Court set aside for that reason?" Now, we should arrange on the second, if not on the first, sale to have some of the widow's friends — say some of the "mourners" or contingent second husbands — make a few modest bids in opposition, and privately coax off other bidders. That is what we should do if we were counsel for the widow: but quite unfortunately we cannot be everywhere at once, and act for all the distressed widows in the country. By the way, a quite interesting chapter might be written on "The Law of Widows," — say by Mr. R. Vashon Rogers. Of course, the writer should *weed* out all the law pertaining to married women.

TOTAL ABSTINENCE — In Grand Lodge A. O. U. W. et al *v.* Belcham, Supreme Court of Illinois, 33 N. E. Rep. 886, an applicant for insurance, in answer to the question to what extent he used alcoholic stimulants, answered, "None." *Held*, that proof of a single use of liquor was not sufficient to prove the answer untrue, but that it would be necessary, for that purpose, to prove a habit or custom of using such stimulants. The court said: —

"It is said in the argument of counsel, 'We insist that his answer "None," as to intoxicants, meant none at all, — to no extent whatever.' We do not think this is a correct view of the language used. The language embodied in the application must receive a reasonable construction, — one within the contemplation of the parties at the time the contract of insurance was consummated. What was the purpose of requiring the insured to state in the application to what extent he used alcoholic stimulants, tobacco, and opium? But one object can be perceived, and that was to guard against the risk which might arise from insuring the life of one who was in the habit of using the articles, or either of them, to such an extent as to imperil the health and life of the individual. If a man drank a glass of liquor, or smoked a pipe of opium or a cigar, once a month, it is too plain to admit of argument that such a use could not endanger the life of the person, and that such a use was not within the contemplation of the parties when the contract of insurance was entered into by the parties. It may be that the language of the question and answer in regard to the use of alcoholic stimulants, if given a strict and technical construction, might be interpreted that the insured did not use alcoholic liquors at all. But in our opinion, an insurance company, propounding a question of that character, should not be allowed to indulge in a strict and technical construction, but, on the other hand, the language should receive a fair and reasonable construction, — a construction which would imply more than an occasional use. There should be, to some extent at least, a habit or custom. This is the well-established rule in Van Valkenburgh *v.* Insurance Co., 70 N. Y. 606, and we think it is the correct one."

If one says that he does not use intoxicants "to any extent," this in popular parlance does not indicate that he is a total abstinent, but only that he does not use them to any considerable extent.

FLATTERING PHOTOGRAPHS. — In connection with recent remarks in this magazine on the unreliability of photographs ("Practical Tests in Evidence"), it is instructive to consider a case now pending on appeal in the Supreme Court of New York, — Harter *v.* Town of Moravia, — an action for personal injuries sustained by driving into a dangerous mud-hole of long standing (or lying) in the middle of a highway. To show that it was not much of a hole and not dangerous, the defendant put in evidence a photograph of the locality, which makes it a very harmless place to all appearances, and indeed does not disclose any depression at all. Witnesses however swore that it was from ten to fifteen feet long, four to eight feet wide, and eight to twenty-four inches deep. Justice Rumsey charged the jury as follows in respect to photographs: —

"In regard to photographs, it is very true that in certain respects a photograph tells the precise and absolute truth, but yet it will be for you to consider exactly to what extent a photograph precisely delineates the particular thing upon which the camera is pointed. When you look at a thing with your eye, as Mr Ackerman said, by long practice you have gotten into the habit of correcting the variation of the lens of the eye, so that the things which you see through your eye give you an accurate picture. The lens of a camera cannot do that. It is like the eye of a baby. All of you have seen a little child reach for the moon, utterly unable to distinguish how far off it is, or anything about it. The photographic lens is a thing of the same kind; it is a mere inanimate piece of glass, through which the light goes, and which puts upon the negative what goes through, but it does not faithfully put upon the negative precisely the relative situation or condition of the things at which it is pointed. So when you come to examine these photographs, of course you must examine them in view of the condition of affairs as Mr Ackerman said it was, and judge how accurately the photograph has reproduced the thing which the camera was pointed upon, and which is presented here. I call your attention in that regard, also, to the fact that it is the testimony of the photographer that the space there, which is six or eight inches across, represents twenty-three feet, as he said, and the space three or four inches long represents one hundred and fifty feet, not by way of throwing any doubt upon the accuracy of the picture, but simply by way of giving you some suggestion as to how you should consider that picture when you come to examine it, in view of the testimony which has been given in this case."

The trial resulted in a verdict for the plaintiff in spite of the photograph.

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.

A BALTIMORE correspondent offers the following suggestions concerning "A Serious Problem."

Editor of the "Green Bag":

Mr. Percy Edwards's article, "A Serious Problem," in the "Green Bag" for August, 1893, is interesting and suggestive. It is, however, a mistake to suppose that "the law" is increasing in anything like proportion to the reports and the digests and the treatises that follow them so rapidly. Thousands upon thousands of cases merely iterate and re-iterate the principles of law as laid down in thousands upon thousands of other cases. And still the reports keep pouring from the presses, and still the digests and treatises keep treading on their heels, till it may fairly be said that the man who is rich enough to own a complete law library, and keep it "up with the times," is too rich to practise law. But think of the expense which the mere "getting out" of these "reports" entails upon an overtaxed people. Think of the awful expenditure of energy and brains wasted in the compilation of Treatises and Digests which are old before they are new, — energy and brains that, but for this temptation, might have rendered some real service to mankind, might have invented a new religion or discovered a new *bacterium*, with a complete and useless system of "culture" and "progressive innoculation."

It may be asked, If the principles are settled, whence the innumerable cases? The answer is, partly, The cases are the results of attempts to defeat the application of the principles to new sets of facts. These attempts are sure to continue while fees can be gotten for making them. It is the stories of these attempts and the pretty uniform defeat of them that multiply the "reports," and render their volumes so bulky. Now and then — and only now and then — does such an attempt result in an actual *extension* of the law, in the amplification of an old, or the elucidation of a new, principle.

But this is not all the answer. Many of the new cases grow out of necessary judicial constructions of new statute law. Many a page of the "reports" is taken up with elaborate elucidations of some single sentence or paragraph of a legislative Act. And this is not surprising when we remember that a very large proportion of our legislative Acts are written without reference to the grammatical rules of the language in which they are nominally expressed.

But the answer is not completed yet. The endeavors to defeat the application of well settled principles to particular facts is greatly stimulated by the practice of writing long opinions, — a practice doubtless encouraged by the modern conveniences of stenographers and type-writers. It may be said of long opinions that they are never necessary, and are almost invariably obnoxious. The points essentially involved in the most intricate and important cases are usually to be disposed of in a few brief sentences. The objection to long opinions is that they complicate the law; that they suggest "loop-holes" where none exist; that they involve endless *obiter dicta*, -- the most aggravating and detestable nuisances of our law.

Why not attack these symptoms in order, and see if we cannot do something with the disease in that way? *First*, extend the practice of designating cases "not to be reported." Let the courts of final resort allow no official report to be made of any case which does not distinctly present a new aspect of the common law, or a new construction of a statute. *Second*, keep down the statutes. With every possible facility for special sessions, when needed, give us one Congress to the Presidential term, and make that term six years, *with no re-eligibility;* and let us have legislative sessions at even longer intervals. *Third*, give us short opinions, strictly confined to the matter in hand. The early English decisions are examples in this regard. Perhaps they are not strictly models, as they sometimes sacrifice clearness to brevity. The English opinions of to-day, as a rule, seem to hit the happy medium, and afford a most striking contrast to the voluminous dissertations of many of our courts.

The second of these remedies will probably be applied about the time when "all our ships come in." But the first and third, resting with such a judiciary as that which is America's pride and boast, perhaps need only mention for speedy application.

JAS. T. RINGGOLD.

HERE is another communication called forth by the same article.

AKRON, O., Sept. 12, 1893.

Editor of the "Green Bag":

DEAR SIR, — In your August number, Mr. Percy Edwards, under the title "A Serious Problem," has some timely comments on the vexatious multiplicity of reported decisions. His opinions, on the whole, are just and well considered; but he makes several rather astonishing statements of fact. For instance, he seems to assert that Cicero flourished after the year 130 A.D. The impression has usually prevailed that the Roman orator died nearly half a century before the beginning of the present era. Blackstone is made to live in the "glorious Shakspearian age" as a contemporary of Coke and Bacon. Here our cheerful writer takes no account of the gap of nearly one hundred and fifty years that separates the time of the great commentator from the earlier day of "Good Queen Bess."

Respectfully yours,

H. T. W.

LEGAL ANTIQUITIES.

IN the thirty-first year of the reign of Prince Edward III., the year 1347, there was one Cicely de Ridgyway, or Rygeway, indicted for the murder of her husband; but she refusing to plead and continuing mute, notwithstanding all the arguments and threats the judges could use to her, they adjudged her at last to fast forty days together in close prison without any meat or drink. This she actually did. The following is a translation of the record lodged in the Tower of this extraordinary case: —

"The king to all bailiffs and others his liege subjects to whom these presents shall come, &c., greeting. Be it known unto you that, whereas Cecely, who was the wife of John Rygeway, was lately indicted for the murder of the said John, her husband, and brought to her trial for the same before our beloved and faithful Henry Grove and his brother judges at Nottingham, but that, continuing mute and refusing to plead to the same indictment, she was sentenced to be committed to close custody, without any victuals or drink, for the space of forty days, which she miraculously, and even contrary to the course of human nature, went through, as we are well and fully assured from persons of undoubted credit. We do, therefore, for that reason, and from a principle of piety to the glory of God and of the Blessed Virgin His Mother, by whom it is thought this miracle was wrought, out of our special grace and favour, pardon the said Cecely from the further execution of the sentence upon her; and our will and pleasure is that she be freed from the said prison, and no further trouble be given her upon the account of the said sentence, &c. — In witness whereof, &c."

FACETIÆ.

THE following story is told of a South Texas judge: On one occasion an attorney appeared before the judge with a written request that a writ of *Duces Tecum, Linguidus Licit*, issue; and the court, after adjusting his glasses and giving the paper a very careful reading, handed it to the clerk with instructions that the writ issue, whereupon the clerk informed the court he was not an attorney, and did not understand the nature of the writ; so the court again took the paper, bowed his head, and apparently went off into the far land of study, and after some moments had elapsed arose and addressed the clerk as follows: —

"Mr. Clerk, you will issue a writ that will play the deuce generally, and take 'em in gwyin' and comin', sick or well."

JAMES FRANCIS OSWALD, a new Queen's Counsel, is perhaps the hero of more good stories than any man at the English bar. He was the junior who, on being told by Justice Kay that, "although he could teach him law, he could not teach him manners," quietly remarked, "That is so, my lud." An encounter with Justice Chitty was hardly so successful. He had been addressing the court at great length in a bill of sale case, and at last said: "And now, my lud, I address myself to the furniture." "You have been doing that for some time past," said Justice Chitty.

AT a church-meeting in one of the suburbs of Chicago, held for the purpose of taking measures for increasing the interest of members and drawing others into the fold, the inquiry was made whether a certain lawyer of the congregation whose financial affairs were somewhat involved, had "got religion." To which another lawyer present responded, "No, I think not, unless it 's in his wife's name."

WE take the following from a non-legal newspaper, namely, that very excellent weekly periodical known as the "Sketch;" and true or not true, it is worth repetition: —

"I heard an amusing story of Sir Henry Hawkins from a legal friend a week or two ago, but I cannot vouch for the absolute truth of it. Sir Henry was presiding over a long, tedious, and uninteresting trial, and was listening, apparently with absorbed attention, to a long, tedious, and uninteresting speech from a counsel learned in the law. Presently he made a pencil memorandum, folded it, and sent it by the usher to the Q. C. in question. This gentleman, on unfolding the paper, found these words: 'PATIENCE COMPETITION. — Gold Medal, Sir Henry Hawkins. Honorable Mention, Job.' His peroration was wound up with as little delay as possible."

A FAMOUS judge actually broke off a summing up upon one occasion with: "Mr. Sheriff, I should like to know what that fat man means by pressing against those two young women in the front row of the gallery." On another occasion the same judge, during the examination of a witness, exclaimed: "Really, Mr. Foreman, I am exhausted, worn out, with the outrageous conduct of that witness in the box, who amongst other profanities keeps on saying that what he deposes to is 'as sure as God made apples.'"

FROM a lawyer's point of view, the people most sought after are those who do not pay their debts.

SIR BOYLE ROCHE said: "Single misfortunes never come alone, and the greatest of all possible misfortunes is generally followed by a much greater."

THE following response was made to an inquiry of a character witness in a suit in Wilkes County, N. C.: —

Ques. Do you know the general character of F——?

Ans. I do.

Ques. What is it?

Ans. Well, passing and re-passing, entertaining and being entertained, in a social point of view it is good; but in matters of business, where he is financially interested, and especially in winding up dead men's estates, his character is bad.

IN the South the color line is so well drawn that in some sections to be a colored man and a Republican is synonymous. This was amusingly but innocently shown by the reply of a colored juror at Jones County Superior Court in North Carolina. A negro man was on trial for burglary. The jury consisted of four negroes and eight white men. During the night they came to a verdict which was received by the judge without awaking the Solicitor, as the prosecuting officer in that State is very singularly called. The next morning the Solicitor, Swift Galloway, while washing his face on the hotel porch, was surprised to see one of the negro jurors walk by. "Hello, Jim," said he, "did the jury agree?" "Yes, sah," was the reply. "How did the verdict go?" "The jury went *democratic*, sah," was the reply, meaning that the verdict was according to the views of the white jurors.

NOT long since, in the course of a trial before a certain Justice of the Peace in Texas, counsel for the defendant requested the court to rule on a certain point; whereupon counsel for plaintiff, whose name was Charley ——, insisted that the court had already passed on the point. After considerable argument, and due deliberation on the part of the court, the Justice (who was Irish) said: "Chaarley, this court has niver passed on that p'int." "Well," said Charley, "will your honor pass on it *now*?" "I do pass on it *now*," responded the court, with infinite dignity. "Well, how does your honor pass on it?" inquired the perplexed counsel. The court straightened himself up, cleared his throat, and relieved himself by delivering the following, in his most impressive manner: "Chaarley, ye must abide by the law, whativer it is."

NOTES.

IT is impossible to read Lord Justice Bowen's finely phrased judgments in the "Reports" without being made aware that he possesses a considerable power of gentle irony as well as of lucid expression. It is said that when the judges met to consider the terms of their address on the occasion of her Majesty's jubilee, an objection was raised against the words "conscious as we are of our shortcomings;" and that Lord Justice Bowen

suggested that the phrase should be altered into "conscious as we are of one another's shortcomings." On several occasions during the past few years his lordship's health has caused him to be absent from the Court of Appeal. We trust that the lighter duties of the House of Lords will prevent the recurrence of this misfortune. — *London Law Journal.*

We have received by mail the following specimen of Western legal enterprise. As a business card it is certainly unique.

> Barrett White,
> Attorney and Counsellor at Law,
> Notary Public.
> Over 321 Main Street. Peoria, Illinois.
> (Over.)

On turning "over" we find the following: —

"In matters of law, if you have any right,
You should make application to Barrett White
He has the experience of thirty-one years,
Employ him to see to your case, without fears.

In suits for possession, and cases like that,
His knowledge of law is just under his hat.
In suits for your wages, just give him a call;
He will see that justice is done to you all.

And if you should ever get into a fight,
Go right to his office and see Barrett White.
And if ever you want to get good advice,
It 's there you can get it, at very small price.
Remember the place he invites you to come
'T is Peoria, on Main St, at Three Twenty-one"

This card ought to prove a drawing one.

Mr. Justice Williams, in his mode of trying prisoners, was exceedingly fair to the accused, and once, when asked whether those whom he tried appeared to have any general characteristics, he replied: "They are just like other people; in fact, I often think that, but for different opportunities and other accidents, the prisoner and I might very well be in each other's places."

No one would imagine, says "London Tit Bits," that any amusement could be derived from the perusal of such an uninteresting record as the list of the solicitors now practising; and yet, on glancing over the long columns, many curious combinations suggest themselves to the observant reader.

From an ecclesiastical point of view the result of the scrutiny is satisfactory, as there are 4 Popes, 2 Priors, 2 Priests, a Monk and a Nunn, 8 Palmers, 3 Abbotts, a Bishop, a Parson, 2 Chaplins, 3 Chapples, 2 Parishes, 6 Churches, a Kirk, 2 Deans, a Deakin, and only one Christian!

Royalty is well represented by 16 Kings and 2 Princes, and there are also 3 Dukes, a Lord and a Baron, 8 Knights, 2 Chamberlains, and 5 Pages.

The ornithological inquirer will be gratified on finding 11 Birds (who have unfortunately but one Wing), a Heron, a Fowle, 2 Daws, 9 Martins, 2 Parrotts, 2 Goslings, 5 Robins, 2 Peacocks, 2 Ravens, a Kite, a Quale, a Rook, and a Swan.

Rural scenery is present in the shape of a For rest, 16 Woods, 4 Fields, 3 Marshes, a Meadow, and 3 Lanes, which are beautified by a Lily. 6 Roses (with 2 Thornes), a Marigold, and 4 Budds.

Of the pleasures which attend a country life, there are to be found 9 Hunters, 8 Hunts, 14 Foxes, 1 Renard, and a Horn. There are also 11 Fishers, with 6 Brooks, 8 Lakes, and a Creeke; 3 Pike, 3 Salmon, a Smelt, and a Sole.

Cricketers will be pleased to find a Crickitts, a Batting, 3 Bowlings, 2 Balls, and 2 Fielders; but the fair sex will regret to learn that there are only 3 Batchelors.

Of the points of the compass there are 1 North, 1 Southern, 3 Easts, 3 Wests, and 2 Westerns. Seven Adams and 3 Eves may also be found, as well as a Bulley and a Fagge; 3 Miles and a Yard; a Head, a Bone, a Legge, 2 Hands, a Hatt, and a Boote; 3 Summers and 6 Winters; a Thunder, 4 Snows, a Frost, and a Breese.

Finally, there are 2 Wills, a Deedes, a Motion, and one Law!

The laws for thy great-grandsire made
Are laws to thee, — must be obeyed.
Must be obeyed, and why? Because,
Bad though they be, they are the laws. — Goethe.

Aristotle defined law to be reason without passion; and despotism or arbitrary power, to be passion without reason.

THERE has been at least one jury trial in the United States Supreme Court. It took place at the February Term, 1794, in the case of Georgia *v.* Brailsford. Chief-Justice Day presided, and is reported as laying down some very incorrect law. He is made to say that the jury are to determine the law as well as the facts, and then proceeds to tell them that the facts in the case are all agreed, that the only question is one of law, and upon that the whole court are agreed. Where so much was agreed, it does not clearly appear why the case was left to the jury at all. The accuracy of the report is questioned by Judge Curtis in The United States *v.* Moore, 1 Cur. Cir. Ct. 23 — *Law Reporter.*

Recent Deaths.

EX-JUDGE RICHARD LUDLOW LARREMORE, a well-known member of the New York bar, and for more than twenty years a judge of the Court of Common Pleas, died on September 13th.

Judge Larremore was sixty-three years old He had been in failing health since he resigned from the bench, nearly three years ago. He was born in Astoria, L. I., Sept. 6, 1830, and was graduated from Rutgers College, at New-Brunswick, N. J., in 1850. He studied law in the office of Robinson, Betts, & Robinson, and was admitted to the bar in New York in 1852. He was a Commissioner of Education from 1861 to 1864, and from 1868 to July, 1870, serving as president of the board during the last year of his service upon it.

Mr. Larremore was a member of the Constitutional Convention of 1867, and served on the Committee on Education and Literature. He received the degree of Doctor of Laws from the University of the City of New York in 1870. In 1870 he was elected a Judge of the Court of Common Pleas on the Democratic ticket. In 1876 Governor Tilden assigned him to duty as one of the Judges of the Supreme Court in the place of Judge Van Brunt. Judge Larremore was re-elected for another fourteen years' term in 1884 on the Tammany ticket, but served only seven years, resigning in 1891 on account of ill health. For two or three years before he resigned he was Chief-Justice of the Court of Common Pleas, succeeding Judge Charles P. Daly.

ISAAC G. GORDON, ex-Chief-Justice of the Supreme Court of Pennsylvania, died on September 4th.

He was born in Lewisburg, Union Co., Pa., Dec. 22, 1819. His father, Zaccheus Gordon, was a native of Northumberland County. His family was originally from Scotland, but the Judge's grand father, having removed to Ireland, they were known as Scotch-Irish. When a boy Judge Gordon learned the trade of a moulder, but having one of his feet accidentally injured by molten metal, he relinquished the work, and being of a very studious disposition and with a taste for classical and scientific pursuits he applied himself to study; and with the aid he received at the common school, and one term in the Lewisburg Academy, he acquired, by dint of indomitable perseverance, a liberal, classical, and scientific education. In 1841 he entered the law office of James F. Linn, of Lewisburg, continued his studies two years, and was admitted in April, 1843, to practise in the courts of Union County. That year he removed to Curwensville, Pa., opened an office, and soon afterward entered into partnership with George R. Barret. In 1846 he located at Brookville, became a partner of Elijah Heath, and continued in that business relation until Judge Heath removed to Pittsburg in 1853.

In 1860 and 1861 Judge Gordon represented the district composed of Jefferson, Clearfield, Elk and McKean counties in the State Legislature, and was Chairman of the General Judiciary Committee during his second term. In 1866 he was appointed by Governor Hartranft President Judge of the judicial district formed of the counties of Mercer and Venango, taken from the Eighteenth district, and served until the next general election. He continued his practice at the Jefferson County bar until he was elected to the Supreme Bench in October, 1873, and acquired a wide reputation as a learned and able advocate, apt in the trial of causes, full of resources, and exerting great influence over juries. His full term of fifteen years as Justice of the Supreme Court expired Jan. 1, 1889, he filling the position of Chief-Justice at that time; and he retired, possessing the confidence of the bar, of the Commonwealth, and the people to an exceptional degree.

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His Vanished Star, V., VI , Charles Egbert Craddock; Edwin Booth, Henry A. Clapp; Hack and Hew, Bliss Carman, A Slip on the Ortler, Charles Stewart Davison; A Kitten, Agnes Repplier; Wild cat Banking in the Teens, J. B. McMaster; A Russian Summer Resort, Isabel F. Hapgood; Love and Marriage, Sir Edward Strachey; On the St. Augustine Road, Bradford Torrey; Nibblings and Browsings. Fanny D. Bergen; The Isolation of Life on Prairie Farms, E. V. Smalley; The Moral Revival in France, Aline Gorren; The Technical School and the University, Francis A. Walker; Studies in the Correspondence of Petrarch, III., Harriet Waters Preston and Louise Dodge.

The Century.

Sights at the Fair (illustrated), Gustav Kobbé, William James Stillman, Wendell P. Garrison; Six Bulls to Die (illustrated), Mrs. Norman Cutter; The Taormina Note-Book (illustrated), George E. Woodberry; Benefits Forgot, X., Wolcott Balestier; A Glance at Daniel Webster, Mellen Chamberlain: A Woman in the African Diggings (illustrated), Annie Russell; Balcony Stories: I. Grandmother's Grandmother, II. The Old Lady's Restoration (illustrated), Grace King; The White Islander (*Conclusion*), Mary Hartwell Catherwood; The Horizon Line, Thomas Wentworth Higginson; The Census and Immigration, Henry Cabot Lodge; The Author of Robinson Crusoe (illustrated), M. O. W. Oliphant; Phillips Brooks's Letters from India, Phillips Brooks; The Heir of the McHulishes, in Two Parts, Part I., Bret Harte; The Test, Mary Thather Higginson; The Hiltons' Holiday, Sarah Orne Jewett; Leaves from the Autobiography of Salvini, Tommaso Salvini.

The Cosmopolitan.

This is a "World's Fair" number, and contains the best illustrations of the Great Exposition which have yet appeared. The several articles, fully illustrated, include: A First Impression, by Walter Besant: The Foreign Buildings, by Price Collier; Notes on Industrial Art in the Manufacturers' Building, by George F. Kunz; An Outsider's View of the Woman's Exhibit, by Ellen M. Henrotin; Foreign Folk at the Fair, by Julian Hawthorne; Electricity at the Fair, by Murat Halstead; Transportation, Old and New, by J. B. Walker; Mines and Metallurgy, by F. J. F. Skiff; Chicago's Entertainment of Distinguished Visitors, by H. C. Chatfield-Taylor; The Government Exhibit, by F. T. Bickford; Ethnology at the Exposition, by Franz Boas; Points of Interest, by Ex-President Harrison.

Harper's.

A General Election in England (illustrated), Richard Harding Davis; The Handsome Humes, a Novel, Part IV., William Black; Edward Emerson Barnard (illustrated), S. W. Burnham; An Albert Durer Town (illustrated), Elizabeth Robins Pennell. Gabriel, and the lost Millions of Perote, a Story (illustrated), Maurice Kingsley; The Letters of James Russell Lowell, Charles Eliot Norton; Texas (illustrated), Ex-Senator Samuel Bell Maxey; The General's Sword, a Story (illustrated), Robert C V. Meyers; Down Love Lane (illustrated), Thomas A. Janvier; Horace Chase, a Novel, Part IX., Constance Fenimore Woolson; The Diplomacy and Law of the Isthmian Canals, Sidney Webster; A Gentleman of the Royal Guard (illustrated), William McLennan; Riders of Egypt (illustrated), Colonel T. A. Dodge, U. S. A.

Lippincott's.

A Bachelor's Bridal, Mrs H. Lovett Cameron; In the Plaza de Toros (illustrated), Marrion Wilcox: A Girl's Recollections of Dickens, Elizabeth Wormeley Latimer; The Cross-Roads Ghost (illustrated), Matt Crim; Uncle Sam in the Fair, Charles King, U. S. A.; Ishmael (illustrated), Richard Malcolm Johnston; Hypnotism: its Use and Abuse, Judson Daland, M.D.; The Carthusian (illustrated), from the French; A Sea-Episode, C. H. Rockwell, U.S.N.; Men of the Day, M. Crofton

Political Science Quarterly.

Giffen's Case against Bimetallism, Charles B. Spahr; Theory of the Inheritance Tax, Mark West; Modern Spirit in Penology, Alexander Winter; Late Chilian Controversy, Prof. J. B Moore; The Prussian Archives, Prof H. L. Osgood; Ashley's English Economic History, Prof. W. Cunningham

Review of Reviews.

This is a number of fine variety and timeliness It epitomizes and synchronizes the whole planet for the month of August, 1893. It discusses the monetary crisis, the silver debate, the tariff outlook, the Behring Sea decision, the French attack on Siam, the progress of the Home Rule bill, the politics of the European continent, various matters at Chicago and the World's Fair, and a hundred other timely subjects, the whole number being profusely illustrated with portraits and pictures A sketch of Engineer Ferris and his great wheel is a singularly readable and attractive article, and Mr. Stead contributes a most noteworthy character sketch of Lady Henry Somerset.

Scribner's.

Izaak Walton (illustrated), by Alexander Cargill; A Thackeray Manuscript in Harvard College Library, by T. R. Sullivan; Chartres, by Edith Wharton; Clothes Historically Considered (illustrated), by Edward J. Lowell; An I. O. U. (illustrated), by Margaret Sutton Briscoe; The Machinist (illustrated), by Fred. J. Miller; The Tides of the Bay of Fundy (illustrated), by Gustav Kobbé; The Copperhead, Chapters VI.–VIII., by Harold Frederic; A Letter to Samuel Pepys, Esq, by Andrew Lang; The Opinions of a Philosopher (illustrated), *Conclusion*, by Robert Grant; Richardson at Home (illustrated), by Austin Dobson.

BOOK NOTICES.

PRINCIPLES OF THE LAW OF INTEREST, as applied by Courts of Law and Equity in the United States and Great Britain; and the text of the General Interest Statutes in force in the United States, Great Britain, and the Dominion of Canada. By SIDNEY PERLEY, of the Massachusetts Bar. George B. Reed, Boston, 1893. 433 pp. Law Sheep, $5.00 net.

This is a remarkably clear and comprehensive work upon a very important subject, and one to which little attention has been given by our law-writers. The law of interest is much more complex than one would naturally suppose, and on many questions relating to it there is such a diversity of opinion that it is impossible to harmonize the decisions. The extent to which the subject has occupied the courts may be inferred from the fact that in this treatise nearly seven thousand decisions are cited. The book has been prepared with evident care and good judgment. It cannot fail to be of great assistance, and we unhesitatingly commend it to the profession as a most valuable addition to our legal text-books.

The contents are as follows: Definition and History of Interest; Contractual Interest; Interest allowed as damages; How Interest is barred; Rate of Interest; Compound Interest; Partial Payments; Pleading and Practice: Conflict of Laws; Usury; Interest in Equity; Effect of Statute of Limitations on Interest; Interest Statutes.

THE INFRINGEMENT OF PATENTS for Inventions, not Designs, with sole reference to the opinions of the Supreme Court of the United States. By THOMAS B. HALL, of the Cleveland (Ohio) Bar. Robert Clarke & Co., Cincinnati, 1893. Law Sheep, $5.00 net, delivered.

This new book by Mr Hall is a valuable addition to the works on Patent Law, and will prove of much assistance to all interested in the subject. The author, without personal discussion, presents the decisions of the Supreme Court of the United States upon the subject of infringement of Patents. The arrangement is excellent, and reference to any desired point is easily found. We commend the work to the profession as one of real merit.

THE LAW OF FOREIGN CORPORATIONS, a discussion of the principles of Private International law, and of local statutory regulations applicable to transactions of foreign companies. By WILLIAM L. MURFREE, Jr., of the St. Louis Bar. Central Law Journal Company, St. Louis, Mo., 1893. Law Sheep, $4 00.

This is a work which should prove of interest and value to the profession. Covering a subject which has received but little attention in general treatises on corporations, and covering it fully and exhaustively, it should receive a hearty welcome. The subject is an important one, and one which is constantly engrossing the attention of both bench and bar. Mr. Murfree appears to have done his work carefully and conscientiously, and has given us a reliable and trustworthy work. We know of no better book for those who desire the best information upon the subject.

INDEX TO THAYER'S CASES ON EVIDENCE. Charles W. Sever, Cambridge, Mass.

Prof. James B. Thayer has had a full index to his admirable selection of Cases on Evidence prepared, and *it will be presented free* to all owners of the work upon application to the publisher through the dealer of whom they purchased it. This index greatly enhances the value of the book, and renders it an excellent working tool for the practising lawyer.

A BRIEF DIGEST TO VOLUMES XXV. TO XXX. OF THE AMERICAN STATE REPORTS, together with an index to the notes, an alphabetic table of cases reported in Volumes XXV to XXX., and a numerical table of cases reported in Volumes I. to XXX. inclusive. By C. B. LABBATT. Bancroft-Whitney Co., San Francisco, 1893.

The liberality of the publishers in *giving away* to the patrons of this series of Reports this valuable

index will be fully appreciated. The work has been most thoroughly prepared, and the arrangement is in every way admirable.

A Treatise on the Writ of Habeas Corpus, including Jurisdiction, False Imprisonment, Writ of Error, Extradition, Mandamus, Certiorari, Judgments, etc., with Practice and Forms. By William S. Church. Second edition, revised and enlarged. Bancroft-Whitney Co., San Francisco, 1893. Law Sheep. $7.50 net.

The first edition of this treatise was published in 1884, and since its appearance it has been recognized by the profession as the standard work upon Habeas Corpus. During the nine years which have elapsed since the publication of the first edition the subject has been developed to such an extent as to require a new edition. In the present work, two new chapters have been added, — one on "Appellate Practice," and the other on the "Nature of the Writ," and over twelve hundred additional cases have been cited. Several of the chapters of the old work have also been amplified. In its revised form the treatise is eminently satisfactory, and it will undoubtedly long continue to hold its position as by far the best book ever published on this important subject.

Patent Office Manual, including the law and practice of cases in the United States Patent Office and the Courts holding a revisory relation thereto. Also, an Appendix of Copyright decisions, etc. By George H. Knight. Little, Brown, & Co., Boston, 1893. Law Sheep. $5.00 net.

The author of this work, a solicitor of patents; has long been known as an expert in his profession, and is in every respect admirably qualified to prepare a manual of this important branch of the law. The purpose of the work is to facilitate the labor of inventors and attorneys in the United States Patent Office by a convenient summary of the more important rulings governing proceedings in that bureau. That the author has brought to his task all the advantages of his long experience cannot be doubted upon a careful examination of his book. The rules and legal points are concisely and clearly stated, and the authorities cited directly to the point. As an aid to patent lawyers we know of no work which seems so fully to meet the requirements of a busy practitioner. It will prove a real *vade mecum* on the subject.

The contents are: I. The Patent Franchise; II. Decisions relating to Patents for Inventions; III. Decisions relating to Patents for Designs; IV. Decisions relating to Trade-Marks and Labels; Appendix A, Copyrights; Appendix B, Foreign Patents.

Zachary Phips. By Edwin Lassiter Bynner. Houghton, Mifflin, & Co., Boston and New York, 1892. Cloth. $1.25.

Mr. Bynner, in this work, the last written before his untimely death, gives us another of his charming historical novels. It deals with exciting times and events, in which Aaron Burr is a prominent actor. While perhaps not equal in interest to "The Begum's Daughter," which we consider Mr. Bynner's masterpiece, it will hold the reader's attention to the very end. It is admirably written, and the pen portraits of the characters are unusually strong.

Dr. Latimer. A Story of Casco Bay. By Clara Louise Burnham. Houghton, Mifflin, & Co., Boston, 1893. Cloth. $1.25.

The struggles of three young independent sisters striving to make their way in the world, in which they are most materially assisted by Dr. Latimer, a man whose sole object in life seems to be to make others happy, form the subject matter of this story of Miss Burnham's. Of course the doctor falls in love with one of the young ladies, and though the course of true love is somewhat disturbed by the appearance of his wife, whom he had supposed to be dead, the end is eminently peaceful and happy. The other two girls also have their love affairs, which terminate satisfactorily to the parties concerned. The story is interesting, and in parts exceedingly well written.

A new volume, which is expected to attract much attention, has just been written by the Hon. L. E. Chittenden, whose "Personal Reminiscences," published last spring, was so widely and favorably noticed by the press, and whose "Legal Reminiscences" are now delighting the readers of "The Green Bag." The forthcoming volume is entitled "An Unknown Heroine," an episode of the war between the States. The scene is in the Shenandoah Valley; and the story recounts the rescue from impending death of a wounded Union soldier by a Southern woman, whose husband, a Confederate soldier, was at the time a prisoner of war. The facts, which are well authenticated, are related in Mr. Chittenden's inimitable style, and would perhaps in a work of fiction be considered improbable, if not impossible. The work is one of thrilling interest, and will add materially to the already well-established reputation of the author.

The publishers, Messrs. Richmond, Croscup, & Co., 9 East 17th St., New York, expect to have the book ready for delivery in October. It will be illustrated with portraits and map.

Yours sincerely
David Blaikie

The Green Bag.

VOL. V. NO. 11. BOSTON. NOVEMBER, 1893.

JUSTICE SAMUEL BLATCHFORD.

BORN March, 1820, — DIED July, 1893.

BY A. OAKEY HALL.

THE late Justice Blatchford was the second "Samuel" from New York State who sat on the bench of the Federal Supreme Court after having been a judge in other courts. The first "Samuel" was Samuel Nelson, who entered the highest court on an exit from the Chief-Justiceship of New York State.

Samuel Blatchford was born in New York City, where his father was in eminent legal practice, and where the latter acted as American Counsel for the Bank of England, as well as for the National Bank at Philadelphia. The future judge was a precocious lad, and was entered at Columbia College when only thirteen years of age. He entered his father's law office in his seventeenth year. At that time, 1837, the legal profession had two branches, — Attorneyships and Counsellorships, with separate examinations and diplomas, and with stated long terms of studentship; therefore, not until 1843 was the young Samuel Blatchford admitted as counsellor. His father was then a prominent member of the Whig party and an intimate friend of William H. Seward, who was serving as a State Senator. The future Secretary of State had greatly fancied young Blatchford; and when Mr. Seward was chosen governor of New York he selected Samuel as his private secretary, and for two years the latter resided at Albany, where he was thrown into the society of distinguished politicians and statesmen. That unvaried courtesy and geniality which was Judge Blatchford's exercised possession throughout his career made him a most popular secretary, and greatly contributed toward increasing the popularity of his chief. When the latter quitted office and removed to his old home at Auburn to resume the practice of law, he invited Mr. Blatchford to accompany him and become a full partner. Almost immediately the young counsellor took high rank at the bar of the Midland Circuits, and became greatly esteemed by his elders. He also took a leading part in the exciting politics of the Tyler and Van Buren period. But for politics he had no especial taste, — preferring to win laurels in his profession, with the principles of which he was deeply imbued; and he was never a "case lawyer," arguing from and pursuing precedents in preference to purely legal science. He, however, sighed for the large legal field of his native metropolis; and after a successful novitiate under the favor of the elder Seward, young Blatchford and young Clarence A. Seward, an adopted son and nephew of the ex-Governor, migrated to New York, where they established the firm of Seward & Blatchford, with the senior Blatchford as jurisconsult of the office. Almost immediately the firm acquired prominence in commercial and legal circles, and especially took lead in the practice of the United States District and Circuit Courts, — an experience which afterwards greatly militated for the success of the after Federal judge. Mr. Blatchford at

the bar was a noted pleader and conveyancer. He displayed fine judgment, and was greatly sought after as an adviser. He was happier at arguments *in banco* than before juries,—Mr. Seward as a natural orator taking precedence at *nisi prius*. Mr. Blatchford soon became prominent in social circles, and through his suavity and conversational powers was a welcome guest at private and public entertainments. An an alumnus of Columbia College, he took great interest in its welfare, and was soon honored by being elected as one of its trustees; and later that college conferred upon him the degree of LL.D. When, during President Grant's first term, a vacancy occurred on the bench of the District Court of the United States in New York City, he was selected to fill it. From there he was, in 1878, promoted to be Federal Circuit Judge. How zealously and ably he fulfilled those judicial duties is illustrated by the pages of Benedict's Reports and in the twenty volumes of Blatchford's Reports. Legal history contains many instances of the success and value of reports that are issued under the editorship of a judge who gave, or assisted in giving, the decisions reported.

President Arthur, when a vacancy occurred on the Federal Supreme Bench, was expected to nominate Roscoe Conkling, and doubtless would have answered the expectation, only it became known that the brilliant orator preferred to remain at the bar rather than accept the intended post. President Arthur and Mr. Blatchford had been brought together in friendship and in legal conflicts, and the former at once turned to the latter, and named him to the vacant place. Public, legal, and press opinions immediately eulogized the selection, and Judge Blatchford was soon unanimously confirmed.

In New York City the Bar Association members often spoke of him as the "Chesterfield" of the Bench, owing to his grace and courtesy and strict observance of the first principles of amenity. He inherited graceful manners from his mother, who as Miss Julia Ann Mumford (daughter of a distinguished Metropolitan publicist) was a noted belle in Knickerbocker society. It is certain that no one ever heard from Judge Blatchford at chambers or when upon the bench an ill-natured criticism or a hasty or spasmodic remark calculated to ruffle sensibilities in the slightest degree. He was remarkable for his considerate treatment of the young practitioner. He was a patient listener. During an argument he would sometimes interrupt to sift propositions, and could impliedly by apt questions convey to the advocate his own judicial views as to pending matters without appearing loquacious or to be captiously interfering. He was never known to be reading cases or points of argument during the speech of counsel, as is the vexatious wont of many judges. He was eminently dignified on or off the bench without incurring a suspicion of pomposity. His heavy eyebrows seemed to be emphasizing questions; and when he wrinkled his ample forehead, his brain seemed to be beating time to the thoughts offered to his hearing.

He was probably the greatest Admiralty judge this country ever knew. What the Admiralty brother of Lord Eldon was to England in his day, Samuel Blatchford was to the United States. Mr. Hamilton L. Carson of the Philadelphia Bar once remarked of Judge Blatchford: "He determined rules of navigation on the high seas; he ruled upon the speed of steamers during a fog, and as to process of foreign attachment, to reinsurance of a charter party, to jurisdiction of damages not done on the water." Judge Blatchford rendered a notable decision as to an admiralty seizure of a municipal vessel for a maritime tort, and another in which he discreetly mingled flashes of humor with his logic when considering whether damage to a cargo by rats was a peril of the sea.

Judge Blatchford was equally judicially effective when considering cases in patent law, or under the rapidly throttled Bank-

ruptcy Statute fathered by Secretary Chase, or under copyright controversy. In the course of his judicial duties when in the local Federal tribunals, he heard the celebrated arguments on the letters patent for insulating telegraph and cable wires with guttapercha, and as to whether a common carrier knowingly carrying an infringed patent article for purposes of ultimate sale could be made liable as a wrong-doer. He settled in favor of the Brooklyn Bridge its legality as a structure over navigable waters.

In the libraries of the Bar Association in New York City, of its Law Institute and in the Albany State House, Blatchford's reports show by the appearance of their usage how valuable they have been considered by lawyers. In writing opinions he was, perhaps, lacking in that compression which marks the opinions of British judges in the last century. But he was never verbose nor tyronic, nor given to centonism. His expressions and rhetoric were ever his own, and not purloined from the briefs of counsel.

The most elaborate opinion delivered by Justice Blatchford (*see* 132 U. S. Reports, p. 75) in the Supreme Court was in the case of the Pennsylvania R. R. Co. *v.* Miller, which decision held that the company was bound by a new provision of a new constitution of the State that imposed fresh burdens not contemplated by its charter; and that exemptions from future legislation to a company in order to control must be expressed in the original charter. Justice Blatchford largely participated in such judicial action as was demanded from the U. S. Supreme Court by the consideration of an Anti-polygamous statute applicable to the Mormons; by certain "Granger Cases" in modifying decisions previously given; by the Terry murder case in San Francisco, and by the New York Electrocution Statute of capital punishment that was questioned as inflicting a cruel and unusual punishment.

Justice Blatchford was not addicted to dissenting opinions. He was devoid of "fads," prejudices, and obstinacy of views. He readily grasped a major premise, and as readily could seize upon the sophism of a minor. Even when at the bar he was famed for logical dealings.

He never, whether advocate, jurisconsult, or judge, regarded law as an abstract principle only, but as a rule of affairs and as the supreme force in government. But he took literature and society in the concrete, — so to illustrate the idea. No one enjoyed a good poem or novel more than he did, whenever he had leisure moments, and it may be well fancied those were few. Indeed it may be well said that all painstaking judges are devoid of leisure; for when an incumbent of the bench leaves court, he must take the business of thought, research, and comparison home with him. The ordinary layman who sees a judge sitting composedly in his official and cosey chair day after day, probably thinks judicial life an easy method of earning subsistence. But listening is the smallest part of judicial work. He must in his library winnow the grain of result from perhaps much argumentative chaff of verbiage or sophism or inaccurate illustration and precedent. He must award for decision reasons that will bear the test of time; and piles of manuscript soon fill his desk. Even the merchant knows the worry and perils of discriminating thoughts on the risks of sound judgments to be reached.

Nevertheless Judge Blatchford could in society and at his old club — often visited, so as to obtain attrition of mind and disposition — show that he could forget for the moment his brain work, and socially display the versatility of his emotional nature. He readily took, and as readily gave repartee. He held a merry and hearty laugh. His smile at times was womanly in its magnetism. He honored the power of the newspaper press, and could prove interestingly discursive on the topics of the day; nor did he — yet unobtrusively — forget his early interest in the political questions of the day, foreign or domestic. And his judgment upon current affairs was as impartial as were his judicial

results. In fine, he was a great gentleman as well as a great lawyer; and his associates in society as upon the bench equally loved and admired him. In Washington society he well preserved all those charming traditions which belong to the judicial times of Jay and Marshall, Woodbury and Curtis, McLean, Story, and Chase.

Judge Blatchford was a man of fine physique and of well-balanced temperament; and he had known little of illness until his last days. He was finally overworked with all his husbandry of strength. But then, what conscientious and work-loving judge is not overworked? His death was physically peaceful and tranquil, and was mentally filled with contentment over the summons. New York mourned his loss from judicial and social life as it had previously mourned that of such of her former Federal judges as Betts, Nelson, Woodruff, Johnson, and Ward Hunt. The latter's death made way for Mr. Blatchford, who in turn has made way for the grandson of a great New Jersey jurist whose learning lives supremely in the reports of that State. A judge enjoys better posthumous fame than the practising lawyer. The latter may live in biography, but the former enjoys the immortality of the reports.

Upon Friday, Oct. 10, 1893, a large representation of the bar in attendance upon the Supreme Court in Washington met, during a short recess of its judges, to consider memorial action respecting the death of Justice Blatchford. Ex-Senator Edmunds of Vermont in the chair gracefully and feelingly aunounced the object of the assemblage. Taking as texts some eulogistic resolutions prepared by a committee of which Julien T. Davies, a son of a late Chief-Justice of the New York Court of Appeals, was chairman, addresses were made by several lawyers. Among them was Joseph H. Choate of the New York Bar, who eloquently made panegyric of the deceased jurist, and emphasized his mingled courtesy, urbanity, industry, and learning.

THE ENGLISH AND AMERICAN BAR IN CONTRAST: MR. OAKEY HALL'S OPINIONS CONSIDERED.

ALTHOUGH the world has become very cosmopolitan within the last fifty years, yet nothing testifies so much to the variety of the conditions under which people live on different sides of the Atlantic as the crowds of tourists who are continually seeking something new and interesting in countries away from their own homes. One of the mistakes which the travelling portion of any country is likely to fall into is, that institutions which are managed under different ideas or are subject to different customs than those which they find ruling in their own country do not supply the wants for which they are intended, or that there is no necessity for their existence at all. I remember once hearing an animated discussion between a French and American lady, in which the latter severely commented upon a French custom which she thought limited the freedom of the fair sex in France. She was cut short by this reply from her French friend, "Pourtant, madame, nous sommes françaises, et vous, vous êtes américaines." There are many of your "blue blood" Americans who would be horrified at the sight of a French lady drinking a bottle of claret at her midday or evening meal; and yet in France people would stare in amazement if she were so unorthodox as to drink water. Londoners think that the overhead railway of New York, and its cloud of electric wires are little short of being intolerable. New Yorkers wonder how business is done in London, for they tell you Englishmen have not awakened to the necessity of "rapid transit," although countless trains and thousands of public conveyances are plying through the great business centres for eighteen hours out of the twenty-four.

It is not then a matter for wonder that English lawyers should find their brethren across the Atlantic mercenary, wanting in dignity, and unprofessional among themselves; and that your American "brothers" should wonder at the formal dress and manners of English lawyers, their cold and logical delivery in court, the solemnity of the proceedings before the judge. But English lawyers are under the impression that nowhere in the world is the administration of justice marked with fewer blemishes than in the home of the common law; and that the entire machinery of the law, such as it is found in England, works with less positive injury to the subject, and with as much advantage, as any system of law in any other country on the globe. It is true that in the Old World there are many customs observed, many principles followed, which are supposed to be useful, and which must yield before the answer "Cui bono," by which Mr. Oakey Hall (in the May number of the "Green Bag") wishes to test the custom which allows barristers alone of all other people in the world, to-day, to array themselves in the costume which the courtiers of England and France affected two hundred years ago. May I not ask of the black robe, which the judges of the Supreme Court of the United States alone have the privilege of wearing, "Cui bono?" And if the gown may be used as a mark of distinction, why not the "band" and wig? "Cui bono" the gilt lace and plumed helmets which American officers have not disdained? From our point of view the answer to Mr. Oakey Hall's question may be found in Mr. Bagehot's book on the English Constitution. He points out that there are two parts in our Constitution, each of which discharges its own proper functions, — the working part and the theatrical part. The Queen and Royal Family compose the theatrical part; but I am not aware that it is of any direct utility; and yet no one acquainted with English public feeling will deny that this royal show is of some indirect advantage in the administration of public affairs.

Americans are to be congratulated that their government requires no such expensive ornament, but I think few people will be inclined to admit that the government of the United States is conducted with better results to the people at large, notwithstanding its freedom from the burden of royalty. The truth is, what suits the English in England would not suit the Americans in America. An American seems to feel that the administration of justice needs no formula to make it impressive. We consider that a lawsuit is such an important thing that when a man enters a court of justice, he should feel he is taking a step outside of his ordinary business avocation; he should be alive to the responsibility of his actions; he should understand that the temple of Themis does not wear the same ordinary look as the market-place. It is difficult to estimate the practical utility of this solemnity. Most people who have lived in England or Ireland will acknowledge that it is of some use; and I say we can no more find a reason for adhering to customs which appear to mean nothing, than that, even in America, people find it necessary to don an evening dress when attending a "soirée;" and that I am not aware that any gentleman on your side of the Atlantic has yet seen fit to answer the question, "Cui bono?" when asked of a claw-hammer coat and white cravat.

Americans in London who come in search of lawyers will no doubt find some difficulty in talking business matters to counsel without having first seen a solicitor. The consideration of this difficulty leads to the more important question of the amalgamation of the professions. I have spoken to many American lawyers on this subject, and they all seem to prefer the dual system to that which obtains in their country. An American lawyer has to see clients, prepare his case, read up the law which bears upon the facts at issue, and plead in court. As a result, from my information, I find the fees as high in America as in England, cases not so thoroughly prepared, the law not so well understood, the lawyer not so highly respected. Indeed, one of the worst results that flows from the amalgamation of the professions in America, is the dependence of lawyers upon a repute which they must make for themselves, "*coûte que coûte.*" The old motto, "*Non tam turpe fuit vinci, quam contendisse decorum,*" finds no place in America. A lawyer's name is made by the number of cases he wins, not by the knowledge of law, nor by the power of combining, of elucidating, and of explaining facts which he shows to the court and jury. Hence the personal acrimony, the intense jealousy, the mortal enmity, which a short acquaintance with American lawyers is sure to bring to light. In England a solicitor will recognize the ability of a barrister who makes a good fight in a losing battle. In America a lawyer is known only by the results he produces. As a consequence, in every lawsuit, it is not only the interests of his client which are involved, but the interests of the lawyer himself are no little incentive to his efforts to convince the court and jury. The lawyer's aim must therefore be, not that justice be done, but that he should obtain a verdict, at all costs. In a trial in an American court, I am afraid witnesses are too often previously "drilled" upon what they are to testify. Lawyers are not above resorting to "sharp practice" during the trial; as, for example, suddenly calling in a piece of testimony which is not legally permissible, for the purpose of influencing the jury, or forgetting the respect due to a fellow practitioner, as I have seen on one occasion, when a counsel called on the opposing counsel to testify to something which he had inadvertently said in a conversation with him, as to facts which the witness, who had left the stand, had deposed and contradicted.

Lawyers in America do not measure their conduct in a case by the motto "*Fiat justitia ruat cælum.*" They are too much dependent upon their client's estimation to risk such impartial comment as the motto

would imply. A client only measures the value of a lawyer by the successful result he may have occasioned. A solicitor, who understands the law and facts of the case, does appreciate the skill of a lawyer and advocate, although he may be unsuccessful in any particular instance. Where a standard such as I have shown prevails in the United States is set up and acted upon for the purpose of judging of a lawyer's efficiency, it is not the most learned and ablest lawyer who succeeds best, but the most unprincipled. Certain lines of Ben Jonson were perhaps applicable in England two hundred years ago; but I think many Americans to-day approve of the sentiment contained in the following couplet as applied to legal practitioners in their own country:

> "Good works wonders now and then:
> Here lies a lawyer, — an honest man."

I cannot help thinking your learned contributor underestimates the probity of English lawyers, and overestimates that of his brethren in the United States. He lays too little stress upon the fact that every client in England who objects to his solicitor's charges may have the bill referred to a taxing-master. From my experience, I do not think the bills of costs of English lawyers are, as a rule, higher than those which clients have to pay on your side of the Atlantic. Indeed, from one experience I am inclined to admit that Lord Brougham's definition of a lawyer — "a gentleman who rescues your estate from your enemies and keeps it for himself" — is more strictly true in America than in England. I refer to a case where a prominent lawyer in one of your great cities made a charge of $750 for a few searches in the Probate Court, and for having sent (in all probability) some one from his office into court to make a motion. I have seen cases, and heard of others in the United States, where attorneys have most flagrantly "plunged their clients into needless litigation." As an example, a lawyer is appearing for a client at one of the municipal courts. The judgment goes against his client, who is immediately advised by his counsel to appeal to the Supreme Court. When the case again comes on for hearing, the counsel, with the supremest indifference, advises his unfortunate client to plead guilty, or fights a sham battle to save appearances. I have never known practice of a similar kind to be followed in the United Kingdom, and I am not aware that even when cases are appealed the expense is great, considering the importance of the facts involved, nor that it is relatively greater here than in America. We have long since grown tired of "exceptions." We find that an appeal is the simplest way of testing the validity of a judgment; and where is the utility of reserving exceptions, when an application for a new trial may as well be made? The cases in which a new trial is granted are practically the same here as in Massachusetts. And here also, as in Massachusetts, we do not speak of a "calendar of causes at issue," but of the Trial List. Judging by the article of your learned contributor, it does not seem that pleading in the alternative is allowed in all the States of the Union. It is allowed, however, in Massachusetts, and I scarcely think Boston or English lawyers who consider the interests of their clients are apt to find fault with an arrangement which spares their clients the costs of two suits; and I am sure there, as well as here, many unjust actions are defeated, and much time spared to the public, under a system of Pleading which allows interrogatories and discovery of documents. Our conveyancing is now, perhaps, simpler than yours. For example, in Massachusetts, at least, the four covenants — right to convey, freedom from incumbrance, quiet possession, and further assurance — are always inserted in a Warranty Deed. We get rid of these covenants by simply stating that the grantor conveys as "beneficial owner." Then, how much injustice is still done in your courts by the law of "variance" as it now stands,

and which no longer disgraces our rules of procedure!

The right of either party to select a special jury seems to us to be quite intelligible. The horror of a "jury of farmers" which seems to be a kind of nightmare to American practitioners, is unknown to English lawyers. We know how to sympathize with you in your efforts to convince twelve good men and true, who know nothing beyond the necessity of a rotation of crops and the latest improvements in agricultural implements, of the utility and newness of some complicated mechanical patent. There is nothing irrational in requiring men above the average intelligence to pass upon a subject which the average intelligence cannot grapple. I assume challenges are never used, except where there is some necessity for them. In England, happily, most people have implicit confidence in the fairness of the men who swear a "true deliverance to make," and experience has scarcely disappointed this opinion; but we have a shrewd suspicion that you mean more by a "good jury" than you would like to confess. In Ireland, owing to the unfortunate political condition of the country, it is not uncommon to see the Crown go through the entire panel in exercising its right of ordering jurors to "stand aside;" and there both parties frequently exhaust their right of challenge.

I should have thought that the last thing to be found fault with by any person, much less by a lawyer, is the "absence of emphatic objections" in a court of justice. If I understand the learned contributor to your May number to mean by "emphatic" objections objections which are pressed upon a judge, notwithstanding his previous ruling, it seems to me such a course necessarily implies that the judge is weak-minded or does not know his own mind, or that his knowledge of the law is at fault. Nothing, it is true, would be considered to be in worse taste in our courts than to try and make a judge swallow his own words. No one ever attempts it, for the men who practise before the judges of the High Court are well aware that a long course of legal training with long years of experience have made them thoroughly capable of grasping every statement of fact and law as soon as it is intelligently stated, and we take it for granted that his conscience never yields to any external consideration. Such being the case, if the judge is of opinion that an objection is untenable when first put, how will more emphasis generally guide his judgment to a different conclusion? And it is not any "affectation of deference" towards the judge, or any feeling of his "omnipotence" that determines the respectful conduct of barristers towards the bench. The deference is real, because it is generally merited, and because at least some deference is necessary. The probity of the English judges, their untiring patience, their courtesy to the members of the bar, their encouragement to its junior element, have gained such an honorable name for them, and have ensured such respect for them, as may well be the model, if not the envy of every bar and judiciary in the world.

I fancied any comparison made between the appearances of the English and American courts of justice should result in favor of the former. When I read Mr. Oakey Hall's description of the courts at Westminster, I involuntarily repeated the lines of the Scotch poet:—

> "Oh, would some power the giftie gie us
> To see ourselves as others see us."

The only objection I had previously heard made to the court-rooms was, that the judge could not hear the barristers, and that the barristers could not see the judges; but this is merely an accident, or, perhaps, "an accident of an accident." In America it is not uncommon to find the benches assigned to the bar occupied by people who have no other business in court than that which idle curiosity dictates. And if you are sensitive to the stale flavor of the "weed," and the frequent use of spittoons, with the thermometer standing at 80°, Madame Roland's famous words may spring to your lips: "Justice, what crimes are wrought in thy name!"

American lawyers seem to be heedless of the remark which Lord Mansfield once made to a barrister of very diminutive stature, who he thought was sitting, when addressing the court: "It is usual for barristers to rise when addressing the Court." I have seen lawyers in your own city addressing the Court certainly for some minutes, and retaining their seats with the greatest complacency. If this is a matter of small importance, why not introduce the hired "claque" which historians tell us the famous lawyer Domitius Afer referred to as ushering in the decline of the Roman bar?

After a long residence in London, I cannot see how Mr. Oakey Hall fails to understand "the carriage, demeanor, and address" of English advocates. The carriage, demeanor, and address of the English people is generally so sober as to have earned for them such uncomplimentary criticisms as may be found in the writings of writers of such different intellectual scope as Max O'Rell, Carlyle, and John Stuart Mill. Pope said:—

"Words are like leaves, and where they most abound
Much fruit of sense beneath is rarely found."

The English people are not a talkative race, except on rare occasions, when matters of deep import are under discussion. They are distrustful of eloquence, although no one who remembers the orations of Mansfield, Brougham, and Erskine will say they are incapable of eloquence, or believe in the theory of "play-acting" and "straight-jackets," which Mr. Oakey Hall humorously propounds. Ceremony rules the French law-courts more rigorously than those of England, and yet any one who has ever listened to the impassioned address of any of the leaders of the French bar, clad in their gowns and bands, and wearing "birettes," or square caps, will scarcely be convinced of the depressing effect of the use of the toga on oratorical effort, or of the inspiration drawn from running the fingers "caressingly" through the hair.

From a European standpoint the position of the American Bar may be characterized by the words of a famous French lawyer. It is "a group of men without traditions, without discipline, connected only by the kinship which similar occupation gives, and seeking what every person is looking for, to transact the affairs of the public as a means to help themselves on their road to fortune. The era of business has dawned for them, but that of Art has expired."

Barrister.

LEGAL REMINISCENCES.

By L. E. Chittenden.

IV.

THERE were five in the party, all interested in a matter pending before a committee of Congress which gave us a hearing when convenient, sometimes as often as once a week. Four had been Californians, — Forty-niners. Three had made their fortunes, and come to the East to double them. One had made and lost a half-dozen fortunes. Just now he was a Senator. His friends said he was "strapped," meaning thereby that he had no money. He preserved a jolly frame of mind, however, and was waiting for something to turn up. The Senator and two of the party were six feet in stature and full to the overflow with energy, — what were called on the West coast *brainy, scopy* men, ready for any enterprise and equal to it. The fourth was a little fellow, always trained to his fighting weight of one hundred and thirty pounds. None of the four lacked courage, of which the little one had his full share. The fifth in the party was the writer, who so far as these incidents are concerned was merely their recorder. He went by the sobriquet of Judge; the others responded to the titles of Senator, Contractor, Drover, and Quicksilver, indicating their several occupations.

They were lying around on the bed, lounge, or any convenient place in the Judge's room at Willard's, when the Californians began to exchange stories. This was one of the stories told in the course of that evening.

Contractor. You mentioned to-day, Judge, the name of "Pettibone." I wonder if you ever knew my friend, Sam Pettibone? I think Sam Pettibone had more sand than any man only sixty inches high that I ever met. Yes, Sam Pettibone was a good all-round fighting Yankee of the Presbyterian persuasion. I think he was a Vermonter.

"It is very probable," said the Judge. "The Pettibones are an old and reputable Vermont family."

"Sam was no discredit to a respectable family," said the Contractor. "I once saw him abate a public nuisance in the most expeditious and respectable manner."

"Tell us about it," was the demand of the whole party. The Contractor thereupon gave us the following history.: —

"Keep in your minds that Sam Pettibone was a little fellow, no larger than Quicksilver here, not an inch over five feet, with a weight of a hundred and thirty pounds. I was a dealer in miners' tools and supplies. One of my collecting tours brought me to a new mining-camp in Devil's Gulch, where I took dinner with the boys. There was only one table; it was under a shed long enough to dine a hundred men at a time. Sam Pettibone sat beside me; around the table were at least a hundred men. Directly opposite Pettibone, occupying two seats, sat 'Jack Roach,' the worst man in that part of California. He was credited with any number of murders, robberies, and other crimes, — he was a giant in strength and size, utterly reckless, accustomed to take anything he wanted to eat or drink without payment, and if any objection was made, 'to clean out the shanty,' as he expressed it. He had so completely terrorized the country that few thought of making any resistance to his demands. He was a walking arsenal. On this occasion two large revolvers were stuck in a belt filled with cartridges; the handle of one bowie-knife protruded from his boot-leg, and another from between his brawny shoulders, and a repeating, breech-loading rifle he claimed was never beyond the reach of his hand.

"With many oaths and in a loud voice on this occasion he was vaunting the merits of his rifle. It was the (oath oathest) best gun on the (oath, oath) West coast. By (oath, oath), he always knew she would keel up a man at five hundred yards; but, by (oath), he never had a chance to try her until to-day. As he was coming down the cañon, he saw 'Ingin Jo' sitting in front of his tepee on the opposite side of the river. He drew up an' onhitched her off-hand *just for fun*, an' keeled Jo over as neat as if the distance had only been forty rod!

"Here the brute burst into a horse laugh. As no one responded to it, he took offence, which he proposed to vent upon the smallest man within his reach. This was Pettibone. 'Here, you milk-faced infant over there! You don't seem to like my story. Wall, what you got to say about it any way, you dunghill rooster?"

"'I do not like your story, Jack Roach!' said Pettibone, who knew that every eye at the table was upon him. 'And what I have to say about it is that, in my opinion, a man that murders an Indian for fun will murder a white man for money!'

"The brute roared like a mad bull. 'Let me get at him!' he screamed, as he jumped upon the table and strove to draw one of his pistols. We thought Pettibone had no show. But Roach's pistol seemed to stick for a moment in his belt. That moment cost him his life. Pettibone neither quivered nor retreated. He waited until every one saw that Roach intended to kill him, and then something flashed at the end of his right arm and hand, and Roach fell forward with a knife through his body and heart.

"Then it was time for me to interfere. 'Where is your justice of the peace and sheriff?' As two men came forward, I whispered to Pettibone: 'Keep quiet! I am going to take care of you.' I said to the justice, 'Call your jury of inquest!' He named six good men, who came forward and were sworn. The jurymen all declared that they saw the whole affair, and wanted no evidence. I insisted that Pettibone should be formally arrested. The jury immediately found a verdict of 'justifiable homicide in self-defence,' adding that Pettibone was awarded 'the thanks of the camp *for abating its greatest nuisance*.' Pettibone had established his reputation in the mining-camp of Devil's Gulch!"

* * * * * * *

I had never seen the face or any photograph or portrait, or read or heard any description, of the man, and yet the moment he entered the door of the court-room of Justice Hunt, I said to myself, "That is Judge Terry!" Turning to my opponent in the case on trial, I asked, "Wilson, is not that man Judge Terry?" "Certainly it is," he replied; "do you not know him?" "No," I said; "nor have I any desire to know him!"

It was not homely, — it was by no means wanting in intellect; and yet it was the most repulsive human face I ever saw. It impressed me as wicked, villanous, — the face of a man you would not like to meet in the night or in a solitary place. I knew how he terrorized the bar. It was disgraceful! I was present in the Federal Court when the famous Sharon case was argued. It was an equity proceeding to enjoin the use of a forged certificate of marriage. The forgery was palpable, obvious beyond question. It was forged by the Sarah Althea whom Judge Terry had married. It was a case in which the guilty forger deserved the scornful, severest denunciation; yet the counsel for the complainant could not have treated the highest lady in the land with more delicate consideration. I asked a retired Judge of the Supreme Court of the State what reason existed for such delicacy. "None but cowardice," he said. "They are simply afraid of Terry!" Fortunately for the country, there was one judge who was not afraid of Terry. He had justly earned a high reputation by long, learned, and dignified judicial service; but there was no incident of that service more dignified, exemplary, and fearless than

his treatment of Terry. For which, honored among lawyers, be the name of STEPHEN J. FIELD!

I came to know somewhat intimately the retired judge to whom I have referred. He was a gentleman of great amiability and of high judicial and social reputation. By some inexplicable disease he became almost blind, and I found that an element of kindly sympathy pervaded the universal respect in which he was held. His courage had been put to severe tests while on the bench, and it was questioned by nobody.

"Terry is a murderer," said this judge to me one evening in a social conversation. "I do not guess at his guilt, — I know it, for I saw him murder Broderick; and a more brutal, cold-blooded murder was never committed."

"I wish you would tell me about it!" I said. "I knew Broderick slightly, and I esteemed him. I should regard myself as fortunate if I could hear the story of his duel from one who was present and saw it."

"You say you esteemed Broderick," resumed the judge; "so did all gentlemen who knew him, for he was an able, chivalrous, and estimable man. He possessed great power as a public speaker, and his eloquent words pierced the tough hides of the brutes who called themselves the chivalry. They numbered, maybe, twenty. Terry was their leader. We had known for some time that they intended to murder Broderick, and we told him so on his return from Congress at the last session he attended. We cautioned him particularly to have some cool, prudent second if he decided to fight. But Broderick was chivalrous, and they played upon his unsuspicious, frank nature. It was easy to get his consent to use the pistols that belonged to one who was Terry's friend. After the selection was made, they were taken to a gunsmith, who fixed one of the hair-triggers so that a breath would discharge it. It was not difficult to get that pistol into Broderick's hands. The word was 'One-two-three — fire!' At the word 'One' Broderick's pistol was discharged, and I saw the ball strike the ground not fifteen feet from where he stood. Terry aimed as deliberately as if shooting at a mark, and his pistol was not discharged until after the word 'Fire.'

"As Broderick fell, all the seconds and friends rushed to where he lay; among them Terry's second, who shortly went back to where Terry stood.

"'Where did I hit him?' asked Terry of his second.

"'A little above and behind the left nipple!' was the reply.

"'That was just about two inches higher than I intended!' was the cool comment of the murderer.

"Terry has had fortunate escapes," continued the judge. "He would have been hung by the vigilance committee if his victim had not recovered. That was a foul and cowardly act. He took offence at a remark not made to him, drew his knife, and almost cut the man in pieces. I believe vengeance will yet overtake him, and that he will yet die by violence." This remark was made in October, 1886. It was realized before many years.

I was present when the scene transpired for which Judge Field imprisoned Terry. I have never written a description of that scene. I will now do so as it rests in my memory. I write wholly from memory, without a document or even a newspaper paragraph before me.

In some proceeding in the State court one of the judges had affirmed the validity of the "marriage contract." Sharon then commenced in the Federal court an action to enjoin Sarah Althea from setting up that contract and to compel its cancellation. The merits of this action were decided in favor of Sharon. He then died. Sarah Althea married Terry, and a motion was made to revive the action by Sharon's executors and for final decree. This motion had been fiercely contested, argued, and submitted. Notice

was given, through the press, that on a certain day the motion would be decided.

The court-room is unusually large, — the bench and its approach, elevated above the floor, occupies one side. In front on the right is the clerk's, on the left the marshal's desks. Beyond the passage in front of these desks are the seats and tables of the bar, in the form of an amphitheatre. Around and on three sides of the bar are the seats for the public.

Terry and his wife occupied seats within the bar in the second tier from the front, the wife directly in front of the presiding justice. The audience was not large, and there were not more than twenty persons inside the bar.

Two judges — Hoffman of the District, and the judge for the District of Nevada — entered with Judge Field. The Bar rose to receive the court, but Terry and his wife kept their seats. Judge Field, having taken his seat, announced that the opinion and order of the court would be read.

The opinion commenced with a full and eminently fair statement of the facts, read in his ordinary tone, without any feeling or excitement. As he approached the inevitable result to which the facts tended, the woman in a shrill, piercing voice exclaimed, "How much of the Sharon money do you get for that opinion?" Almost without raising his voice Judge Field said, "The marshal must preserve order! Those who do not preserve order must be removed!" The woman had been muttering something which I did not distinctly hear; her final words were, "I suppose the next thing will be your order that I give up the marriage contract!" Judge Field then said, pointing to her, "The marshal will remove that person from the court-room!"

Two marshals were quickly beside her; one took the right, the other her left arm. There was a flash of steel above the heads of the crowd; and Terry yelled with a vulgar oath that "no man should lay a hand on his wife!"

His arm had been grasped with such force that he could not bring it down. The knife-hilt was seized in his clutch, the blade kept extended, until the marshals laid him on the floor, where he continued to struggle and blaspheme until he was disarmed and carried into the adjoining or consultation room, where he was kept until committed to prison.

I do not think the interruption exceeded ten minutes. Judge Field resumed and completed the reading of his opinion and order. The marshals acted quickly and effectively, but I do not recall that either said a word. One of them was the man who killed Terry afterwards in the railroad station at Lathrop. The whole scene impressed me as dignified, proper, and discreditable to no one concerned except Terry and his wife.

THE FIRST COURT WEST OF THE ALLEGHANIES.

By Samuel C. Williams.

FOR many decades the Alleghany mountain range was respected by the colonists of America as Nature's boundary between civilization and the wilderness-empire of the hostile Indian tribes. Prior to the War of the Revolution, few prospectors made expeditions beyond the mountains, not to speak of home-seekers.

However, anterior to 1770, a handful of North Carolinians had broken through the confines of civilization, and effected a permanent settlement in what is now known as Tennessee, on the Watauga River, at a point about fifteen miles west of the mountains. To this little settlement on the verge of the frontier came, shortly afterwards, a number of patriot-soldiers, "Regulators," who had been defeated in the disastrous battle of the Alamance, fought near Raleigh, in May, 1771.

These daring spirits brought with them not merely a love of liberty, but a love of law and order as well; and they immediately set about the formation of a system of government for the settlement. In the "History of Tennessee," by John Haywood (for quite a while a justice of the Supreme Court of Tennessee), it is stated:—

"In 1772 (May), the settlement on the Watauga, being without government, formed a written association and articles for their conduct; they appointed five commissioners, a majority of whom was to decide all matters of controversy, and to direct and govern for the common good in other respects. . . . This committee settled all private controversies, and had a clerk, Felix Walker, now, or lately, a member of Congress from North Carolina. They had also a sheriff. The committee had regular and stated times for holding their sessions, and took the laws of Virginia for the standard of decision."

The laws of Virginia were modelled often because the settlers were of opinion that they had located on the territory of Virginia instead of that of North Carolina. They were, in fact, on North Carolina soil,—occupying, as they did, the extreme northeastern corner of Tennessee, portions of the counties of Washington and Carter.

About four years after the establishment of this local government, the mistake of the settlers having been discovered in the mean time, a memorial to the Legislature of North Carolina was prepared by John Sevier, afterwards the first governor of Tennessee, in which the action of the settlers was explained:—

"Finding ourselves on the frontier, and being apprehensive that, for want of a proper legislature, we might become a shelter for such as endeavored to defraud their creditors; considering also the necessity of recording deeds, wills, and doing other public business, we, by consent of the people, formed a court for the purposes above mentioned, taking, by desire of our constituents, the Virginia laws for our guide, so near as the situation of affairs would admit. This was intended for ourselves, and was done by the consent of every individual."

Thus was organized the first court west of the Alleghanies.

No record of the proceedings of this unique court, prior to 1778, is extant. In 1777 North Carolina formally assumed jurisdiction of the settlement, by erecting Washington County, the boundaries of which were coextensive with those of Tennessee; and in the following year the county was organized by the justices of the peace appointed by the governor of North Carolina for that purpose.

The records of the "County Court" of Washington County are in existence, dating back to "February Court, 1778." The town of Jonesborough was the county-seat of Washington County, North Carolina, and is yet the seat of Washington County, Tennessee.

In the county clerk's office, in that place, the curious may see the recorded proceedings of this court, remarkable alike in its origin and in its jurisdiction. The court exercised both legislative and judicial powers, administered civil and criminal law, and tried and punished crimes grading from treason and murder to misdemeanors.

That the settlers were true sons of liberty, and had lost nothing of the spirit evinced at the Alamance, is shown as clearly by these records as by the fact that they sent across the mountains a force under the command of John Sevier, to meet the British and wrest from them a decisive victory at the battle of King's Mountain. In fact, it might be said, with some degree of truth, that the court was conducted as a branch of the Continental army, as these quotations from its minutes evidence: —

"Ordered that Zeble Brown be discharged by the sheriff, he the sd Brown having enlisted in the Continental Army."

"Joseph Darton came into court and took the oath of allegiance to this State."

"Ordered that John Holley be sent to goal for his ill practice in Harboring and Abetting disorderly persons who are prejudicial and Inimical to the common cause of Liberty, and Frequently disturbing our Tranquility in Gen'l. And on motion it is further ordered that 1500 pounds current money, due from Robt. Caldwell for two negroes be Retained, for there is sufficient reasons to believe that the said Holley's estate will be confiscated to the use of the State for his misdemeanors."

"State *vs.* George Lewis, for treason against the State. On hearing the facts and testimony of the witnesses, it is the opinion of the court that the said defendant be sent to the district goal, It appearing to the Court that the sd Lewis Is a spie or an officer from Florida out of the English army."

"David Higdon came into court and proved himself by the oath of several credible witnesses Also by the certificate of sundry gentlemen that he the said Dave Higdon is a zealous and good friend to his country and that the Court do recommend It unto Capt. James Roddy to deliver unto the sd Dave Higdon a certain negro man slave named James, which the said Roddy's Company took from Henry Grimes, provided the sd Higdon do well and truly prove his property of the said slave."

"It is the opinion of the court that the defendant be imprisoned during The present war with Great Brittain, and the Sheriff taking the whole of his estate into custody which must be valued by a jury at the next court, and the one half of the sd estate be kept by the said Sheriff for the use of the State and the other half remitted to the family of defendant."

"On motion of Ephraim Dunlap that Isaac Buller should be sent to the Continental Army and there to serve three years or during the war. On hearing the facts it is ordered by the Court that the said Isaac Buller be immediately committed to goal and there safely kept until the said Isaac can be delivered to a Continental Officer to be conveyed to Head Quarters."

The court was summary rather than deliberate in its action, direct rather than tedious in its procedure. A contested election case was thus disposed of: —

"Wm. Cocke by his council Waightsill Avery attorney moved to be admitted to the office of Clerk of the County of Washington which motion was rejected by the Court, knowing that John Sevier was entitled to the office."

Why should not this case be cited as authority that a court will take *judicial knowledge* as to who are its officers?

"On motion it did appear that Joshua Williams and a certain James Linsay did feloniously steal a certain bay gelding from Sam'l Sherrill, Sr. Ordered that if the sd Sam'l Sherrill can find any property of the said Joshua Williams or sd Linsay that he take the same into his possession, he first leaving bond and security with the County Clerk pay'd to the court in behalf of said Williams and Linsay for his safe keeping the same until lawfully called for."

Who can gainsay that, the aforesaid Williams and Linsay having absconded, this action of the court was not equal and exact justice?

"John Colyer is found guilty of petit larceny and it is ordered that the said John Colyer be taken to the stocks and that he there receive twenty lashes well laid on his bare back. From which judgment James Stewart, Esq., one of the justices dissents and enters his protest that he does not believe it to be Law."

This mode of punishment may be subject to criticism, but who shall say that the "dissenting opinion" is improved upon, as to force of diction, at this day?

"Ordered that Wm. Cooper an orphan Child about ten years old be bound to Ezekiel Abell Blacksmith until he attains to the age of Twenty one years. And said Abell binds himself to endeavor to learn said boy his Art and Mystery and to provide for said boy agreeable to act of Assembly."

This entry shows that the waif of the settlement was the ward of the court, — that the court was not too busy suppressing "toryism" to put the hand of the orphan in its own.

"Joseph Culton came into court and proved by the Oath of Alexander Moffett that he lost part of his left ear in a fight with a certain Charles Young and prays the same to be entered of record."

It was the *oath* that the said Joseph desired to have entered of record; and this presumably that he might have a certified copy of the entry to take with him as he went farther westward, evidencing for him that his loss had been at the hands of Charles Young in open fight, rather than in some method despised by the frontiersmen. That the court was a *social* factor, and given to vouching for the good character of emigrants from its jurisdiction, is shown by the following:

"Ordered that the Clerk certify that Edmond Williams, Esqr., is a person of good behavior and honest character and that he be recommended to the favorable notice of all to whom he may have occasion to cultivate an Acquaintance."

"Chas. Robertson proved by the oath of John Sevier the conveyance of a certain tract or territory of land as in the deed prescribed from Oconastoto the Tennessee Warrior The Breed Slave Catcher Artacullacullah and Chinatah Chiefs of the Cherokee nation and same is ordered to be recorded."

John Sevier, so often referred to in the quotations, was clerk of the court. He was a master-spirit among the settlers, and afterwards became one of the greatest Indian fighters of the Southwest, and dreaded as "Nolachucky Jack" by the Cherokees.

In 1788 another master-spirit, Andrew Jackson, came to Jonesborough, and entered upon a career that was destined to bring him into bitter rivalry with Sevier. Jackson had read law at Morganton, North Carolina, and upon coming to the bar set out for the country across the mountains, commissioned by the authorities of North Carolina as prosecuting attorney. One of his first contests at the bar was with Col. Waightsill Avery, mentioned above. It is quite likely that Avery appeared in defence of some person indicted under the administration of the young prosecuting attorney. Jackson's first duel grew out of this contest. It seems that Colonel Avery had the better side of the cause, and that Jackson foresaw defeat, and tried to break his fall by a bit of pleasantry in the perpetration of a practical joke on his opponent. Avery, as was the custom in those days of circuit riding, carried his few books and briefs in a pair of saddle-bags (the *green bag* was not for the frontier lawyer). Jackson knew that the authority relied upon by Colonel Avery to win the case was Bacon's "Abridgments," and knowing where the book was kept, he went to the saddle-bags and extracted the book, substituting a piece of *bacon* of the same shape.

When, in the course of his argument, Colonel Avery had occasion to appeal to his authority, he took from his saddle-bags the package and unfolded it before the court and jury. His *precedent* did not apply! Suspecting Jackson of being the guilty person, Colonel Avery turned upon him and abused him without stint. Jackson was much an-

gered in turn, and wrote upon the fly-leaf of a law-book this challenge: —

August 12, 1788.

SIR, — When a man's feeling and character are injured, he ought to seek a speedy redress; you rec'd a few lines from me yesterday & undoubtedly understand me. My character you have injured; and farther you have insulted me in the presence of a court and large audience. I therefore call upon you as a gentleman to give satisfaction for the same; and I further call upon you to give me an answer immediately without equivocation, and I hope you can do without dinner until the business is done; for it is consistent with the character of a gentleman when he injures a man to make speedy reparation, therefore I hope you will not fail in meeting me this day from Yr obt st

ANDREW JACKSON.

To COLL. AVERY.

P. S. this Evening after court adjourned.

Avery accepted the challenge, and the duel was fought at dusk of Aug. 12, 1788, in a ravine near the court-house in Jonesborough. After the exchange of a few shots, Jackson declared himself satisfied, and the antagonists left the field to become and remain firm friends.

After the lapse of a number of years the young public prosecutor was made Judge. It was while holding the court at Jonesborough that the incident of Bean's arrest by Jackson occurred. Judge Jackson, upon reprimanding the sheriff for his failure to take Bean into custody, and ordering the summoning of a posse, was himself summoned from the bench to take the desperado. Bean, learning that his honor was in the execution of the summons, quailed and submitted to arrest.

Andrew Jackson afterwards (1801–3) presided over the Superior Court of Tennessee, and sat at Jonesborough in conjunction with Judge Hugh Lawson White. The minutes show the signatures of these two eminent men, side by side, in boldest script. In after years the two associates became leaders of rival factions in Tennessee politics and warm antagonists. In 1836 Judge White became an anti-Jacksonian candidate for the Presidency, against Van Buren, "the heir of Jackson." The campaign in Tennessee was most bitter. Judge White carried the State, but Van Buren was easily elected by the nation at large.

THE FOUR COURTS FROM THE LIFFEY.

THE HALL OF FOUR COURTS.

By Dennis W. Douthwaite.

II.

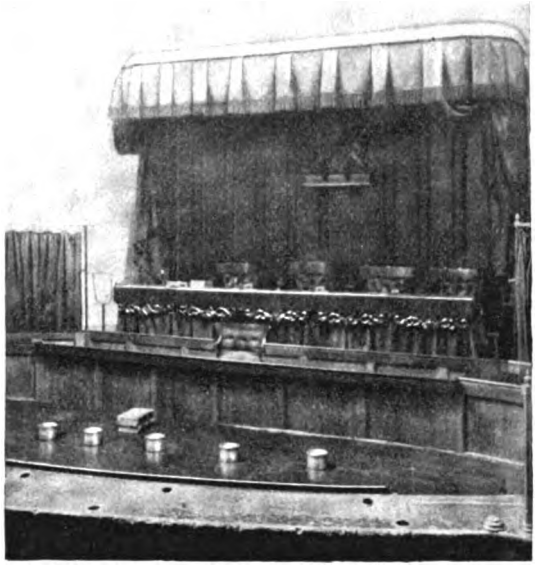
LITTLE change has been made in the Four Courts building since it was built in the beginning of the century. The front of gray stone remains untouched. Various law offices have been built out, at the back, as increase of business and more intricate systems demanded. A Land Commission Court — the outcome of recent legislation — has been founded, and the solicitors have found a home within the huge quadrangle. These new courts and communities have made the building spread its wings a little; but the middle part, containing the dome, the Hall, and the courts, remains intact.

Inside, however, the change has been marked enough, and the Hall has become merely an antechamber and consulting-room to the courts themselves. The man-about-town no longer comes there to give and receive a budget of news. The changing tide of fashion has ebbed south of the river, and has left the pile on Inns Quay stranded in the midst of a neighborhood largely given over to the great unwashed. The Dublin *flâneur* as seldom crosses the Liffey at this point as his London brother crosses the Thames; he is a great stay-at-home, and not given to wandering among strange peoples. The Hall of Four Courts is now the market-place of the litigant, — the ἀγορά wherein the solicitor engages his forensic laborer, and the junior stands all the day idle because

no man hath hired him. Even these, too, congregate more in the Library; and the days are few when the visitor would encounter Sheil's difficulty in threading the crowd, or stand dazed at "the tumult of some thousand voices in ardent discussion."

It is only since the time of O'Connell that the gossips have ceased to come; and the fathers of the bar, *laudatores temporis acti*, still tell of the crowd that thronged round the "Kerry councillor" as he talked, and of the bustle and laughter that filled the place, while they quote Tom Moore as only an Irishman can: —

"I feel like one
Who treads alone
Some banquet hall deserted;
Whose lights are fled,
Whose garlands dead,
And all but he departed."



THE COURT OF CHANCERY.

The groups one sees now are of the ordinary work-a-day sort. Barrister and solicitor are in close consultation, while the client tries hard to catch amidst the legal jargon some details of his case. There is a small cloud of witnesses, and a sprinkling of jurors. Here and there a junior barrister runs (a junior never walks, lest the observer think that the Court is not waiting for him), or a senior passes with less haste and more dignity, from door to door. It should be said here that the name of Four Courts is now become, in some sort, a misnomer.

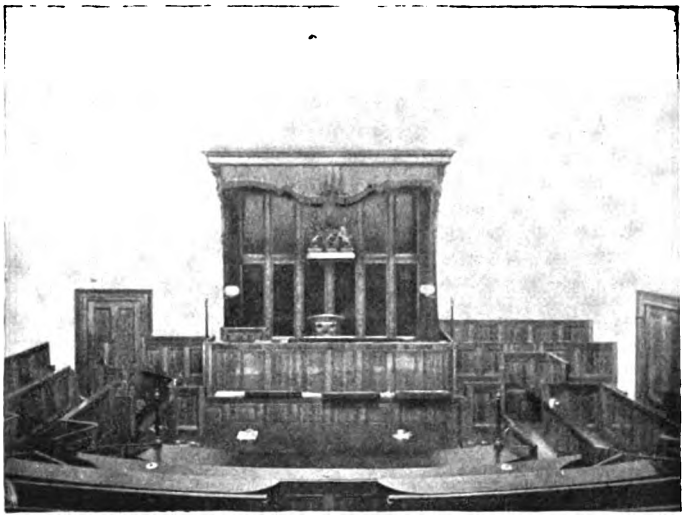
Besides the establishment of some minor tribunals, the Court of Common Pleas has now become Queen's Bench No. II., and the Exchequer is probably doomed. The question of its abolition is to come under discussion when the tenure of its present Chief shall cease. Few doubt that Palles is the last of the Barons of the Court, and that one more "ancient form of party strife" is doomed.

At the top of a spiral staircase, at the far end of the Hall, is the Library, — a long building, with galleries atop, in which sit those Chamber lawyers who wish to escape from the dust and din below. The first thing to strike the visitor is the Babel of tongues, sufficient, one would think, to make consultation difficult and work impossible. There is a throng of barristers running to and fro, some to seek places at the crowded, littered tables, others to search for missing bags or books, others in answer to the stentorian hail of the doorkeeper, who announces that a visitor seeks an interview. At one end of the building is a small wing, supposed to be set apart for the Chancery Bar. But the insidious Nisi Prius man has long ago established a right to enter, and holds his consultations with his fellows, hard by the Equity lawyers, deep in black letter amidst the din. The outside world is not admitted here; the solicitor, though he be the bearer of a brief, must have his barrister summoned to him, and adjourn to the Hall for further discussion.

From the gallery one looks down on a legal microcosm. One hears the keen-eyed, ready-witted advocate fight his battles o'er again, or tell the latest gossip of the Circuits, or the last good story from the Courts. And the grave Chamber lawyer,

"Musing o'er the cases old,
All that Ventris, Viner, Comyn, Saunders, Vesey,
East have told,"

will add his own jest, old as its author, and having the official stamp of an Equity judge. The juniors have their knots and gatherings, where the talk is not all of things legal, and shows that they are yet willing to turn aside from learning to be wise. And among all — from the dozen to the junior barrister — is the sense of comradeship and freedom which comes to men who have worked and fought together. It is good to see the junior with his first brief take it to a Queen's Counsel and Crown Prosecutor to boot, state his case, and receive instructions and a hint or two. Indeed, to have the reputation in the Library of being a "safe opinion" is an enviable position, but one having its responsibilities. It means that the holder is guide, philosopher, and friend to the junior bar of Ireland. So far is the system carried that the junior becomes fastidious in his selection. The especial oracle whom he consults in criminal law is deserted for another if his problem relate to ejectment, and the man who has written a book is beset by seekers after knowledge on the subject of his treatise. But in no case is the oracle dumb. The books and briefs are thrown aside, and State business itself may wait while the complicated issues of Smith *v.* Jones, being an action for nuisance, and surely the strangest farrago ever enunciated by a first-briefed and excited junior, engages the attention of her Majesty's counsel learned in the law. It is a good old custom that would bear being copied in other crafts, where the atmosphere surrounding those at the top is too chill to invite the intrusion of the younger brethren.



THE COURT OF BANKRUPTCY.

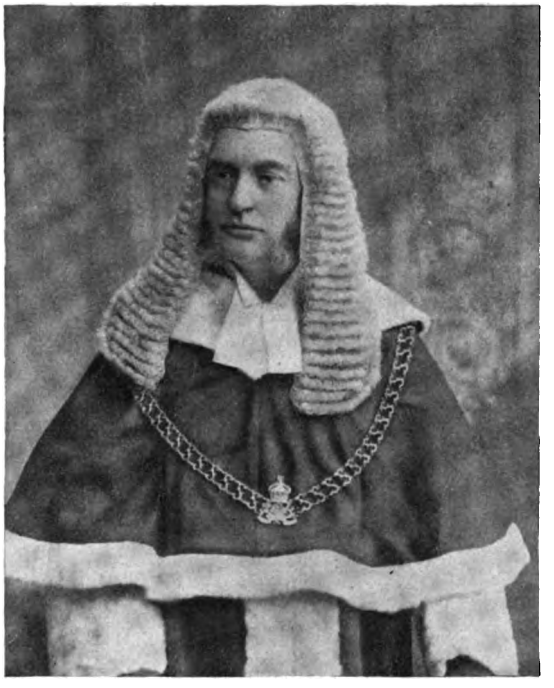
To say truth, the junior bar nowadays needs all the help and counsel he can find. There is no harder fight than that which awaits the student who, having left the King's Inns and taken his degree, enters the Library with only his intellect and energy to help him. At the King's Inns he may acquire all the professional equipment he needs. The days when one might, by a strict attention to the business of Term dinners, and in ignorance of the common law, yet become a barrister, are gone with the men who took their ease at their Inn in this fashion, and who yet left a reputation hard to live up to.

The law student now undergoes a three years' course of lectures, examinations, and reporting of cases which will teach him much theory and some practice. And so armed he goes down to the Law Courts to be "called" with a throng of interesting and interested spectators, whose looks of pride are mingled with frank sorrow for the men of an older generation, when their briefs shall be taken away by this new Gil Blas, — "huitième merveille du monde."

He finds himself one of an army of such portents who sit daily in the outer court watching for such crumbs as fall from the solicitors' table. In the six years that follow

he learns many things. He discovers that a revising barristership *in esse* is worth a judgeship *in posse*. Like Richard Abinger, he writes for newspapers while waiting to be made Lord Chancellor, or reports the cases which he may not plead. Or he becomes a standing mystery to his acquaintance, who "wonder how on earth he lives," and forget to ask him to dinner.

But there are many prizes, all offering a good position and an enticing lack of work. And for these there is always a fair field and no favor. Many a coatless back has donned in later years the ermine of a judge, and under the full-bottomed wig may be hidden a pate which once went bare to the roughest wind.



THE RIGHT HON. SIR PETER O'BRIEN.
Lord Chief Justice of Ireland.

It has been said by an Irish jurist that the business of the American courts is not much disturbed by formality. Nowadays the formality of the Irish courts, is not much disturbed by business. As in England, the interiors are not imposing, and there is the same impression of cramped space and some dinginess. The single exception is the Bankruptcy Court, whose whitewashed walls and bright interior are a happy omen to those who seek its services.

The fittings and appurtenances of each are much the same. In front of the Judges' bench, with its canopy and stand of Royal Arms, is the solicitors' table. To one end of this is fastened (in the Common Law courts) the arm-chair which takes the place of the witness-box in an English court. Beyond the table rise tier above tier small pens, in which sit the various counsel engaged in the case, who pore over huge briefs, and are ostentatiously indifferent to the arguments of "m' learned friend," now, after an hour's discoursing, getting into the thread of his argument. Then come the juniors and such members of the bar as have chosen this particular court in which to spend the morning. Lastly, high up at the back of the court is the gallery reserved for the spectators, which may be empty or cramped as the case is dull or attractive to the lay mind.

Of all the courts the Queen's Bench and Nisi Prius are by far the most interesting. When the Court of Chancery is attractive, it is by favor of the bench. It is good to see Lord Ashbourne and Lord Justice Fitzgibbon pitted one against the other in an Appeal case, while Lord Justice Barry gives his opinion in strong language and to the point. For the Lord Justice lives *in extremis*, and is in a perpetual state of amazement either at the effrontery of the appellant or the appalling ignorance of the court below.

It is in the Common Law courts that the real human interest lies. There one may hear the typical Irish wit; there the hostile witness is butchered to make a Dublin holiday, and the "gods" enjoy the spectacle of a good man struggling with a cross-examiner.

The Nisi Prius leader is always sure of an audience; and to this we may put down that discursive eloquence sometimes heard there

even now when this has become a superfluous thing in courts of law. And besides an expectant audience there are other incitements to eloquence. An Irish jury and an English, for instance, are widely different bodies. The English lawyer who knows so well that acme of Cockney respectability — that phalanx of twelve faces of varying degrees of wooden stolidity, aptly called a "panel" — may well be excused if he drops oratory and sticks to his brief. They have come there with two ideas: the first, the awful solemnity of the occasion; the second, the conviction that the British juror is not to be hoodwinked. Hence they greet the advocate with an unblinking stare, and oratorical flourishes with the suspicion that the orator is trying to impose on them, — an unfortunate decision for any jury to arrive at. In an Irish law-court he will find twelve men instead of an amalgam, and each man packed full of humors. The enthusiast who during Butt's speech for Duffy rose and shouted, "Hurrah for Repeal!" may be seen in any jury-box in Dublin today. He is a little more staid, as becomes his added years. But he is quick-witted and keenly critical, something of a humorist, and with an eager, speaking face, from which an old jury lawyer may almost tell how his case goes. Surely an ideal audience for a speaker, and one that will lead him to do his best.

THE RIGHT HON. SAMUEL WALKER.
Lord High Chancellor of Ireland.

In sketching a few of the important facts and features about the men most talked of at the Four Courts, one must certainly go both to bench and bar. Promotion is so quick and the judges are so many that, if the "bull" may be pardoned, the leaders of the bar must be looked for on the bench. In England, unless it be a very strong individuality, the man is usually merged in the position, so soon as a judge is made. But in Ireland the men go to the bench who in England join the Cabinet; they are mainly politicians retired from business. The judgeships are the highest appointments in the country, — highest both in position and in salary, which ranges from £2,000 to £8,000 per annum. In a country where business languishes and commercial enterprise is almost dead, these naturally draw the greatest intellects to compete for them. The way to the bench is almost invariably through the House of Commons, and the method finds its justification in the splendid calibre of Ireland's present jurists. Norbury and Clare and Clonmell have found no successors, and Ireland may point to her judges to-day as presiding over one of the fairest tribunals in the world.

The Right Hon. Samuel Walker, who holds the blue riband of the legal race, is probably the soundest lawyer at the Irish Bar. The making of a new Lord Chancellor is not infrequently made the occasion of a few sarcastic comments on a system which teaches a man to study politics if he wish to become a great lawyer. But nothing of the kind could be said when Mr. Walker went to the

Woolsack. He was thirty-seven years a barrister, having been called in 1855, and in that time had earned a reputation as the best opinion in the Four Courts. He was never a really brilliant advocate, his speech being slow and with a curious falling inflection not likely to impress an Irish juror; but he was very sure, and had a marvellous grip of his case often inconvenient to his more showy opponents.

When his facts had all been marshalled, his witnesses skilfully treated, the judge propitiated, and all things in order, Mr. Walker was at his best. His plain, artless story was very taking, and the quiet undertone of sympathy for his opponent as a well-meaning but misguided zealot not ineffective. Mr. Walker's plain, unvarnished tale made him popular with the judges as a tribute to their perspicacity and the value of their time.

RIGHT HON. A. M. PORTER.
Master of the Rolls.

Hence, judges being human, Mr. Walker was sometimes said to win more than his fair share of cases, and to increase the work of the Court of Appeal. It was said of him, too, that he had never been known to press a point too far. So long as there seemed a chance of bringing the court to see the error of its ways, no man was so quietly persistent; but he could gauge its endurance to a nicety, and then refrain even from good words.

Mr. Walker was born in Westmeath in 1832, and was Trinity's best classic and a gold medallist in his year. He joined the Home Circuit in 1855, and was made Queen's Counsel in 1872. He was Mr. Gladstone's Solicitor-General in 1883, and sat in the House of Commons as member for Londonderry in the following year. He was Attorney-General in 1885–86, going out with his Premier on the Home Rule Bill. He will probably make an even better chancellor than counsel; and no higher praise than this could be given him.

The Right Hon. Lord Chief-Justice O'Brien will always be known in Dublin as "Peter." "Peter the Packer" was the name given him by the Nationalist press in the days when, as Attorney-General, he "packed" juries in order to gain a fair trial. The country folk then were not fond of Peter, and the newspaper teemed with testimonies to his innate wickedness, and to the iniquity which allowed him to decline the help of such friends of the prisoner as seemed somewhat too eager to exercise their rights as jurors. Most men know the story of the lady who wishing to plead in person was asked if she had no friends to help her obtain counsel, and who answered that all the friends she had in the world were in the jury-box. Mr. O'Brien knew that story, as he knew most things about the Irish peasantry. It is well known that several times at the Special Commission was that prince of cross-examiners, Sir Charles Russell, foiled by some unlettered Galway peasant with just enough of legal learning to look on a cross-examiner as his natural foe. The peasantry could boast few such victories over "Peter." Even now

the hand has not lost its cunning. Often in the Nisi Prius Court one may see the Lord Chief Justice, suave, urbane, but very determined, take a witness in hand and wring from him an answer, clear, definite, and precise. He is probably the most impressive judge on the Irish Bench. His sentences, delivered in grave, impassive tones and in splendid language, make his court much patronized by the bar and the public.

One of his most impressive judgments was delivered last January. He had occasion to condemn the action of the Irish Chief Secretary, and one may be pardoned for suggesting of so ardent a politician that the knowledge that the Common Law of Ireland had given his late enemies into the hollow of his hand did not detract from the vigor of his language. It will long be remembered as a piece of stirring and dramatic diction. He was in his time the best abused man in Ireland, but wisely "valued solid pudding against empty praise," and having, like Tom Bowling, done his duty faithfully below, was raised to the bench at the early age of forty-six. He was born in 1842, called in 1865, became a Q. C. in 1880, a Judge in 1889, and a Baronet in 1891.

C. H. HEMPHILL, Q. C.
Solicitor-General.

The Master of the Rolls is, like Baron Dowse, an Ulsterman, and far more akin than was the Baron to that serious and business-like community.

Andrew Marshall Porter was born in Belfast in 1837, he and that city being, as it were, infants together, and both have risen by the same strict attention to business. The son of a clergyman, he entered Queen's College, Belfast, in 1853, and took his degree in 1856, being nineteen years of age. Four years later he was called to the bar in Dublin. His Belfast connection soon brought him a fair practice in commercial cases, making his junior years very prosperous ones. In twelve years from the date of his call he became a Queen's Counsel, and ten years afterwards, in 1882, entered Mr. Gladstone's ministry as Solicitor-General, becoming Attorney-General in the next year. This post involved the prosecution of the Phœnix Park murderers, and here Mr. Porter set seal on his fame. Dublin was in a ferment, and clamoring for vengeance with that unreasoning haste which stamps a populace frightened for their lives. Mr. Porter's calm, dispassionate conduct of the prosecution was a model of forensic judgment and skill. It was his last important case; in the same year he was appointed to the Rolls.

It was not thought that Mr. Porter had found a congenial post. The cumbrous machinery of the Equity Courts seemed ill calculated to bring out his powers of rapid work and business acumen. The man and the method would probably clash, and Irish Equity suitors would suffer. We do not know if the prophecies were at first fulfilled. What is evident now is that the method has given way to the man, the delays and

uncertainty are minimized, and the court's jurisdiction availed of to its fullest extent. Nowhere are the rules so well observed; but the nice customs of Equity courtesy to the present Master, and he is at no time so happy as when proving the sweet reasonableness of the methods of his court. But he is not much given to moralizing; this and an almost total lack of humor aid him in getting through more work than most of his predecessors and any living Irish judge.

The Macdermot, as the prefix implies, is head of an ancient Sligo family, and a prince of Irish blood. He may be said to be the first of the line who for some time had anything but his name in proof of his claim to princely dignity. For most of the estate had vanished until the Attorney-General won it back by his exertions at the bar. He was called in 1862, and for a long time was one of the most hard working of juniors. Even now, when success has brought with it freedom from drudgery and a superfluity of "devils," no man gets up the points of his case as the Macdermot does. His knowledge of the law of evidence is supreme, and his persistence in fighting a point so long as he has left a legal leg to stand on is a by-word in the courts. This persistence doubtless arises not only from the man's innate energy, but from a certain hot-blooded enthusiasm which teaches him to make his client's case his own, and to feel that if justice be not done him the heavens will fall.

THE RIGHT HON. THE MACDERMOT, Q. C.
Attorney-General.

In the election petitions of last year, in which the Macdermot was feed for the Anti-Parnellites, his zeal eclipsed all others. This alone would prove him the most earnest of Irishmen. Any man may be a good patriot, but it takes a real enthusiast to make a good mercenary.

In his cross-examination there is no subterfuge or trickery. He hunts for a clew to the truth, and having found it, follows it up like a sleuth-hound to the end.

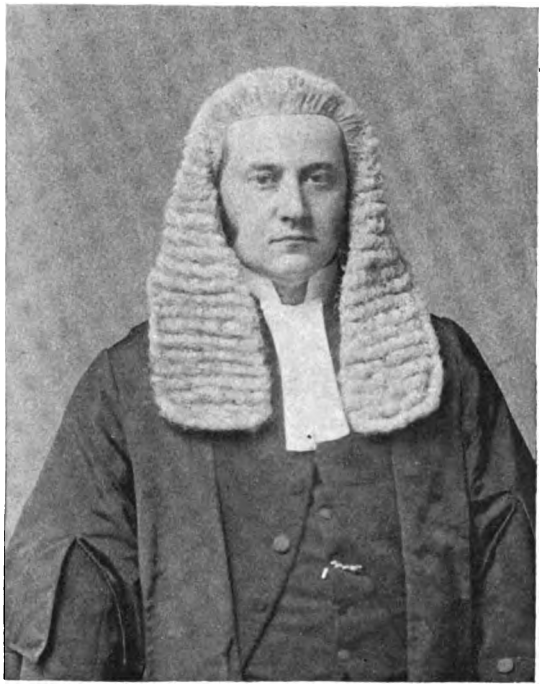
Questions are rained on the witness with marvellous quickness, and although the method be not pretty and lacks finesse, it is usually very effective. In his manner to the judges he is bold almost to a fault; few men would hazard some of the remarks and suggestions which come from the Attorney-General in the heat of battle.

The Macdermot became a Q. C. in 1877, and having passed through several minor appointments, was made Crown Prosecutor for the County of Dublin. He became Solicitor-General to Mr. Gladstone (for he is a Home Ruler as well as a Roman Catholic) in 1885. On the Premier's return to office last August the Macdermot got one step higher in a career which will without doubt end on the bench.

Charles Hare Hemphill, Solicitor-General, is a barrister of nearly fifty years' standing, having been called in 1845. He entered Trinity College as a scholar in 1842, and proceeded to his B. A. in 1844. His has therefore been a long life, and one of tardy

promotion. When the Attorney-General was called to the bar, Mr. Hemphill had lived for fifteen years the life of a busy junior, and was within two years of his silk gown; he became a Q. C. in 1860.

The most noticeable thing about him is his voice, which is even now, when the wear and tear of fifty years of court work bring an occasional jarring note, one of the finest in the Four Courts. His is a fine court presence, and there are few pleasanter personalities than that which shows under the wig of her Majesty's Solicitor-General. Nor is it a case of *vox et præterea nihil.* Mr. Hemphill — Sergeant Hemphill, as he has been dubbed since 1881, when first he took the order of the coif — had at one time one of the finest all-round practices at the bar. Of late years he has been content in some part to narrow his business; but his appointment last August has brought him back into hard work, and made him one of the busiest of men. His court manner is perfect. There is an easy grace about his most damaging cross-examination which his opponents do not perhaps appreciate at its full worth. The sunny smile on his face as he makes certain personal and sympathetic inquiries betrays his victim into confidences whose value he does not realize until he hears them repeated in the Sergeant's mellow voice for the benefit of the jury. We should not call him a great orator, but he has a natural and wholesome eloquence very pleasant to listen to.



T. L. O'SHAUGHNESSY, Q. C.

Mr. Hemphill has never been in Parliament, but he can claim no credit for this. He has contested more than one constituency, but the electors have steadfastly declined to lend to the House of Commons, even for so short a time, so good a lawyer and so pleasant a gentleman.

Thomas Lopdell O'Shaughnessy is probably the best example we can give of the prosperous Nisi Prius advocate. There are people who think that he is the best "all-round man" at the Irish Bar; and it is rumored that Mr. O'Shaughnessy himself is of the number. He is quite of the old school of lawyer. Knowing not much law beyond the rudiments, and forgetting some of that if the time require it, he rings the old familiar changes on justice and right and common sense or Common Law as happens to be convenient. He discovers unheard-of villanies in his client's opponent with a freshness of horror and indignation that leads one to forget that he has been discovering these things for twenty years.

Mr. O'Shaughnessy's tastes are catholic, and he is offered every kind of brief. You will find him fighting a breach of promise case to-day and a water-rate to-morrow. He will argue both, not with any marvellous eloquence, but with a rough and ready skill that adapts itself to all cases and loses very few. He is a great favorite with the gallery, which enjoys his mode of cross-examination, with its traps and pitfalls and

hectoring address. It is practically a duel between the witness and the lawyer ; Mr. O'Shaughnessy, like Robin Hood, always tries a fall with his man rather than rely on his position to gain his ends.

Mr. O'Shaughnessy was pitted against the Macdermot in the late election petitions, and fought his case with an energy and acuteness which did much to gain such a sweeping verdict for his side. He was called to the bar in 1872, and was made a Queen's Counsel in 1889.

We doubt the truth of the story that Baron Dowse mistook him for a lady when first he donned silk ; but his short stature and thin pale face make the tale *ben trovato.*

Such are a few of the leaders of the Irish Bar. It would be rash to say that in oratory they rank as high as did their forerunners. The opportunities for its display become rarer every day. Barristers are beginning to find that if speech is silver, a knowledge of the Land Acts is golden, and under the blighting influence of that belief the flowers of oratory wither. Demosthenes himself would become commonplace on inventories and bills of costs. But in legal learning the bar has made immense strides.

It remains to be seen whether, under the new dispensation said to be drawing nigh, the Senate House on College Green will bring back the old oratorical splendor.

LICENSE OF SPEECH OF COUNSEL.

By Irving Browne.

II.

IN the amusing "Legal Reminiscences" of Mr. Chittenden, in the "Green Bag" for July, he relates how he remarked to a jury, in reference to a false witness, that "they could see the lie run out of him as they had seen it run from a leach in the home soap-making of their early lives." This was a good pun and an acute observation, but it would have been dangerous "out West" or "down South," for if it had been properly objected to, and the jury had not been warned by the judge to disregard it, a new trial might have resulted.

In Lake Erie & W. Ry. Co. *v.* Cloes (Ind. App.), 32 N. E. Rep. 588, the counsel said, in reference to a remark made by a conductor in expelling the plaintiff from a train, "the conduct of this conductor and these railroad employees shows that they have become like the corporation for whom they work, — that they have become so hard-hearted and unfeeling that they have no charity for their fellow-men." This was held no error, and yet it was an accusation that the greatest of the three chief Christian virtues did not abide in the master or the servants.

In Dale *v.* State, 88 Ga. 552, the remark of the prosecuting counsel that the jury knew the defendant's history, and that a certain witness "lied from stem to stern," was held not sufficient, in spite of the egregious mixing of metaphors, to warrant a new trial. A perjured ship is really a novel spectacle in a court-room. But this was where there was no objection, and the court warned the jury not to be carried away by the nautical allusion. It would seem that a ship might reasonably "lie to."

In Henry *v.* Huff, 143 Pa. St. 548, it was held that allusions by counsel to the wealth or poverty of parties, the strength of corporations, and the comparative helplessness of an individual are proper when made fairly and to stimulate the jury to careful and conscientious action, but not when made for the evident purpose of inflaming their passions and prejudices.

But in Waterman *v.* Chicago & A. R. Co. 82 Wis. 613, a new trial was granted because counsel told the jury that if their award of damages should be regarded by the court as excessive, "it is our privilege to throw off as we see fit to," and "Money may minister somewhat to his comfort, and shall not he have it from a company that is able to pay?" This seems a very hard bit for the mouth of counsel.

Newman *v.* Vicksburg Ry. Co., 64 Miss. 115, was a suit by a "poor negro" for the killing of his stock. Counsel intimated that the company, with its army of retainers, was more likely to overawe witnesses than was the poor negro whom he represented. He said that "these corporations have grown to such a position that they seem to have been constructed that a few may live and fatten on the arterial blood of the country." "Things have come to such a pass that a railroad company is very much injured if a humble man dares to bring them into the courts. If he appeals to the juries of the country, it is high treason." "Is it not a fact that it has never happened that a railroad employé has ever testified that he did anything to the damage of the company in litigation? It never has happened, and never will till the last syllable of recorded time." "If that horse had belonged to that engineer, he would have been alive to-day." It was held, however, that these remarks were not unduly inflamma-

tory; and they do seem very mild and innocuous in this meridian.

In Augusta, etc. R. Co. *v.* Randall, 85 Ga. 297, a new trial was asked because counsel said, "At all events, gentlemen, I believe, before high Heaven, that if Mr. Mosher had not paid this visit to our witness this morning, she would have fulfilled her promise, and would have come to court and testified in the case. It would have been improper for me to say what she would have testified to; but we deem her testimony important — in fact, our most important witness — and were very anxious to have her present." The appellate court held that counsel soared too high in these remarks, and allowed a new trial on account of his heavenly flight.

In Cartwright *v.* State, 16 Tex. Ct. App. 473; s. c. 49 Am. Rep. 826, the prosecuting attorney, having "brought down the house" by his remarks, alluded to it as "a spontaneous outburst of approval" by the audience of this cause, after they had heard it truthfully represented by the State. The judge did not rebuke the "claque" nor the remarks. Result, cause "reversed and remanded."

In Tafft *v.* Fiske, 140 Mass. 250; s. c. 54 Am. Rep. 459, a new trial was granted because counsel commented on a discrepancy between the original and the amended answer, and argued therefrom that the defence was fictitious.

In Brown *v.* Swineford, 42 Wis. 282; s. c. 28 Am. Rep. 582, an action of assault and battery, counsel, in order to enhance damages, without evidence on the subject of defendant's wealth, spoke of him as the servant of a wealthy railroad company. This was held material error, the court observing: "For all that appears in this case, the appellant may be as poor as Job in his downfall." Why not "as poor as Job's turkey"? The court further said: "It is to the honor of the bar that this is the first time that this question has come before this court." This is somewhat ambiguous. Was the compliment directed to the bar on account of their self-control, or on account of their ignoring one another's loss of temper and improper allusions? But the court said they must make an example, although the offender was "an eminent member of the bar; a gentleman of high character, personal and professional, known to every member of this court; whose professional ability needs no adventitious aid, and who probably fell into this error casually and inadvertently." This was a "first-rate notice;" and if I only knew the eminent gentleman's name, I would gladly publish it, and thus give him a capital free advertisement. But the error seems very trivial. It by no means follows that because a master is wealthy his servant must be. Dr. Johnson's aphorism, "Who drives fat oxen must himself be fat," does not apply.

In Hatch *v.* State, 8 Tex. Ct. App. 416; s. c. 34 Am. Rep. 751, an indictment for forgery, the public prosecutor, in addressing the jury, denounced the defendant as a "fellow," and a "land thief," and "as guilty as hell," and declared that he had obtained a new trial "by a dodge and technicality," and boasted of his ability to convict him before twelve honest men as often as he could get a new trial. The jury, not wishing to be deemed dishonest, convicted the defendant, and a new trial was granted on account of this language. It should seem that the prosecuting attorney ought not to have said "land thief," for he ought to have known that real estate is not a subject of larceny! Commenting on his allusion to the "technicality" for which a new trial had been awarded, the court remarked that all defences "are in a certain sense and to a certain extent 'technical,' and may in the estimation of some be mere 'stumbling-blocks' in the way of justice, and 'foolishness' in the way of a speedy enforcement of the law, just as the doctrines of Christianity at first were to the Jews a stumbling-block and to the Greeks foolishness. Yet they are rights, nevertheless," etc. It seems that "the skilful counsel for defendant," as the

trial judge explained, by interruptions and objections had sought "to entrap the able counsel employed in the prosecution by the State into some such intemperance of language and gross violation of the law as was indulged in by him," and as the appellate court said, by this he was "goaded into a perfect frenzy of irritation, which for the moment rendered him wholly oblivious or totally reckless of the consequences to follow." (By the way, do consequences ever precede?) But although counsel could "scarcely be blamed," yet the defendant must not be allowed to suffer by reason of his loss of temper.

In Coble *v.* Coble, 79 N. C. 589; s. c. 28 Am. Rep. 338, plaintiff's counsel said, in addressing the jury, that "no man who lived in defendant's neighborhood could have anything but a bad character; that defendant polluted everything near him, or that he touched; that he was like the upas-tree, shedding pestilence and corruption all around." For this arborical allusion defendant was awarded a new trial, the court holding that it was not excused by "zeal of counsel or heat of debate." So counsel were taught not to transplant the poisonous upas into the court-room. The allusion was all the more reprehensible because modern investigation shows that the deadly upas-tree never existed except in imagination, and on the stage in the opera of "L'Africaine." The upas-tree was again invoked, with the like result, in McDonald *v.* People, 126 Ill. 150; 9 Am. St. Rep. 547. Perhaps in this case the court were a little prejudiced against counsel on account of his having (most unwarrantably) alluded to them on the same trial, as "those seven wise men down at Ottawa." Anyhow, they declared this reprehensible language, and thus resented the imputation, probably deeming it "sarkastikal."

In People *v.* Rohl, New York Court of Appeals, 33 N. E. Rep. 933, an indictment for murder, the defendant having testified that the deceased had made an insulting remark about defendant's wife, the district attorney, in argument, referred to deceased "as a veteran in the late war, who rendered meritorious service to the government, went to war, and would be the last man to call a woman a whore." Held, no error. But the argument seems to be a *non sequitur* in assuming that war is a school of politeness, and that a man would refrain from calling a woman "that name"—as Desdemona puts it—if he thought it justified, simply because he had been engaged in the rough business of soldiering. The inhabitants of New Orleans did not derive this impression from General Butler's celebrated order.

In Huckshold *v.* St. Louis, I. M. & S. Ry. Co., 90 Mo. 548, counsel said to the jury: "In a case of this kind the law fixed the penalty at $5,000. What in the name of common sense do railroad companies care for $5,000? If they want to make issue, what in the name of common sense do they care for that? And yet they have the heart to come here and say that you ought to find a verdict for the defendant, and let the railroad companies kill all the men and boys they please." To this objection was made, but the court declined to interfere. On review the court said: "The trial judge, who had heard the speeches of opposing counsel, and knew what, if anything, was said to provoke the last remarks of counsel in his closing speech, was in a better position than we are to determine whether he should or not interfere; and as to when, how, and to what a trial judge may interfere in any case must depend upon the exercise of a sound discretion, especially so in view of the fact, within the knowledge of every trial judge as well as those who practise before him, that he is closely scrutinized by the jury to discover, if possible, how he inclines to view the evidence; and it is only when it clearly appears that this discretion has been abused that we will interfere."

In Gulf, etc., R. Co. *v.* Wallen, 65 Tex. 568, counsel for the defendant, in his argument to the jury, made use of the following language: "The plaintiff has no right to com-

plain of the railroad company; she jumped from the train on account of an alarm given by a Jew drummer, and if it had not been for that everlasting Jew drummer there would have been no trouble. There was no occasion for alarm, and if defendant had not been a corporation, and supposed to have plenty of money, there would have been no suit brought by plaintiff." In the concluding argument for the plaintiff, counsel said: "The railroad company is a corporation without soul or conscience, but notwithstanding this, they have got a big pocket, and this you can reach, and if you fail to do it now, you may never again have the opportunity. The employees of a company will walk through the train and talk to passengers like puppies" (who were the puppies?); "so while you have a chance, teach them the lesson that they cannot be reckless with so valuable a thing as human life." The court observed: "The remarks excepted to in the closing speech of plaintiff's counsel were not authorized by anything in the record; and in the remarks of opposing counsel, stated as provocation, we fail to discover any justification." But a new trial was granted on another ground. So it seems that it is prudent for counsel to eschew remarks on the Wandering Jew. Besides, a Jew "drummer" seems an anomaly. Perhaps a Jews-harper was meant.

In Sasse *v.* State, 68 Wis. 530, the district attorney spoke to the jury as follows: "The defendant committed a crime in the old country, in Germany, and he fled from justice. He engaged passage in one ship, and then in another. He landed in this country, and went to Philadelphia, committing a crime there. He admitted that he knocked a hole in a man's head in the old country, and by his admission fled and committed a crime in Philadelphia, a crime on one of the citizens of this country." To these remarks to the jury the defendant's counsel objected. The Circuit Court overruled the objection, with the remark: "I suppose the previous history of the defendant may be given, but the fact that he committed one crime is no evidence that he committed this. The court permits the district attorney to proceed as far as to state the previous history of the defendant, with the suggestion, however, that because he committed one crime it is no evidence that he committed the crime of which he now stands charged." To which ruling the defendant's counsel excepted. The district attorney then proceeded as follows: "He assumed another man's name. He obtained money under false pretences, and told how he came to commit the crime before stated." The district attorney afterward repeated the remark that "the defendant knocked a hole in a man's head," — was it not at Holyhead? — which was also excepted to. The learned judge before whom the case was tried instructed the jury, in reference to these remarks of the district attorney, as follows: "You will not regard any statement of counsel that the defendant committed a crime in Germany, or that he was a fugitive from justice, or that he came here under an assumed name, all of which things are not in the case." On denying the motion for a new trial in the case, the learned judge remarked as follows: "The district attorney stated in his opening that the defendant had been guilty of some crime in Germany, etc. Whether that be such an error as will reverse the judgment I am not certain. That it was error permitting the district attorney to make the statement I have n't any doubt; but that it was cured I am of the impression. I am disposed to let the Supreme Court pass upon the question." The court on appeal said, among other things: —

"These remarks of the district attorney, so grossly improper, unprofessional, and unjust, and so repeated and asseverated to the jury, when their minds were entirely free from bias, prejudice, or partiality, when they had no knowledge or opinion of the defendant, or of the merits or demerits of his prosecution, and before they had heard any evidence, and when they were bound to presume him innocent, must have produced

an ineffaceable and permanent impression. What though they were told by the court that 'the fact that the defendant committed one crime was no evidence that he committed this'? This language of the court came very near sanctioning the charge made by the district attorney, or taking it as true. It was enough that the defendant came before the jury for trial for this crime, already guilty of several other crimes, by the solemn and deliberate statement of this high and impartial officer of the State and of the court. It was impossible that he should have a perfectly fair and impartial trial after this. I never heard of such an opening speech from a prosecuting officer before, and I question if there ever was one so violent and reprehensible. Now that this case is before this court on this alleged error, to sanction it would overrule every previous case decided by this court in which such an error was assigned, and be in conflict with all of the decisions of other courts upon this question. The remarks of counsel to the jury upon matters outside of the evidence in Bremmer *v.* Railway Co., 61 Wis. 114, which were deemed in that civil case sufficient error to reverse the judgment, were a thousand times more harmless. In Brown *v.* Swineford, 44 Wis. 282, the remarks were far less objectionable, and they were held of sufficient consequence to reverse an otherwise meritorious judgment. Chief-Justice Ryan said in that case: 'It is sufficient that the extra-professional statements of counsel may gravely prejudice the jury, and affect the verdict,' citing Tucker *v.* Henniker, 41 N. H. 317; State *v.* Smith, 75 N. C. 306; Ferguson *v.* State, 49 Ind. 33. A great many similar cases are cited in the brief of the appellant's counsel in that case, and in the brief of the learned counsel for the plaintiff in error in this case, to which reference may be had. For these very objectionable remarks of the district attorney, so approved by the court, we are compelled to reverse the judgment of conviction in this case, and order a new trial." In the same case, when the first witness for the prosecution was called, he did not respond, and the district-attorney said, "Perhaps some one has got hold of him." Being rebuked by the trial court, he said, "I will prove it before I get through." The appellate court said of this: "He did not thereafter even offer to prove this charge. He evidently made this unfounded charge to prejudice the defendant's case in the minds of the jury. This may not of itself be such an error as to warrant a reversal of the judgment, but it was grossly improper, and very unfair towards the prisoner, and was wickedly consistent with his preceding unwarrantable and reprehensible assault upon the defendant's previous character." But after this scoring we do not find any intimation that the district-attorney resigned his office!

In Pence *v.* State, 110 Ind. 95, the court said: "During his closing argument to the jury, the prosecuting attorney referred to the riots in Cincinnati, and the burning of the court-house by a mob, which had occurred recently before the trial. He assigned as a cause for the mob-violence, the lax administration of the criminal law in that city. The appellant objected to the reference thus made, and the conclusions drawn. The court overruled the objection. The remarks alluded to above had reference to an historical event, concerning which the jury were supposed to be familiar, both in respect to its occurrence, and the causes to which it was attributed. As there was no allusion made to the defendant in that connection, or to his being in any manner concerned in the riots, we cannot say that the privilege of fair debate was transgressed.

"In his closing argument, counsel for defendant, by way of illustrating the value of certain testimony given on behalf of the State to sustain the general reputation of a witness, said, in substance, that the witnesses did not profess to have any knowledge of the reputation of the witness whose testimony they were called to sustain, and that from the same standpoint he could personally

sustain the general reputation of the defendant. This was made the basis upon which the prosecutor said in argument that he had personal knowledge of the fact that defendant was reputed to be a hotel thief, and that he had been published and portrayed in the 'Police Gazette' as such. The speech of the prosecutor went entirely beyond the bounds of propriety in that respect. It cannot be justified. There was a bare shadow of excuse for it in what was said by the defendant's counsel. The remark should have been promptly withdrawn from the jury, and the court should have admonished both the jury and counsel, in no uncertain terms, in respect to their duty in that connection. This was not done. The evidence in the record, however, fully sustains the verdict of the jury, and there was a shadow of excuse for the remarks. Under such circumstances, we have concluded, after some hesitation, that a reversal ought not to follow. Upon the evidence in the record, it seems to us that a conviction was at all events inevitable, and as the punishment assessed does not seem to have been out of proportion with the offence, we cannot see that there could have been any prejudice to the substantial rights of the appellant. In such a case we are not authorized to reverse."

In Moore *v.* State, 21 Tex. Ct. App. 666, a trial for assault with intent to commit rape, the district attorney, in his address to the jury, made use of the following language: "Gentlemen of the jury, a good jury of your county convicted the defendant of the offence with which he is now charged, upon a former and a previous [1] indictment, and his attorneys appealed it to the Court of Appeals upon a trifling technicality in drawing the indictment; and that court reversed the case, and by taking advantage of this trifling technicality, without merit, he has caused your county great expense, which comes out of the pocket of every good tax-payer, yourselves among the rest; and now, in view of these facts; I ask you to give him such a term in the penitentiary that will make up for this great expense he has caused upon a mere technicality." (It is a little difficult to understand how "this great expense" could be "made up" by subjecting the State to the maintenance of the prisoner for a term of years.) A new trial was granted for this, the court observing: "In many decisions this court has urged upon counsel, whose duty it is to prosecute the pleas of the State, to refrain from injecting into trials of cases of this kind any matter calculated to inflame the minds or excite the prejudice of the jury. If we could add anything to what has been said, or could use any language calculated to reach the minds and consciences of those to whom such admonitions are addressed, we would avail ourselves of the present occasion so to do. As we cannot, we can only reverse and remand the case, in the hope that the accused may secure a fair and impartial trial, according to law and according to those methods, alike ancient and honorable, which still obtain in all enlightened courts."

In Newton *v.* State, 21 Fla. 53, the prosecuting attorney made a statement as to what a witness had told him out of court. The court said: "Instead of calling witnesses to impeach the witness, Cowan, Mr. Wilson makes his statement to the court and jury. 'Statements of fact, not proved, and comment thereon are outside of the cause; they stand legally irrelevant to the matter in question, and are therefore not pertinent. If not pertinent, they are not within the privilege of counsel.' In State *v.* Underwood, 77 N. C. 502, the court say: 'We have in some cases ordered a new trial on account of the abuse of privilege by counsel, and will always do so when it seems probable that the defendant has been prejudiced on his trial by such abuse.' In Jenkins *v.* North Carolina Ore Dressing Co., 65 N. C. 563, the court uses the following language: 'But still it may be laid down as law, and not merely discretionary, that where the counsel grossly abuses his privilege to

[1] This tautology reminds me of a witness whom I heard testify that he had "seen the defendant write frequently and often."

the manifest prejudice of the opposite party, it is the duty of the judge to stop him then and there. And if he fails to do so, and the impropriety is gross, it is good ground for a new trial.' See also State *v.* Williams, 65 N. C. 505," citing Tucker *v.* Henniker, 41 N. H. 317.

"The ninth error assigned is, 'that the court erred in permitting the State's attorney to argue in reference to the conviction of another person for another murder, as appears from the bill of exceptions.' In the bill of exceptions the following facts appear: The State thereupon rested its case, and the defendant offered no evidence or testimony, and in the argument before the jury the State's attorney said: 'Because I say, and with all the earnestness with which I am capable, that there never was to my reading or knowledge a case of circumstantial evidence where every link was so perfect, where the facts were so overwhelming, and when the presumption of guilt was so startling in its conclusions, as in the case before you. If we cannot convict on this testimony, then there is a man under verdict of murder in the first degree, now incarcerated in that jail, who ought to have the door of his prison-house opened, and—' By Mr. Foster: 'I object to his stating what is not in the evidence.' By the Court: 'He is only using it as an argument.' By Mr. Foster: 'Well, I except to that style of argument being used.' Mr. Abrams then said: 'I will suppose a case. I say there is the case of Palmer, which the learned writer stigmatizes in the severe language I have read to you — he says of him: 'He was a model of physical health and strength, and was courageous, determined, and energetic. No one ever suggested there was a disposition toward madness in him; yet he was cruel, as treacherous, as greedy of money and pleasure, as brutally hard-hearted and sensual a wretch as it is possible even to imagine.' Now you don't find verdicts by comparison with verdicts in other cases, nor am I telling you what the testimony in that case was, but I am only stating to you that if this man were declared innocent no others should be punished.' . . .

"If the remarks so made by counsel were pertinent in argument, they were proper for the consideration of the jury when they have retired to deliberate upon their verdict. His illustrations of the man convicted of murder, now in jail, who should be released, if no conviction was found in this case, and the other of the man Palmer, a supposititious case, were entirely outside of the record and the evidence, and were calculated to prejudice the rights of the accused. The court, in answer to an objection interposed by counsel for accused, said 'he is only using it as an argument,' thus emphasizing the position taken by the State's attorney, and giving it the force and weight of its approval." A new trial was awarded.

In Hardtke *v.* State, 67 Wis. 552, it was said: "On the argument of the cause to the jury, the district attorney said: 'The defendant confessed this crime to me.' To this remark and others the defendant's counsel objected, and excepted, and the record does not show that the court gave it any attention whatever. It is true that the court did not affirmatively rule on this objection of the defendant's counsel, but by its silence the jury might have well understood that the court approved of it, or at least thought that there was nothing objectionable in the remark. It was so clearly not a correct statement of the facts proved that we think it was the duty of the court to have corrected it then and there. It was very material. There had been no evidence of one of the principal ingredients of the crime; and if this statement of the district attorney was accepted by the court and jury as true, it supplied all defects in the testimony, and was a full confession of the crime. With the errors already noticed in this most extraordinary trial, we cannot but think that this omission of the court to correct such a material and important misstatement of the evidence was also erroneous."

A CONTRAST.

By Wendell P. Stafford.

ATHENS reclined, but Sparta sat,
To take the cup.
Deliberating, Athens sat;
Sparta stood up.

In speaking, Athens made a show
Of word and wit.
Spartan debate was Yes and No.
That settled it.

Athens, when all is vainly fought,
Flies from the field.
Sparta brings home, or else is brought
Upon, the shield.

The Attic pen was wielded well;
The world has read.
What Lacedæmon had to tell,
Her right arm said.

Something the Spartan missed, but gained
The power reserved
That lets the crown pass unobtained,
Not undeserved.

LONDON LEGAL LETTER.

London, Oct. 2, 1893.

DURING the long vacation there is little of legal interest to record. Within the last few weeks Lincoln's Inn Hall has been the scene of the annual conference of the Institute of Journalists, an association which grows every year in influence and popularity. One of the most interesting features of the proceedings was the paper entitled "The Journalist before the Law," read by Mr. Joseph R. Fisher. Mr. Fisher, who is a member of the bar, and a specialist in everything pertaining to the law of libel and press law generally, is also one of the ablest journalists in London. His views have commanded a large amount of attention among lawyers and journalists, as those of one specially qualified to deal with the subject. Mr. Fisher is far from satisfied with the position of the journalist before the law, and anticipates still further encroachments on his liberty in the matter of privilege of parliament and contempt of court. Personally, I strongly favor the present attitude of parliament and the courts towards the press. There can be no reasonable doubt that many newspapers and periodicals would gravely transgress in many directions were judicial vigilance and authority to be relaxed. Within recent years the administration of the law of libel has meted out severe and timely punishment to several journals, whose mordant columns had attacked the fair fame of worthy citizens.

The vacancy in the Court of Appeal, occasioned by the promotion of Lord Justice Bowen to the House of Lords, has been filled up by the appointment of Sir Horace Davey, the leader of the Chancery Bar. Had the new Lord Justice possessed the slightest tincture of political aptitude, he would inevitably have reached the woolsack; but his popular gifts are of the humblest order, and the ordinary elector never could appreciate the unique intellectual gifts which underlay a demeanor intensely frigid, and devoid of the magnetism necessary to the platform speaker. Some years ago, when an exceptional number of appeals from all parts of the empire stood in the lists of the judicial committee of the Privy Council, Sir Horace Davey appeared in almost every one, and his income reached a figure which has only once or twice been equalled or surpassed in the annals of the bar. He is regarded as not only the acutest but the most learned lawyer in England, and the very highest anticipations are formed of his future judicial career.

The demolition of Hare Court, prior to its being rebuilt, is now complete ; and Middle Temple Lane presents a strangely unfamiliar appearance, with the huge gap in its continuity occasioned by the process. In other thirty years the greater part of the Temple will have been rebuilt, and few of the quaint, dingy tenements will remain, — not altogether, I apprehend, to the satisfaction of the profession, for while the new sets of chambers possess what are styled modern conveniences, the rooms in the old buildings were in many respects more comfortable and more conveniently arranged.

During the present recess I visited Edinburgh, and rambled through the Parliament House and the endless corridors of the magnificent library, of which the Faculty of Advocates is so justly proud. None of the libraries of the Inns of Court in London can for a moment compare with the legal department of the Advocates Library. While their shelves contain most well-known treatises of every-day importance, they are signally deficient in many juristic writings of a more recondite character.

Year by year there is a regular withdrawal from the ranks of the bar of a number of young men who have given the profession a period of trial, and finding it unproductive of satisfactory results, pursue occupation for their capacities elsewhere. Secretaryships of joint-stock companies are highly coveted ; journalism and literature of course absorb perhaps the greatest number, while here and there a despairing barrister becomes a schoolmaster, or enters some phase of commercial life which earlier in his career he would have heartily despised. It is a wise course to turn to some fresh industry ere the faculties have lost the necessary elasticity. In this respect the English barrister enjoys an indisputable superiority to his Scottish brother. In the larger community little notice is taken of a man's changing his profession, and few remember that the prosperous wine-merchant was a couple of years before a disappointed claimant for forensic glory ; but in Scotland it is different. Where society is conceived on so much smaller a scale, local curiosity would continually track the career of an advocate who became a trader or a journalist. He would be branded as a failure, as one who began to build and was not able to finish. ***

The Lawyer's Easy Chair.

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

BY IRVING BROWNE.

CURRENT TOPICS.

AMERICAN PROGRESS IN JURISPRUDENCE. — Among the notable papers prepared by request for the Columbian Exposition at Chicago, was one by the veteran David Dudley Field, on "American Progress in Jurisprudence," characterized by the vigor, breadth, and acumen which have always marked his productions, and couched in a flawless and felicitous style. It is a proud record for our country which is here reviewed; and the eminent lawgiver might well exclaim, *quorum pars magna fui.* New York, under the teaching and leadership of Mr. Field, was the first community to reject those "time-worn and worm-eaten, . . . cracked, dusty parchments on which was written the worst plan of entering the courts and getting out of them that the wit of man could devise," and to adopt the plan under which "no suitor is turned away for defect of form, and no witness is rejected who has sense enough to think and voice enough to speak." "This grotesque machinery has been swept away wholly or in part in twenty-eight American States and Territories;" and a similar reform is briskly agitating, with fair prospect of success, in Vermont, Illinois, Michigan, Virginia, and Alabama. The American example of the abolition of forms of action and the fusion of law and equity, was followed in 1873 in England; and the reform has extended to the English colonies of Victoria, Queensland, South Australia, Western Australia, New Zealand, Jamaica, St. Vincent, the Leeward Islands, British Honduras, Cambia, Grenada, Nova Scotia, Newfoundland, Ontario, and British Columbia. America moved early in the reform of allowing parties to testify for themselves in civil actions. Not only civil but criminal procedure has been greatly ameliorated. America was the first to reject the monstrous inhumanity of refusing counsel to the prisoner, and the gross absurdity of shutting his mouth as a witness. (Right here let the Easy Chair take a little credit to himself for having been one of the earliest writers in behalf of these reforms in respect to evidence. His first legal writing was an essay in favor of allowing parties to civil suits to testify on their own behalf, published in the "American Law Register," in 1857, with a careful editorial disclaimer of agreement with its novel sentiments!) "There are already to be found in American Jurisprudence," says Mr. Field, "eighteen codes of criminal procedure, five penal codes, and five general civil codes. Taken altogether, here is an array of fifty-six codes which the United States are able to present to the world as the fruit of the first century of independence, or rather, of the present half of it."

ELECTION OF JUDGES. — The foregoing are "the bright figures of the shield," says Mr. Field. He then proceeds to consider the reverse, on which he finds as blemishes, "the popular election of judges, allowing them short terms of office, and the increasing habit of spasmodic and excessive legislation." In respect to the last two, few sober-minded persons will be found to disagree with Mr. Field. In respect to the first he is in opposition to the great majority of the people, and the more common practice of the United States. Mr. Field states the statistics as follows: —

"In eight of the forty-two States the judges of the highest courts are appointed by the governors, with the consent of the Senate or a legislature or a council; in seven they are elected by the Legislature; in twenty-seven they are elected by the people. In eight of the States — New Hampshire, Massachusetts, Connecticut, Delaware, North Carolina, South Carolina, Florida, and Alabama — the judges of the highest courts hold their offices during good behavior; in six — New York, Pennsylvania, Maryland, Louisiana, Tennessee, and West Virginia — they hold for terms between ten and fifteen years; in two — Illinois and Colorado — for nine years, in five — Virginia, Kentucky, Michigan, Arkansas, and Wyoming — for eight years; in Minnesota, for seven years; in Ohio, for five years; in Georgia, for three years; in all the rest for six years, except that Vermont elects her judges annually by the Legislature, and Rhode Island elects hers by the Legislature to hold during its pleasure."

It seems to be eminently in accord with the theory of a republic that the citizens should elect their judges as well as their rulers. Going one step farther, it seems axiomatic that the people of any community are just as fit to choose their judges as to choose a single agent or several agents to appoint them. Bringing the question to the test of experi-

ence, considering the number of those appointed and of those elected, is there any manifest superiority in the former, and are such courts more deeply fixed in the confidence of the people? We submit a negative answer. Looking at the State of New York, for example, that State has elected a very great number of judges, all of a good measure of ability, and all of a high degree of integrity, with two or three notorious exceptions growing out of the general demoralization of the times in politics, which probably would have infested the appointing as well as the electing power. It is common, at least in the State of New York, for both parties to agree on the re-election of an incumbent who has won the respect and favor of the community in long service. Eminent examples have been made in New York in the case of several judges of the highest court within a few years. We can imagine nothing worse in that State than to put the appointing power in the hands of the governor, except to intrust it to one of those unspeakable legislatures! It is our belief that with the reasonably long term of office which prevails in New York and Pennsylvania the elective system is preferable. Even with the appointing system we should deprecate the life tenure. It is within the recollection of all our readers that in the Federal Supreme Court one judge died in office, after years of incapacity, because he had not mind enough to resign, and another clung to the office four years after he ceased to perform any judicial labor, in order to be qualified to draw his pension! These inconveniences may at least be considered when the occasional unworthiness of a judge is urged against the election system. It is putting a dangerous power into the hands of a State governor to allow him to appoint judges for life. He may appoint all or many of his own party, and thus in time the court may be permanently in opposition to the preferences of the people. This we do not believe to be fair, although we hardly need say that we deprecate politics on the bench, and we may add that we believe they seldom find a lodgment there. How fair and unbiassed elected judges can be has been strikingly illustrated in the last few years in the decisions upon questions of districting and elections. At all events, it is reasonably certain that the people of the twenty-seven States mentioned by Mr. Field are not going to relinquish or delegate this power; and it behooves all good citizens to make the best of the situation.

Appointment of Mr. Justice Hornblower. — This appointment has elicited universal approval. The gentleman has had but two predecessors who were younger at the time of appointment. It is well to put young blood into the court, notwithstanding Mr. Hornblower's youthfulness almost exactly parallels that of Mr. Skimpin, who was "a promising young man of two or three and forty." Mr. Hornblower is undoubtedly a very good lawyer, although not of the broadest cast of mind, and will probably, after some experience, satisfactorily fill the place of Mr. Justice Blatchford. We should say that the cast of his mind is rather judicial than toward advocacy, that he has a calm and dispassionate judgment, and that his integrity is spotless. The Easy Chair has an old but good-natured quarrel with Mr. Hornblower in respect to general codification, of which measure he has always been an influential, industrious, and ingenious opponent. Probably this is what leads us to think that there are broader minds than his, for we cannot conceive that any broad intellect can bring itself to believe that it is impossible or impolitic to write the laws in statutes, when it has so long been done in decisions. Perhaps a few years of judicial experience will tend to modify his opinions on this subject. But this is aside from the question of the new justice's probable merits as a magistrate. He has learning, dignity, and industry, and will not give reason for any diminution of the popular respect for the most sacred of our country's institutions. It is gratifying to observe that so respectable an appointment is put to the President's credit by men of all parties.

The Flitch of Bacon. — The stability of English customs is well illustrated in a recent incident which we find chronicled in the London "Telegraph," as follows: —

"Two young married couples presented themselves before a jury of maidens and bachelors in the quaint old town of Dunmow, Essex, yesterday, and claimed the flitch of bacon, the annual award which has made the place so famous. The presiding judge was a local auctioneer, who administered to the candidates the customary oath whereby they swore that for a year and a day they had 'ne'er made nuptial transgression,' nor 'offended each other in word or in deed,' nor 'since the church clerk said "Amen," wished themselves unmarried again.' Mr. Francis Webb, a railway clerk of Wednesbury, and his wife, were the first to submit to the ordeal of a searching cross-examination. Counsel on their behalf having elicited that, 'by means of their quiet, peaceable, tender, and loving' life they were fit and qualified persons to receive the coveted distinction, another lawyer rose in the capacity of 'devil's advocate' and sought to throw doubt on their story. Failing in this, he next applied himself to weakening the case of Mr. and Mrs. Philip Garner of West Molesey, Surrey; but the horse-slaughterer and his wife also proved too much for him. The cross-examination afforded unbounded amusement to the assembled audience, who were highly delighted when a verdict was given in favor of both couples. At the close of the trial the winners were required to kneel on sharp stones and

take the necessary oath in the presence of some thousands of spectators. A third couple from Birmingham was prevented by illness from engaging in the contest."

Over the mantel in Sir Walter Scott's library at Abbotsford, hangs a print after Stothard's painting of the "Procession of the Flitch of Bacon," showing the loving pair on one horse, escorted by their friends on horseback, and preceded by a piper and one bearing the coveted edible. Why does not Chicago offer a prize of this kind — it is directly in her line — as an offset to her somewhat too energetic divorce business?

AMERICAN BAR ASSOCIATION. — This body did several commendable things which we failed to chronicle last month. It abolished the award of gold medals for eminent services in law reform. This prevailed by the casting vote of the president. Fifty-one voted. The only award ever made was the double award to Lord Selborne and David Dudley Field. The association elected Judge Cooley president for the ensuing year. No fitter selection could have been made. To praise this great constitutional lawyer would be like painting refined gold. He has the admiration for his abilities and his achievement, and the sympathy in his declining health, of every lawyer in the United States. At the banquet a toast was drunk to Mr. Edward Otis Hinkley, Professor Baldwin responding. Mr. Hinkley has retired from the office of secretary of the association, which he had held from the beginning. A more efficient officer or a more courteous gentleman cannot be imagined. He went out in a blaze of glory, too, for he made an admirable speech in favor of congressional legislation for the indemnity of aliens suffering from unlawful conduct of our citizens, on which we commented last month. About one hundred members sat down at the "banquet." How many stood up at the close is not recorded. There is always a quorum on such occasions, without resorting to Mr. Reed's stringent measures; and they all act promptly and without filibustering.

BOGUS. — As we are informed by one of our exchanges, Mr. F. K. Munton, in a lecture delivered in London, on "Bogus Concerns," began by explaining what he meant by the term. Although the word "bogus" might sound unparliamentary, a little research had satisfied him that it was not inappropriate, as he found the origin of the term to be as follows: Early in the present century a person named Borghese was convicted in America of a series of robberies founded on the issue of bills of exchange, either in counterfeit names, or payable at imaginary banks; and the extraordinary success which attended these frauds before their exposure gave rise to the popular description of any counterfeit transaction as a "Borghese" one, the word being corrupted by easy transition to "borgus," and ultimately into "bogus." Mr. Munton probably took it for granted that the term was an "Americanism," and looking into Bartlett's Dictionary of Americanisms, found that explanation given and credited to the "Boston Courier" of June 12, 1857. Exactly how the "Courier" should have acquired this exclusive information in the nature of a "scoop" does not appear. It sounds extremely fanciful. If the reduced Italian noble attached his family name to his financial operations, it probably would have appeared in England on his way to America. The "Century Dictionary" does not give this derivation, but suggests "bagasse," sugar-cane refuse.

COMPULSORY CORPOREAL EXAMINATIONS. — The Legislature of New York at the last session passed a law enacting that in an action for damages for personal injuries, the defendant may have an order providing for the physical examination of the plaintiff, before trial, by physicians or surgeons to be appointed by the court, under such directions and restrictions as shall appear proper to the court, and upon satisfactory evidence that the defendant is ignorant of the nature or extent of the injuries. This is a recognition of the late decision of the Court of Appeals in McQuignan *v.* Ry. Co., 129 N. Y. 50, following Union Pac. Ry. Co. *v.* Botsford, 141 U. S. 250, holding that no such power exists at common law. There would seem to be no doubt of its constitutionality, as a rule of evidence. We do not believe in its policy, for it is evident that it will be much resorted to, as for example by railroad companies, to terrify and deter such parties as women from bringing suit. The proper way is to let the jury judge of the weight of the evidence which the plaintiff brings. In most cases it is perfectly satisfactory one way or the other. At all events, it is apparent that the act has one grave defect. Such an order should not be granted unless it is made clearly to appear that the alleged injury is of such a character that oral testimony of experts on the trial will not disclose it. Mere "ignorance" is not enough.

LEGAL PORTRAITS. — It behooves us to speak well of legal portraits when they are good. "'T is an ill bird," etc. Two large groups of such reach us from the Lawyers' International Publishing Co. of Kansas City, Mo. Each contains some seventy small portraits, inscribed in every instance with the date of birth of the subject, and of death in case of those deceased. In most instances they are sur-

prisingly good likenesses, and are all well executed. They comprise the greatest of living and dead lawyers and judges of past and present times. We have thought them worthy of framing and hanging up in our office, and cordially recommend others to do likewise. Very likely, in these "stringent" times, the publishers would not object to the purchaser's "hanging up" the payment for a reasonable period.

A CORRECTION. — A mistake, which the Easy Chair very much regrets, crept (they always "creep," never seem able to go upright) into its account of the late conference at Milwaukee of the States Commissions on Uniform Legislation. It was stated that Mississippi was not represented there. On the contrary, two of the commissioners from that State were present, — Mr. Thompson, who travelled nine hundred miles, and Mr. Sullivan, who travelled seven hundred miles, both at their own expense. We hope these gentlemen will accept our apology for the error, which of course was inadvertent, but nevertheless very careless. It is to be hoped that Mississippi, and the other States which do not pay even the expenses of their commissioners, will see the fairness of doing so.

NOTES OF CASES.

POLYPHEMUS' TWIN. — Under the head of "The Case of Polyphemus" we recently discoursed in this department of Bawden *v.* Liverpool, etc., Assurance Co., 2 Q. B. Div. (1892) 534; 46 Alb. L. J. 390, the case of the one-eyed man insured against accident producing "complete and irrevocable loss of sight in one eye" or "to both eyes," in which it was held that he might recover as for the loss of sight of both eyes upon the loss of sight of his only eye. Now we discover that this was anticipated in Pennsylvania, in 1891, in Humphreys *v.* Nat. Ben. Ass'n, 11 Lawy. Rep. Ann. 564. The facts were precisely the same in both cases, except that in the latter the policy did not provide for loss of one eye, but only for "total and permanent loss of sight of both eyes;" and it was held that the Cyclopean plaintiff might recover therefor upon the loss of his single eye. The court said: —

"The loss of one eye to him was precisely the same as the loss of both eyes by an ordinary man. It is total blindness in either case. There is no provision in the policy for the loss of one eye, as there is for the loss of one arm or one leg. The reason is plain. The loss of one eye does not produce a 'total and permanent loss of sight.' For all practical purposes a man with one eye can still follow his occupation and gain his living, while the loss of an arm or leg is a disability which seriously interferes with his ability to earn his bread; hence it was that the policy provided, or rather defined, the 'loss of sight' as the 'loss of both eyes.' It was the loss of sight which was insured against; and this was just as complete in the plaintiff's case as though both eyes had been lost during the life of the policy. Assuming that the company intended to insure the plaintiff against something, and that that something was the loss of his sight, the most that can be said is that having but one eye the risk was increased; but the risk was not increased after the policy was issued.

"It is reasonable that the parties did not intend the policy to cover the matter of eyesight at all? Yet this is the conclusion we must come to, if we sustain the defendant's contention. Where the terms of a policy are susceptible, without violence, of two interpretations, that construction which is most favorable to the insured, in order to indemnify him against loss sustained, should be adopted. Teutonia F. Ins. Co. *v.* Mund, 102 Penn. St. 89; Burkhard *v.* Travelers' Ins. Co., id. 262."

This is a striking proof that there is no case so queer that another just about like it does not turn up about the same time.

VOLENTI NON FIT. — In Fitzgerald *v.* Connecticut River Paper Co., 155 Mass. 155, it was held that a female employee in a mill the steps of which are slippery from the freezing of exhaust steam from the engine, is not negligent in law in using the steps in her exit from the building, although she knew of their slippery condition. Knowlton, J., devotes six pages to a learned review of the doctrine of *Volenti non fit injuria*, citing nearly fifty authorities. He finally observes: "Besides, there was evidence tending to show that she had no way of leaving the defendant's mill except by going down the steps, and that was important to be considered in deciding whether she took the risk voluntarily." Well, we should say so! And we should say that this was absolutely decisive of the case without any discussion of *volenti non fit*. She took the only way out provided by her employer, and owing to his negligence was injured on that way. She was not bound to stay in the mill until warm weather, nor to jump out of window, nor to yell for the hook-and-ladder company. We should have decided that case in just four lines, as the learned judge substantially did when he had got over the case-learning that had nothing to do with the case. This volume contains thirty-one cases of negligence resulting in personal injuries!

CONTRACT FOR BENEFIT OF STRANGERS. — This subject has been considerably mooted in the American courts, and the doctrine of the leading cases of King *v.* Whitely, 10 Paige, 465, and Lawrence *v.* Fox, 20 N. Y. 268, although followed in that State, has met with some criticisms and limitations elsewhere. In Jefferson *v.* Asch, Minnesota Supreme

Court, June, 1893, it was held that "a stranger to a contract between others, in which one of the parties promises to do something for the benefit of such stranger, there being nothing but the promise, no consideration from such stranger, and no duty or obligation to him on the part of the promisee, cannot recover upon it." The court said: —

"The decision in 10 Paige was followed in Trotter *v.* Hughes (12 N. Y. 74), and approved in Garnsey *v.* Rogers (47 N. Y. 233). In Vrooman *v.* Turner (69 N. Y. 280), similar in its facts to the case in 10 Paige, the court go over the whole ground, recognize the decision in Lawrence *v.* Fox, and hold the two decisions consistent, and follow that in 10 Paige. It lays down this rule. 'To give a third party who may derive a benefit from the performance of the promise an action, there must be, first, an intent by the promisee to secure some benefit to the third party; and, second, some privity between the two, — the promisee and the party to be benefited, — and some obligation or duty from the former to the latter, which would give him a legal or equitable claim to the benefit of the promise, or an equivalent from him personally.' 'There must be either a new consideration, or some prior right or claim against one of the contracting parties, by which he has a legal interest in the performance of the agreement;' and 'there must be some legal right, founded upon some obligation of the promisee, in the third party, to adopt and claim the promise as made for his benefit.' In some cases, near relationship, as of father and daughter, or uncle and nephew, has been held to supply the place of a strictly legal right in the third party (Dutton *v.* Pool, 1 Vent. 318; Felton *v.* Dickinson, 10 Mass. 287), are instances of such. To enforce such a promise in favor of a third party, where there is no obligation to benefit him on the part of the promisor or promisee, nor anything such as near relationship, nor any consideration from the third party, would be much like a gratuity. . . . The question was considered and the cases in Massachusetts summed up in an able and exhaustive opinion by Metcalf, J., in Mellen *v.* Whipple (1 Gray, 317). That was the case of an agreement by a grantee of real estate to pay a mortgage for which the grantor was not personally liable. It was held the creditor could not recover from the grantee. The court attempts to classify the cases in that State in which one not a party to the promise has been permitted to sue upon it. The classification may be briefly stated as: First, cases where the defendant has in his hands money which in equity and good conscience belongs to the plaintiff — as, if A. put money or property in the hands of B. as a fund from which A.'s creditors are to be paid, and B. has promised expressly or impliedly to pay such creditors; second, cases where a near relationship, as father and child, or uncle and nephew, exists between the promisee and the person to be benefited; third, cases, of which Brewer *v* Dyer (7 Cush. 337) is an instance, in which the defendant agreed with a lessee of premises to take the lease and pay the rent to the lessor, and entered with the knowledge of the lessor, paid him the rent for a year, and then left before the term expired. We have referred so fully to the decisions in New York and Massachusetts, because in those States the question has more frequently arisen, and been more ably and thoroughly discussed, than elsewhere in this country. There has been no decision of this court at variance with the rule as held in those two States. . . . Without undertaking to lay down a general rule defining when a stranger to a promise between others may sue to enforce it, we are prepared to say that, where there is nothing but the promise, no consideration from such stranger, and no duty or obligation to him on the part of the promisee, he cannot sue upon it. Such is this case."

CRIMINAL INADVERTENCE. — A very awkward case of what Richard Grant White used to call "heterophemy" occurred in Hawkins *v.* State, Florida Supreme Court, July 15, 1893. In the margin of the written instructions, which the jury were permitted to take to their room, the judge, in one instance of a charge asked by the prisoner, wrote "guilty" instead of "given." The conviction of murder was reversed for this reason, the appellate court evidently deeming that the trial judge had thus incautiously spoken his mind. They remarked: —

"But however absent-mindedly or unintentionally it was written upon the charge, the question for our consideration is, was it, in the hands of the jury in their room, calculated to injuriously affect the defendants? We think that it was. There are but two words — 'guilty,' 'innocent' — that we know of in the English vocabulary that, when put singly and alone before the eyes of the jury, can so completely and effectually sum up and convey to their minds the conclusions of the judge upon the entire testimony in the case. Had he written the one word 'innocent' on the charge, the thought conveyed thereby would have been, 'These people are innocent The proofs are insufficient to establish their guilt;' on the other hand, the writing of the word 'guilty' was tantamount to saying, 'The proofs are ample to establish their guilt. In my judgment, they are guilty,' — either of which declarations would have been an unwarranted invasion by the court of the exclusive province of the jury to pass upon the facts. Though the jury may have been impressed with the idea that the writing of the word was unintentional on the judge's part, and due to absent-mindedness, even then it was calculated to convey to their minds the idea that the judge inadvertently gave expression to that which was uppermost in his mind. All of which was seriously harmful to the defendants. The writing of this word by the court upon the margin of the charge, and then sent with the jury to their room, to say the least, was so wide a deviation from the ordinary proceedings and forms provided by law for the securement to the defendants of a fair and impartial trial, that they were entitled to require at the hands of the State satisfactory evidence that they had not been injured by reason of such departure from the usual forms, and the burden was not upon them to show affirmatively that such departure had been the probable cause of their conviction."

As the sentence was not capital, this seems an extra-humane construction. Lynch courts are not subject to such mistakes at least.

WOMEN LAWYERS. — In a proceeding entitled *In re* Leach, decided in the Supreme Court of Indiana, in June, 1893, it was held that a provision of the Constitution and Revised Statutes of that State, that every person of good moral character, being a voter, shall be entitled to admission to the bar, and shall on application be admitted, on prescribed conditions, does not, by implication, exclude women from the practice of the law, there being no common law inhibition, and it being elsewhere provided in the Constitution that no privileges shall be granted to any citizen which shall not on the same terms belong to all citizens. The court said: —

"We have searched in vain for any expression from the common law excluding women from the profession of the law. Whatever the objections of the common law of England, there is a law higher in this country, and better suited to the rights and liberties of American citizens, — that law which accords to every citizen the natural right to gain a livelihood by intelligence, honesty, and industry in the arts, the sciences, the professions, or other vocations. This right may not, of course, be pursued in violation of law, but must be held to exist as long as not forbidden by law. We are not unmindful that other States — notably Illinois, Wisconsin, Oregon, Maryland, and Massachusetts — have held that, in the absence of an express grant of the privilege, it may not be conferred upon women. In some instances the holding has been upon constitutional provisions unlike that of this State, and in others, upon what we are constrained to believe an erroneous recognition of a supposed common law inhibition. However, each of the States named made haste to create by legislation the right which it was supposed was forbidden by the common law, and thereby recognized the progress of American women beyond the narrow limits prescribed in Westminster Hall. . . . The fact that the framers of the Constitution, or the legislators, in enacting our statute, did not anticipate a condition of society when women might desire to enter the profession of law for a livelihood, cannot prevail as against their right to do so independently of either. As said by the Supreme Court of Connecticut, in considering this question: 'If we hold that the construction of the statute is to be determined by the admitted fact that its application to women was not in the minds of the legislators when it was passed, where shall we draw the line? All progress in social matters is gradual. We pass almost imperceptibly from a state of public opinion that utterly condemns some course of action to one that strongly approves it. At what point in the history of this change shall we regard a statute, the construction of which is to be affected by it, as passed in contemplation of it?' (*In re* Hall, 50 Conn. 131.) Our position is not that the constitutional and legislative grants of power to practise were adopted with a view to including women, but that such provision simply affirmed the right of the voter, without even an implied denial of it to women. Whatever disabilities existed as to married women, under the common law, they did not affect the rights of unmarried women; and now that married women are under no legal disability in this State, as to the choice of honorable pursuits, both are to be considered as occupying the same position before the law."

BETTING ON BASEBALL. — In Mace *v* State, Supreme Court of Arkansas, in July, 1893, it was held (two judges dissenting) that baseball is a game of skill, within a statute making it a criminal offence to bet on a game of hazard or skill. That seems unanswerable. "A game of baseball" is a very common phrase, and it requires skill to play it, especially to "throw" it. One might well argue too that it is a game of hazard, — at all events, it is a hazardous game. The court said, speaking of the passion for gambling, "The Indian will stake his wife, and the ancient German would stake himself" to gratify it. The Indian undoubtedly would also "stake" his captive. "Gaming" has been held to include quoits and billiards and tenpins, but not a horse-race. Probably, however, a contest of polo would be construed a game of skill, as it is a mixture of racing and skill. Baseball has been held construed a "sport" in New York. The principal decision is precisely supported by reference to People *v.* Weitnoff, 51 Mich. 208, where Judge Cooley held baseball "a game of skill or chance."

EDITOR AND CONTRIBUTOR. — The London "Law Journal" brings news of a novel contention between these parties. The plaintiff, Mr. W. A. Macdonald, a Canadian journalist, sought to recover from the proprietors of the "National Review" the price of an article which he had written and submitted to the editor's consideration, *ex proprio motu*, and which had been set up in type, sent to him for correction, and returned revised. The article was not published within what Mr. Macdonald deemed "a reasonable time;" he complained of its non-appearance, and got back the manuscript, with an implied refusal to insert it, by return of post. The plaintiff contended that by putting his manuscript in type and sending him a proof for revision, the editor had in law "accepted" his article, and was bound to publish or pay for it within a reasonable time. The defendants, on the other hand, maintained, and adduced what appears to have been strong evidence to prove that this position was, according to journalistic custom, untenable. But his Honor Judge Lumley Smith agreed with the plaintiff, and held that to print a manuscript and send the author a proof (presumably) for correction, is to exercise over it the *dominium* which constitutes an acceptance in law. "We are far from satisfied that the judgment in this case is sound," says the "Law Journal." But pray, why not? The putting in type and sending for correction is always an indication of intention to publish speedily; any custom to the contrary would be unreasonable and absurd, and therefore illegal. Granting this, the liability to payment within a reasonable time follows as a legal consequence. It is very different from the custom not to pay for accepted articles until published.

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 most heartily approve the suggestion made in the following communication: —

ALBUQUERQUE, N. M., Oct. 2, 1893

Editor of the "Green Bag":

DEAR SIR, — An accomplished Spanish scholar recently called my attention to a word with which I was previously unacquainted, and which I think is worthy of adoption into our own language. In the "Diccionario de Legislacion y Jurisprudencia" of Escriche, under the head of "Leguleyo," will be found a definition, of which I have made and inclose herewith a translation. We have no word in the English language which is quite so extensive in its meaning. The nearest approach to it is "pettifogger;" but that does not convey any idea of the superlative character of the "leguleyo," which is defined as follows: —

"LEGULEYO. He who, without penetrating to the foundation of the law, knows only enough to confuse and perpetuate suits with the subtleties of forms. He is, among lawyers, the same as a charlatan among physicians. 'Leguleyus [says Cicero, Book I. de Oratore], quidam cautus et acutus, præco actionum, cantor formularum, anceps sillabarum.' Francisco Poleti, in his history of the Roman Bar, calls the leguleyos 'charlatans, harpies, bloodsuckers of the human race, and consummate frauds, who involve their clients in the labyrinths of never-ending litigation.'"

Hoping that you will make the entertaining and possibly useful suggestion to the profession that we incorporate "leguleyo" into our vocabulary, I am

Yours truly,

F. W. C.

THAT there is much quiet fun going on at times in the letters of lawyers to each other is a fact well known to the profession. As an illustration, witness the following verbatim copy of a letter, written in June, 1876, by a Washington lawyer to his legal friend in Boston, who had asked a *gratuitous* service in relation to the pension case of a man named Swett: —

MY DEAR JOHN, — Yours of 2d is at hand enclosing fifty dollars retainer, which is refreshing.

You say that Oliver H. Perspiration went in for glory, and came out anatomically imperfect. Very like.

His next misfortune was employing you as an attorney.

As soon as I received your letter, I put on my hat and went to the Pension Office. I ascended to the top thereof, and interviewed the head-devil of the establishment. After a good deal of heavy waiting around, I found the man who knows all about it. He got out the papers, and we sat down and looked the thing over. I did n't hand him any money, not being myself in that line of business; nor did I grab the papers, as I am not a candidate for the Presidency.

This man looked the papers over carefully. He said you made a great mistake writing in purple ink; it is not recognized at the Department. Again, he says there 's a "t" that is n't crossed, — fifth line from top, in "surgeon's certificate," — but when I told him you were a friend of Governor L——, and was talked of one year for the Legislature, he said he would cross that "t" himself, and it would be all right.

Then he wanted to know why in —— (I should n't like to say what) you did n't forward the photograph of the applicant. I told him it was probably *ignorantia legis*, — you 'd been troubled with that all your life. However, I said I had an old photograph of Schuyler Colfax I would send in and file; and he said that would do just as well.

Then he wanted to know if you were married, and if not, why not. He said "going to the circus" was not relevant, and you could n't inject any such testimony into the case. Then he wanted to swear me before a colored justice that I was to receive no fee for my services. I told him what Horace Greeley would probably have told him under the circumstances. Then he said we would go out and take a drink, and telegraph you it was all O. K. I said, "No: this Centennial year we must be more economical, — more like our forefathers." Then he got mad, and said he would n't play any more. 'I calmed him down, and got the following facts out of him: —

1. Your claim is not dead, but sleepeth.
2. It has n't yet been submitted.
3. It shall be submitted *at once*.
4. He (from a cursory view) thinks it will be allowed.
5. If more evidence is needed, you will be advised at once.
6. It takes about three weeks for the certificate to issue after submission.

I am glad that I stirred it up for you; and you, my dear fellow, are welcome to my services.

Yours truly,

LEGAL ANTIQUITIES.

In Virginia, where tobacco was the chief production, it was early used as money. Taxes were collected and fines assessed in tobacco by weight. In 1624 it was enacted that any person absenting himself from divine service any Sunday should forfeit a pound of tobacco, and if absent four consecutive Sundays, fifty pounds of tobacco. The law extended to ministers, who were required to "preach in the forenoon and catechise in the afternoon of every Sunday," under a forfeiture of 500 pounds of tobacco. But for any "popish recusant" who should assume to exercise a public office, or even remain in the colony "above five days after warning," the penalty was 1,000 pounds of tobacco. Clergymen were paid in tobacco; but in 1632, owing to the low price of that commodity, there was added to their allowance "every twentyeth calfe, kidde, and pigge." The value of tobacco, and almost everything else, was regulated by statute or judicial decree. In Maryland (1699) it was enacted that every tavern-keeper who demanded above 10 pounds of tobacco for a gallon of small beer, 20 pounds for a gallon of strong beer, 4 pounds for a night's lodging in a bed, or 12 pounds for a peck of oats, should forfeit for each offence 500 pounds of tobacco.

FACETIÆ.

Baron Maule once rebuked the arrogance of Mr. Cresswell, who had been treating the Bench with a lack of courtesy, in the following terms: "Mr. Cresswell, I am perfectly willing to admit my vast inferiority to yourself. Still, I am a vertebrated animal, and for the last half-hour you have spoken to me in language which God Almighty himself would hesitate to address to a black beetle."

Old Squire C——, one of the first clerks of Cass County, Missouri, was a man who, although his early education had been sadly neglected, fairly revelled in the use of big words. The grand jury had come into court to report a lot of indictments which it had found, and upon which the foreman had properly indorsed "A true bill," signing his name. The Clerk, not being satisfied with the simplicity with which Justice was clothing herself, wrote upon each indictment, under the foreman's name, the following: "We, the undersigned jurors, concur in the above *effluvia*." To which each juror signed his name, supposing it to be some necessary legal appendage.

We print the following two genuine verdicts, rendered by an old coroner in Kentucky, as an aid to the gentlemen of the same profession in the discharge of their delicate duties:

State of Kentucky } ss.
Russell County }

An inquisition taken for the people of the State of Kentucky and County of Russell this 28th day of October 1854 before Mr. M. W. C—— Crowner of said County of Russell upon view of the body of a male man name unknown, then and there laying dead upon the oaths of twelve good and lawful men of the people of the said State and County of Russell and when and where the same come to his death, we the jury do agree, the body come to his death by death unknown.

M. W. C—— C. R. C.
Crowner of the said County.s & State.

State of Kentucky } ss.
Russell County }

Inquisitions held over the body of Hugh Holmes deseasts about December 8th 1853. We of the said jury by being summoned and qualified and having the evidences and making true and diligious researchments over the said body of said deseasts twelve men met & being duly sworn into the case beleaves that he come to his death by some fit or other of apoplexy.

Doctor being sworn by myself Crowner states that the Lobos membrane of the spinal disease was affected to considerable extent.

M. W. C—— C. R. C.
Crowner of the said County.s & State.

NOTES.

THE "Philadelphia Telegraph" is responsible for the following: —

"Judge Wallace, afterwards Chief-Justice of California, examined ex-Speaker Reed for admission to the bar. It was in 1863, when the Legal-tender Act was much discussed in California, where a gold basis was still maintained. Wallace said: 'Mr. Reed, I understand that you want to be admitted to the bar. Have you studied law?' 'Yes, sir; I studied law in Maine while teaching.' 'Well,' said Wallace, 'I have one question to ask: Is the Legal-tender Act constitutional?' 'Yes,' said Reed. 'You shall be admitted to the bar,' said Wallace. Tom Bodley, a Deputy Sheriff, who had legal aspirations, was asked the same question, and he said 'No.' 'We will admit you both,' said Mr. Wallace; 'for anybody who can answer offhand a question like that ought to practise law in this country.'"

SOME years ago in a Richmond court, the judge, in passing sentence upon a man who had been convicted of improperly influencing a trial, said: "I owe it to you and others — perhaps more to you than any other — that I am sitting here a Virginia judge. You elected me to administer the laws of the Commonwealth with an upright and impartial mind, and to keep pure the courts of justice in Virginia. I know not how better I can justify your expectation and vindicate the wisdom of your choice, believing you to have offended against the laws of the State, than by imposing upon you the highest penalty of the law, — a fine of 500 dollars and costs."

THE advice of Judge Pryor of New York to the jurors in a recent case to read the newspapers reminds us of an incident in the life of the late Gen. A. C. Niven, when he was defending a man indicted for murder in the adjoining county of Orange, fifteen or twenty years of age. The General reversed the usual practice, and rigorously excluded by challenge every man from the jury who had not read the papers containing the full account of the killing, declaring that he wanted only intelligent men on the jury. He won the case and cleared the man.

In this county, some four years ago, counsel in a case examined and re-examined jurymen, as they were called, until they succeeded in getting a jury who swore they had neither read nor heard anything about the matter in issue, one member asserting that he took no papers, had never taken any, and did n't want to take any, and that he had never read anything about the case, although it had been published and commented upon in every paper in the county. The jury decided the case by beating the side whose lawyer had made the most persistent efforts to get a jury of know-nothings. — *Monticello Watchman.*

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The Arena.

The Psychology of Crime, Henry Wood; A Ready Financial Relief, W. H. Van Ormun; Judge Gary and the Anarchists, M. M. Trumbull; Silver or Fiat Money, A. J. Warner; Mr. Ingalls and Political Economy, William J. Armstrong; The South is American, Joshua W. Caldwell; A Continental Issue, Richard J. Hinton.

The Atlantic.

The Man from Aidone, I.–III., Elizabeth Carazza; The Undertime of the Year, Edith M. Thomas; The Isthmus and Sea Power, A. T. Mahan; The Tilden Trust, and why it Failed, James L. High; Two Modern Classicists in Music, in Two Parts: Part One, William F. Apthorp; Tone-Symbols, III., John Hall Ingham; His Vanished Star, VI.–IX., Charles Egbert Craddock; The Hayes-Tilden Electoral Commission, James Monroe; The Gothenburg System in America, E. R. L. Gould; The Permanent Power of Greek Poetry, Richard Claverhouse Jebb.

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Private Schools for Boys (illustrated), Price Collier; Some Rejected Princesses (illustrated), Eleanor Lewis; Old Newport (illustrated), Osmond Tiffany; The Papyrus Plant (illustrated), Georg Ebers; How to avoid Taking Cold, Charles A. Hough; Senator Stanley's Story (illustrated), T. C. Crawford; Notes of Ancient Rome (illustrated), Rodolfo Lansiani; Canoeing in America (illustrated), Lee J. Vance; Rome, the Capital of a New Republic, F. Marion Crawford; A Traveller from Altruria, W. D. Howells; Curious Breadwinners of the Deep (illustrated), Charles B. Hudson.

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From the Black Sea to the Persian Gulf by Caravan, I. From Trebizond to Tabreez; (illustrated), Edwin, Lord Weeks; Our National Game-bird (illustrated), Charles D. Lanier; The Handsome Humes, a Novel, Part V., William Black; A French Town in Summer (illustrated), Elizabeth Robins Pennell; The Childhood of Jesus (illustrated), Henry Van Dyke; A Pirate in Petticoats, a Story, Francis Dana; "Manifest Destiny," Carl Schurz; Lispenard's Meadows (illustrated), Thomas A. Janvier; Horace Chase, a Novel, Part X. (conclusion), Constance Fenimore Woolson; Riders of Syria (illustrated), Colonel T. A. Dodge, U. S. A.; Undergraduate Life at Oxford (illustrated), Richard Harding Davis; On Witchcraft Superstition in Norfolk, Charles Roper.

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The Irrigation Idea and its Coming Congress (illustrated), William E. Smythe; The Evils of an Appreciating Currency, Edward B. Howell; The Renaissance of the Historical Pilgrimage (illustrated), Lyman P. Powell; The Revival of the Pilgrimage in England (illustrated), W. T. Stead.

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The Northwest Mounted Police of Canada (illustrated), J. G. A. Creighton; The Mystery of the Red Fox (illustrated), Joel Chandler Harris; The Man of Letters as a Man of Business, W. D. Howells; Glimpses of the French Illustrators, I. (illustrated), F. N. Doubleday; In Viger Again, Duncan Campbell Scott; Carleton Barker, First and Second, John Kendrick Bangs; Historic Houses of Washington (illustrated), Teunis S. Hamlin; The Security of Desolation, Edith M. Thomas; Scott's Voyage in the Lighthouse Yacht, Introduction, Robert Louis Stevenson; Reminiscences of Sir Walter Scott, Baronet, Robert Stevenson; Nell Guy, Miss Carman; The Art of the White City (illustrated), Will H. Low; Shriven, H. C. Bunner; The Copperhead, chapters IX.-XI., Harold Frederic.

LEADING ARTICLES IN THE LAW JOURNALS.

American Law Review (Sept.-Oct. '93).

American Progress in Jurisprudence, David Dudley Field; The Distribution of Property, Mr. Justice Henry B. Brown; The Behring Sea Arbitration; Strikes and Trusts, U. M. Rose.

Central Law Journal (Oct. 20, '93).

Actions by Foreign Receivers, William L. Murfree, Jr.

Criminal Law Magazine (Sept., '93).

Former Offence, W. W. Thornton; Criminal Anthropology, O. F. Hershey.

Harvard Law Review (Nov. '93).

The Origin and Scope of the American Doctrine of Constitutional Law, James B. Thayer; The Present Legal Status of Trusts, S. C. T. Dodd.

Law Quarterly Review (Oct., '93).

What is a Chose in Action? Sir H. W. Elphinstone; Contract by Letter, L. C. Innes; The Reorganization of Provincial Courts, W. H. Owen; Indemnity of Executor Continuing Testator's Business, A. T. Murray; Our Indian Protectorate, Sir A. C. Lyall; The Last Days of Bondage in England, I. S. Leadam; A Doubt on the Statute of Frauds, E. C. C. Firth.

Yale Law Journal (Oct., '93).

The Importation of Armed Men from other States to Protect Property, Wilfred M. Peck; The Use of Cases in Teaching Law, Prof. Emlin McClain.

BOOK NOTICES.

A TREATISE ON THE LAW OF INSURANCE, including Fire, Life, Accident, Guarantee, and other Non-Marine risks, with reference to the decisions in the United States, England, Ireland, Scotland, Canada, and the other British Provinces. By

ARTHUR BIDDLE, M. A. Kay and Brother, Philadelphia, 1893. Two vols. Law Sheep. $10.00 net.

This work of Mr. Biddle's is a thorough and exhaustive exposition of the principles of law applicable to the subject of Non-Marine Insurance. Starting with the Contract of Insurance as the fundamental idea of the work, the author proceeds to consider its structure, the essential elements in its formation, the rights that accrue to the parties to it after it is formed, the capacity to avoid it, its performance, the consequences dependent upon its breach, and the measure of damages. The arrangement of the book is excellent, and the propositions, while briefly and concisely stated, are unusually clear and comprehensive. We welcome the treatise as a valuable addition to our legal text-books, and heartily commend it to the profession as the latest and best work upon the subject.

THE AMERICAN STATE REPORTS, containing the cases of general value and authority decided in the courts of last resort of the Several States. Selected, reported, and annotated. By A. C. FREEMAN. Vol. XXXII. Bancroft-Whitney Co., San Francisco, 1893. Law Sheep. $4.00 net.

This volume contains an admirable selection of cases from the Reports of Florida, Georgia, Illinois, Indiana, Iowa, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New York, North Carolina, and West Virginia. The annotations are as full and valuable as ever.

THE PETRIE ESTATE. By HELEN DAWES BROWN. Houghton, Mifflin, & Co., Boston, 1893. Cloth. $1.25.

The plot of this story turns upon a lost will. An old bachelor, James Petrie, dies leaving a vast estate, which Richard Waring, a young journalist, had every reason to suppose, from declarations made by Petrie, would be devised to him, as the old man believed he had no relatives left in the world. No will being found, the property goes to a distant relative, Charlotte Coverdale, a poor school-teacher in a seminary for girls. The experiences of this young girl in New York City life; her efforts to better the condition of those living in the tenement-houses composing a part of her estate; her meeting with Richard Waring, and of course falling in love with him; the finding of the lost will, — all these elements are woven into an interesting and charming story. The heroine is a delightful creation, but we confess to a feeling of disappointment in the hero. The author takes the trouble to inform us that he "was not a prig." He comes pretty near being one, however.

THE BUILDERS OF AMERICAN LITERATURE. First Series. Biographical and Critical Sketches of Leading American writers, born previous to 1826. By FRANCIS H. UNDERWOOD, LL.D. Lee & Shepard, Boston, 1893. Cloth. $1.50.

This work is intended to show the beginnings and growth of American literature down to a comparatively recent period, and will be completed in two volumes. The first series, now published, has an Historical Introduction, serving also as a General Survey. The body of the work consists of biographical and critical notices of eminent authors, beginning with Jonathan Edwards, and ending with those born previous to 1826, of which the last happens to be Richard Henry Stoddard, the poet. At the close is an interesting chapter upon "Some Mostly Forgotten Poets."

This work, in connection with the author's "Handbook of American Literature," will be of great value to all libraries, teachers, and students of our country's literature, as well as to the general reader. It contains a vast amount of interesting information, and is a most agreeable companion for a leisure hour.

A GENERAL OUTLINE OF CIVIL GOVERNMENT IN THE UNITED STATES. The States, Counties, Townships, Cities, and Towns. By CLARENCE D. HIGBY, PH.D. Lee & Shepard, Boston, 1893. Cloth. 30 cents.

It is the aim of this small book to bring the subject of Civil Government within the reach of that large class of students who desire to complete their school-work in the shortest time possible.

The plan of the work is very simple, beginning with Part I., The State and the Government. Part II., The United States and the Departments of Government. Part III., The States and Territories. Part IV., Counties, Townships, Cities, Towns, etc. Part V., The Constitution of the United States, — supplemented by a series of questions on each part.

While prepared primarily as a text-book for the use of teachers and pupils, yet the information given here should be in possession of all who desire to be good citizens and who wish to take an intelligent interest in public affairs. Nowhere can the matter be found in more compact form suitable for general use.

THE ADVENTURES OF MR. VERDANT GREEN, AN OXFORD FRESHMAN. By CUTHBERT BEDE (Rev. E. Bradley). 2 vols. LITTLE MR. BOUNCER

AND HIS FRIEND VERDANT GREEN. By CUTHBERT BEDE. 1 vol. Little, Brown & Co., Boston. Together, 3 vols. 12mo, cloth, extra, gilt top. $5.00.

The lovers of these favorite books will welcome them in a choice and handsomely printed and illustrated edition hitherto wanting. The first part of "The Adventures of Verdant Green" appeared in 1853, forty years ago, and of the whole book more than 150,000 copies have been sold. Those familiar with these delightfully humorous college stories will remember the many mirth-provoking hoaxes of Mr. Charles Larkins and little Mr. Bouncer; the hero's rowing, riding, boxing, skating, archery, and cricket experiences and mishaps; the famous description of a town and gown row at Oxford; Mr. Bouncer's expedients in studying for his degree, etc. "The Adventures of Little Mr. Bouncer" and "Tales of College Life" are now for the first time published in uniform style with "The Adventures of Verdant Green." All of the author's spiritedly humorous illustrations are included.

No young man should forego the pleasure of an introduction to the inimitable "Verdant" and his companions, and many of our older readers will desire to renew the delightful acquaintance made in their youthful days. These volumes are just the thing for a Christmas gift.

A limited edition of 250 numbered copies on Dickinson hand-made paper has been issued, price $15.00 *net*.

THE AUTOCRAT OF THE BREAKFAST-TABLE. By OLIVER WENDELL HOLMES, with illustrations by HOWARD PYLE. Houghton, Mifflin & Co., Boston and New York. Two vols. Cloth. $5.00.

The Autocrat of the Breakfast-Table needs no introduction to our readers, for he is known and loved by the whole English-reading world. These papers are as fresh and inspiring as when read by our fathers and grandfathers more than thirty years ago. There is a distinctive charm about them which no lapse of years can diminish. This new edition is in every way worthy of both author and publishers. The illustrations are exquisite gems of art, and the typographical work is a delight to the eye. For a Christmas or New Year's gift nothing more beautiful or fitting could be found.

THE WOMAN WHO FAILED, AND OTHERS. By BESSIE CHANDLER. Roberts Brothers, Boston, 1893. Cloth. $1.00.

There is a freshness and originality in the author's style which makes these stories vastly entertaining. Both pathos and humor are skilfully intermingled, and the character sketches are drawn with spirit and vigor. "Esther Goodwin's Geese" is irresistibly funny, while "The Woman who Failed" is a pathetic but faithful picture of the struggles of a young couple against adverse circumstances. The other stories are capitally told, and include "The Middle Miss Tallman," "Miss Polly Atherton's Ball," "Uncle Nathan's Ear-Trumpet," "A Silent Soul," "Margaret's Romance," "A Victim of Prejudice," and "The Turning of the Worm." The book is a delightful companion with which to while away an hour.

TWO BITES AT A CHERRY, with other Tales. By THOMAS BAILEY ALDRICH. Houghton, Mifflin & Co., Boston and New York. Cloth. $1.25.

Mr. Aldrich is one of the most charming of our story-tellers, and this volume contains seven of his brightest and most captivating tales. These include, beside the title story, "For Bravery on the Field of Battle," a touching story of the Mexican War; "The Chevalier de Resseguier;" "Goliath," a most amusing "dog" story; "My Cousin the Colonel;" "A Christmas Fantasy;" and "Her Dying Words." These stories are all written in Mr. Aldrich's best vein, and furnish a most enjoyable treat to the reader.

BROTHERS AND STRANGERS. By AGNES BLAKE POOR. Roberts Brothers, Boston, 1893. Cloth. $1.00.

This is a remarkable book in many respects. It is difficult to believe that it is Miss Poor's first essay as a novelist, for there is nothing, either in method or construction, to indicate the novice, but on the contrary she proceeds to her task with all the confidence of an experienced writer. She knows what she wishes to say, and says it without hesitation or circumlocution. Her short stories (published under the *nom de plume* of Dorothy Prescott) had led us to expect further good things from her pen, but we confess that this book has more than surprised us. For a first novel we know of nothing better which has appeared during recent years. We sincerely trust that this first success will not, as it has done in so many cases, turn the author's head, for she has the capacity and the ability to earn for herself an enviable reputation in the literary world. The story is a simple one of New England life, — so simple that it is in fact devoid of anything like dramatic incident. The plot is one which few writers could invest with sufficient interest to hold the reader's attention, but Miss Poor has succeeded where nine out of ten would have failed, and the book is thoroughly enjoyable from beginning to end. We await with pleasant anticipations the next product of her pen.

SIR JOHN ABBOTT.

The Green Bag.

VOL. V. No. 12. BOSTON. DECEMBER, 1893.

THE LATE HON. SIR JOHN ABBOTT, K. C. M. G.

ON the 30th of October, 1893, Sir John Abbott, the successor of Sir John Macdonald in the Premiership of Canada, died after a lingering illness at his home in Montreal. Thus, within the short space of two years and a half, Canada has lost three of her most eminent public men. In 1891 Sir John Macdonald, her first Premier, and probably the most renowned of colonial statesmen, passed away; and he was soon followed by his great Liberal opponent, Hon. Alexander Mackenzie, who had been the Premier from 1873 to 1878.

John Joseph Caldwell Abbott was the eldest son of the late Rev. Joseph Abbott, the first Anglican incumbent of St. Andrews in the county of Argenteuil, Quebec, and was born at St. Andrews on the 12th day of March, 1821. He received his primary education in his native town, after completing which he entered McGill University, Montreal. In 1847 Mr. Abbott was called to the Bar of Quebec, then Lower Canada, and began the practice of his profession in Montreal, where in a short time he became a leading advocate. He began his political career as a Liberal, and it is well known that his name was signed to the famous annexation manifesto of 1849. That manifesto he himself afterwards described as "the outgrowth of an outburst of petulance in a small portion of the population of the province of Quebec, which is among the most loyal of the provinces of Canada." He was first returned to the Canadian Assembly by his native county in the general elections of 1857, and he continued to hold the seat until 1867. For a short time during this period he occupied the portfolio of Solicitor-General for Lower Canada.

Throughout his whole public career Mr. Abbott paid special attention to questions of commercial law, and he was regarded as one of the best commercial lawyers in Canada. While he was in the Canadian Assembly, he prepared the Insolvent Act of 1864, which he afterwards published in book form with copious and useful notes. He also prepared a Jury Law Consolidation Act for Lower Canada, besides a number of other useful statutes. In 1862 Mr. Abbott was made a Q. C., and the degree of D. C. L. was conferred upon him in 1867 by McGill University.

When the union of the Provinces was consummated in 1867, it was but natural that a public man who had distinguished himself so much in the old assembly should aspire to a seat in the new Parliament of Canada. He accordingly placed himself once more in the hands of his old constituents, and was elected to the House of Commons in 1867. He was re-elected for the same constituency in 1872 and 1874, but was unseated shortly after the latter election, and was not again successful in carrying the county until 1880. He was again elected in 1882. During his later years in the House of Commons he made few speeches. He was chairman for many years of the Committee of Banking and Commerce, — a position as responsible as a seat in the Cabinet, inasmuch as many of the most important matters coming before Parliament are referred to this committee for close investigation.

In May, 1887, Hon. Mr. Abbott was appointed a member of the Privy Council of Canada, and was translated to the Senate, where he became Government leader. He discharged the functions of that position

with great tact and ability, and his speeches in the Senate are among the ablest and most valuable published in the Canadian Hansard.

Upon the death in 1891 of Sir John Macdonald, who was for about twenty years Premier of Canada, the choice of a successor was practically confined to two of his lieutenants, — Sir John Thompson and Hon. Mr. Abbott. The name of Sir Charles Tupper was mentioned in connection with the vacant post, and it is believed that he was not averse to assuming the functions of leadership. But Sir Charles had been absent from Canada for several years, and the conditions had in the mean time so vastly changed that he was scarcely in the race at all. The great provinces of Quebec and Ontario were opposed to his leadership, and in the maritime provinces he probably could not secure a following except perhaps in New Brunswick. The question, therefore, was whether Sir John Thompson or Mr. Abbott would be chosen.

Under the British constitutional practice, which prevails in Canada as well as in the mother country, when the leader of a government dies in office his administration comes to an end, and the viceroy is free to choose whomsoever he will in the dominant party to form an administration. Shortly after Sir John Macdonald's death, the Governor-General summoned Sir John Thompson, and requested him to form a government. The latter had been the late Premier's right-hand man since 1885, but he was only forty-seven years of age, and had been only six years in the House. During those six years he was undoubtedly the principal spokesman of the party, both in the house and on the platform; yet with becoming modesty and generosity, he expressed a preference to remain in the ranks, and recommended Mr. Abbott to the Governor-General. Hon. Mr. Abbott responded to the summons, and formed an administration. This step was a great sacrifice for him. His health was not good; and he had reached an age when quiet and retirement are most coveted. He, however, obeyed the call of duty, and discharged the arduous duties of first minister until November, 1892, when, unfortunately, his health obliged him to retire. In May, 1892, he was created a Knight Commander of the order of St. Michael and St. George.

When his death was announced a few weeks ago, the press of Canada, without distinction of party, united in extolling the ability and integrity of her great son. We will cull one flower from the wreath of merited panegyric. The "Toronto Empire" said: —

"Mother earth never took to her comforting breast a kindlier man than the late Sir John Abbott. They who had knowledge of his simplicity of manner, the purity of his mind, the geniality of his spirit, the wisdom of his words, will not soon forget him, and the memory will be forever associated with the rugged old face, seamed with many a line of care, and furrowed deep by Time's unrespecting finger. But there was n't a wrinkle on that brave old face that was n't a beauty, that did not make it stronger and more impressive. It was a lion face, and it expressed the lion will which made a grand but unavailing struggle against death."

While Sir John Abbott did not occupy the high office of Prime Minister of Canada for so long a period as his illustrious predecessor, and while he had not displayed the wonderful all-round ability of his gifted successor, his place on the roll of Canada's statesmen will always be an honorable one. He had not Sir John Macdonald's *bonhomie* and knowledge of human nature, but he was a better speaker and a more thorough administrator. He was a singularly methodical man of business; measures committed to his care received his best attention to the smallest detail; and the result of his public labors will continue to be of enduring value to his country.

LEX.

LICENSE OF SPEECH OF COUNSEL.

By Irving Browne.

III.

CLEVELAND Paper Co. *v.* Banks, 15 Neb. 20; s. c. 48 Am. Rep. 334, was an action on an alleged agreement to pay for paper furnished the printing company. The attorney for defendant persisted in offering to prove that one S., the secretary of the printing company, had embezzled the funds and appropriated the property of the said company, which evidence was excluded. In the argument to the jury, defendant's attorney said: "The history of Smith you know; they told you that directly after these goods were shipped Smith went away, and that he went away with property that was not his own." *Held* error, and that the cause must be reversed. The court said: "The rights of parties are to be determined from the evidence; and an attorney, in arguing a case to a jury, must confine the discussion of facts to those proved. If he can be permitted to make assertions of facts, or insinuations of the existence of facts, not supported by the proof, there is danger that the jury will lose sight of the issue, or be influenced by misstatements as to the prejudice of the other party. Where such statements are improperly made, *prima facie* they are prejudicial, and may be sufficient to cause the reversal of the case. In the case under consideration it was entirely immaterial whether Smith had embezzled the funds or appropriated the property of the Post Printing Company or not, and any evidence tending to prove such facts, or assertions of their existence, must have diverted the attention of the jury from the real question at issue and must have been prejudicial. That evidently was the object of the statement, and that it had the effect desired is pretty clear. The question at issue was whether Banks, the president of the company, had made himself personally responsible for the payment of a quantity of paper purchased for and received by the Post Printing Company. Whether or not Smith had embezzled the funds or appropriated the property of the company, in no event could have the slightest relation to the case; and the only effect of the persistent offer of such evidence and making of such statements was to cause the jury to consider that the alleged wrong of Smith would defeat the liability of the defendant. In our opinion, therefore, the statement was so far prejudicial as to demand a new trial."

In Grosse *v.* State, 11 Tex. Ct. App. 377, the court said: "The eighth bill informs us that the district attorney in the close stated to the jury over objections of defendant, that 'he heard, while out on the street in New Braunfels, a citizen remark that it was a great shame that the defendant should have taken the money of the old man Wucherer, near seventy-one years old, and all the money he had in the world.' The court overruled the defendant's objections and allowed the district attorney to repeat these remarks, and gives this explanation: 'The district attorney used the remarks by way of argument, and the facts were testified to besides, — that is, that Wucherer was seventy-one years old, and it was all the money he had.' We cannot conceive how these remarks could be termed, as applicable to a legal trial, argument. An argument, it is true, is 'a reason offered in proof, to induce belief or convince the mind.' A person on the street believed that defendant stole an old man's money, and thinks it a shame; therefore the minds of the jurors should be convinced that defendant is guilty.

"If this is legitimate, the crowd, which in some cases is a mob, should be consulted,

and its decision reported to the jury, and the verdict should be rendered by this outside tribunal, if approaching unanimity, and be substituted for that of the jury. Who would be willing thus to be tried, or who would be willing for a jury to pass upon his guilt, their minds being first filled with the opinions of the streets, frequently manufactured by ignorance or prejudice, if not malice? This would not be a trial but a seriously solemn mockery of the same. A citizen is vouchsafed a fair and impartial trial by a jury of twelve men. Rules are given by which the jurors are tested, under oath, touching their relationship, prejudices, and opinions. When an impartial jury is impanelled, the guilt of the accused is tried under the law and evidence. The evidence consists of facts sworn to by witnesses. The witnesses must confront the accused. Hearsay evidence (facts) is not admissible; neither, *a fortiori*, are street opinions. The fact that there was evidence that the prosecutor was aged, and that he lost all of his money, had no connection with, nor could it justify, the allusion to outside opinions. The court should have promptly stopped the district attorney, and informed the jury that they should disregard these opinions, and try the defendant by the facts sworn to by the witnesses."

In Conn *v.* State, 11 Tex. Ct. App. 399, the court said: "The district attorney said to the jury, 'They have severed, and Conn is put on trial, and you are told he was only a hired hand. They hope thus to clear this man, and then he is to swear his confederate clear. I tell you this is the trick.' To which the defendant objected, and asked the court to stop such statements; which was refused by the court. Continuing, the district attorney said: 'Good men in this county, and the best men in Gonzales County, desire the conviction of this man and his partner.' To all of which the defendant objected. The court overruled the objections, remarking, 'He speaks at his peril; I will sign your bill of exceptions.'

"Collins had the right to place Conn on trial first, and if acquitted, make a witness of him. This is not only permitted by the Code, but is in perfect accord with reason and justice; and the judge should not have permitted for a moment an attack, such as the above, upon proceedings which are not only just but expressly authorized by the very Code of laws for a supposed breach of which the defendant was being tried. If to place Conn on trial first, with a view of acquittal and to make him a witness, be a trick, it is one expressly provided for by law. If Conn be guilty, the State could defeat the trick by proving his guilt, under the rules of law. This response of the judge is astonishing indeed. Considering the very obnoxious and flagrant remarks of the district attorney, we cannot conceive how it were possible for any person save defendant to be in peril. That the district attorney was not is very evident from the fact that defendant's motion for a new trial was promptly overruled. We are left to conclude from the latter part of the remark, to wit, 'I will sign your bill of exceptions,' that the danger or peril was to be from the hands of this court; if so, we are equal to the occasion; for we will not permit one accused of theft or any other offence to be convicted by such means, though all of the good, better, or best men of this State desire his conviction."

In Willis *v.* McNeill, 57 Tex. 465, it was held error in the court to allow counsel to discuss before the jury the irrelevant question of the wealth of a party, and to insist that the wealthier the parties the greater should be the amount of damages assessed against them; and that the error was not cured by the failure of opposing counsel to interpose objection at the time. The court said: —

"In Thompson *v* State, 43 Tex. 274, the late learned chief-justice said, 'Zeal in behalf of their clients, or desire for success, should never induce counsel in civil cases, much less those representing the State in criminal cases, to permit themselves to endeavor to

obtain a verdict by arguments based upon other than the facts in the case and the conclusions legitimately deducible from the law applicable to them.' It is further said that such practice is of sufficiently grave importance and so highly objectionable as to require the decided condemnation of the court. Whether counsel under such circumstances remain silent or object, may be alike prejudicial to his cause. Silence may be construed into acquiescence, objection may call forth a damaging repartee."

In Union Cent. Ins. Co. *v.* Cheever, 36 Ohio St. 201, the court permitted counsel for one of the parties, in argument to the jury, to read and comment upon matter not in evidence, nor relevant to the issue, and which was prejudicial to the opposite party. *Held*, an irregularity, or abuse of discretion which prevented a fair trial, and for which the verdict should be set aside and a new trial ordered.

In Kinnaman *v.* Kinnaman, 71 Ind. 417, it was held not error to grant a new trial for such cause, though no objection was interposed by opposing counsel.

In State *v.* Poland, 85 N. C. 576, counsel, in addressing the court upon a motion for a mistrial on the ground of alleged fraud in selecting the jury, said that two of the jurors had gone into the box "with souls blackened with perjury and bribery," etc., in the presence and hearing of the jury then impanelled, the opposing counsel objecting, and persisted in the use of abusive language toward the jurors during the trial, without being stopped by the court. *Held*, ground for a new trial.

In State *v.* Degonia, 69 Mo. 400, the court said: "It is also alleged as error that the prosecuting attorney, in his closing argument, commented on the fact that defendant had not called as witnesses his two brothers, who were indicted as accessories. It does not appear that this conduct of the prosecuting attorney was made a ground for a new trial in the motion for a new trial; but it does appear that the attention of the court being called to it, the attorney was promptly rebuked by the court and commanded to keep within the record. This, under the principle announced in the case of The State *v.* Lee, 66 Mo. 165, cured the error, if any."

OLD-TIME CURRENCY.

By M. T. Sanders.

IN these days of so much talk about monometallism and bimetallism, the writer is reminded of a quaint chapter in the early history of the Southwest, which may be reproduced with interest to the reader. In the first settlement of this country, in those sections remote from the lines of commerce, the inhabitants, owing to the scarcity of gold and silver, were forced to adopt some standard of value in the exchange of commodities. Paper money was fluctuating and uncertain in value, and its circulation for this reason was limited. The early settlers, in order to carry on their trading and supply their wants, substituted deer-skins and peltries as a currency by which they bought and sold, and supplied themselves with powder and lead, sugar and coffee, salt, and other necessaries. These skins were always in demand at the different trading-points, and furnished a convenient and ready substitute for money, because the finest and most valuable were of small size, and when dried or dressed could be easily carried long distances. A pioneer who had to travel two or three days over the mountains to reach a trading-place, could pack, in addition to his trusty rifle, enough skins or peltries to lay in sufficient

sugar and coffee, powder and lead, to do him almost a year; and if the old lady went along on the pony, she could buy as much calico and as many "store things" as all three could pack home.

In the early days of that portion of the West which is now East Tennessee, the lack of specie and the prejudice against paper money were such that taxes were often paid in skins; and when the State of Franklin was organized in 1785, the Legislature passed a law making the salaries of all executive, legislative, and judicial officers payable in skins. The reader, doubtless, is familiar with the rise and fall of the State of Franklin. The territory now embraced in the State of Tennessee once belonged to North Carolina. The inhabitants in the eastern part of this then almost trackless wilderness fell out with the North Carolinians, absolved themselves from all allegiance to the mother State, and established a separate government of their own choice, styling it the State of Franklin. Among the first acts of the Legislature of this new commonwealth was one to the effect that the collection of taxes in specie was oppressive to the good people of the commonwealth for want of a circulating medium, and it was accordingly enacted (I quote *verbatim*) as follows:—

Be it enacted by the General Assembly of the State of Franklin, and it is hereby enacted by the authority of the same, that from the first day of January, A. D. 1789, the salaries of the civil officers of the Commonwealth shall be as follows, to wit:—

His Excellency the Governor, per annum, one thousand deer-skins.

His Honor the Chief-Justice, five hundred do. do.

The Attorney-General, five hundred do. do.

The Secretary to his Excellency the Governor, five hundred raccoon do.

The Treasurer of the State, four hundred and fifty otter do.

Each County Clerk, three hundred beaver do.

Clerk of the House of Commons, two hundred raccoon do.

Members of Assembly per diem, three do. do.

Justice fee for signing a warrant, one muskrat do.

The Constable for serving a warrant, one mink do.

Enacted into a law this 18th day of October, 1788, under the Great Seal of the State.

Witness, His Excellency ———,
Governor, Captain-General, Commander-in-Chief, and Admiral in and over said State.

It is obvious that the framers of this law meant business, and appreciated the exigencies of the dear people, and favored the protection of home industry, for at that time the country abounded in wild animals of precious skins and furs, and the principal occupation was to hunt them. It is moreover obvious that the passage of this law was a *coup d'état* on the part of the members of that General Assembly, which forever endeared them in the hearts of their constituents, and doubtless secured their re-election to the next session. Such a stroke for re-election would have delighted the chief ambition of the average legislator of our own times.

There is one feature of this law which deserves special remark. The governor, it will be observed, subscribes himself not only commander-in-chief, but also admiral. Now, when it is remembered that this new State was situated almost in the heart of the continent, and had not a solitary mile of sea-coast nor a single navigable stream within its boundaries, in fact was hardly less than a thousand miles from salt water, it is hard to conjecture what use this inland, coon-skin commonwealth had for a navy!

But the Franklinists soon abandoned their secession movement, bridged "the bloody chasm," and resumed allegiance to the State of North Carolina on condition of general amnesty, and without the pains and penalties of reconstruction. Their State lines were blotted from the maps, but their buckskin laws form a pictorial page in the volume of our history illustrative of the practical good sense and independence of character of the

sturdy men who turned forests into fruitful fields, and built the log-cabins which have grown into great cities, and laid all the foundations on which we have builded up to this Columbian period of American greatness and glory.

THE CASE OF BLUEBEARD.[1]

By Percy Edwards.

HOW many of us, even children of a larger growth, know that such a character as Bluebeard was no myth, invented, perhaps, to terrify us into restraining our inconvenient curiosity, but an actual fact, — a living, breathing man-monster.

We know, of course, that French taste for highly seasoned sensationalism has wrought about this personage a fiction of highly wrought spectacular characteristic, rivalling, in this respect, the most famous Chamber of Horrors. According to a French romance, the Chevalier Raoul had a blue beard, from which he takes his name. He wished to test his wife's fidelity to him, and at the same time her curiosity. During his absence on a journey he intrusts her with the key to a secret chamber in the house into which she has been forbidden to enter. Curiosity gets the better of her fealty, and just as her Mother Eve weakened to the suggestion of her evil genius, so did she listen to the prompting of native curiosity. She peeped into the closet, — pictures of which we all remember to have seen at some period of our lives, with its awful reminders of the penalty of a too curious nature. Bluebeard puts her to death, and gives her a place in the closet, where are already the heads, with their long hair, of several former wives, all in a row.

As the fiction has it, the old fellow is about to put to death his wife number seven, who had failed, as did the others before her, to restrain her curiosity, when her brothers rescue her, and Bluebeard is slain.

Of this story, Tieck has made a clever drama in his "Phantasus," and Grétry has worked the characters into his opera "Raoul."

So much for the myth. Now comes the historical character and case.

Bluebeard was none other than Gilles de Laval of Riaz, Marshal of France in 1429, and was burned at the stake in expiation of his many crimes in the year 1440.

As a distinction between the myth and the fact, the real Bluebeard's victims were not women; they were children, and they were counted by the hundreds.

An abstract of the papers relating to the case was made by order of Ann of Brittany, and placed in the Imperial Library. The original papers were in the Library of Nantes, and were destroyed by the Revolutionists; but an abridgment of these papers had been made, and from this the French antiquarian Lacroix published a circumstantial memoir, although he found it necessary to avoid much that the trial revealed.

It is said of Bluebeard that when the thirst for blood was upon him his beard bristled and turned a bluish color.

At all other times a cursory glance revealed no evidence of his real nature. "His physiognomy was calm and phlegmatic, somewhat pale, and expressive of melancholy. His hair and mustache were light brown. But he had one peculiarity which earned for him the sobriquet so well known in nursery lore, and by which he will be known while the world lasts. The Marshal de Retz's beard was blue. It was clipped to a point and

[1] See Belgravia, January, 1893.

sometimes looked black, but in certain lights, or when he was powerfully moved, it assumed a light blue hue. A closer examination of the countenance of Gilles de Laval, however, showed that there was something strange and frightful in the man. At times the muscles in the face contracted, the mouth quivered nervously, and the brows twitched spasmodically. He ground his teeth like a wild beast, and then his lips became so contracted that they appeared drawn in and glued to his teeth. His eyes became fixed with a most sinister expression in them, his complexion livid and cadaverous, his brow covered with deep wrinkles, and his beard bristled and turned blue. But in a few minutes his features would become serene, with a sweet smile reposing upon them; and his expression relaxed into a vague and tender melancholy."

This is the description given of this noted criminal as he appeared when placed on trial on Oct. 10, 1440.

Yet this same Bluebeard was no less a person than Marshal of France, a councillor and chamberlain to Charles VII. He was one of the most famous and powerful noblemen in the province, a distinguished soldier, and a shrewd politician. A still greater characteristic of this man was his deep religious temperament. He was constantly repeating his prayers and litanies, and subscribed largely to all charities.

Evidence at the trial showed that Gilles de Laval owned and occupied the castle of Machecoul, a gloomy structure of sombre and repulsive appearance, composed of huge towers, and surrounded by a deep moat. Witnesses testified that on certain days and times the drawbridge was lowered and the servants of De Retz stood in the gateway distributing clothes, money, and food to the mendicants, who came soliciting alms. Sometimes children were among the beggars; the servants coaxed the little ones into the kitchen with a promise of reward, and as often as they accepted the invitation, they disappeared within the gloomy recesses of the old castle and were seen no more.

Children playing in the forests around the castle, those sent on errands, and sometimes even those left at home, alike mysteriously disappeared, sometimes several in the same family. Babies left in their cradles and young people of sixteen or seventeen years of age were among the missing.

The terror was widespread among the peasantry; and "when dusk settled down over the forest, and one by one the windows of the castle became illumined, they would point to one casement high up in an isolated tower, from which a clear light streamed through the gloom of night, and speak of a fierce red glare which irradiated the chamber at times; of the sharp cries, as of some one in mortal agony, that rang out of it through the hushed woods, to be answered only by the howl of the wolf as it rose from its lair to begin its nocturnal rambles."

It became the duty of John, Duke of Brittany, to move in the matter of his cousin's guiltiness. He was slow, indeed, to believe in the guilt of his kinsman. But at last those in high estate interfered in the matter, and Gilles de Laval, Marshal of France, and two of his servants were apprehended and taken to the Château de la Tour Neuve, at Bouffay.

The Duke nominated the Commissioner Jean de Toucheroude to collect information and take down the charges against the Marshal. At this time there seemed to be a good deal of doubt, among those whose duty it was to bring such offenders to justice, as to the guilt of the Marshal. But upon the investigation witness after witness deposed to the loss of their children, and connected the loss with the Marshal and his servants, until there was a terrible array of evidence against them. The Commissioner became satisfied of the guilt of the prisoner; yet the Duke was loath to believe his kinsman, the most powerful of his vassals, the best of his captains, a councillor and marshal of France, could be guilty of

such atrocity. But at this time De Retz sent a letter to the Duke which was in the nature of a confession. In this letter the Marshal acknowledged having sinned horribly again and again, but said he had never failed in his religious duties, having heard many masses and vespers, always having fasted at Lent and at vigils, and confessed and communicated regularly. He was ready to acknowledge and expiate his crime by retiring into a monastery, there to lead a good and exemplary life. He signed himself, "In all earthly humility Friar Gilles Carmelite in intention."

At the trial the Marshal was haughty. He suggested to his judges that they expedite matters, so that he might consecrate himself to God, and that he might go about his work of endowing charities and distributing his alms for the salvation of his soul. He was arrogant. It had not entered the Marshal's mind at this time that a conviction of his crime would condemn him to death. He seemed to think that his godliness and piety would procure him that admission to a monastery which he so much desired.

But the Bishop of Nantes stood in his way. He believed the testimony of the many witnesses who testified against the Marshal, and was horrified at the magnitude of his crime.

The Sire de Retz assumed a bold front, and charged the witnesses with testifying falsely; but when informed that his servants had divulged the whole diabolical plan, he weakened and no longer equivocated. Confronted with the terrible alternative of the rack, Gilles de Laval shuddered, and declared that rather than be tortured he would confess all. When the confessions of his servants were read to him, he turned deadly pale, and exclaimed that God had loosened their tongues so that they had spoken the truth. Urged to relieve his conscience, he told how he had robbed mothers of their children and how he had killed them, sometimes by cutting their throats with daggers or knives, sometimes by cracking their skulls. Some of the bodies he opened that he might examine their hearts and entrails, and afterwards burned the bodies. He confessed to some one hundred and twenty-five murders in a single year.

One of his judges suggested that the Evil One must have possessed him, to which he replied: "It came to me from myself, no doubt at the instigation of the devil; but these acts of cruelty afforded me incomparable delight. The desire to commit these atrocities came upon me eight years ago. I left court to go to Cantonen, that I might claim the property of my grandfather deceased. In the library of the castle I found a Latin book, Suetonius, I believe, full of the accounts of the cruelties of the Roman Emperors.

"I read the charming history of Tiberius, Caracalla, and other Cæsars, and the pleasure they took in watching the agonies of tortured children. Thereupon I resolved to imitate and surpass these same Cæsars, and that very night I began to do so. For some time I confided my secret to no one, but afterwards I communicated it to my cousins Gilles de Sile, then to Master Roger de Briqueville, and then to Henriet Ponton, Rossignol, and Robin." These last were the servants of De Retz.

This is the historical character of the famous, or rather infamous, Bluebeard.

SITTING IN DHARNA.

PROBABLY the best account of sitting in *Dharna* is to be found in Mr. Nelson's work on "Hindu Law." The following description is there given: —

"The recognized mode of compelling a debtor to pay up appears to have been by sending a Brahman to do *Dharna* [is this our "dun"?] before his house, with a dagger or bowl of poison to be used by the Brahman on his own body if the debtor proved obstinate. When the tax-collector gave too much trouble, a ryot would sometimes erect a *Koor*, or pile of wood, and burn an old woman on it by way of bringing sin on the head of his tormentor. The *lex talionis* obtained in the following shape: Persons who considered themselves aggrieved by acts of their enemies would kill their own wives and children, in order, as we may suppose, to compel their enemies to do a similar act to their own hurt. Thus two Brahmans cut off their mother's head to spite a foe. And it seems that upon being punished by loss of caste, out of deference to the feelings of the British Government, these simple-minded men expressed the greatest surprise, since they had acted, so they said, through ignorance. On one occasion five women were put to death together for witchcraft, after being regularly tried for the offence, according to custom, by the heads of their caste.

"With regard to the *lex talionis*, a letter is preserved in Recueil X. of the *Lettres cur. et éd.*, written by Father Martin in 1709, in which he describes the horrible practice in vogue amongst the inhabitants of the Marava country, of killing or wounding oneself, or one's wife or child, in order to compel one's enemy to go and do likewise. Such a practice can obtain only where no legal means exist of obtaining reparation for wrongs suffered. It would be very interesting to know to what extent this natural law has prevailed in various forms in South India, and whether its influence has yet altogether died out.

"The practice of *Dharna* would seem to be nothing more than a threat of instantly resorting to the *lex talionis*. And I take it that Marco Polo was mistaken in his view of the meaning of a creditor drawing a circle round his debtor, by way of arresting him, when he said that a debtor who breaks such arrest 'is punished with death as a transgressor against right and justice,' and that he (Marco Polo) had seen the king himself so arrested and compelled to pay a debt. Doubtless the king was coerced by the threat, express or implied, that the creditor would kill or wound himself if not satisfied, in which case the king would have been bound to kill or wound himself in return. Father Bouchet, in the letter cited above, tells us that obstinate debtors were arrested in their houses by their creditors in the name of the Prince, under pain of being declared rebels, and when so arrested durst not pass out until bystanders had interceded and made the creditors come to terms. The use of the name of the Prince I regard as imaginary, and opposed to native ideas. What coerced the debtor probably was the fear of his creditor injuring himself. And possibly it is this fear that often operates on the minds of native servants of the present day, when they decline to go on a long journey with their masters without first partially satisfying their creditors, and where, as so often happens, an old man or woman is killed by his or her own party in a boundary riot, probably in most instances the object of the slayers is to bring sin on their opponents."

CELEBRATED OLD-WORLD TRIALS.

I.

THE MATLOCK WILL CASE.[1]

THE great Matlock Will Case was one of the strangest and most interesting disputes that has ever occurred in the history of the law testamentary. It related to the validity of three alleged codicils to the will of a person named George Nuttall, who died at Matlock in Derbyshire, on 7th March, 1856. The testator was possessed of considerable estate, both real and personal. He was a bachelor, had no near relations, and was not on intimate terms with such as he had. His cousin, Catherine Marsden, had lived with him as housekeeper for many years, and was living with him in that capacity at the time of his death. One of her sisters was married to John Else, assistant overseer of Matlock and bailiff of the County Court. Nuttall was a land-surveyor, and had been accustomed to employ Else in copying accounts and collecting rents; and Else wrote a hand not unlike his, though distinguishable from it. Nuttall made his will — the genuineness of which was not disputed — on 15th September, 1854. It was prepared by his attorney, Mr. Newbold, but was copied in duplicate by the testator, and both copies were duly executed. Thus there were two copies of his will, both holograph and both in his possession, and one was kept in his bedroom cupboard. Shortly stated, the terms of Nuttall's will were as follows: His cousin John Nuttall was made residuary devisee of the bulk of his real estate, which was worth from £2000 to £3000 a year. To Catherine Marsden were left the furniture and effects, the testator's dwelling-house, an annuity, and a house occupied by Else. Else received an interest in certain titles. Part of Nuttall's estate was a quarry let to a farmer, Job Knowles, and Sir Joseph Paxton. Under the will, Knowles took a right of working this quarry for life subject to his lease. Nuttall had been very ill for some time previous to his death, and suffered in particular from an abscess in his back. He died, as we have said before, on the 7th of March, 1856. On the 2d of March he had had a conversation with his attorney, Newbold, and desired his attendance on the following day; but when Newbold came next day according to arrangement, he was unable to speak; and although he pointed to the bedroom cupboard, the object of his anxiety could only be surmised. On one side it was alleged that he wished to get at the will for the purpose of cancelling it; on the other side it was suggested that he intended to acknowledge it as his last will and testament. The will contained several instances of misspelling, — "debth" for "depth," "oweing" for "owing," and "surgion" for "surgeon." Between the date of the testator's death and the day of the funeral, Job Knowles announced that "there was something else." The cupboard was searched, and the holograph duplicate was discovered. It was found to contain an interlineation — of which there was no trace in the second copy — giving Else an annuity of £100. No question as to this interlineation was raised by the residuary devisee, John Nuttall, who died on 12th April, 1856, leaving his property to the principal defendants in trust for his infant children. Less than a fortnight after Nuttall's death the first of the three disputed codicils was found by Else. It purported to be holograph and to be attested by two laborers, Buxton and

[1] The great Matlock Will Case, Cresswall *v.* Jackson, Derby *v.* Richard Keene & London. Simpkin Marshall & Co., 1864.

Gregory, and was mainly in favor of Catherine Marsden and Else, whom it also named an executor. Else alleged that he had discovered this codicil among the papers of the deceased along with an epitome or abstract of the will. It contained quite a variety of orthographical errors; as, "codicel" for "codicil" (three times), "hears" for "heirs," "doughter" for "daughter," "executers" for "executors," "conferm" for "confirm;" in the attestation clause the document is stated to have been executed "in the presences of us." Eight months later, the second codicil was found. Like the former, it was discovered by Else, and was largely in his favor. He professed to have found it on 16th December, 1856, pinned on to one of the leaves of a little penny account-book which had belonged to the testator. It was dated 6th January, 1856, was attested by Knowles and Adams, a surgeon who had died since the action was raised, and — subject to an annuity to Knowles's son and another to Catherine Marsden's mother — gave the bulk of the testator's property to Else. The misspellings in the second codicil were not less glaring than those in the first. "Contiguous" became "contiguaes," "annexed" dropped the ultimate "e," "commutation" was twice rendered "commuation," "immediately," "numbered," "assigns," "tithe," and "presence," became, respectively, "immediatley," "numbred," "assignes," "tith," and "prensence." The words in question were all correctly spelled by the testator in his authentic will. Though the suspicions of Nuttall's trustees were now thoroughly aroused, they did not assume the responsibility of questioning the codicils, and for the time both passed unchallenged. But after the lapse of nine or ten months, a third codicil made its appearance. It was dated 12th January, 1856, six days after the second, and like its two predecessors was entirely in favor of Else, whom it now substituted for John Nuttall as residuary devisee. It was attested by Knowles and Adams. The circumstances of its discovery were as follows: At the back of Nuttall's house was a court, on one side of which was a flight of ten or twelve stone steps leading up to a hay-loft, at the farther end of which was a small lumber-room. Else, who shortly after the testator's death had taken up his residence at the testator's house, desired to have the window of this place cleaned, and told a boy named Champion, who was in his service, to go and clean it. Here we shall tell the story in Else's own words: "Before the window was a window-board, apparently fixed and firm. The boy said, 'Master, can you open the window?' I unscrewed it, and I tried to get on the window-board, and laid hold of it in order to spring up on to the window-board, and it came out and I nearly fell backward. It slid out. The boy saw it. I was going to push it back, and the boy said, 'What's that?' I said, 'What?' He said, 'There is something under the board.' I looked, and saw a hole under the window-board, and in it a jar, which I took out and found in the jar a canvas purse and a paper; the canvas bag (which contained twenty sovereigns) was twisted round the paper;" and the paper was the third codicil.

The patience of John Nuttall's trustees was at length exhausted; and proceedings in Chancery were immediately taken. An issue was directed by the Master of the Rolls to determine the validity or invalidity of the codicils: it came on for trial in 1859 at the Derby Summer Assizes, before Lord Chief-Justice Erle and a special jury. The jury found in favor of the codicils. The Master of the Rolls was dissatisfied with the verdict, and ordered a new trial, which took place before the Lord Chief Baron at Derby Spring Assizes, 1860; and the jury then found a verdict against the validity of the codicils. With this finding the Master of the Rolls was satisfied. The Lords Justices on appeal were equally divided in opinion. Then there was an appeal to the House of Lords, who ultimately decided in favor of a new trial, and appointed it to take place in

London before the Lord Chief-Justice of England and a special jury. The third trial commenced at the Guild Hall on Feb. 22, 1864. Sir Alexander Cockburn was on the bench; and the most eminent counsel at the bar were engaged on either side. Mr., afterward Sir John, Karslake, Q. C., the present Lord Field, and the present Lord Hannen appeared for Else; Mr. Sergeant Hayes, Mr. Sergeant Ballantine, and Mr., now Mr. Justice, Wills represented Nuttall's trustees. The case was keenly contested, and for a long time the fate of the day seemed doubtful. But it was at last decided against Else, chiefly by the following circumstances. (1) In the first place Mr. Sergeant Hayes, with admirable Irish wit, poured such a flood of ridicule upon the alleged discovery by Else of the third codicil, that Mr. Karslake could not get the jury to consider the matter seriously again. "What could be more utterly incredible," asked the learned Sergeant, "than the whole story? 'What 's that?' said Else, 'what 's that in the jar?' Why, a codicil to be sure! what else could it be? In a jar in a hole in the wall, 'covered with cobwebs,' of course what could it be but a codicil? This finder of codicils, who seemed to find nothing but codicils, what should it be but a codicil, and a codicil in his favor? In a hole in the wall! Why, it might not, but for this miraculous discovery, ever have been found at all. Not until the house was pulled down, a century hence perhaps! What a place for a man of business to put his last will in! But what will you say when I tell you that I will prove that an iron vice, weighing about sixty pounds, was in the testator's lifetime screwed over the window-board under which the hole was found, so that the testator two months before his death, laboring under an abscess in his back (which he described in one of his letters as five inches long, three inches broad, and one and a half inches deep), must have gone up to that loft, unscrewed this vice, lifted it up, made the hole in the wall, deposited the jar with the twenty sovereigns and the codicil, then covered it up and screwed the vice over it again; and all this to prevent any one from ever finding it. (Laughter.) The hole in the wall! Why, imagination could hardly go beyond it! No more codicils had been found since, and one great blessing of these Chancery proceedings had been that they had stopped the finding of codicils. (Laughter.) But for them a fourth codicil must have been found! It must have come. The second and third had each been found after nine months, — the usual period of gestation, — but perhaps, as there was so little of the property still left to be disposed of, this might have been only a seven months' codicil. (Great laughter.) It was certainly difficult to conceive where it could have been found. One could hardly imagine any more obscure place for secreting another codicil. Perhaps, however, in Job Knowles's quarry, while his men were blasting the rock with gunpowder of course, in some fissure Else might have seen an antediluvian toad sitting on something (laughter), and said, 'Bless me! what is that?' (great laughter), 'what could it be but a codicil?'" (Roars of laughter). Wrath is cruel and anger is outrageous, but who is able to stand before ridicule? Even more effective than Mr. Sergeant Hayes's mirth was the evidence of the expert Chabot. He pointed out that there was a keyword by which the handwriting of the testator could be infallibly distinguished from that of Else. It was the shortest and commonest of all words in the language, — the little monosyllable "to." Nuttall's habit was to leave the "t" in "to" *wholly uncrossed*. He sometimes, but very rarely, crossed it *through*, the cross extending on each side of the down-stroke. He *half crossed* it, beginning the cross at the down stroke, so seldom that practically it might be said he never did it at all. Else sometimes but very seldom left the "t" uncrossed; he also sometimes but very seldom crossed it wholly, his cross extending right

and left; but in at least 80 instances out of 100 he would half cross it. Chabot's evidence in support of this conclusion may be presented in tabular form.

Number of times the "t" in the word "to" is

	Uncrossed.	Whole Crossed.	Half Crossed.
Fifty of Nuttall's letters . .	131	14	0
Twenty-eight of Else's letters	10	28	88
Nuttall's will	51	5	0
Interlineation	0	0	3
Undisputed part of epitome .	13	1	0
Disputed	0	0	7
First codicil	0	16	10
Second codicil	0	11	2
Third codicil	12	6	4

In the skilful hands of the Lord Chief-Justice of England, these figures secured a verdict for the defendants. — LEX.

THE SACRED TWELVE.

THE institution of trial by jury is regarded by modern lawyers with less awe and complacency than were formerly deemed to be decent and appropriate. In civil causes a jury has already ceased to be the machinery most commonly employed for the determination of issues of fact, and even in criminal trials the bold voice of the reformer has begun to cry for alterations and innovation. Attention has lately been pointedly directed to some of the peculiarities of the jury system by the remand of a half-tried murderer until the following sessions because a juror went home to lunch, and by the adjournment for weeks of the Hansard Case after a great number of persons had been engaged for many days in partly trying it. It may be interesting to note how these peculiarities have obtained their place in our law.

The unanimity of the jury in criminal cases, either for acquittal or conviction, has long, perhaps always, been regarded as essential, although a passage in Britton has been understood to suggest that in his day (when jurors still decided on their own knowledge) a dissenting minority was sometimes taken out of the jury and replaced by other jurors if they swore they knew nothing about the matter. And few English lawyers would be prepared to go beyond Sir J. F. Stephen's proposal to accept the verdict of a considerable majority, but only where it was for acquittal and where no unanimous verdict could be procured. In civil cases, however, it seems clear that, in and before the reign of Edward I., the judge could take the verdict of a majority; but it was settled before the end of the fourteenth century that this was not the law, the judges ruling that "if there be eleven agreed, and but one dissenting, who says that he would rather die in prison, yet the verdict shall not be taken by eleven, no, nor yet the refuser fined and imprisoned; and therefore where such a verdict was taken by eleven, and the twelfth fined and imprisoned, it was upon great advice ruled that the verdict was void, and the twelfth man delivered, and a new *venire* awarded; for men are not to be forced to give their verdict against their judgment." In spite, however, of the apparent fairness of this last sentiment, it was long held to be the duty of the sheriff to send jurors who could not agree after the judge in a cart as he went round circuit, and to deny them fire and food until their judgments accorded. It was not, indeed, finally settled until 1866, though first decided a century earlier, that if the judge, despairing of an agreement being reached, discharged a jury in a criminal case, the prisoner could be put upon his trial again.

The "patriarchal and apostolical number of twelve," as the proper and only admissible number for a jury trying cases according to the common law, has come down to us

from remote antiquity. Coke thought that its origin was surrounded with abundance of mystery, and it seems clear that, as a "legal number," it is far older than the petty jury itself. Yet it was not always universal. In 1652 a Cornish custom to have juries of six was declared to be bad; but evidence was given that such juries had been widely used in the county, and by a special statute of Henry VIII., juries of six were allowed in Wales. The County Court jury of five is, of course, a very recent, and some think a very unfortunate, innovation, and the Court in which it sits is itself only fifty years old. But the jury of the grand assize consisted of sixteen men, which still finds a parallel in the jury of presentments of the Liberty of the Savoy. The modern grand jury, the coroner's jury, and the jury at lunacy and ecclesiastical inquisitions number anything between twelve and twenty-three, whereof twelve at least must agree on a verdict. So much for the law; the practice is, at least according to common report, that where the jury consists of twelve only, one petty juryman can get the plaintiff a verdict or acquit the prisoner, if only he is sufficiently obstinate, and if he have breakfasted with foresight and discretion. — *Ex.*

JUDICIAL WIGS.

THE uses of perukes and periwigs by judges and barristers as part of their professional attire dates from 1670, and has been retained to the present day, although long abandoned by the other two learned professions, and still longer by general society.

The horsehair wigs of the present day are made only of the best horsehair. It is the white qualities which are chiefly used, bought just as it is cut from the horse. Some of it comes from South America, some from France, some from China, and some from Russia. English horsehair is the best, being white down to the points. The hair is first hackled out, and sorted into lengths. It is then drawn through brushes three or four times, and next goes through the process of boiling, bleaching, baking, and curling on small wooden pipes, in order to prepare it for the loom. Next it is woven into material on silks of varying degrees of fineness (this work is done by women), and picked out for the different portions of the wigs, which are made on blocks or models, of which there are nearly a couple of hundred. As a rule, very little of the hair in its raw condition is of use. Most wig-makers buy their hair in a curled state from large curlers; but others curl their own with a small hand-curling machine, which keeps the wig in a more firm condition, and prevents the hair turning to a yellow hue, as happens with inferior kinds. With this exception everything is done by hand.

Years ago wigs had to be perpetually curled and frizzed and powdered. To Humphrey Ravenscroft — the founder in 1726 of the firm of wig-makers, and makers of all things belonging to lawyers' professional attire, on the same premises in Serle Street, Lincoln's Inn, occupied by the present firm — occurred the idea of permanently fixing, by mechanical means, the multitudinous curls of wigs. The general use of white hair for the manufacture of wigs was precluded at that time by its enormous price, according to Diprose's "St. Clement Danes' Parish" (1876), from which many of these details are taken. In the "Weekly Journal" for 1720, it is stated that the white hair of a woman who lived to the age of 170 — a misprint probably for 107 — was sold, after her death, to a periwig-maker for £50. After a variety of experiments he took out a patent

in 1822. Its terms are these. It is a patent for "making a forensic wig, the curls whereof are constructed on a principle to supersede the necessity of frizzing, curling, or using hard pomatum, and for forming the curls in a way not to be uncurled; and also for the tails of the wig not to require tying in dressing; and, further, the impossibility of any person untying them." This patent contained the principle of the present "fixed" wig, of which they are the makers. Till then wigs had been made of human hair, but by using white horsehair with a judiciously small quantity of black hair, a wig bearing a close resemblance to the old powdered wig was produced. The proportion is about one of black to five of white. The invention was mainly introduced to enable bench and bar to evade Pitt's tax on hair-powder. The old wigs were much heavier, owing to the quantity of grease which was being continually rubbed into them. The lining was necessarily thick, and contrasted very unfavorably with the present light silk-ribbon frame. The powder was always coming off; and, with the old wigs, cleanliness was out of the question.

Messrs. Ravenscrofts' walls are hung with a valuable collection of portraits of legal celebrities, gradually acquired since 1726. The Lord Chancellors begin with Lord Chancellor Somers, 1697. The portraits of Brougham and Erskine, sketched at the trial of Queen Caroline, are particularly happy likenesses. The earliest of the Lord Chief Justices of the King's Bench on the walls is Lord Raymond, 1725; and the first of the Common Pleas Chief Justices, Lord Walsingham, 1771. The Chief Barons of the Exchequer begin with Sir Geoffrey Gilbert, 1725, and end with Sir Fitzroy Kelly, the last of the Chief Barons. In nearly every case the portrait bears the signature of the learned judge whom it represents. These portraits show the style of judicial wigs during more than a couple of centuries. Hogarth's "Five Orders of Periwigs" finds a place on the walls. An interesting autograph-book is kept, containing the signatures of celebrities on the bench and at the bar during the last sixty-seven years, as well as of the Speakers of the House of Commons, including Mr. Peel. On the wall is a portrait of Lord Eversley, a former Speaker, who died recently at the age of ninety-five. — *Law Journal.*

THE SUPREME COURT OF VERMONT.

By Hon. Russell S. Taft.

I.

THE PRE-REVOLUTIONARY COURTS.

PRIOR to the Revolutionary War the present State of Vermont was included in the limits of the province of New York, the Connecticut River forming the eastern boundary. At the time of the conquest of Canada in 1760, the only white settlements in the State were in the six towns bordering on the Connecticut north of the Massachusetts line, and the number of the settlers was probably about three hundred. After the termination of the French war, and the treaty of Paris, by which Canada passed under the control of the English, settlements were soon made as far north as the valley of the Winooski west of the Green Mountains, and Essex County in the easterly part of the State.

Albany County.

In 1763, before any attempt was made to organize any county within the present limits of the State, Lieutenant-Governor Colden issued a proclamation commanding "all judges, justices, and other civil officers" holding commissions under New York "to exercise jurisdiction in their respective functions, as far as to the banks of the Connecticut River. That it was difficult to execute process, if any issued, is apparent from the petitions for a new county, in which it is stated "there can be no passing from Connecticut River to Albany without going through the province of the Massachusetts Bay; and as soon as the officer gets across the line of the province, his office leaves him, and the delinquent makes his escape."

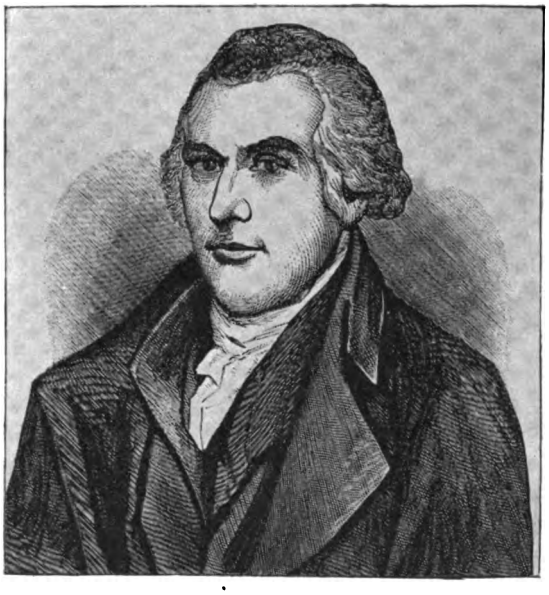
Many justices of the peace were appointed; but their precepts could not be served, for the reason stated. A meeting of the justices of the peace and quorum was held at Rockingham in February, 1766, and constables were appointed for some of the towns. It required a guard of a dozen men to convey safely a prisoner or a debtor through the woods and over the mountains to the jail at Albany. The whole of Vermont was nominally within the limits of Albany County; but it being impossible to execute the process of its courts on the easterly side of the mountains, Cumberland and Gloucester counties were organized in that part of the province, in 1766 and 1770 respectively. After the latter year Albany County embraced only the territory in Vermont west of the mountains. At this time (June, 1770) suits in ejectment against the settlers to recover lands in and near Bennington were brought to trial at Albany. Ethan Allen was appointed by the settlers an agent to defend the suits. He obtained copies of the Royal orders and instructions, by virtue of which Governor Wentworth of New Hampshire had made grants and given patents of the lands in question, and employed Mr. Jared Ingersoll, an eminent barrister of Connecticut, to appear for the settlers. Upon trial the orders and instructions were excluded as evidence, and judgments passed for the plaintiffs. Mr. Kemp, the King's attorney, observed to Mr. Allen that the people "should be advised to make the best terms possible with their landlords, for might often prevailed against right;" when Allen made his noted reply that "The Gods of the valleys are not Gods of the hills." Mr. Kemp asked for an explanation; and Allen replied, that, if he would accompany him to Bennington, the phrase should be explained. Failing to obtain redress in the courts, on Mr. Allen's return to Bennington the "Vermontese"

met, and resolved to defend their rights by force; and under his leadership associations were formed for the purpose of resisting the officers. A military organization was effected, with Mr. Allen as colonel commandant; and in the vigorous language, undoubtedly, of the colonel, the settlers gave "all the land-jobbers of New York an invitation to come and view the dexterity of our regiment." After the organization of Gloucester County in 1770, all the territory west of the mountains was within the limits of Albany County, with the city of Albany as the county-seat. The sheriff of the county, with a *posse comitatus* numbering seven hundred and fifty men, attempted to serve a writ of possession against James Brackenridge of Bennington. The Green Mountain Boys assembled to the number of three hundred, and presented so formidable an appearance that the sheriff and his posse, "not being interested in the dispute, made a hasty retreat, so that a musket was not fired on either side." Writs of ejectment were still issued and judgments obtained; but when an execution or writ of possession issued, it was a matter of certainty that the officer attempting to make service would experience a vigorous application of the "beech seal" or "twigs of the wilderness." So many of the recalcitrant settlers were summoned to the City Hall in Albany, in which the blind Goddess purported to hold sway, that a meeting of the settlers was held at Bennington to devise means to get rid of the building. Several modes of blowing it up were suggested, when Ethan Allen, to divert their minds from that manner of destruction, proposed that Sim Sears, a famous land-speculator, noted for selling property that did not belong to him, "be employed to sell the d——d thing."

LUKE KNOWLTON.

CUMBERLAND COUNTY, established by ordinance of the Governor and Council of the New York province, dated July 3, 1766, was the first county organized within the limits of Vermont. It embraced substantially the present counties of Windham and Windsor. Chester was made the county-seat, and provision made for the erection of a court-house and jail at that place. A court of common pleas and general sessions of the peace was authorized to be held semi-annually, each session being limited to four days, and the two courts authorized to sit at the same time, in order that business might be "constantly proceeded in and all unnecessary attendance avoided." In 1772 Westminster was selected as the shire town; and it so remained until the sessions of the New York courts ceased in March, 1775. The judges of the Inferior Court of Common Pleas were Thomas Chandler of Chester, Joseph Lord of Putney, and Samuel Wells of Brattleboro'. Their commissions were first dated 16th July, 1766, were renewed in April, 1768, and again four years later, when, Judge Lord being then "at the sixty-eighth year of his

age and troubled with great deafness, loss of memory, dimness of sight, and a paralytic tremor in his hands, Noah Sabin was added to the bench, Judge Lord to continue in office, but to take only as little share of the burden of the office as should be agreeable to him." Biographical notices of these judges may be found in Hall's History of Eastern Vermont. They were the only judges appointed in this county prior to March, 1775, after which time no sessions of the courts were held, although commissions were issued to judges at a later date. John Chandler, Crean Brush, and Samuel Gale were successively clerks prior to the year 1776; and Solomon Phelps, Micah Townsend, Charles Phelps, and Samuel Knight were commissioned as attorneys at law. Assistant justices of the court of common pleas were appointed as well as many justices of the peace. A court of Oyer and Terminer and general gaol delivery, at which Hon. Robert R. Livingston, one of the judges of the Supreme Court of Judicature for the Province of New York, attended, was held at Westminster in July, 1774. To constitute such a court, it was necessary that one of the Supreme Court judges should attend. In March, 1775, the people became so excited over what they deemed to be grievous wrongs and injustice inflicted upon them that they determined that the administration of justice in the hands of tories should cease; and "such proceedings were thereupon had," that the riot in respect thereto culminated in the death of William French and Daniel Houghton, and effectually closed the New York courts in this county, and none were afterwards held. An accurate account of the transactions may be found in the history above mentioned.



STEPHEN ROWE BRADLEY.

Gloucester County.

The territory in the province west of, and contiguous to, the Connecticut River and north of Cumberland County, was established as the county of Gloucester by ordinance passed March 16, 1770; and on the succeeding day John Taplin of Newbury, Samuel Sleeper of Bradford, and Thomas Sumner of Newbury were appointed judges of a court of common pleas. Samuel Sleeper was a Quaker preacher, who moved to Newbury from New Hampshire in 1762, but, being "moved by the spirit," he created disturbance in the religious meetings by interrupting the minister while preaching, with laudatory or condemnatory ejaculations. For this grave offence he was confined in a cellar, and threatened with "thirty lashes in full tale" should he continue to exhibit his peculiar propensities. He was released upon his removing to Bradford, then Moretown, that he might more fully enjoy his religious freedom. It is not stated that his conduct while residing in Bradford differed from that in Newbury, but it met with such approval from the authorities that he was appointed

a member of the judiciary. He attended the first session of the court, and in 1772 Jacob Bayley of Newbury was substituted in his place. In 1774 John Peters of Bradford was appointed one of the judges. Assistant judges and justices of the peace were appointed. Kingsland, where the town of Washington is now located, was selected as the county-seat; it was an unsettled mountainous town, without an inhabitant and eight miles from any settlement. A town plot was laid out into village lots, and in the centre of the plot a log jail was erected which gave the name "Jail Branch" to a tributary of both Winooski and Wait's rivers. The court met for the first time on the 29th day of May, 1770, the three judges being present, and "opened as is usual in other courts." The court docket states: "N. B. These courts were the courts of Quarter Sessions and the Court of Common Pleas for said county." Justices of the quorum were present. John Taplin, Jr., was high sheriff, and John Peters clerk. The court adjourned, without transacting business, until the last Tuesday in August, 1770, when constables were appointed for some of the towns, and an order made "that the plaintiff filing declaration in the clerk's office eight days before the Court should be a Barr to the Defds. Pleading an Imparlance." At the following term, in November, 1770, eight cases appear upon the docket, and notwithstanding the supposed pacific disposition of the Quaker, Judge Sleeper, he appears as plaintiff in one and defendant in another. He was not present either as judge or party; and one of his cases was entered "action called Put over" and the other "Nither appearing Nothing done." The other causes were "put over," or adjourned to next term. Court adjourned to the last Tuesday in February, 1771; and the record of the term following is in these words, namely: —

"Feb'y 25th 1771 Sett out from mooretown for Kings Land travieled until Knight there Being No Road and the Snow very Deep we travieled on Snow Shoes or Racats. on the 26th we travieled some ways and Held a council where it was Concluded it was Best to open the Court as we Saw No Line it was not whether in Kingsland or Not But we concluded we were farr in the woods We Did not expect to see any House unless we marched three miles within Kingsland and No one Lived there when the court was ordered to be opened on the Spot

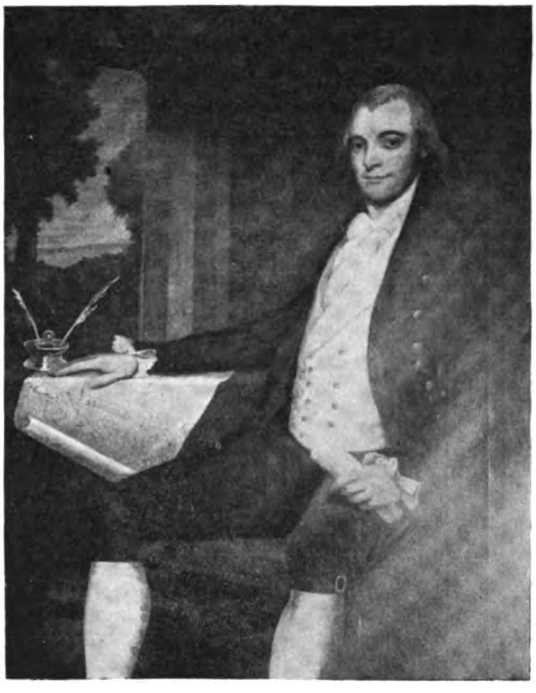
Present

JOHN TAPLIN Judge
JOHN PETERS of the Quorm
JOHN TAPLIN Jur Sheriff

all Causes Continued or
adjourned over to Next tirm
the Court if one adjourned over untill the Last tuesday in may Next"

In May the court succeeded in reaching the court-house, and the session was opened "att Kingsland" by Proclamation. A recognizance, "Dated some time agoe," in a bastardy case from Newbury was adjudged to be forfeited, two judgments rendered and two causes continued, when the court adjourned until the August term. There is no record of any subsequent term, until that of May, 1772, when, no business being transacted, court adjourned until the last Tuesday in August, to the town of Newbury. At this time the settlements on the west side of the Connecticut extended far north towards the Canadian line; many families residing in Maidstone. The people required courts more easily reached than those held in Kingsland; and on the 9th of April, 1772, the provincial government passed an ordinance directing the court to hold a session in Newbury on the last Tuesdays in February and August, "during the space of seven years." After this date terms were regularly held at Kingsland in May and November, and at Newbury in February and August, until February, 1774. The court docket until and including this term is in the Orange county-clerk's office, and is the only known record of the court. John Peters was clerk until June, 1774, when John

Lawrence was appointed. The docket when Mr. Peters was clerk covers all the terms save August, 1771, to February, 1772, inclusive, and the last one of his clerkship. The court appointed constables for the towns, and granted licenses to keep tavern; the keepers were generally required to find sureties that they would "keep a good house," "keep a good and regular tavern," etc. Occasionally no business was done at a term. Causes were referred, jury trials had, and grand juries summoned. At one term six of a panel of grand jurors were named Chamberlin. No one of the name was indicted at that term, but at a subsequent term one of the six, Richard Chamberlin, was indicted for murder. There is no subsequent mention of the case in the docket; but Richard evidently was himself again, for he and two of his namesakes appear as members of the next grand inquest.



NOAH SMITH.

At the February term, 1773, Rebecca Martin complained of Hezekiah Sillaway, at one time surveyor of highways and constable of Bradford, for that he did beget her with child. It appearing that the child was born "ten yearly months and one day from the time she swore he begat it, the court having considered the matter, clears the said Hezekiah from the charge laid against him by the said Rebecca." Aulus Gellius, who wrote in the third century that the utmost period of gestation was in the eleventh month, was no authority in the courts at Newbury. The grand jury indicted the damsel for the crime of lewdness. At one term, when but two judges were present, "it was disputed whether two made a Cor—" Five precepts were returned, but the President of the Sessions declared "all causes to rest or continue untill nexterme."

At the August term, 1773, the court met at the house of Mr. Robert Johnston in Newbury, and on the third day of the term "adjourned to the building intended for a court-house and gaol in this township until four o'clock this afternoon." Votes were then taken at the Quarter Sessions in relation to accepting a "logg gaol and fraim for a court-house," and for finishing it so as to be comfortable and convenient for a family and for holding court and for holding sessions, etc., "not to be overnice in doing it." It was voted to petition the provincial assembly to lay a tax on the county of £400 to finish this building in Newbury in part and "to Doe something att Kingsland toward repairing that gaol and court-house." At the first term held in Newbury, August, 1772, John Grout, who had been licensed as an attorney under the hand and seal of the Governor and Commander-in-Chief of the province, was admitted as an attorney. He then moved to enter ten actions, the defendants all being in custody of the sheriff; but the court refused to take cognizance of them for the reason that at the time the writs were issued Grout was not an admitted attorney of the court, although he was licensed as an attorney by the Governor. At a subsequent

term Mr. Grout, who resided in Chester, appeared "by his agent Mr. Phelps." How many sessions of the court were held after June, 1774, is uncertain. I find nothing to indicate any; and as they ceased in Cumberland County the following March, it is safe to infer that they did not continue long after that period in Gloucester County.

Charlotte County.

In 1772 the northerly part of Albany County lying on both sides of Lake Champlain, including western Vermont north of the Battenkill at Manchester, was organized as Charlotte County.

In April, 1772, twenty-six inhabitants of Socialborough, which included, under a New York charter, the whole or part of the towns of Rutland and Clarendon, petitioned for the establishment of the shire at that place; while twenty-one of the residents of that town, with others of the New York towns of Crown Point, Ticonderoga, and Skenesborough (now Whitehall) asked that the latter be made the county-seat. The New York Executive and Council deemed it prudent to locate the Court House at a greater distance from the grants; for on the 8th of September, 1773, it was ordered by his Excellency, "with the advice of the Council, that an ordinance issue establishing a court of common pleas and a court of general sessions of the peace to be held annually in the County of Charlotte at the house of Patrick Smith, Esq., near Fort Edward, on the third Tuesdays in the months of October and May."

On the same day Philip Schuyler was appointed Judge of the Court of Common Pleas, and Patrick Smith county clerk; the first session was held in October, 1773. In 1774 there was no jail nor court-house in the county, and the legislature passed an act reciting that "A great part of the said county being involved in a state of anarchy and confusion, by reason of the violent proceedings of riotous and disorderly people, from whence it must at present be extremely difficult, if not impracticable, to bring offenders to justice within the said county," and providing that the courts in Albany County should have jurisdiction of crimes committed in Charlotte County.

The government of New York also passed the most despotic and blood-thirsty act that ever was enacted in America, which contained a provision, that, if offenders should be indicted for certain capital offences, they should be adjudged to be convicted and attainted of felony, and should suffer death as in cases of persons convicted and attainted of felony by verdict and judgment; and the courts were authorized to award execution the same as if they had been convicted. Death was the penalty under the New York law to be inflicted upon any one assuming judicial power unauthorized by that State, and upon rioters for demolishing an out-house or destroying even a sheaf of wheat in any enclosure. The people of New York sympathized with the settlers, and the processes of the courts of Albany and Charlotte counties were disregarded by the settlers in Vermont, and forcibly resisted if necessary.

No resident of the State ever held any judicial position in the courts of either county, unless that of justice of the peace. Of the latter there were John Munro of Shaftsbury, Benjamin Hough and Mr. Spencer of Socialborough, Bliss Willoughby and Ebenezer Cole at or near Bennington, and George Gardiner of Pownall; but the exercise of their judicial functions was not a pleasant pastime. No session of the courts of either county was ever held in Vermont; and their jurisdiction, save in theory, never extended over it.

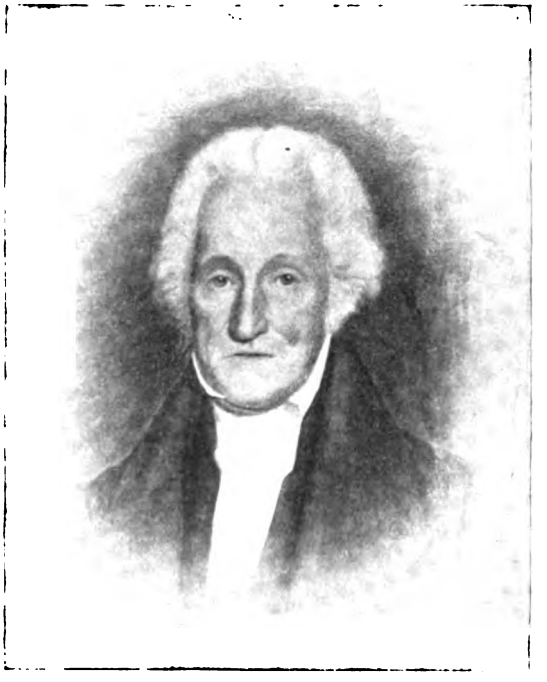
After the sessions of the New York courts ended in 1775, no judicial organizations existed in Vermont until the special courts were established in 1778.

The Vermont Courts.

The Special Courts in 1778.

The organized government of Vermont began in 1778. The first Constitution, Chap.

II. Sec. 4, provided that "courts of justice shall be established in every county." The first legislature met on the 12th day of March, 1778; adjourned on the 26th to the 4th day of June; then meeting, continued in session two weeks, when it adjourned and did not again meet. At the March session two counties were established, — Benington in the west and Cumberland in the east. Two shires were created in each, — Bennington and Rutland, Westminster and Newbury. County and inferior courts are mentioned in the legislative records; but there is no evidence, record or traditionary, that any were organized that year. At the first session special courts were established. On the 24th March the Assembly records show the following vote, namely: Assembly made choice of Gen. Jacob Bayley, first judge, Mr. Jacob Burton, second, Mr. William Heaton, third, Mr. Reuben Foster, fourth, and Capt. John French, fifth, judges for the shire of Newbury; Major John Shepardson, first, Mr. Stephen Tilden, second, Hubbel Wells, Esq., third, Deacon Hezekiah Thompson, fourth, and Nathaniel Robinson, Esq., fifth, judges for the shire of Westminster; Major Jeremiah Clark, first, Capt. Samuel Robinson, second, Lieut. Martin Powel, third, Capt. John Fasset, jr., fourth, and Lieut. Thomas Jewett, fifth, judges for the shire of Bennington; and Joseph Bowker, Esq., first, Major Heber Allen, second, Charles Brewster, third, Capt John Stark, fourth, and Capt. Jonathan Fasset, fifth, judges for the shire of Rutland. There is nothing in the record of the election of judges to indicate the name of the court, but in the journal there is the record of a vote "that the special courts appointed in the several shires, etc."; and on the day after the election of the judges as above stated, Watts Hubbard, jur., was recognized to "appear before the special [court] of the half-shire of Westminster, when summoned thereto, etc." Special courts are mentioned in the Assembly records of the fifth day of June, several days prior to the election of judges of the special courts, at the June session. The day preceding the final adjournment of the latter session, the Assembly —



ISAAC TICHENOR.

"*Voted*, That the following persons, viz.: John Shepardson, Esq., Stephen Tilden, Esq., Hezekiah Thomson, Esq., Col. Samuel Fletcher, and Mr. Joshua Webb, be, and they are hereby, appointed judges of a special court, in the shire of Westminster.

"*Voted*, That Deacon Smalley, Deacon John Burnet, William Heaton, Esqr., Mr. Benjamin Baldwin, and Reuben Foster, Esqr., be, and they are hereby, appointed judges of a special court, for the shire of Newbury.

"*Voted*, That Samuel Robinson, Esqr., Martin Powell, Esqr., John Fasset, Esqr., Thomas Jewett, Esqr., and Maj. Gideon Olin be, and they are hereby. appointed judges of a special court, for the shire of Bennington.

"*Voted*, That Thomas Rowley, Esqr., Major Heber Allen, Capt. John Stark, Capt. Jonathan Fasset, and Theodus Curtis be, and they are hereby, appointed judges of a special court for the shire of Rutland."

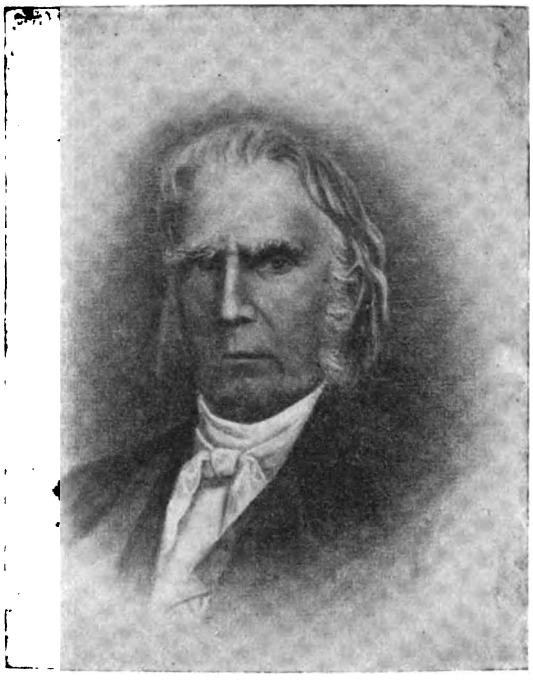
I am not aware that there are any records of these special temporary courts in existence, if indeed any were kept. David Redding was tried and convicted of treason, before that in the shire of Bennington, Ethan Allen State Attorney; and Zerubbabel Mattison was fined for "enimical conduct" by the same court. I learn nothing from the records as to the powers and jurisdiction of the special courts; but in the absence of all other courts, it is probable they took jurisdiction of all matters in controversy brought before them, both civil and criminal, with the sole exception of the banishment of tories, for which a superior court was created at the June session, with Col. Peter Olcott of Norwich, the grandfather of Mrs. Rufus Choate, Bezaleel Woodward of Dresden, N. H., Major Griswold, Patterson Piermont, Esq., and Major Tyler as judges. I think no other courts were organized in Vermont in 1778 until the special courts ceased to exist. Justices of the peace were appointed at the October session, and among them were special judges, — Samuel and Nathaniel Robinson, Fasset, Jr., Powell, Webb, and Wells. Special judges — Powell, Bowker, Bayley, and Shepardson — were appointed judges of probate in their respective districts. There were no lawyers in the State save those adhering to the New York government; nevertheless the Assembly appointed Captain Coffein of Cavendish, Mr. Rowley of Danby, Ensign Harris of Halifax, Mr. Alverd of Wilmington, and Mr. Jewett of Pownal a committee to "prepare a bill to regulate attorneys;" and on the next day their report relative to providing attorneys for the county courts, regulating their fees, etc., was accepted. The common law was established as the law of the land. Of the twenty judges elected in March, twelve were re-elected in June, with eight new ones, so that under both elections there were twenty-eight persons who served as judges. They were not lawyers, for no lawyer in the State acknowledged its jurisdiction; it was not the custom in the State for many years to select lawyers for judicial positions. A glance at their names will convince one that they were men of strong common-sense, of marked distinction in their day, and as well qualified to adjust the differences between their fellow-men, in the times in which they lived, as Chief-Justice Fuller and his colleagues are to settle the abstruse and complicated questions of to-day. Seventeen of the twenty-eight were members either of the Governor's Council or the Assembly at the time of their election. As might be expected, many of the judges were military men. The judges of the Bennington shire were all fighting men, headed by that sturdy patriot Jeremiah Clark, who with his sixteen-year-old son fought at Bennington, and who presided at both trials of Redding and passed sentence of death upon him. There were one general, one colonel, four majors, six captains, two lieutenants, five esquires, three

CHARLES K. WILLIAMS.

deacons, four misters, and plain Charles Brewster and Theodus Curtis. The acts authorizing the special courts were regarded as temporary merely, to last only until the next session of the legislature, even if there were several sessions annually.

THE SUPERIOR COURT, 1778–82.

The stirring events of the first year of Vermont's existence preclude the idea that there was much business for the courts; in fact, the only business prior to December of which we have tangible evidence was the trial of Redding for treason, and of Zerubbabel Mattison for "enimical conduct." That all laws passed in 1778 were but temporary and designed to last only until the succeeding session, may be inferred from the vote of the General Assembly passed the day before final adjournment in October, "that all the bills passed the two sessions preceding this (except the act forming the special court, and the act respecting banishment) be revived until the next session of this Assembly." The act creating the special courts was not revived, as a substitute for them had already been provided by a prior vote, namely:—



STEPHEN ROYCE.

Resolved, That the Hon. Moses Robinson, Esqr., be, and is hereby, appointed Chief Judge of the Superior Court, and Major John Shepardson, second, John Fasset, Jr., third, Maj. Thomas Chandler, fourth, and John Throop, Esq., fifth, judges of said Court."

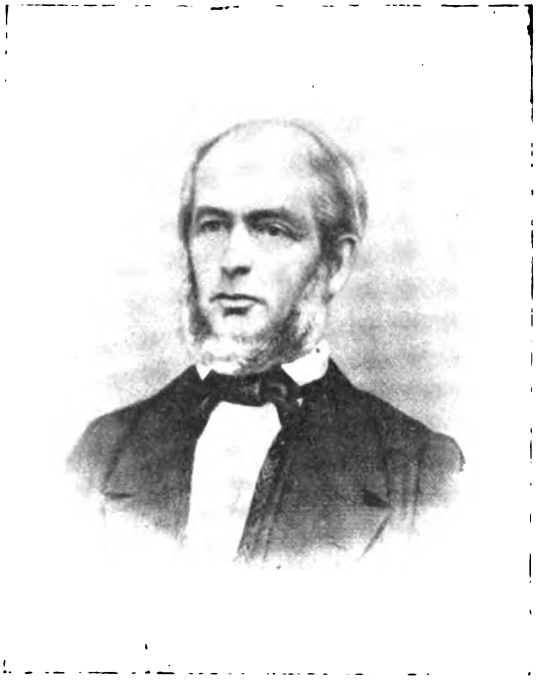
The Assembly voted that the court should not sit longer than one week at one sitting, and should convene four times each year,—at Bennington on the second Thursday of December; at Westminster on the same day in March; at Rutland on the ——; at Newbury on the same Thursday in September. Nothing in the legislative records indicates the passage of any act relating to the powers or jurisdiction of the court. If one was enacted, it has passed into oblivion with the other statutes of that year, for no copy of the acts of the year 1778 is now known. In February, 1779, it was enacted that all writs, pleadings, and entries should be in the English tongue and no other; and at the same time one superior court, for the year ensuing, was established. The powers and duties of the judges, one chief, and four others, those of the clerk, the jurisdiction of the court, and the times and places of its sessions were defined, and an act passed for the directing and regulating of civil actions. At the same time it was enacted that as no county courts had been established, all causes within the jurisdiction of those courts should be heard in the Superior Court. At the October session, 1779, it was provided that the judges of the Superior Court should be chosen annually by the joint ballot of Governor, Council, and House of Representatives. It was also enacted that the Superior Court should be a court of equity in all causes where the matter or cause in dispute

was above twenty pounds, and did not exceed four thousand pounds lawful money, and that causes exceeding four thousand pounds should be heard by the Governor, Council, and House of Representatives, but parties could appeal to the latter, from the decisions of the Superior Court. The first Council of Censors criticising the acts giving judicial powers to the legislature as designed to exalt the legislative above the judicial department, that part of the statute which authorized the legislature to hear equity causes was repealed in October, 1786. In February, 1779, divorce was placed within the jurisdiction of the Superior Court. The powers of the several courts were not precisely defined, the county courts were not organized, at least until the year 1781, the business of such courts having been transferred to the Superior Court by special act. In February, 1781, the legislature directed that there should be five judges of the county court, and in April of that year passed an act directing the county courts in their office and duties.

The Superior Court held but one session in each half-shire annually; the county courts were not organized until 1781, the line of demarcation between their respective jurisdictions was so uncertain, the judicial system so confused, that in 1782 "an act defining and limiting the powers of the several courts within this State," was passed, by which the county courts were continued, the Superior Court abolished, and the Supreme Court of Judicature established, the powers of the courts accurately defined, and the times and places of their sessions regulated. The Superior Court ceased to exist in October, 1782. It had been during the four years of its existence the only court at all times open, and in fact exercised jurisdiction in all matters. The unfinished business of the special courts of 1778 was, by act of the legislature in 1779, transferred to the Superior Court. By the act constituting the Superior Court, it was provided that any one of the Governor's Council might sit, in the necessary absence of, or just exception against, any of the judges of the court. The dockets show that Jonas Fay, Jeremiah Clark, Timothy Brownson, and Ira Allen did sit as judges. During the four years of the existence of the court but nine persons acted as judges. At the first election Moses Robinson was elected Chief Judge, and with him were elected John Shepardson, John Fasset, Jr., Thomas Chandler, Jr., and John Throop. Shepardson and Fasset had served as judges of the special courts in 1778. At the end of the first year Thomas Chandler retired, and Dr. Paul Spooner was elected. In 1780 Dr. Increase Moseley took the place of John Shepardson. Thus there were but two changes in the personnel of the court in the first three years. The sessions were very regularly held, as shown by the docket, kept by William Gould, clerk. The docket begins with the May term, 1779, at Westminster, where all the judges were present. The proceedings of the first two terms are printed, in part at least, in Slade's State papers, p. 549. The first civil action of which there is a record was a sort of cross between trespass and replevin for fraudulently taking and detaining a "certain white horse," in favor of William Griffin against Jacob Galusha. The latter pleaded for an adjournment, "for the want of material evidence" which was granted until the next February, at which time he was defaulted; but later in the day he appeared with his attorney, and a review was granted him upon payment of £12 6*s.* 9*d.* costs. Upon full trial of the case, the court, "having duly considered the same, the evidence, and every attending circumstance relative thereto," ordered the horse delivered to the plaintiff, and the defendant to pay £7 4*s.* 6*d.* more cost.

In 1781 certain towns in western New Hampshire and northern New York united with the towns in Vermont; and at the election of judges in October, Elisha Payne of Lebanon, N. H., was chosen Chief Judge, Moses Robinson, second, John Fasset, Jr., third, Bezaleel Woodward, fourth, and Joseph

Caldwell, fifth, judges of the court. Mr. Payne was deputy-governor of Vermont at the time of his election. Mr. Woodward, a professor in Dartmouth College, represented Dresden in the General Assembly. This town comprised the Dartmouth College lands in Hanover, N. H. Col. Joseph Caldwell represented Cambridge, N. Y., in the Vermont Assembly. The election of a new chief no doubt was displeasing to Judge Robinson, who had served as chief the three preceding years; in six days after the election he informed the Assembly "that he should not accept his appointment as second judge of the Superior Court," and Paul Spooner was elected in his place. Colonel Caldwell declined on the 23d of October, and Jonas Fay was chosen. On the 26th instant Professor Woodward declined, and the vacancy was filled by electing Simeon Olcott of Charlestown, N.H., afterwards Chief Justice of, and Senator from, that State. The General Assembly received a letter from Mr. Olcott dated 28 January, 1782, which was probably his resignation or declination, for on the 13th of the following month Gen. Samuel Fletcher of Townsend was elected in place of Mr. Olcott, *resigned*, as the Assembly journal reads. Mr. Fletcher declined, and three days later John Throop was elected. Throop had served as judge the three preceding years. Mr. Fletcher elected and declined was one of the judges of the Special Court in 1778. There is nothing in the legislative record to indicate that Mr. Payne resigned or declined. The dissolution of the union with the towns in New Hampshire, in February, 1782, made him a non-resident of Vermont; and on the 20th day of June, 1782, Moses Robinson was elected Chief Judge of the Superior Court. Prior to the election in October, 1781, Judges Robinson, Fasset, Spooner, Throop, and Moseley composed the court. During the succeeding eight months ten different persons were elected, one of them twice. At the end of that time the judges were Robinson, Chief Judge, Fasset, Jr., Spooner, Throop, and Fay, the same as in October previous, save Dr. Jonas Fay was in the place of Dr. Moseley. After the election in October, 1781, until June, 1782, but one term of court was held at which any business was transacted; that was at Westminster on the first Tuesday in January, with Judges Fasset, Spooner, and Fay present; some business was transacted, and the court adjourned until the second Tuesday in June.



ISAAC F. REDFIELD.

After the election of the judges in October, 1781, the docket shows that —

"At a superior court in the county of Washington [which was the county east of the Connecticut River, in New Hampshire], on the fourth Tuesday in Decr. 1781

Present ELISHA PAYNE, Esqr., Chief Judge
PAUL SPOONER, Esqr., Side Judge.

Dec. 25. The court opened and adjourned to the first Tuesday in June, 1782.

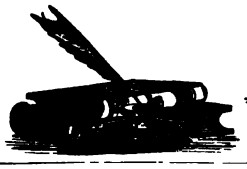
WM. GOULD, *Clerk.*"

Following the session at Westminster in January, the court convened at Windsor on the second Tuesday and at Thetford on the third Tuesday of the same month, with Judge Spooner alone present, but adjourned until June; no quorum being present, no business was transacted. There is no docket entry of a term held pursuant to the adjournment at Charlestown, N. H., nor at Thetford, but there was a session at Westminster on the second Tuesday, and at Windsor on the third Tuesday in June; the names of the judges present were not inserted in the docket. Considerable business was transacted at both sessions, with a grand and petit jury in attendance. The judges then residing in the State were Fasset, Jr., Spooner, Throop, and Fay, the chief judgeship being vacant, until the election of Chief Judge Robinson on the 20th June, 1782. I do not insert the name of Mr. Olcott in the list of judges, as there is no evidence that he ever acted as such, not sitting even at the term held in the town in which he resided. Judge Payne appeared but once in court, and that at the session held in New Hampshire, and with no quorum present. Nine persons served as judges during the four years of the existence of the court, — military men mostly: there were one major-general, one colonel, two majors, two captains, and a surgeon. After June, 1782, the terms were regularly held with juries in attendance; and notwithstanding the turmoils of the war then raging, litigants found time to assert their rights in the courts. All but two of the judges were members of the legislative bodies at the time of their election. Biographical notices of the judges are found in the records of the Governor and Council lately published. Three of the nine were physicians; four natives of Connecticut, five of Massachusetts.

JUDGES OF THE SUPERIOR COURT, 1778–82.

	Residence when Elected.	Place of Birth.	Date of Birth.	Date of Death.	Time of Service.	Age when Elected.
Moses Robinson . .	Bennington	Hardwick, Mass.	26 Mar., 1741	26 May, 1813	1778–81. — 20 June to Oct., 1782	37
John Shepardson .	Guilford	Attleboro, Mass.	16 Feb., 1729	3 Jan., 1802	1778–80	49
John Fasset, Jr. . .	Arlington	Bedford, Mass.	23 June, 1743	2 April, 1803	1778–82	35
Thomas Chandler, Jr.	Chester	Woodstock, Ct.	28 Sept., 1740	. . .	1778–79	38
John Throop . . .	Pomfret	Lebanon, Ct.	11 Sept., 1733	25 Jan., 1802	1778–81 Feb. to Oct., 1782	46
Paul Spooner . . .	Hartland	Dartmouth, Mass.	20 Mar., 1746	4 Sept., 1789	1779–82	33
Increase Moseley .	Clarendon	Norwich, Ct	18 May, 1712	2 May, 1795	1780–81	68
Elisha Payne . . .	Lebanon, N. H.	Canterbury, Ct.	7 Mar., 1730	20 July, 1807	1781 — Feb., 1782	51
Jonas Fay	Bennington	Hardwick, Mass.	28 Jan., 1737	6 Mar., 1818	1781–82	44

The Lawyer's Easy Chair.

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

∴ ∴ ∴ ∴ ∴ BY IRVING BROWNE. ∴ ∴ ∴ ∴ ∴

CURRENT TOPICS.

NOTHING could be more delicious than the passage in Mr. Chittenden's Reminiscences, in the October Green Bag, about Mr. Phelps' experience with the artless college professor who did not understand the true inwardness of the conspiracy and interrogatory clauses of a bill in equity for the foreclosure of a mortgage executed as collateral security for a promissory note. It ought to make the shades of all the old special pleaders lighten up with something akin to unholy merriment. It would seem also that it ought to make Mr. Phelps himself a little more lenient towards the shortcomings of those arch enemies of the law, the codifiers. It reminds the Easy Chair of the arduous struggle that those persons and their predecessors had in overthrowing the old system in the State of New York, and in substituting for it a single court and a system of pleading in which, as Mr. O'Conor gravely urged, a demurrer "is a very dangerous step." Probably nearly all lawyers nowadays will join in laughing over Mr. Chittenden's anecdote, and even the hold-backs of the profession will unite in saying, "Oh! of course nobody believes in that nonsense in these times;" but let them ask themselves how long since those ingenious and useless lies ceased to be precious and essential, and how long they propose to cleave to much other ancient rubbish, including the hoary absurdity that the laws cannot be reduced to a written expression. The forms of pleading that Mr. Phelps was forced to observe in his youth sprang up and were cherished in the ages when the chancellor and the judges answered certain of the calls of nature publicly in a corner of the court-room. In those times, and even in comparatively recent times, it was deemed sinful to have a stove in the religious meeting-house, the hearers depending for warmth on the flames of hell kindled by the imagination of the preacher in the pulpit. Probably the great body of lawyers on both sides of the ocean have ceased to believe in hell and chancery, although in some cases of exceptional depravity, they might still deem the torments of either not cruelly excessive. Once in a great while the voice of the *laudator temporis acti* comes to us wailing on the current of contemporary thought; some he-Rachel mourning for his demolished temple of justice with its two doors, and his lost pleadings. Such an one comes just now from England. At a recent meeting of the Incorporated Law Society, at Manchester, Mr. Walter Pence stirred up the echoes of his middle-age as follows: —

"Looking back for a period of fifty years since I first entered into the law, — forty-five of which have been hard practical experience, — I find a consolation in the reminiscence of the old style and technicalities of legal proceedings in those days. The era of John Doe and Richard Roe of declaration, plea, replication, new assignment, rejoinder, surrejoinder, rebutter, and surrebutter, and all the fictions of that time, come back to one's remembrance with some pleasurable feelings of the quaint and good old times. There is no doubt that in the remote past I refer to, we can hardly in the present day realize the remarkable position legal practice then attained. Imprisonment for debt — the ease when upon oath a debtor was arrested and the opportunities afforded for the abuse of the law's prerogative — do largely startle our present sense of justice and equity; but after all the progress in improvement of legal procedure and the practice of legal qualities are only consistent with the general progressive movement in every department of human industry during the past fifty years. To go with the times is assuredly a laudable determination; at the same time old practitioners cannot dispel from their memories the delights they experienced in the quibbles and fictions the law then provided.

> At length the man perceives 'this vision' die away
> And fade into the light of common day.

I quite admit the improvement, but I do not condemn old-established usages. And here comes the question. Are we advanced in honesty of purpose and desire to act justly and with integrity? I am not certain whether litigation nowadays does exhibit an earnest purpose to seek the law only for protection, and whether the old fictions are replaced by a more solid foundation. Is not the modern practice in many instances a delusion? Do not the technicalities of the law give occasion to exercise the power they command for unworthy ends? If we refer to the trials taking place in our courts at the present day, we do not perceive the civilizing influence of new rules and improved judicature. Trials now last several days and weeks, and the public time is sadly wasted in an endeavor to unravel fraudulent schemes and unsavory scandals. An enormous mass of evidence is produced, — witness after witness called to fortify some glaring statement, very probably the reverse of truth, and the whole range of procedure leading to a protracted and almost endless litigation. The

law's delay is far more vexatious and disastrous, and the unpopularity of legal tribunals is largely increasing in the present day, notwithstanding our boasted improvements and our Judicature Acts and Rules. Many actions tried in our courts of law are a blemish to our civilization. The publication in the newspaper reports reveals a sad story of degradation and vice in our social surroundings, and mars the moral tone of our social edifice."

Here we have the faults of modern society and the inevitable results of the enormous increase of legal business laid at the door of the new practice. Mr. Pence inveighs against the present law's delay, but he forgets the old law's delay — as for example in Lord Eldon's court — and neglects to consider what would be the result if we had the old machinery for doing the new business. It would be hardly less sensible or just to attribute the present delays to the abolition of the old "convenience" in the corner of the court-room and the substitution of decent and convenient retiring-rooms for the judges.

THE JUDICIAL ELECTION IN NEW YORK. — This event was anticipated with great anxiety by the legal profession in that State, and probably with great interest by the profession throughout the country. Judge Maynard's offence is familiar to all lawyers, we suppose; but if not, it is sufficient to say that it consisted in surreptitiously removing from the proper place of deposit a correct and true election return, where a false one had previously been deposited (which was afterward pronounced false and void by the court of appeals), leaving only the latter to be canvassed, thus changing the political complexion of the Senate, setting at naught the judgment of the court, and defeating the will of the people. This was while he was deputy Attorney-General. This was a statutory crime, for which he should have been put in prison instead of being twice appointed to fill vacancies in the court of appeals, permitted to draw $24,000 from the treasury in judicial salaries, and nominated for a term of fourteen years in that court by the party which he had so dishonestly put in temporary power. The voice of the people has now pronounced against him For the second time in recent days the people have unmistakably shown to political bosses and party managers that there is such a thing as political conscience irrespective of party obligation. The former victim was a blameless one, as able and pure a man as has ever graced the highest bench, but who was absolutely "snowed under" in protest against the unhandsome manner in which the nomination was thrust on him. Never was a word uttered against the beloved Judge Folger. In this last case the offender was a man of originally good intentions and fair record, and of highly respectable abilities, who was a victim to the stronger and utterly unscrupulous will of a political brigand, and who in confessing and justifying his crime showed that he had lost the power to distinguish right from wrong. As a recent speaker said, "He shows that he has not a judicial mind." We are not disposed to call hard names or glory in this great victory. All good men must feel, like Wellington after Waterloo, sad while rejoicing. Two lessons may be drawn from the result. First, that the people may be safely trusted to choose their judges. Had the result been the other way, Mr. Field and other believers in the appointing system might have derived from it a powerful argument in support of their theory, as against the people, although they would have found it difficult to derive support for it as in favor of the appointing agency. Here the governor did wrong twice over in regard to the same candidate; and the people, irrespective of party, did the right, just, and decent thing by a verdict so tremendous that it should sound in the ears of unscrupulous partisans for a generation. Second, the bar can be trusted to defeat and can defeat an unworthy nomination, irrespective of their party ties. Let no one make any mistake here. The honor and glory of this great victory are due to the lawyers of the State of New York, some of whom unselfishly gave up their time for weeks to the canvass, and especially to the Bar Association of the city of New York, headed by the acknowledged leaders of the bar of the entire country, themselves Democrats. The writer of these lines has only one personal regret in the matter; that is, that Judge Maynard had not been a Republican, so that he could have shown his independence of party by voting against him. Now let the matter drop, so far as the candidate is concerned. But let not the lesson be forgotten; an awful disgrace has been averted. The people have declared that they will not reward crime by judicial preferment; that they will have judges, not only absolutely pure, but like Cæsar's wife, free from suspicion.

THE JUDICIAL ELECTION IN CHICAGO. — Judge Gary has been re-elected to the Superior Court in Chicago. Our readers of course will recall that he was the judge before whom the Anarchists were tried and convicted for the murder of the policemen, and upon whom, and upon the methods of which trial, Governor Altgeld, in pardoning those who were in prison, made such an unprecedented and unwarrantable attack. This will serve to demonstrate that the people do not recognize their governor as a supreme court of appeal. Mercy to fairly convicted criminals is a matter of humanity and policy alone, in the exercise of which the people will not suffer the just judgments of their courts of justice to be wantonly impugned. So far as the actions of governors in

matters judicial are concerned, the people seem this year to be in the accusative mood. Moral: the servant is not greater than his master.

LEGAL VULGAR ERRORS. — Under this title the "London Law Journal" gives a very readable article, with most of which one finds no difficulty in agreeing. A sample of its scope may be extracted as follows: —

"The idea that an Englishman has a common-law right to take his wife to market for sale with a halter round her neck now only lingers in the mind of the intelligent foreigner and some North-country miners, but the related superstition that a husband may beat or imprison his wife died hard only quite recently in the Jackson case. These, and a good many other vulgar legal errors, seem to be the shadows cast by traditional usage or obsolete statutes, such, for instance, as that bull-beef may not be sold unless the bull has first been baited; that no one may shoot a crow within five miles of London, or carry a dark lantern; or, more singular still, that the owner of an ass must crop its ears to prevent it frightening horses on the road. The idea that an heir could not be disinherited unless he was given a shilling still survives in the phrase being 'cut off with a shilling.' When Sheridan was threatened with this last extremity by an indignant parent, he replied with characteristic coolness, 'You don't happen to have the shilling about you, sir, do you?' This demand was premature; the said shilling need only (according to the vulgar view) be given by will."

Our impression has always been that the point of Sheridan's joke was his pretended eagerness to get the shilling ahead of the legal time, as he was an unscrupulous borrower and conscious spendthrift. We might add to the Journal's list two vulgar errors extremely common in America, and very likely in England, — one that a witness may escape the penalties of perjury by simply kissing his thumb instead of the book, and the other that girls come of age at eighteen instead of twenty-one. We have somewhere read an ingenious vulgar way of evading the sanction of a part of the customary marriage vow, to the effect that a Sussex, England, horticultural correspondent announces, on the authority of his vicar, that nine out of ten among the humbler brides swear to "love and honor cherries and a berry." It is doubtless true that the promise, "with all my worldly goods I thee endow," means in the common understanding to hand over all the said goods including lands, tenements, and hereditaments, instead of a mere pledge of a dower right. So the poor women almost universally suppose that their "thirds" means the ownership, and not merely the life use, of a third. The Journal includes among vulgar errors the notion that a deed executed on Sunday is void, and so it is an error at common law; but not so in some of our States, in one of which pious communities even a subscription on Sunday for church purposes was held void. But the Journal is certainly wrong in saying that it is an error to suppose that "you may shoot a burglar or a cat trespasser which is making night hideous on the tiles." If the burglar is in your house, and not on the tiles, you may safely assume that he means mischief to the inmates and kill him out of hand, and we are not sure that you may not slay him on the tiles. It is a case of the castle being threatened by night. As to the cat, it was long ago gravely held by the Supreme Court of this State (Brill *v.* Flagler, 23 Wend. 354), that you may kill an offending dog in similar circumstances. Said the great Judge Nelson, "It would be mockery to refer a party to his remedy by action; it is far too dilatory and impotent for the exigency of the case." See to the same effect, "Mother Hubbard's Dog," 4 Green Bag, 279. Still fewer rights has the cat, for she (and especially he) is far less useful, and spite of Shakespeare, is not "necessary." It is also a vulgar error to suppose that "drawn," in the ancient punishment of treason, meant evisceration. It simply meant dragged to the place of execution on a sledge, and the correct form of sentence was "drawn, hanged, and quartered." Evisceration followed after death.

"PRINCETON SKETCHES." — This is the title of an attractive book of some two hundred pages, published by Messrs. Putnam's Sons, of New York. The volume is beautifully printed, and charmingly and lavishly illustrated. The sub-title is "The Story of Nassau Hall;" and this is well told, and will prove interesting to graduates and patrons of this "fine old college," as Dr. McCosh reasonably calls it. Princeton is probably more celebrated for the strength of the Calvinistic doses and of the football game which it "puts up," than for anything else in the estimation of the current young man; but it is a highly respectable institution, with an interesting history, ancient, for this country, and a highly honorable and useful record. It has had important endowments in recent times, and has taken a great stride in advance. If the Easy Chair had a son, he would not prohibit his going to Princeton, if he desired, but he would strictly bar out its theology and its football.

— ✦ —

NOTES OF CASES.

OBSTRUCTING THE HIGHWAY. — In Barber *v.* Penley, '93, 2 Ch. 447, it was substantially held, as we are given to understand — the text of the decision has not come under the Easy Chair's rocker — that an actor in a theatre may be restrained from being

unusually "drawing," and from being so attractive that the streets are jammed with people trying to get tickets or gain admission to hear him. The injunction was not granted, as we understand, because the police reduced the crowds, but the judge recognized the principle by making the actor pay the costs of the application. Now a court might just as well decide that an injunction would lie against Mr. Gladstone for making a thirty hours' speech and causing the streets in the vicinity of the parliament house to be obstructed by admirers; or against Mr. Spurgeon for attracting crowds to his tabernacle on Sunday; or against the "London Times" for publishing a series of articles that are not dull; or against "Punch" for publishing a good joke and thus causing a jam of people in the street curious to obtain them. Of this absurd decision the "Law Quarterly Review" very justly observes: —

"Barber *v.* Penley ('93, 2 Ch. 447) certainly goes beyond anything hitherto decided. If Mr. Penley had let off fireworks on his premises, or exhibited a pig-faced lady in his window, or even caricatures, or done anything reasonably calculated to attract a crowd, he would fairly have exposed himself to an injunction; but is a man who carries on his business in an orderly and quiet manner, and does nothing to attract a crowd in the ordinary sense, to be answerable for the idle and vulgar curiosity of a set of London loafers? Is a chemist, for instance, when a person in a fit is carried into his back parlor, to be answerable for the crowd who flatten their noses against his shop window? Chang, the Chinese giant, is a resident at Bournemouth. Is he reponsible for persons who may collect to gape at him as he goes in or out? Is a professional beauty answerable, or a distinguished statesman? Popularity, moralists have long ago told us, is a perilous thing, but North, J., has added a new terror to it if a popular actor must either clear the streets or discontinue his acting. The true remedy is in the police; and happily that excellent body is always found equal to the situation."

In "Bookseller Carlile's Images," 2 Green Bag, 238, the reader may find the principal cases of unlawful obstruction of highways by attractive shows poetically described. See also a supplementary versified report of the case of the long-haired Sutherland sisters, *Ibid.* p. 501.

Basis of Recovery for Seduction of Daughter. — The common law, which "is the perfection of reason" according to some, is the perfection of nonsense in some points at least. One of its most delightful humbugs is the notion that mental anguish and wounded affection cannot support a parent's action for the seduction of his daughter, but that the only ground of recovery is the loss of service. This being shown, no matter how trivial, damages, founded theoretically on that loss, may be heaped up to any amount. So if the child was accustomed to milk cows or make tea for her father, or we dare say comb his head, and is temporarily debarred from the performance of those onerous duties, the old man may recover ten or twenty thousand dollars therefor. The latest illustration of this pleasing fiction is in the Irish case, O'Reilly *v.* Glavey, 32 L. R. Ir. Q. B. 316. The "Law Quarterly Review" says: —

"The daughter-servant there was a mature woman, who had been a wife ten years and a widow two, who lived, not under her mother's roof, but in lodgings of her own, and was employed in a milliner's shop from 9.30 in the morning till 8 at night. Incidentally it may be mentioned that Clarissa had already got damages out of the defendant for breach of promise. All that the so-called service consisted in was in her going occasionally to her mother's house and performing little acts of kindness, such as getting tea, helping to cook, and doing a little dusting. Yet this gratuitous kindness by a long emancipated daughter was held enough by a majority of the Court to found the action."

What is the use of keeping up this foolish old pretence? The Irish case seems to go beyond our own cases. See Browne's Domestic Relations, pp. 82-84; Ogborn *v.* Francis, 15 Vroom, 441; 43 Am. Rep. 394. It seems also opposed to Thompson *v.* Ross, 5 H. & N. 16.

When is a Thief not a Thief? — This question is asked by the "London Law Journal," continuing as follows: —

"This is a riddle of a kind suitable for the Court of Criminal Appeal suggested by daily experience of the difference between theft as 'taking what is n't his'n' and the elaborate definitions by common and statute law, of the incidents and varieties of larceny, which lead to infinite judicial casuistry and the elaboration and conflicting opinions in Regina *v.* Ashwell, 55 Law J. Rep. M. C. 65; 16 Q. B. Div. 190. The latest solution, given by Mr. Bushby, is 'when committed by a cabman.' A man took a cab. On his way, and before his journey's end, he found he had only a five-pound note. So he stopped the cab, and asked the cabman to get down and change it for him. Next time he will get down himself to go on such an errand. The cabman agreed, got down, went into some place, and presently came back and handed to his fare a piece of paper, saying that he could not get change. Later on the fare looked at the paper, found it was not the five-pound note, and went to Mr. Bushby to seek process against the cabman. Mr. Bushby explained that the cabman was not a bailee of the valuable security, but had only been intrusted with it in order to convert it into cash, with a view to getting paid himself, and that, therefore, in the eye of the law, he had not stolen but merely 'conveyed' the check, — i. e. converted it to his own use; and that the only remedy in respect of the converted note lay in the County Court, where the cabman's adviser will doubtless plead that, as the facts show a felony and no prosecution, the owner of the note cannot recover its amount. The cabman could not be regarded as servant of the hirer of

his cab; consequently those decisions did not apply which hold that a servant commits larceny by misappropriation of money entrusted to him to get change or pay his master's debts; and apparently Mr. Bushby was right in saying that he was not a bailee, like Bellencontre, since the article entrusted to him was not returnable in specie, and the object of entrusting it to him was ultimately to obtain the change less the proper fare."

This is certainly not the law of America, and it cannot be *law* anywhere. Such quibbling is not law, and is quite sufficient to bring lawyers and judges into contempt. The reader will find the American law strongly to the contrary in Hildebrand *v.* People, 56 N. Y. 394; 15 Am. Rep. 435; State *v.* Anderson, 25 Minn. 66; 33 Am. Rep. 455; Justices *v.* Henderson, 90 N. Y. 12; 43 Am. Rep. 135; Murphy *v.* People, 104 Ill. 528; State *v.* Ducker, 8 Oreg. 394; 34 Am. Rep. 590. In the State of New York the case is now covered by the Penal Code.

ASSAULT AT LONG RANGE. — A novel and interesting case is Simpson *v.* State, Georgia Supreme Court, May, 1893, 17 S. E. Rep. 984, which holds that —

"The offence of shooting at another is committed in this State when one in the State of South Carolina, without malice aforethought, but not in his own defence, or under other circumstances of justification, aims and fires a pistol at another who at the time is in this State, although the ball misses him, and strikes the water in this State near the boat which he occupies."

The court said: —

"Of course the presence of the accused within this State is essential to make his act one which is done in this State, but the presence need not be actual. It may be constructive. The well-established theory of the law is that, where one puts in force an agency for the commission of crime, he, in legal contemplation, accompanies the same to the point where it becomes effectual. Thus a burglary may be committed by inserting into a building a hook or other contrivance by means of which goods are withdrawn therefrom; and there can be no doubt that under these circumstances the burglar, in legal contemplation, enters the building. So if a man in the State of South Carolina criminally fires a ball into the State of Georgia, the law regards him as accompanying the ball, and as being represented by it, up to the point where it strikes. If an unlawful shooting occurred while both the parties were in this State, the mere fact of missing would not render the person who shot any the less guilty. Consequently, if one shooting from another State goes, in a legal sense, where his bullet goes, the fact of his missing the object at which he aims cannot alter the legal principle. Cases are numerous in which it has been held that where a person wounds another in one State or country, but the person wounded dies elsewhere, beyond its territorial boundaries, the courts of the State or country in which death occurred have jurisdiction to try the offence. A leading case on this line is that of Tylor *v.* People (8 Mich. 320), in which there was a dissenting opinion by Justice Campbell. The ruling of the majority of the court, however, was approved in the case of Com. *v.* Macloon (101 Mass. 1). Justice Gray, who delivered the opinion in the latter case, says, on page 7, that if one's 'unlawful act is the efficient cause of the mortal injury, his personal presence at the time of its beginning, its continuance, or its result, is not essential. He may be held guilty of homicide by shooting, even if he stands afar off, out of sight, or in another jurisdiction;' and the words quoted are followed by apt illustrations. On page 17 of the same report Justice Gray disapproves the dissenting opinion of Justice Campbell above mentioned. There is, however, a clear distinction between cases like the one just cited, where a wound is inflicted in one jurisdiction and death ensues in another, and cases like the present, where the accused in one State puts in operation a force which takes effect in another. On page 343 of 8 Mich. (supra) this distinction is clearly stated by Justice Campbell. He says the doctrine of constructive presence is not applicable to a case like that with which he was then dealing, and then uses the following language which sustains our ruling in the case at bar. Speaking of constructive presence, he says: 'All that it amounts to is that the crime shall be regarded as committed where the injurious act is done. A wounding must, of course, be done where there is a person wounded, and the criminal act is the force against his person. That is the immediate act of the assailant, whether he strikes with a sword or shoots a gun; and he may very reasonably be held present where his forcible act becomes directly operative.'"

This doctrine is illustrated in the recent case of Dr. Graves, who murdered a woman in Colorado by poison which he mailed to her in Massachusetts, and he was convicted in Colorado.

COURTING VISITS. — There is a very impolitic and immoral decision in Clark *v.* Hodges, Vermont Supreme Court, May, 1893, which should be studied by every young man disposed to go a-courting, at least in Vermont: —

"The plaintiff was permitted to show by a neighbor that during the period of defendant's visits he frequently saw a light in the parlor on Saturday evenings and Sunday evenings. The defendant insists that this was error, on the ground that it does not appear that the defendant was in any way connected with these lights by the testimony of other witnesses. It appears that there was evidence tending to show that the family was not in the habit of passing the evening in the parlor, and that it was the room made use of by the plaintiff when receiving the defendant's visits. If it had further appeared that there was evidence tending to show that the defendant's visits were ordinarily made on the evenings named, it would not have been questioned. but that the testimony regarding the lights was admissible to establish a corroborating circumstance. Assuming that this further showing was required to properly connect the defendant with the lights,

it will not be presumed that the evidence which was undoubtedly in the case, as to the time of the defendant's visits, placed them on evenings other than those named"

This is impolitic because it will have a tendency to diminish the courting industry. It is immoral because it will inspire young men to turn the lights down or out. It reminds one of a recent excellent jest in "Life." A young man applied to a stern father for permission to call on his daughter, which was accorded, but with the warning, "Remember, young man, I always turn out the gas at ten o'clock." "All right, sir," replied the young man; "I will be careful not to call before that hour."

SLEEPING-CAR COMPANY'S LIABILITY. — A novel point was ruled in Pullman Palace Car Co. *v.* Gavin, Tennessee Supreme Court, June, 1893. The action was for money given to plaintiff by the parents of a young woman who had been put in his care, for her travelling expenses, and stolen from him by the porter of the sleeping-car in which they were travelling. It was held that he could maintain the action. The court observed on this point: —

"It has been held in this State that an actual and exclusive possession by a party, even though it be by a wrongdoer, is sufficient to support an action of trespass against a mere stranger or wrongdoer, who has neither title to the possession in himself nor authority from the legal owner (Criner *v.* Pike, 2 Head, 397). 'Ordinarily,' says the court in that case, 'the party in possession is either the owner of the property, or answerable over to the owner; and in either case he is entitled, not only to damages for the taking, but also for the value of the property. This is the general rule. A defendant has been allowed to prove, in mitigation of damages, that the goods did not belong to the plaintiff, and that they have gone to the use of the true owner, either by being restored to him in specie, or taken upon legal process in payment of his debts, for in such case the plaintiff is not answerable over. But Mr Sedgwick thinks the principle of these decisions has been carried quite far enough, . . . and that it will not do to permit acts of wilful or wanton trespass to be excused by the defence of outstanding titles in third persons.' See also Logan *v.* Coal Co. (9 Heisk. 690), where it is held that 'mere possession is a sufficient title upon which to maintain trespass against a mere wrongdoer' (Crawford *v.* Bynum, 7 Yerg. 381). Miss Kelly having been placed in charge of Mr. Gavin, the latter had become the depositary of this money, for the purpose of defraying her current expenses, as they arose upon the journey. It has been held that members of the same family, travelling together, may carry each other's effects (Dexter *v.* Railroad Co., 42 N. Y. 326; Curtis *v.* Railroad Co., 74 N. Y. 116). We think that Miss Kelly, having been placed in charge of Mr. Gavin, was *pro hac vice*, for the purposes of the journey, a member of his family, and that a gentleman in charge of ladies on such an occasion was their protector, and the proper custodian of their money and personal effects intrusted to him. In this view of the case, we think it unnecessary to determine whether, at the time the theft was committed, the money was the property of Miss Kelly or her father, Martin Kelly. The proof shows the money was in the actual possession of Gavin, as its rightful depositary."

It has even been held that a thief may maintain an action against another who steals the stolen goods from him. The principal decision is in the true line of gallantry, and tends to promote civility to woman travelling alone.

THE ALCOHOL HABIT. — A beneficent decision is that in Grand Lodge, etc. *v.* Belcham, Illinois Supreme Court, April, 1893, that where on an application for life insurance, to the question, "To what extent does the person use alcoholic stimulants?" the answer of the insured was, "None;" a reasonable construction of the question and answer implied more than an occasional use of alcoholic stimulants, and that to invalidate the contract of insurance there should be, to some extent at least, a habit or custom as to such use. The court observed: —

"The language embodied in the application must receive a reasonable construction, one within the contemplation of the parties at the time the contract of insurance was consummated. What was the purpose of requiring the insured to state in the application to what extent he used alcoholic stimulants, tobacco and opium? But one object can be perceived, and that was to guard against the risk which might arise from insuring the life of one who was in the habit of using the articles, or either of them, to such an extent as to imperil the health and life of the individual. If a man drank a glass of liquor or smoked a pipe of opium or a cigar once a month, it is too plain to admit of argument that such a use could not endanger the life of the person, and that such a use was not within the contemplation of the parties when the contract of insurance was entered into by the parties. It may be that the language of the question and answer in regard to the use of alcoholic stimulants, if given a strict and technical construction, might be interpreted that the insured did not use alcoholic liquors at all. But, in our opinion, an insurance company propounding a question of that character should not be allowed to indulge in a strict and technical construction; but, on the other hand, the language should receive a fair and reasonable construction, a construction which would imply more than an occasional use. There should be, to some extent at least, a habit or custom. This is the rule established in Van Valkenburg *v.* A. P. L. Insurance Co., 70 N. Y. 605, and we think it the correct one."

The case of Meacham *v.* N. Y. etc. Ass'n, 120 N. Y. 237, is in the same line.

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 CHIEF-JUSTICES OF THE SUPREME COURT OF THE UNITED STATES.

TO every subscriber remitting the amount of his subscription for 1894 BEFORE JANUARY **10, 1894**, we shall present a large group picture (24 in. × 30 in.) of the eight Chief-Justices of the United States Supreme Court. The portraits include JOHN JAY, JOHN RUTLEDGE, OLIVER ELLSWORTH, JOHN MARSHALL, ROGER B. TANEY, SALMON P. CHASE, MORRISON R. WAITE, and MELVILLE W. FULLER.

WITH this number "The Green Bag" completes its fifth year. As in the past we have striven to cheer and entertain our legal brethren, so in the future it will be our chief endeavor to shed some rays of legal sunshine upon the weary lawyer, and to continue to demonstrate to him that there is a bright and enlivening phase to the profession which is commonly thought to be only dry and prosaic.

"THE Green Bag" for 1894 will be filled with all manner of good things. Several eminent lawyers whom we have not heretofore numbered among our contributors have promised articles, and our biographical sketches (with portraits) and illustrated articles will be of unusual interest. The series of Supreme Court articles will be continued, and the publication of a number of celebrated "Old World Trials," which is commenced in this number, will be continued during the coming year. A bountiful supply of new anecdotes and bits of facetiæ is all ready for distribution.

LEGAL ANTIQUITIES.

THE feeling upon the subject of oaths among the earlier colonists of Maryland is shown by the following extract from a petition of Assemblymen of the Province, addressed to the Lord Proprietary, in 1649, and "signed by all the members present": —

"We do further humbly request your lordship that hereafter such things as your lordship may desire of us may be done with as little swearing as conveniently may be, experience teaching us that a great occasion is given to much perjury when swearing becometh common."

FACETIÆ.

THE bullying manner sometimes assumed by certain barristers in cross-examination, in order to confuse a witness and make his replies to important questions hesitating and contradictory, is notorious; and many are the tales told of "cute" witnesses who have turned the tables on their persecutors. The following relates to a case of this kind: —

In a civil action on money matters the plaintiff had stated that his financial position was always satisfactory. In cross-examination he was asked if he had ever been bankrupt.

"No," was the answer.

Next question was, "Now, be careful; did you ever stop payment?"

"Yes," was the reply.

"Ah," exclaimed the counsel, "I thought we should get at it at last. When did that happen?"

"After I paid all I owed," was the answer.

BARON DOWSE was on circuit when an accused man could understand only Irish, and so an interpreter was sworn. The prisoner said something to the interpreter, and the interpreter replied to him.

"What does he say?" demanded the judge. "Nothing, my lord." "How dare you say that, when we all heard it? Come, sir, what was it?" "My lord, it had nothing to do with the case." "If you don't answer, I shall commit you, sir. Now, what did he say?" "Well, my lord, you 'll excuse me, but he said, 'Who is that old woman, with the red bed-curtain round her, sitting up there?'" "And what did you say?" asked Baron Dowse. "I said to him, 'Whist! That is the old boy that is going to hang yez!'"

JAMES T. BROWN, of Indiana, was once engaged in a case in the Circuit Court of that State, and was laying down the law with masterly ability, when the judge remarked that he need not argue the law of the case, as the Court understood that perfectly. Mr. Brown replied, with much meekness, that he "merely desired to talk about the law as it is in *the books*, which would be entirely different law from any his honor was acquainted with."

JUDGE JEREMIAH BLACK for a long time wore a black wig. On one occasion, having donned a new one, he met Senator Bayard, of Delaware, who thus accosted him: "Why, Black, how young you look! You are not so gray as I am, and you must be twenty years older." "Humph!" replied the judge; "good reason: your hair comes by *descent*, and I got mine by *purchase*."

A GOOD story is told of a Pennsylvania judge who, before his promotion to the Supreme Bench of that State, once had a number of Irishmen before him in one of the interior counties, indicted for a riot on the canal. All their names were included in the one indictment, and the jury found them all guilty, though one of them, Pat Murphy, clearly proved an alibi. They were all brought into court to be sentenced, and Pat was directed to stand up with the others. Pat protested vehemently, and reminded the judge that it was clearly proven on the trial that he was at the time sick in bed, and at a considerable distance from the scene of riot.

"Stand up, Pat," said the judge. "Stand up; you 're just as guilty as any of them. You know you would have been there if you could!"

NOTES.

WHEN Sir James Fitzjames Stephen, under circumstances that are still fresh in the public mind, resigned his judicial position, he took a semi-public farewell from bench and bar. It was a dismal enough scene; and when it was over, and as the judges were filing out, Mr. Justice Bowen is said to have muttered to one of his learned colleagues, —

> "And may there be no moaning at the bar
> When I put out to sea." — *Globe.*

IN his "Outline of Civil Government," Mr Higby, speaking of our judiciary, says: "The qualifications of Supreme judges are not stringent. Only six States require "learning in the law," and only about the same number require any identification with the legal profession; but through the influence of the bar it has become a custom to confine the choice to professional lawyers."

A NOVEL suit is said to have been commenced in the Nebraska courts, in which one party claims the right to have a post-mortem examination of a body made, while the other opposes it and defies the first to proceed with the affair. It seems that a few years ago a Mr. Warrington, a well-to-do cattleman of that county, married a second wife, to whom he presented the jewels, consisting of valuable diamonds, belonging to the first Mrs. Warrington, and which she had received as part of her marriage portion from her father, a wealthy merchant in jewelry in San Francisco.

Warrington dying shortly after his second venture into matrimony, Mrs. Warrington kept the diamonds in defiance of the family of her predecessor, who claimed them as the deceased woman's heirs. Suit was brought against her, but she declared that her husband had sold them shortly after they were married, and that she had no property to make good the loss, even if she were liable for the act of Mr. Warrington.

This story was not believed by the first Mrs. Warrington's family, who maintained that the woman still had them in her possession; and soon after her death, which took place some weeks ago, the nurse who attended her in her last illness testified that the day she had died she had her bring her a box filled with unset gems, which she deliberately swallowed one by one, passing away a few moments

after she had got the last one down. The family now wish to disinter her body and to open it for the recovery of the diamonds; but her own people, not crediting the nurse's story, refuse to allow what they consider a desecration of the dead.

ALTHOUGH there are as many as 6,000 attorneys actively practising in this city, each of whom is probably doing as well as, if not better than, he would in any other calling, the Circuit Court calendar, which is typical of others, shows that not more than 1,800 of them can be classified as litigating lawyers. This number, it is safe to say, includes every member of the bar into whose office has come, during the last twenty-five years, business which resulted in a common-law action brought in the Supreme Court. The other 4,000 have worried along on their incomes as chamber counsellors, advising as to contracts or investments, passing titles, or caring for trust properties. The number of cases on the Circuit Court calendar — 3,200 — actually represents approximately the number of joinders of issue in two years, the monthly average being 150, or one case a year for each litigating lawyer on the list. Thus the professional income, even for this class of attorneys, growing out of litigation may be put at a low figure, even though the lighter calendars of three other courts be included. — *N. Y. Evening Post.*

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To Lowell, on his Fortieth Birthday, Ralph Waldo Emerson; Fifth Avenue (illustrated), Mrs. Schuyler Van Rensselaer; The Yellow Glove, Alexander W. Drake; My First Lions, H. W. Seton-Carr; The Factions of Kitwyk (illustrated), Anna E. King; The Watchman (illustrated), Mary Hallock Foote; Artists' Adventures: The Rush to Death (illustrated), Walter Shirlaw; The Casting Vote, Part I. (illustrated), Charles Egbert Craddock; John Henderson, Artist, George Kennan; George Michel (illustrated), Virginia Vaughan; Taking Napoleon to St. Helena, II., John R. Glover; Bismarck at Friedrichsruhe (illustrated), Eleonora Kinnicutt; Tramping with Tramps (illustrated), Josiah Flynt; Escape of the Confederate Secretary of War (illustrated), John Taylor Wood; Humor, Wit, Fun, and Satire, James Russell Lowell; Memories and Letters of Edwin Booth, William Bispham.

The Cosmopolitan.

Autobiographical Notes (illustrated), Franz von Leubach; Busy Days of an Idler in Mexico (illustrated), Ellen M. Slayden; In Hop-picking Time (illustrated), Ninetta Eames; The Bolero in Seville (illustrated), George W. Edwards; Some Forms of English Invitation, Adam Badeau; The Esquimau Maiden's Romance (illustrated), Mark Twain; American Notes, I. (illustrated), Walter Besant; Measures of Lawn (illustrated), Mrs. Roger A. Pryor; A Doll-Home, H. H. Boyesen; Dealing in Futures (illustrated), Alice W. Rollins; Writing Material of Antiquity (illustrated), Georg Ebers; Letters of an Altrurian Traveller, W. D. Howells.

Harper's.

From Tabreez to Ispahan (illustrated), Edwin Lord Weeks; The Handsome Humes, Part VI. (Conclusion), William Black; The Decadent Movement in Literature (illustrated), Arthur Symons; Along the Bayou Teche (illustrated), Julian Ralph; An Indian Commonwealth (illustrated), Rezin W. McAdam; London in the Season (illustrated), Richard Harding Davis; The Frog that Played the Trombone (illustrated), Brander Matthews; Arbitration, F. R. Coudert; Vorbei: A Story, Annie Nathan Meyer; Riders of Turkey (illustrated), Colonel T. A. Dodge, U. S. A.: Em'ly: A Story (illustrated), Owen Wister; Apollo in Picardy, Walter Pater; A Reminiscence of Stephen A. Douglas, Daniel Roberts.

Lippincott's.

An Unsatisfactory Lover, Mrs. Hungerford ("The Duchess"); Golf (Athletic Series), John Gilmer Speed; The Rustlers (Lippincott's Notable Stories, No. IX.), Alice MacGowan; Progress in Local Transportation, Lewis M. Haupt; How the Light Came, J. Armoy Knox; An Old-Fashioned Garden, Charles C. Abbott; Expensive Religion, Phil. Stansbury; Why the Body should be Cultivated, Wilton Tournier; A Three-Volume Tract, Frederic M. Bird; Men of the Day, M. Crofton.

Review of Reviews.

Possibilities of the Great Northwest (illustrated), S. A. Thompson; Inland Waterways for the Northwest (with Maps), Emory R. Johnson; The Future of Silver Production, E. Benjamin Andrews; The Gothenburg System of Liquor Traffic; Lobengula, King of the Matabele (illustrated).

Scribner's.

In Camp with the Katchins (illustrated), Col. H. E. Colvile, C. B. Grenadier Guards; The Proud Pynsents, Octave Thanet; Madame Roland (illustrated), Ida M. Tarbell; Glimpses of the French Illustrators, II. (Conclusion, illustrated), F. N. Doubleday; The House of Commons, Augustine Birrell, M. P.; The Picturesque Side (illustrated), F. Hopkinson Smith; Mr. Freeman at Home (illustrated), Delia Lyman Porter; The Copperhead, Chapters XII.–XIV., Harold Frederic (Conclusion); Education for Girls in France, Katharine de Forest; A Laggard in Love, Martha McCulloch Williams; Historic Moments: The Nomination of Lincoln, Isaac H. Bromley.

BOOK NOTICES.

THE AMERICAN DIGEST (annual, 1893). A digest of all the decisions of the United States Supreme Court, all the United States Circuit and District Courts, the Courts of Last Resort of all the States and Territories, and the Intermediate Courts of New York State, Pennsylvania, Ohio, Illinois, Indiana, Missouri, and Colorado, United States Court of Claims, Supreme Court of the District of Columbia, etc., from Sept. 1, 1892, to Aug. 31, 1893, with notes of English and Canadian Cases, Memoranda of Statutes, Annotations in Legal Periodicals, etc., a table of the cases digested, and a table of cases overruled, criticised, followed, distinguished, etc., during the year. West Publishing Co., St. Paul, Minn., 1893. Law Sheep. $8.00 net.

This volume is in every respect all that could be desired for a work of this nature, being in every sense of the word a "complete digest." The labor involved in its preparation must have been stupendous, and yet there is no evidence of the editors having in any way slighted their work. The greatest care and attention has manifestly been bestowed upon it. The arrangement throughout is excellent, and the typographical work deserves a word of commendation. Good paper and clear type are not always found in our digests, but they are distinguishing features of this volume. The publishers are to be congratulated upon their successful efforts to make this digest of great value to the profession.

A TREATISE ON THE LAW OF QUASI-CONTRACTS. By WILLIAM A. KEENER, Kent Professor of Law and Dean of the Faculty of Law in Columbia College. Baker, Voorhis, & Co., New York, 1893. Law Sheep. $5.00 net.

In substituting the term "Quasi-Contracts" for the term "Contracts implied in Law," Professor Keener has followed the lead of eminent English law-writers. This treatise exhaustively covers the large class of rights and obligations arising independently of the doctrines of either Contract or Tort. "It has been usual," says Mr. Maine, in his "Ancient Law," "with English critics to identify the quasi-contracts with implied contracts; but this is an error, for implied contracts are true contracts, which quasi-contracts are not. . . . A quasi-contract is not a contract at all. The commonest sample of the class is the relation subsisting between two persons, one of whom has paid money to the other through mistake. The law, consulting the interests of morality, imposes an obligation on the receiver to refund; but the very nature of the transaction indicates that it is not a contract." These words of Mr. Maine indicate perhaps better than anything we could say the scope of Professor Keener's book. Important as the subject is, no attempt has hitherto been made to treat it exhaustively, and the work should receive a hearty welcome on this account, if for no other reason. It will be found, however, to be a thoroughly practical treatise, written in a concise and clear style, and in every way worthy its learned author's great reputation. The contents are as follows: Chap. I., Nature and Scope of the Obligation; Chap. II., Recovery of Money paid under Mistake; Chap. III., Waiver of Tort; Chap. IV., Rights of a Plaintiff in Default under a Contract; Chap. V., Obligation of a Defendant in Default under a Contract; Chap. VI., Recovery for Benefits conferred at Request, but in the Absence of Contract; Chap. VII., Recovery for Benefits in-

tentionally conferred without Request; Chap. VIII., Recovery for Improvements made upon the Land of another without Request; Chap. IX., Recovery of Money paid to the Use of the Defendant; Chap. X., Recovery of Money paid under Compulsion of Law; Chap. XI., Recovery of Money paid to the Defendant under Duress, Legal or Equitable.

LAWYERS' REPORTS, Annotated. Book XX. All current cases of general value and importance decided in the United States, State, and Territorial Courts, with full annotations by Burdett A. Rich and Henry P. Farnham.

This series continues to meet with favor from the profession. This is due undoubtedly to the thorough manner in which the cases are reported, and the excellent character of the annotations. The new editors seem fully competent for their task, and the high standard of these Reports is well maintained. The publishers have already in press a digest of the set, covering the twenty volumes issued to date.

RECOLLECTIONS OF PRESIDENT LINCOLN AND HIS ADMINISTRATION. By L. E. CHITTENDEN, his Register of the Treasury. Harper & Brothers, New York.

We do not know when we have read a more enjoyable book than these reminiscences by Mr. Chittenden. The work does not pretend to be a life of Lincoln, but is merely a collection of incidents concerning the great President and his administration, related by one who had exceptional opportunities for knowing what was going on behind the scenes, and who speaks with authority. Written in a most captivating style, free from all attempts at rhetorical embellishment, these stories appeal at once to the reader's heart; and one lays down the book more greatly impressed than ever with the grandeur of Lincoln's character. Many of the incidents referred to are tinged with pathos, while others bring out in a strong light the President's inimitable wit and humor. As a history of the inside workings and doings of those in power at Washington from Lincoln's election to his untimely death, this volume is a valuable state paper. We commend it to our readers as a book which they should not fail to read.

SAM HOUSTON AND THE WAR OF INDEPENDENCE IN TEXAS. By ALFRED M. WILLIAMS, with portrait and maps. Houghton, Mifflin & Co., Boston and New York, 1893. Cloth. $2.00.

Samuel, or "Sam" Houston, as he called and signed himself and as he is known in the familiar language of history, was a most picturesque and interesting personality, and the story of his life as depicted by Mr. Williams reads more like a romance than the biography of a native-born Virginian. Few men have passed through such a varied and remarkable existence as the subject of this sketch. First a soldier, then member of Congress, afterward Governor of Tennessee, and from these exalted positions suddenly seeking a home among the Cherokees, where he disported himself with all the glory of an Indian brave; then again a soldier, later President of the Texan Republic, next United States Senator, and finally Governor of Texas. Such are the principal incidents of this wonderful man's career. Mr. Williams gives us a very accurate picture of the man as well as a valuable history of the War of Independence in Texas. The book will prove of exceeding interest, both to the general reader and to the seeker of historical information.

MARION DARCHE. By F. MARION CRAWFORD. Macmillan & Co., New York. Cloth. $1.00.

Mr. Crawford is certainly one of the most prolific of our novelists, and the only wonder is that he is able to keep the quality of his work so uniformly good. "Pietro Ghisleri" has hardly reached the reading public when this latest novel makes its appearance. Marion Darche differs from anything Mr. Crawford has heretofore given us, the scene being laid in New York, and the topic being a thoroughly American one; namely, a mad desire for riches, which brooks no obstacle, and which leads to embezzlement and forgery on the part of John Darche, the husband of Marion. Forced to flee from justice, his faithful wife, although loathing him in her heart, aids him to escape; and her sense of wifely duty causes her to remain true to him, until at last his death restores her to happiness and to the man she truly loves. The character of the heroine will undoubtedly give rise to much discussion, and we doubt if many women could be found who would be so thoroughly true to a sense of right. The story is powerfully written, and is of absorbing interest.

WITH FIRE AND SWORD. An historical novel of Poland and Russia. From the Polish of HENRYK SIENKIEWICZ. By Jeremiah Curtin. Fourth edition. Little, Brown & Co., Boston. Cloth. $2.00.

This volume is the first of a trilogy of historical romances of Poland, Russia, and Sweden. The author enjoys a high continental reputation which is likely to be fully equalled among American readers. For brilliancy, vivid description, and powerful portrayal of character and events, "With Fire and Sword" is one of the most remarkable historical novels ever written, and entitles the author to a foremost position among living novelists. Mr. Curtin, the translator, deserves great praise for his faithful work. He has

caught the author's wonderful fire and spirit, and the story has apparently lost none of its power by being translated into the English language. The other two works which make up the trilogy are "The Deluge" and "Pan Michael." No lover of historical romance should fail to read these remarkable books, which are destined long to hold a high place in modern literature, ranking with the masterpieces of our greatest novelists.

THE LIFE OF SHAKESPEARE, copied from the best Sources, without Comment. By DANIEL W. WILDER. Little, Brown & Co., Boston, 1893. Cloth. $1.00.

This book supplies a long-felt want. It is a singular fact that until this compilation of Mr. Wilder's made its appearance, no brief and accurate biography of Shakespeare was obtainable. In these days of "Bacon-Shakespeare controversy" there is a widespread desire to know more about the life of this greatest of all dramatists; and this book is admirably adapted for the purposes of the general reader. It is brief, concise, and accurate, and contains a fund of valuable information regarding Shakespeare and his plays.

COMIC TRAGEDIES. Written by "Jo" and "Meg," and acted by the "Little Women." Roberts Brothers, Boston, 1893. Cloth. $1.50.

This is a collection of plays written by Miss Louisa M. Alcott and her sister Anna, and acted by them in their youthful days. They display no small amount of dramatic talent, and if their gifted authors had continued in this field of literary work, we might have had from their united pens the long-looked-for "American drama." These comic tragedies are of the most intense melodramatic school, the best perhaps being "Bianca: an Operatic Tragedy." The many readers of "Little Women" will welcome them as delightful reminiscences of the early life of "Meg" and "Jo."

HELPFUL WORDS. From the writings of Edward Everett Hale. Selected by MARY B. MERRILL. Roberts Brothers, Boston, 1893. Cloth. $1.00.

This beautiful little book is made up of extracts from Dr. Hale's sermons and other writings, and the volume is aptly named. The selections are well chosen, and embody the best thoughts of this favorite writer. The illustrations are exceedingly attractive, and altogether the volume is admirably fitted for a Christmas gift.

THE CHILDREN'S YEAR-BOOK. Selections for every day in the year. Chosen and arranged by Edith EMERSON FORBES. Roberts Brothers, Boston 1893. Cloth. $1.00.

This book has been compiled for the use of children from seven to fifteen years of age, in the hope, as the author says, that it may help them to form the habit of reading each day at least a few sentences from the Bible or some religious book. It seems excellently adapted for this purpose, the selections being made with good judgment and with the evident intent of interesting as well as instructing the youthful mind.

AN UNKNOWN HEROINE. By L. E. CHITTENDEN. Richmond, Croscup & Co., New York, 1893.

The old adage that "truth is stranger than fiction" is well exemplified in this story of Mr. Chittenden's. The author, however, assures us that the facts related were actual occurrences; and strange as they may seem, they must be taken as simple truth. The story is one of our Civil War, the heroine being a Southern woman, who with noble and unselfish devotion nurses back to life a Union soldier who had been wounded almost unto death. Her heroism and self-sacrifice have their reward, as through the efforts of the man she saved, her husband, who was a prisoner in the hands of the Union army, is restored to her arms. The story is dramatic in the extreme, and is told in Mr. Chittenden's most delightful style. It is a beautiful and fitting tribute to the woman who will now no longer remain an "unknown heroine."

LIFE ON THE CIRCUIT WITH LINCOLN. With sketches of Generals Grant, Sherman, and McClellan, Judge Davis, Leonard Swett, and other contemporaries. (Illustrated.) By HENRY C. WHITNEY. Estes & Lauriat, Boston. Cloth. $3.50.

Will the story of the life of Lincoln ever be fully told? With all the biographies and reminiscences which have been given us of this wonderful man, the material seems by no means to have been exhausted, and in the present volume Mr. Whitney adds many valuable facts and reminiscences which only serve to increase one's admiration for the noble character of Abraham Lincoln. Intimately acquainted with him from his earlier days, the author possesses advantages as a biographer enjoyed by but few writers, and his contribution to our literature concerning Lincoln has the charm of novelty, dealing as it does more particularly with a phase of his life which has been but little dwelt upon. Those of the legal profession especially will be interested in Lincoln's career as a lawyer, and the book is one which should be widely read by them. Brief sketches of several of our great war generals are given; but the interest of the work centres upon Lincoln, and Lincoln alone.