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REPORT

OF THE

SEVENTEENTH ANNUAL MEETING

OF THE

American Bar Association

HELD AT

SARATOGA SPRINGS, NEW YORK,

August 22, 23, and 24, 1894.

PHILADELPHIA:
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THE
EIGHTEENTH ANNUAL MEETING

WILL BE HELD AT
DETROIT, MICHIGAN,

On August 28, 29 and 30, 1895.

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TRANSACTIONS
OF THE
SEVENTEENTH ANNUAL MEETING
OF THE
American Bar Association,
HELD AT
SARATOGA SPRINGS, NEW YORK,
August 22d, 23d and 24th, 1894.

Wednesday, August 22, 1894, 10 A. M.

The meeting was held in Convention Hall, and was called to order by George A. Mercer, of Georgia, a member of the Executive Committee.

George A. Mercer, of Georgia :

Gentlemen, in the absence of the President, the meeting will be organized by the Executive Committee. Judge Samuel F. Hunt, of Cincinnati, Ohio, has been requested to preside, and he will now read the address of the President, Judge Cooley.

The President's address was then read by Samuel F. Hunt, of Ohio, one of the Vice-Presidents of the Association, who acted as President throughout the meeting.

(See Appendix.)

New members were then elected.

(See List of New Members.)

The Secretary:

I have received the credentials of the following-named gentlemen as delegates from State and local bar associations, and they are entitled to all the privileges of membership during this meeting.

(*See List of Delegates.*)

The report of the Executive Committee was then read.

On motion the report was received and placed on file.

(*See the Report at end of Minutes.*)

After a brief recess, the roll of States was called, and the General Council was elected.

(*See List of Officers at end of the Minutes.*)

The President:

The report of the Secretary is next in order.

The Secretary, John Hinkley, of Maryland, read his report.

On motion, the report was received, approved and placed on file.

(*See the Report at end of Minutes.*)

The President:

The report of the Treasurer is next in order.

The Treasurer, Francis Rawle, of Pennsylvania, then read his report.

(*See the Report at the end of the Minutes.*)

On motion, the report was received and ordered referred to an auditing committee to be appointed by the chair, under the by-laws.

The President:

I will appoint as such auditing committee Ignatius C. Grubb, of Delaware, and Gilbert E. Munson, of Ohio.

The President also announced the following Committee of Reception:

R. Wayne Parker, New Jersey; Horace W. Fuller, Massachusetts; Charles Claflin Allen, Missouri; Hampton L. Carson, Pennsylvania; Walter B. Hill, Georgia; Emlin

McClain, Iowa; John J. Hall, Ohio; Spencer C. Doty, New York; and Jerome C. Knowlton, Michigan.

Also the following Committee on Publications:

Leonard A. Jones, of Massachusetts; Walter B. Hill, of Georgia; Charles Borchertling, of New Jersey; Thomas Dent, of Illinois; and Henry C. Ranney, of Ohio.

The Association then adjourned till 8 o'clock P. M.

EVENING SESSION.

Wednesday, August 22, 1894, 8 o'clock.

The President:

My brethren of the bar, I am sure, will all remember the contribution to the literature of the profession in the "History of the Supreme Court of the United States." The author is with us to-night. The topic which he has selected for his paper is "Great Dissenting Opinions," and I have the pleasure of introducing to you now Mr. Hampton L. Carson, of Pennsylvania.

Mr. Carson then read the paper.

(See the Appendix.)

The President:

It has been said that freedom itself must be protected from perilous activities quickened into life by its own fearless spirit, and that there must be new defenses for democracy in the new trials of its life. The questions of social order which now engross public attention involve the security of our homes and the peace of our streets. To what extent the arbitrary power of injunction may be invoked under certain conditions is a question of lasting concern to the profession and the country. "Injunction and Organized Labor" is the title of a paper prepared by Mr. Charles Claflin Allen, of Missouri, whom I now have the pleasure of introducing to you.

Mr. Allen then read the paper.

(*See the Appendix.*)

The President:

The papers are open for discussion, but the hour is so late that it would be well, perhaps, to postpone any discussion until to-morrow.

Judson Starr, of Illinois:

Mr. Chairman, I should like to submit a few remarks on the subject of one of these papers, but I feel that the hour is so late that it would be more in order to adjourn this discussion until the next regular session.

George Gluyas Mercer, of Pennsylvania:

I would move, sir, that the discussion be postponed until to-morrow, and that it follow next after the Annual Address. I think the last paper raises a question of very great importance at the present time—a question that can be discussed with the same interest and with like ability at no other time, and a question that ought to be discussed very fully just now. I, therefore, trust that the discussion may be made the special order for to-morrow forenoon, immediately after the Annual Address.

The motion was carried.

The Association adjourned until Thursday, at 10 A. M.

SECOND DAY.

Thursday, August 23, 10 A. M.

The President:

The Annual Address will now be delivered by Mr. Moorfield Storey, of Massachusetts.

The Annual Address was then delivered by Mr. Storey.

(*See the Appendix.*)

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New members were then elected.

(*See list of New Members.*)

The President :

At the session last evening discussion of the papers then read was made the special order for this morning following the Annual Address. The attention of the members is called to three rules, viz, that all resolutions and amendments must be in writing and handed to the Secretary ; that each member on rising to speak must state his name and State, and that no speaker shall speak more than ten minutes at a time, or more than twice on the subject under discussion. The discussion is now in order.

The papers may be considered in the order in which they were read. The first was "Great Dissenting Opinions."

Everett P. Wheeler, of New York :

Mr. President : There is one observation on the very interesting paper of Mr. Carson which deserves a moment's notice, and that is in reference to the effect of the decision in the Legal Tender cases upon our constitutional jurisprudence. I remember very well that in the law school at Cambridge, Chief Justice Parker, of New Hampshire, who filled the chair of constitutional law, used to lay it down as an elementary principle which at that time had universal recognition, that the powers of Congress were solely those that were affirmatively conferred by the Constitution, whereas the State legislatures had all the power of the British parliament, except that which was denied to them by their respective constitutions or by the Constitution of the United States. It seems to me that the effect of the Legal Tender decisions, particularly the last one in the Julliard case, is to apply to Congress in effect—the rule previously applied to the State legislatures and to hold that the power of Congress is practically unlimited, except by prohibition in the Federal Constitution. That much deserves very serious consideration, and I do think that the dissenting opinion in the first case and the prevailing opinion in the second mark an epoch in our constitutional history.

There is an interesting fact in the jurisprudence of the State of New York which illustrates those Legal Tender decisions that may be new to some of our members from other States, and possibly it might be worth while for a moment to call attention to that. When the first decision in the Legal Tender cases was announced, which was against the validity of the law, there were many who maintained that that decision would be overruled, and one pugnacious gentleman in New York, named Jex, who had an equally pugnacious lawyer, was so convinced of this that he undertook to make a formal tender in legal tender notes of a mortgage on which he was not personally liable, but which was on property which belonged to him. Under an earlier decision of our Court of Appeals, in Kortright *vs.* Cady, 21 N. Y., 343, it was held that a tender of the amount due on a mortgage, whether it was accepted or not, discharged the lien *ipso facto*; and he had this in mind, that if the decision should subsequently be changed and his tender should be held to be good, he would get rid altogether of the lien of that mortgage, and, as he had never assumed it and was not on the bond, he would gain its amount. Foreclosure suit was commenced, as he refused to pay interest, and, after the trial there came out the second decision which sustained the validity of the Legal Tender acts, and Jex was very confident that he would carry his point and obtain the land free from the lien of the mortgage. At that juncture I had the honor of being consulted, and I advised that as the decision of the Supreme Court was in force at the time of the original tender the validity of the tender must be judged by the decision that was then in force. It was a novel proposition. It really gave to the decision of the court the effect of a statute. It was to be sure, carrying out the analogy of the decisions that Mr. Carson referred to last night in the cases of Gelpcke *vs.* Dubuque and those following cases, which had given that effect to the decisions of the local courts upon the validity of State statutes; and finally that contention was sustained by our Court of Appeals, (Harris *vs.* Jex, 55 N. Y., 421), and

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they distinctly held that while the decision of the highest court having jurisdiction is in force unchanged and not overruled, all acts must be judged of according to that decision, and accordingly Mr. Jex lost his case.

John L. Thomas, of Missouri:

Mr. President, I do not concur in the statement of Mr. Carson that the dissenting opinion, or the position occupied by Judge Miller in the *Legal Tender Cases*, is a strong position. The inherent weakness of his decision in the dissenting opinion in the first case and the opinion of the court in the others, is that he assumed that to compel a man to take a depreciated currency for a pre-existing debt impaired the obligation of a contract, and then insisted that while the States had no power to pass laws to impair the obligation of a contract, Congress possessed such power. Now, I do not believe that Congress possesses any such power.

In order to clothe Congress with such a power as that it must be first implied, because it is not granted; and we need not draw on our imaginations as to what would have been the fate of a proposition in the convention that formed the Constitution if it had been attempted to force an affirmative proposition of that kind into the constitution. I concede that Congress may pass laws which may indirectly affect contracts. They do do it. It is a necessary incident to business. But to say that Congress may deliberately go to work and depreciate its coins—clip its coins, if you please—and compel a man to take that depreciated coin for a contract that was made before the law is passed, I do not believe it possesses any such power; and Judge Miller distinctly puts his ruling on the ground that Congress may, and did in that case, impair the obligation of a contract. As to the history of the judicial construction of the Fourteenth Amendment, I might say it is paradoxical. The Federal court—and a majority of them were Republicans—had uniformly resolved all doubts against the Federal government, whereas most of the States where those questions have arisen have resolved the doubts in favor of the Federal government. In

other words, the State courts have been extending the limits of the Fourteenth Amendment, while the Federal courts have been limiting it. Pennsylvania, West Virginia, Illinois and Missouri have held that certain legislation in regard to truck stores and the weighing of coal, and that kind of legislation, is class legislation, within the meaning of the Fourteenth Amendment of the Constitution of the United States and is depriving a man of his rights without due process of law. Illinois has submitted an amendment to the constitution of that State to authorize such legislation.

Now, all I have to say is that if the grounds upon which the Illinois Supreme Court ruled that legislation unconstitutional are valid, then Illinois has no power to pass a constitutional amendment to allow it, because that amendment would be in violation of the Fourteenth Amendment of the United States. The Illinois Supreme Court ruled that legislation to be unconstitutional upon these distinct grounds: First, that it was class legislation; it denied to classes the equal protection of the laws. Second, that it deprived a man of his property without due process of law. Both of those provisions are in the Fourteenth Amendment of the Constitution of the United States, and hence the legislature of Illinois cannot pass that kind of legislation; neither can they adopt a constitutional amendment to that effect.

George Whitelock, of Maryland:

Mr. President, I want to say a word about Mr. Carson's paper. I was intensely interested in the whole of his very able review. My attention was, however, especially directed to what he said of the decision in reference to the power of a State to pass an insolvent law by which it could discharge a debt due by its own citizen to a citizen of another State. My attention was particularly called to this part of the review because Maryland, the State of the Judge of "moonlight effulgence," according to Mr. Carson's quotation from William Wirt, is one of the two States in this country that have an involuntary system of insolvency, Massachusetts being the

other. www.libtool.com.cn Maryland has had for a long time a system of voluntary insolvency, but it first adopted the involuntary system in 1880. From Mr. Carson's paper it is quite obvious that the decision of the majority of the Supreme Court has proved to be a great misfortune. Had the views of Chief Justice Marshall prevailed as Mr. Carson stated them our system would have been in much better shape. As I understood Mr. Carson's remarks, it was the view of Judge Marshall that it should be held that the Constitution gave exclusive power to Congress to regulate the subject of bankruptcy and insolvency. So unfortunate was the contrary ruling that the Supreme Court itself sought to find a means of escape wherever it could, and held that if, in any particular instance, the creditor living in another State assented to the State insolvent proceeding, he was bound by the discharge. Now, in Maryland the doctrine of State insolvent proceedings received a very anomalous interpretation. Our court of appeals, seeking to understand the decision of the Supreme Court—and I put it thus because they afterwards confessed that they had not comprehended the decision of the Supreme Court—held that not only was the personal discharge of the debtor ineffectual as against the non-resident creditor, but that as against the latter the title to the assets actually in the State of Maryland did not pass for administration to the insolvent trustee. For forty-five years, I suppose—I think I do not overstate the period—it was the practice in Maryland under the series of decisions of our Court of Appeals for non-resident creditors to stand by and see an insolvent trustee gather up the assets and then lay an attachment in his hands and take the fund away from the home creditors—certainly a very anomalous situation and one which the Supreme Court never contemplated. That went on until the decision of the Supreme Court in the case of *Crapo vs. Kelly*, reported 16 Wallace. There, as we all remember, the issue arose between the insolvent trustee elected in Massachusetts claiming title to a vessel which was on the high seas at the time of the execution of the insolvent assignment on behalf

of her owner, the debtor, and a sheriff of New York City, who took the ship when she came into that port under an attachment sued out against the owner by a citizen of New York. It then became very apparent that the Supreme Court had not meant to hold any such doctrine as the Court of Appeals of Maryland had thought they held, for they decided that the ship, although on the high seas, was a portion of the State of Massachusetts and that the insolvent assignment passed the title to her as if she had been within the State when it was executed. That case was followed by a case in the Court of Appeals of Maryland, of *Pinckney vs. Lanahan*, decided eight or nine years ago, where Pinckney, a resident of South Carolina, laid an attachment in the hands of an insolvent trustee in Maryland seeking to capture the assets, and the Court of Appeals held that the former Court of Appeals had been mistaken about the doctrine of the Federal Court, and followed what they understood to be the doctrine of the Supreme Court of the United States in the *Crapo vs. Kelly* case. Now, although the old rule has never been reversed so far as the personal discharge is concerned, and although it is quite customary for residents of other States to come into Maryland and get a personal judgment against debtors there domiciled which cannot be discharged by our State system of insolvency, they hold that the title to the assets passes to the insolvent trustee—a very fortunate thing for our own citizens. I recollect examining the case of *Baldwin vs. Hale*, in 1 Wallace, in which the question of the personal discharge of a debtor as against a non-resident creditor was again taken to the Supreme Court, in the hope, of course, that a new doctrine would be declared. There a citizen of Vermont had come into the courts of Massachusetts and recovered a judgment against a resident of that State who had applied for the benefit of the State insolvent law, and sought to plead his discharge as a bar to recovery of judgment. It was held in the Circuit Court that he could not do so, the ruling following the earlier decisions of the Supreme Court. The case was

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taken again to the Supreme Court, and Judge Clifford, delivered the unanimous opinion of that tribunal affirming the judgment of the Circuit Court. Certainly it seems to me the law is now in a position where it cannot be questioned except by a constitutional amendment and that position is an unfortunate one when a foreign creditor can obtain a personal judgment against a debtor in the Courts of the very State which has granted him a discharge.

Edward Otis Hinkley, of Maryland :

Mr. President : Let me add what may complete the story of my friend from Maryland to show the injustice of the present state of the law as we have it now in Maryland ; but it is the same, I presume, for all the States of the Union. It having been held that the fund passes to the insolvent trustee of the State in which the insolvency takes place and that the creditor in another State, though not bound by the insolvent law of the State so far as the discharge of his debt is concerned, is bound to respect the fact that the assets are in the hands of the trustee for the benefit of creditors, it follows logically, and yet unjustly it would seem, that if the foreign creditor then comes in and takes his share of the assets, while he is coming in solely for that purpose, he discharges his debt. So that, not having the right to attach, and being bound by the State insolvent laws if he comes in even to get his share, he may lose his debt or discharge it ; he cannot get his share of the assets without losing his debt. That is a little piece of injustice that must yet be corrected in connection with that matter.

As a Marylander, I think I ought to say what I feel about one sentence of three or four lines in the paper of Mr. Carson about Judge Taney. I am old enough to have known Chief Justice Taney, a citizen of Baltimore. In my early days I had some little to do with him, and I saw him on the bench and I heard many of his decisions. I do not think any good can come of reference to Mr. Wirt's eulogy of Taney, which was to the effect that "so dispassionate was he, so calm and pure in his logic and free from temper, that it was like the pure

light of the moon." My friend from Philadelphia turns this beautiful eulogy into a suggestion that his decisions were pure moonshine. I do not like that exactly.

Hampton L. Carson, of Pennsylvania :

Mr. President : I certainly think that the gentleman from Maryland (Mr. Hinkley), if he understood me as saying that any of the decisions of Chief Justice Taney were mere moonshine, entirely misunderstood what I said, and it may be that, owing to the unfortunate echo in this hall, the word "moonlight" was misunderstood by Mr. Hinkley as moonshine. I am glad to find that a Maryland man comes to the rescue of a really great judge. I have the highest respect for Chief Justice Taney's memory, but I think Mr. Hinkley is in error in assuming that Mr. Wirt used that phrase with regard to Judge Taney's judicial qualities. It is absolutely impossible for Mr. Wirt to have been discussing Judge Taney as a Judge, because Mr. Wirt happened to die exactly eight years before Judge Taney went on the bench. Now, in regard to the accuracy of my quotation, I quoted the whole of it. I took it from Mr. John P. Kennedy's "Life of William Wirt," a book written of a Maryland man by a Maryland man, and I quoted the exact phrase. It was "a man of moonlight mind"—I appeal to your recollection of my quotation last evening—"the moonlight of the Arctics with all the light of day without its glare;" and I used it as an illustration, not to the disparagement of Chief Justice Taney or his decisions, but for the purpose of pointing what seemed to me to be a substantial difference in the intellectual structure of the two greatest Chief Justices of the Supreme Court of the United States when I said that the vigor and the power of John Marshall communicated warmth and life and sunlight to our national jurisprudence, and that I thought that a review of the twenty-eight years of the judicial career of Chief Justice Taney showed that his mind was critical rather than constructive, that it was the moonlight of the Arctics that shone upon our legislation, but that there was not the warmth or the life-giving

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power of the sun which is discernible in John Marshall's judgments. On that, gentlemen, I submit my case.

The President :

Gentlemen, is there any further discussion on Mr. Carson's paper? If not, the Association will proceed to consider the paper read by Mr. Allen, which was entitled "Injunction and Organized Labor."

Judson Starr, of Illinois :

Mr. President: The intense interest I have in the subject under discussion, so fitly presented here, not only in the immediate paper, but also in the paper of the president of this association, Judge Cooley, is the more lively because the interstate commerce law was largely the work of Senator Cullom, of Illinois; late events calling for relief have had special prominence in Illinois, and President Cleveland's recent appointment of a commission to inquire into those events includes an able fellow-townsmen, Judge Worthington, of Peoria, Illinois, to whose favors in this matter, and those of Judge Anthony, president of the Illinois State Bar Association, I am much indebted. Mr. Debs was before this commission last Monday.

Differing from the sentiment of Mr. Allen's able paper, he there said it was the injunctions of the Federal Courts that had suppressed and ended the strike. The burden of his song now makes the greatest dissenting opinion recorded. It is that of organized labor to the courts, strongly asserted against proceedings involving injunctions. "There are errors," says Coleridge, "which no wise man will treat with rudeness, while there is a possibility that they may be the refraction of some great truth still below the horizon." In this spirit I hope to speak, excluding from the term organized labor those who live only to breathe, to burn and to steal. My contention is that legal procedure has made marked advance favorable to organized labor, and that injunction suits are effective, and themselves fairly show it.

I. The period of penal actions: From the trial of the Cordwainers of New York in 1810, spoken of by Mr. Allen

(the first fully reported case in this country), to the decision of Chief Justice Shaw of the Massachusetts Supreme Court in 1840 (reported in 4 Metc., 111), there is clear expression that the union of working men to raise wages was not wrong in itself. For half a century the latter decision has stood as the bulwark of organized labor. The court seemed to have studied the matter until "he knew from Homer more than Homer knew." It is interesting, if not relevant, to note that the attorney for the union men in that case was Robert Rantoul, "whose name," said Wendell Phillips, "deserves to rank with McIntosh and Romilly, with Bentham, Beccaria and Livingston" (New York's great gift to Louisiana), "and whose statue deserves a place in the Pantheon of the great jurists of the world."

De Tocqueville observes: "The great danger of a democracy is that unless guarded it merges into despotism." If any such infection came into the ranks of organized labor during this period, it did not come from the air of the court.

II. The advance from criminal to civil procedure: It is a great stride when the effective remedy for any wrong progresses from the vulture of criminal procedure to a safe refuge in civil procedure. In 1888, in the notable case of Patrick Sherry *vs.* Perkins, 147 Mass., 212, reported in the *Legal News*, at the instance of an individual plaintiff, an injunction is sustained against a boycotting union. Judge Beach, of N. Y. Supreme Court, this week, sustained the same principle. The brief of counsel in the Massachusetts case was exhaustive, plaintiff's name suggestive. Patrick feels that off its native heath the methods which so emphatically sent Captain Boycott to Coventry need restraint. It is one of Col. Ingersoll's bright sayings that the world would be happier if health were catching instead of disease. The plaintiff here doubtless thought that labor unions might be better if work were made as contagious as wages. In its general results, too, the granting of injunctions against unlawful acts is gain for the unions themselves. It would seem to follow from the principle on which the decision rests,

that if one union makes itself a nuisance to another, the offender may be enjoined. The mere thought that McBride's union might restrain Arthur's, Gompers both, Debs all three, and Sovereign's all, under such likely circumstances, is not without a suggestion of favor. Chicago, northwest, the storm center; Boston, northeast, the reform center. I think I may say this on the authority of Mr. Storey's splendid paper just read. Adopting the principle of this Boston case, one labor union in Chicago recently enjoined another.

III. The interstate commerce law: Cases arising under this law have educated the public as nothing else can. So much gained. Had their result been no more than the decision rendered by Judge Taft, referred to by Mr. Allen in the Ann Arbor R. R. case against Arthur, that would mark an epoch. If Mr. Allen means what he says of that decision, it effectively answers his doubts as to the effectiveness and propriety of injunctions. Again, organized labor could fairly ask nothing more favorable than this language from Judge Taft's decision.

"Labor can lawfully combine to get as high a price as possible for its product, and on the best terms. The probable loss and inconvenience to the company (the employer), by withholding labor, would, under ordinary circumstances, be a legitimate means, availing to them for inducing a compliance with their demands." Who shall henceforth say that courts never began anything, that they are mere creatures, not creators? This decision fathered an insurrection of thought. Indeed, some charitable commentator on this Interstate Commerce Law and the present state of decisions under it may, a hundred years hence, indulge the thought that if the moving principle of courts of equity in these matters was the restraining of nuisances, it was strange that the law was not itself restrained.

IV. The denial of injunction to employers when first in fault: In 1893, one of the leading legal publications of what is latest and best, the Albany *Law Journal*, noting a recent decision, said: "Judge Barrett's recent action in summarily

refusing an injunction asked by the Clothing Manufacturers' Association to restrain the issue of a certain circular by the cutters, seems eminently judicious and wise. * * * The combined employers had resorted to probably unnecessary aggression against the combined garment workers, which condition of affairs should certainly have a material bearing where the peculiarly equitable relief of injunction is sought. * * * The chances are that such relief will be frequently demanded in the future labor controversies, and it is well to have the principle emphasized in the beginning that the plaintiff must come into court with clean hands and without an affirmative suggestion from the circumstances involved, that he himself does not propose to do equity." I submit that this decision ought to greatly relieve ex-Senator Ingalls' late violent attack of court dyspepsia. The weak imitators of Carlyle usually have the worst pains after the best dinners. I respectfully commend to the New York *Sun* as being in direct line with this decision, the following from the *Legal News*' careful and interesting report of the Debs cases in Chicago.

Said Mr. Erwin, attorney for Debs, whom the *Sun* delights to lampoon, and the union men call "The Defender of Liberty:" "I will show the remarkable fact that all the railroads named in this bill first entered into a conspiracy," etc. To this Judge Woods replied: "This is irrelevant, but if the facts are as stated, the public ought to know it. If there has been any such conspiracy the public prosecutor ought to start against every one of these railroad companies to forfeit their charters. * * * I will not impose any obstacle to its fair presentation, and if it is in my power to put the machinery of the court to work to develop it, you shall have it carried out." Judge Tourgee pertinently suggests, in an able article, that the best way to prevent strikes is to remove the inducement.

The legitimate results of such a line of action as here indicated by Judge Barrett and Judge Woods might go far toward it.

V. Conclusion: Utterances by those in high judicial station, such as those of Justice Brown, of the United States Supreme

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Court, at the last meeting of this association, and of Judge Grosscup, in his late memorable charge to the Federal grand jury in Chicago, show a marked consideration for organized labor, moving in right and safe lines. Judge Grosscup's memorial day address at Galesburg, Illinois, this year, deserves especial commendation from labor, and ought to be ranked with Washington's farewell address and Lincoln's best utterances for its pathos and patriotism. The sovereignty and independence of man never received a higher tribute. In that great argument, says Phillips, which gave us the two most consummate orations of antiquity, the question was whether Athens should grant Demosthenes a crown. Our courts and our noble profession have nothing to do with crowns, but a far greater honor awaits them if they shall continue in a practical, determined and progressive way to deserve well in this, the most comprehensive question of the age. So it may be that injunctions will greatly serve to point the way to the truth of which organized labor is the refraction.

W. W. Howe, of Louisiana :

Mr. President : I do not wish to make any extended remarks on the subject so ably set forth in the paper of last evening, which was read by Mr. Allen. I only want to recall what might be termed the evolution of this subject in the United States Circuit Court for the Eastern District of Louisiana. The first case we had down there, and in which I had the honor of being associated with the late Judge Campbell, was known as the American Railway Improvement Company *vs.* The Longshoremen's Association. The complainant was a construction company organized under the laws of Colorado. They owned a cargo of iron which was imported from Liverpool on an English steamer which arrived at New Orleans and began to discharge with the help of her crew and the employés of the construction company which was building a railroad. The iron had to be moved from the ship's tackles across a wharf some distance in order to be piled on the land because it could not be piled with safety on the wharf. The

Longshoremen's Association claimed the exclusive right to do that moving. Of course, a controversy at once arose between the American Railway Improvement Company and the Longshoremen's Association which desired to monopolize the business of doing that kind of work, and undertook to drive away any other laborers except their own. The American Railway Company, being organized under the laws of Colorado, filed a bill in the Circuit Court of the United States setting out the facts, and at the same time the Collector of the port brought criminal proceedings before one of the United States Commissioners there on the ground that these people were interfering with the proper handling of this iron and with its being counted for the purpose of estimating the duty. The equities which were set up in the bill, this being nearly ten years before the passage of this Act of 1890, were, the irreparable injury which would be caused by these people, who were pecuniarily irresponsible; the damage that would be done to the private property interests of the complainants, and the multiplicity of suits. The matter was prosecuted at the same time before the United States Commissioner on the complaint of the Collector, and before the United States Circuit Court on a motion for injunction *pendente lite*. The principal authority which was cited in favor of the motion in equity was the case alluded to by Mr. Allen last evening, of the Spinning Company *vs.* Riley, in the Law Reports, 6 Equity. The judge took the matter under advisement, and in a very short time made the rule absolute and granted the injunction *pendente lite*. At the same time the United States Commissioner held some of these people for a hearing before the grand jury, and the whole conspiracy was broken up and came to an end. So that, so far as this question of equity proceeding is concerned, it seems as if it was on that occasion of some practical benefit.

The next controversy that came up was some time afterwards. It was in the case of the Missouri Pacific *vs.* The Texas Pacific Ry. Co., about the year 1886. That was a receivership of the Texas & Pacific, and the controversy grew out of the great

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strike organized during that year in the southwest. You will probably remember that Mr. Martin Irons was the man who led that strike, and who at that time occupied as large a share in public attention as the late Mr. Debs did a few weeks ago. Fortunately in that matter—because that was a very unjust strike—the pretense of the strike being that a man had been discharged from the service of the Texas & Pacific Railway by the receivers, who was utterly incompetent—the Circuit Court of the United States, through Judge Pardee, who had appointed the receivers, granted a writ of protection; and it authorized and required the United States Marshal to take steps to defend the property of that railway company which was in the hands of the receivers of the court. Thereupon the United States Marshals in Texas, one of them being Mr. Reagan, a brother of Senator Reagan, and the other being General Cabell, executed those writs with great vigor. I do not think that ever in the history of the action of any executive officers of the courts was there more promptness and efficiency displayed than by those two men. They had cavalry as well as infantry in their service, and in a short time that strike came to an end. But it had a sequence which was unpleasant to some of the strikers. After actual violence had been prevented and the strike had come to an end, then came the reckoning for some of the leaders. They were brought before the judge, and one or two of them were sentenced to brief terms of imprisonment. Of course, there was nothing in that which concerned the Act of 1890. The proceedings were based upon the general power of a court of equity which has taken charge of the property and put it in the hands of its officers to protect that property.

The next case that we had in the Circuit Court in Louisiana was a case which was really a very remarkable one. It grew out of the general strike of November, 1892, and I believe that Judge Poché, of Louisiana, will bear me witness that perhaps never was there in the history of the world such an organization as existed there at that time. Not only did the Teamsters' and Loaders' Association, as it was called, organize

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a strike, and upon no complaint that they did not get wages enough, but only that they would not allow any non-union men to be permitted to do that kind of work, but a combination of various labor organizations known as the Workingmen's Amalgamated Society, represented by a committee of five, resolved that the whole of the city of New Orleans should be tied up; that there should be no newspapers published, because the Typographical Union went in with them; that there should be no dead people buried, because the men who drove hearses and carriages went in with them; and they even decided that we should have no opera in New Orleans. I remember very well a certain Saturday night, having at last succeeded in getting a carriage, which was driven by the owner, he having failed to get one of his drivers to go, I went with my family to the Opera House, and we were told by the manager in pathetic French that there was a strike and that the cornets would not blow and the trombone would not play, and so we would have no opera. Well, in the meantime the business men of the city got together and asked the question among themselves whether our social organization was to come to an end, or whether there was a remedy. There were no street cars to be had; we had to walk. Finally somebody discovered the Act of 1890, and it was suggested that probably we could do something under that Act. Others said it was absurd. However, we thought we would try the experiment. We thought that possibly the author of the Act, going out to curse the people of the Lord, had really, like Balaam, turned around and blessed them, for we found that all combinations and conspiracies for the purpose of interfering with inter-state or international commerce were denounced as criminal; and, more than that, that a new equity jurisprudence had been established which nobody had ever imagined before or ever thought would be established, though certainly it was in the power of Congress to establish it. I suppose nobody would dispute the fact that Congress next year, if their rules would allow them, might pass an act authorizing an injunction against the commission of a crime. It was discovered

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that Congress had not only made this interference a crime, but had specially directed the United States Attorney, under the direction of the Attorney-General of the United States, to bring proceedings in the nature of proceedings in equity by petition in the Circuit Court of the United States, to prevent and enjoin violations of the law. A bill of complaint was therefore filed in the United States Circuit Court in the name of the United States by the United States Attorney, against the Workingmen's Amalgamated Society, and against all these other organized societies which had joined together for the purpose of paralyzing all trades and commerce in the City of New Orleans, three-fourths of which trade was of an inter-state character. That injunction was granted by Judge Billings, and the defendants, under the new rule on that subject, took an appeal to the United States Circuit Court of Appeals for the Fifth Circuit, and soon after, after hearing very ample argument, that appellate court affirmed the decree, declaring two propositions: that, in the first place, it was manifest that the proceeding was properly brought under the Act of 1890; and, in the second place, the proofs in the case justified the lower judge in granting the injunction *pendente lite*. Now, I want to say that that injunction did seem to have a very prompt and beneficial effect, because the moment that bill was filed and the subpoenas were served upon these people, about ten o'clock at night, the strike was called off at two o'clock the next morning. So far as we could judge, it had an immediate effect in satisfying those people that they could not go on under those circumstances and defy an Act of Congress and the decrees of the United States Circuit Court.

We had one more curious proceeding which took place only two months ago. Soon after this general strike was organized in Chicago, the effect of which was to tie up one end of the Illinois Central Railroad, Mr. Debs sent down three emissaries to organize a similar strike at our end of that road, hoping thus to paralyze the entire operation of that system. It was known by telegraph that these men were coming, and again

the business men of New Orleans got together. They asked the United States Attorney to take some steps under the Act of 1890. He advised that they should not file a bill this time, but that if these men came to New Orleans and undertook to organize a strike similar to the one existing in Chicago, and thus to extend the combination and conspiracy, that he would feel bound to take some steps of a criminal nature against them. As soon as the men arrived in New Orleans they endeavored at once to organize an extension of the Chicago strike in New Orleans, one of them declaring that he would tie up the city "in twenty minutes." The United States Attorney had a complaint lodged before a United States Commissioner against them, and the men were arrested. They were examined before the U. S. Commissioner; the testimony was taken in full, and the Commissioner delivered his opinion, stating that he found probable cause against them and they were held for the action of the Grand Jury.

So that, Mr. Chairman and gentlemen, beginning in 1881 and coming down to the last month, we have had this series of proceedings, which seems to me to be a sort of evolution in the course of time of the doctrine upon this subject.

Edward F. Bullard, of New York :

Mr. President: I wish to endorse the paper read by Mr. Allen last night. The old principles of the court of equity are broad enough, without any statute, to give courts of equity full jurisdiction to restrain evil persons from destroying property, upon the principle that when a court of law does not give full relief, equity has the inherent power to give such remedy. What remedy would a court of law give by an action against a pauper who burns your railroad bridges, your depots, or destroys a million dollars' worth of property? A suit at law! Damages against such a man would be an absurdity. But an injunction which could be served by publication and brought home to the notice of every party would give an effectual and summary remedy. Why? Because it was held that an injunction might be effectual by service by

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publication, and even if a man accidentally heard an injunction had been granted by a court of equity he was bound by it. Lord Eldon announced that doctrine as long ago as the 2d of Vesey. That doctrine has been affirmed by every elementary writer since that time. In *Eden on Injunctions*; in *Barbour's Chancery Practice in this State*—a work which was written under the direction and sanction and eye of Chancellor Walworth—it is stated as settled practice that although an injunction could not be personally served, if a notice of it came to the party he was bound by it, and if he violated that injunction he did it at his peril. Injunction, with the power to punish for contempt, is a great remedy and a great protection to society. While mechanics have been inventing and the world has been progressing in all other directions, should not the lawyers evolve the laws? Should we stand on the precedents of one hundred years ago before we had a railroad in this country? We know that if law itself is not in evolution, society would come to a standstill. While everybody else is improving, while every other profession is improving and going ahead, should the lawyers stand still? Evolution is the law of the universe. It should apply to the legal profession as well as to every other profession. A judicial discussion is a great educator. Courts who hear open arguments, not in the dark, but in open daylight, are rarely suspected of corruption. An open discussion is a great educator, not only of the lawyers and judges, but of the community at large. Take this discussion that has been going on in Chicago for the last few days. When the poor man, the mechanic and the striker hear it he is taught that he must obey the law; that the officer appointed to execute the law he must obey. When such discussions take place upon great questions they are enlighteners of the ordinary mind. Take the recent case of Mr. Debs. He concedes that the judicial proceedings were the real cause of the failure of the strike. Of course they were. When the injunction comes out and it is served every man feels that he is going against the law if he disobeys its mandates; he feels that

he is guilty. Therefore, the injunction of itself, although published in the newspapers, is a great protection. Otherwise a mob of ten thousand strikers engaged in rioting and burning up your property, could go on and destroy a whole city and paralyze business and tie up everything in the country unless this summary process was allowed. Therefore, Mr. Chairman, I endorse most heartily the evolution of the power of the court of equity and of the injunction power and its recent use in Chicago.

Austin Abbott, of New York :

Mr. President: It may be useful to add a word as to the immediate future of this question, for I apprehend that the country will look to the legal profession to formulate whatever steps in advance may be feasible and necessary in the progress of this great and disturbing movement. Judge Cooley brought us to the threshold of the subject in his paper when he pointed out that the first element in law is force. The first essential in law is potential force. It is related that an English Bishop and a Chief Justice were comparing views as to the relative merits of their profession, both being a part of the organic government. The Bishop had enlarged upon his great field, saying to the Chief Justice: "You have only to do with the temporary affairs of this life." "Yes," said the Chief Justice; "but when I say 'you be hanged' you are hanged." The first element in law is the fact that the whole power of the community will carry it into effect. Now, for the purposes of this discussion, the second element is uniformity. Some degree of uniformity is an essential element. What is the demand for compulsory arbitration? Judge Cooley pointed out that hitherto a voluntary character was of the very essence of arbitration. We all know the difference between an arbitrator and a court. The arbitrator is called in to make peace. and he leans according to the pressure. The court is called in to do justice whatever the pressure is and whatever the complaints are and whatever the recalcitrant parties may say. The claim for compulsory arbitration is a claim for force with-

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out uniformity. Arbitrators would not be called on to develop any jurisprudence. The question which I think stands before the profession in regard to these matters is: Are not all questions, wherever there is a legal duty capable of being enforced, questions of the judicial power of the State or the United States, and are not all those subjects which tend to extend the domain of the power over these questions so that the controversies of men may all be regulated by the force of the community with that uniformity which is essential to justice, to be wisely guided and facilitated, in order that all the controversies which involve any legal right may come within the judicial power of the United States. We have this same problem in history. Chancery was originally a question of ecclesiastical arbitration, and when Lord Nottingham said, "No, the conscience of the Chancellor is not his individual and private conscience; it is a conscience civil and political, the conscience of the Statesman bound by the settled rules of policy," he laid the foundation of the settled rules of equity, which is, I believe, the object and part of this generation to extend to the silencing of industrial war and extending the rule of justice over all these questions.

Geo: Tucker Bispham, of Pennsylvania:

Mr. President: I desire to say a few words upon the subject so very interestingly presented in the paper of our friend, Mr. Allen. Unless I misunderstood some of the views which he expressed, he seemed to think that the Attorney General of the United States, in instituting the recent proceedings by filing a bill in equity, had unduly attempted to extend the jurisdiction of the Court of Chancery so as to make it cover a portion of criminal jurisprudence. He seemed to think that the proper course to be taken on the part of the government should not have been by bill and injunction, but by warrant and indictment, and he rather deplored the tendency to unduly extend the jurisdiction of the Court of Chancery. In my judgment it would be a most deplorable event if by any discussion which went on in this body the slightest doubt was

thrown upon the validity of the proceedings instituted by the Attorney-General.

With all due deference, I beg to differ from my learned friend, Mr. Allen, and I do so on two grounds. In the first place, as has been suggested by the gentleman from New York who last spoke, and as we all know, it is a truism, equity is constantly extending its jurisdiction. Think of what one of the greatest equity judges of modern times said. "Why," said Sir George Jessel (in substance), "these are new doctrines, I admit; chancery is constantly inventing them; but it does so in order to accommodate itself to the exigency of the times." I venture to say that there is not a single doctrine in the Court of Chancery that is not an invention. Why, therefore, should we hesitate if necessary, even if it were an advance, which I deny, to advance the limits of the jurisdiction of equity to meet such an emergency as this? Our friend tells us that many centuries ago a Court of Chancery exercised a quasi-criminal jurisdiction in the reign of Richard II. Well, if we are denied the privilege of inventing new weapons, can we not at least take up an old one for the purpose of reaching the desired result? But, sir, I do not put it on that ground. When the Attorney General, on behalf of the United States, interfered, what was the object? It was to protect the property of the United States. It was to protect the United States in the custody of its mail matter and in the exercise of its right over its highways for the purpose of interstate commerce. Is there any reason on earth why the jurisdiction of a court of chancery should not be exercised for the purpose of protecting property, simply because the injury which is sought to be restrained may be a crime? Why, just look at it. Take the case of ordinary jurisdiction. Are we to be told that we cannot file a bill for the purpose of restraining destructive trespass or for restraining a nuisance because we have a remedy by indicting the offender who has wrongfully walked over our land or one who has wrongfully carried away our property? But we want the remedy of stopping it by injunc-

tion; and all the more do we want it when the wrong is being done by a combination which can only be reached through the process of the courts, and when the persons who are committing the wrong are so irresponsible that no pecuniary reparation can be recovered.

I do not wish to trespass any longer upon the time of the Association, but I do not feel that the existing principles of equity, the ordinary doctrines for the protection of property, were duly and properly invoked by the Attorney-General in taking the proceedings which he did; and I sincerely trust, as I said before, that if there is any expression of opinion on the part of this influential body it will be in favor of upholding his hands.

Joel W. Tyler, of Ohio :

Mr. President : There seems to be a great deal said here about the right to have an injunction. We in Ohio have passed through considerable trouble caused by strikes within the last year. We have had no trouble in getting our injunctions. The courts have stood ready at all times to issue the writ. In connection with the Baltimore & Ohio Railroad Company, with which a certain road that I have had something to do with as attorney is connected, we had no trouble in getting the injunction that we asked for from the United States Court. I was about to speak in relation to the remarks made by the next to the last speaker. He spoke of force. He said that force was the great point. Now, it strikes me, so far as we have had any trouble, it was not in getting our injunction. It was not any trouble to get a swarm of soldiers of the State, as well as Federal soldiers, to surround our cars, but the trouble was in the case I refer to because while they had stopped the landing of coal in Ohio they were still shipping the coal from West Virginia, and that caused the great riot. Now, we had got our soldiers right on the Ohio river all ready to protect those cars and allow them to start. When we supposed everything was all ready for them to start and that we were going to move that coal, lo ! a squadron of women appeared, starting from the other

side of Wheeling Creek, wading through the creek, and they got aboard those cars and pulled out the coupling pins and threw them in the river, and the wonder was that they had not a solitary particle of wet on any of their garments. The soldiers couldn't do anything against those women, and of course we couldn't move the cars without coupling pins. So I tell you the great point in this instance was force. You have got to apply force. It is no trouble to get injunctions. Governor McKinley issued orders to support the officers, so that we had plenty of soldiers, but still we lacked the force to move those cars.

The meeting adjourned until 8 o'clock P. M.

EVENING SESSION.

August 23, 1894, 8 o'clock.

The President :

When the Association took recess this afternoon, the discussion of the paper of Mr. Charles Claflin Allen was before the meeting. It is now open for further discussion.

Henry Budd, of Pennsylvania :

Mr. President : If what I have to say with regard to the subject of Mr. Allen's paper—the recent remarkable extension of equity powers—may prove not to be strictly in the line of the argument made by the gentlemen who spoke this morning, I hope I shall not be suspected of any desire to render more easy the destruction of property by illegal means, the prevention of speedy and just punishment of crime, or of the desire to shorten or weaken the great arm of equity, the injunction, when exercised within its proper province. Nor shall I, for the purpose of what I am about to say, question the fact that the injunction, in the matter which has perhaps been in all our minds more than anything else during the past few weeks, was in one

sense a success, although, as the testimony of Mr. Debs was cited on the subject, unless I am misinformed, his testimony was that it was the courts that broke up the strike; he did not make any distinction between the criminal proceedings taken in the courts and the proceedings in equity. However, so far as that is concerned, I speak under correction, and I do not wish to dwell upon it at all as a part of what argument I have to make.

We may purchase a temporary advantage, a temporary success even, of what may seem a great character, at too high a price. It is very possible for people to undertake to pay for a temporary benefit, a temporary advantage, a price which, when exacted in the future will wring their very hearts to pay. Augustus Cæsar gave Rome peace. He put down factions. He gave Rome order, but at the same time he crushed out its liberties and paved the way for Tiberius, for Caligula, for Nero, and for Domitian. Now, in the present case, in view of the extraordinary step (for that we all admit it to be, whether we approve of it or not) which has been taken, it behooves us to look with a little care and see what price we may be paying. That price may be the sapping of the right of trial by jury in criminal cases; the drawing within the bounds of equity, under the name of contempt, of crime, and of bringing a man up before a single judge to be punished nominally for a contempt, but really for a crime for which we all believe could not be punished in this country except by the sentence of a court bench or a verdict of a jury. Now, if that be the case, and I think it is, if there be even the remote danger of such a result coming, we ought to pause before giving our approbation to anything of the kind. We should ask ourselves with regard to this extension of equity powers, I take it, three questions: First, is it a natural extension of equity jurisdiction? Second, is it necessary to fulfil or to accomplish the purpose and end which those who put it into force had in view? Third, what may be the ultimate result and effect upon the entire community? Now, is the extension a natural one? The question, Is

an injunction which renders a crime punishable as a contempt a natural development of equity jurisdiction? answers itself. I am not one of those who do not believe that equity can progress. I listened this morning to my friend Mr. Bispham, for whose ability and learning I have the most profound respect, and I listened to him particularly when, quoting Sir George Jessel, *in re Hallett Trust*, he spoke of the fact that equity is progressive, and spoke of the invention of equity. But how is it inventive? Of course, we can go to many a case and say, "Here began this decline or here began that decline;" but *how* is equity inventive? Inventive within the line of its own province; inventive within its own natural boundaries. I do not think the most enthusiastic admirer of equitable invention or the most wild equitable inventor would claim for equity the right by invention to draw within its arms that which does not belong to it, or to make of no effect constitutional or legal guarantees cast around the liberties of the citizen. There equity must stop. Is crime, properly speaking, a subject of equitable jurisdiction? Can we go and point to a man and say he is going to steal and enjoin him? No. But it seems that a suspicion of threatened theft on a large scale or the anticipation of violence or riot is to be held sufficient to cause an injunction to issue, and that then the accused person is to be deprived of the usual constitutional guarantees. This is not natural, it is not what was looked forward to when our government was founded. Can we suppose for a moment that the men who published the bill of rights and formed the constitution, when they provided guarantees, ever contemplated that they could be swept aside by an equitable invention which would turn crime into contempt? So it hardly seems to me that it is a natural development of equity.

The second question is, is it necessary for the purpose for which it was put into effect; is it necessary for the protection of property, whether governmental or other property? Take the case to which I suppose its advocates now say it should be confined, the organizing of large bodies of men under illegal

leadership for the purpose of doing an illegal act against governmental or other property. Is there not another way to stop it? Is equity to be resorted to in the first instance? Should equity be resorted to? Is not the criminal law ready at all times to prevent and punish crime? Your injunction must go out only when there is probable cause shown that a crime is going to be committed, even under the view of the advocates of extended equity powers. Injunction in ordinary cases only goes out when there is some danger. We do not at the beginning of an equitable suit immediately apply for an injunction on the supposition that the other side may possibly do something wrong, although it has given no evidence of any intention to do it. Most chancellors would hold that there has to be a present danger before it goes out at all. Would not the same evidence that would justify in the eyes of its advocates the issuing of an injunction justify the arresting of men whom you supposed were about to commit this crime and binding them over, or would it not justify their arrest and trial for conspiracy! You need not wait until actual violence and destruction has taken place. The criminal law can be made preventive as well as punitive. And with how much more force does the execution of the law strike us when it comes in the ordinary way and not by invention. Here is a man brought up really for a crime. Bring him up as a criminal, try him as a criminal, punish him as a criminal; but do not say to him, "You have committed a civil offence, you have disobeyed the direction of the Judge, and you must be punished for that, and not for a crime against the law of the land." The taking of leaders from the midst of a band of people preparing to become outlaws, as criminals, is much more efficient than enjoining and punishing them for contempt.

Then, coming to the third question, what is the result? The result, in the first place, may be solely, perhaps, to have the criminal law administered by the Judge and not by the Judge in conjunction with the jury; to have a man tried for contempt instead of being tried as a criminal—tried sometimes before an

irritable and timid judge, who feels that something has got to be done to stop public outcry; who feels that he must make an example of somebody, and sometimes, by a combination of timidity and irritability, an innocent man may be punished without any remedy whatever. And practically there is no appeal in contempt proceedings, for while the appeal is being allowed and argued, the man lies in jail; no *habeas corpus* will help him. Another result may follow, less serious than the one just mentioned, one the possibility of which, as an admirer of equity, I think cannot be lightly regarded. We may have a change of popular opinion in this country. We may have such a change of feeling manifested by legislative election and action that the people will sweep away all the power of the courts to punish for contempt, and with it, perhaps, the injunction itself. We know that in many of the states equity only gained the position it now has little by little. We know that in Massachusetts and in Pennsylvania it was a long time before equity powers were given. This fact has left its impress in Pennsylvania to the present day in the equitable defenses at law, which prevailed there so long before they prevailed anywhere else, though of course lately we have seen them introduced in England, perhaps without an idea there existing that we have had them in Pennsylvania for one hundred years. The people may say you can get along without extraordinary equitable powers, and then we may lose a most valuable instrument of justice, even where it should properly be applied. The injunction ought not to be jeopardized by taking the risk of a popular uprising.

E. B. Sherman, of Illinois:

Mr. President: I do not desire to argue this question at length. Certain courts have taken certain views of a statute of the United States and have made certain decisions in suits brought by the United States in which injunctions have been issued restraining violence against the property of the United States, interference with interstate commerce and the transmission of the mails. These decisions will ultimately find

their way to the Supreme Court of the United States. The appeal from the decision of Judge Jenkins made in a prior case has been already argued before the Circuit Court of Appeals of the Seventh Circuit, and, when decided, an appeal will be taken to the Supreme Court for final adjudication. I do not think any one need be greatly alarmed over the exercise of judicial discretion in these cases. We have no Jeffries on the bench. None of the judges who have issued these injunctions desire to exercise power or assume jurisdiction beyond what their duty under the Constitution and the laws compels them to exercise and assume. They sympathize, as does every true man, with those who do the work of the world. I think we need apprehend no dire results from this action of the courts.

It is stated, however, that the commission of crime has thereby been enjoined, and it is suggested that this is a new and dangerous precedent. A threatened act may be an invasion of private right, and as such properly enjoined, and at the same time, if actually done, may be a crime and punishable as such. Husbands have sometimes been so forgetful of their marital duty as to beat and maim their wives, and on a bill filed for divorce or for separate maintenance, courts have not hesitated to enjoin further threatened violence to the injured wife, although, if committed, the forbidden acts would have been a crime. And yet it has never been seriously suggested that our liberties were imperiled because the court enjoined violence to the person of the wife *pendente lite*. Clearly a private injury and a crime may be committed at the same time and by the same act. If the gentleman from Philadelphia should be assaulted and robbed, would it not be a private injury as well as a crime? And does the fact that the footpad may be indicted and punished as a criminal, deprive him of a right of action for the private injury? And if one apprehends violence may he not in a proper case seek protection by injunction? Judge Taft, discussing this question, says:

“It has been suggested that an injunction would not issue against the commission of a crime. The rule thus broadly stated has sometimes been announced, but it will be found on an examination of the cases that it applies only where the injury about to be caused is to the public alone, and where the proper remedy is by criminal proceedings. Where an unlawful invasion of private rights is threatened and an irreparable injury is liable to occur, equity will enjoin on behalf of the person whose rights are invaded, notwithstanding the fact that a criminal prosecution on behalf of the public for the same act will lie.”

This is is not the enunciation of a new doctrine. It is as old as equity itself.

It is said that these suits by the United States in which injunctions have been issued are without precedent. This is doubtless true. They were instituted under a special statute recently enacted and which must be presumed to be constitutional until the Supreme Court shall otherwise determine. The Attorney General of the United States was charged with a solemn duty in a grave crisis. After consultation with the President and the members of the cabinet, he directed these suits to be brought praying for injunctions which, after full consideration, were granted by the courts.

But it is said that these suits were unnecessary and improper; that the persons who were violating the law should have been arrested and tried for a crime rather than enjoined from committing acts which were in their very essence criminal. And it is further insisted that the President should have ordered out the military and suppressed these riotous proceedings by force of arms instead of advising the Attorney General to institute civil suits. The President and the Attorney General were exactly in the line of their duty when in this unusual emergency they invoked the aid of the courts to prevent interference with the mails and interstate commerce before resorting to military force. To have done otherwise would have been a serious blunder, and would have subjected them

to deserved criticism. Let the bar commend, and not condemn, the Executive and his advisers for exhausting all the resources of the legal procedure before appealing to the bayonet and the bullet. Moreover, it was simply impossible for the United States Marshal and his deputies to arrest and bring before the United States Commissioners several thousand men armed with clubs and stones, openly defying the law and its officers and shouting "To hell with the Government!" The consensus of opinion of candid and thoughtful men who were witnesses of these proceedings is that the course adopted was not only the wisest but the most effective one. The safety of the people of Chicago was largely due to the Attorney General who directed the institution of these suits, to the judges, who, in accordance with the law as they understood it, issued the injunctions, and to the President, who, when the Marshal and his hundreds of deputies were powerless, declared that the process and orders of the United States Courts should be respected and obeyed if it required the whole army of the United States to accomplish that result. Consider for a moment our condition. Mobs had undisputed possession of various points on the railroads, at the stockyards and elsewhere. Cars were overturned, plundered and burned. Engineers, firemen and switchmen refused to work, or were driven by threats and violence from their posts of duty. The mail service was almost wholly suspended. Trains bringing supplies of food were delayed or derailed. In a few days a city of a million and a half inhabitants would have been confronted by hunger, if not starvation. There were serious apprehensions that the excited and lawless mobs, composed to a large extent of the vicious classes who infest cities, might apply the torch to other than railroad property. At this crisis these suits were brought and these injunctions issued. They were published in all the newspapers, printed and posted up at all the railway stations and elsewhere, and the people knew that the ministers of justice had spoken. True, the law-defying mobs did not obey until forced to do so by military power. It

is said the leaders of the movement disregarded these injunctions, and proceedings are now pending to inquire whether they are in contempt for disobeying the orders of the court. They will have a patient, fair and impartial hearing. If innocent, they will be acquitted. If guilty, they will be punished. It is true that they will not have jury trials. It is also true that they have no right to a trial by jury. If the gentleman who preceded me had examined the opinion of the Supreme Court of the United States in the case of *Interstate Commerce Commission vs. Brimson*, 154 U. S. 447, he would have been fully satisfied that no constitutional right is infringed when the court tries and punishes one who disobeys its order. In that case the court says:

“And, in matters of contempt, a jury is not required by ‘due-process of law.’ From the very nature of their institution, and that their lawful judgments may be respected and enforced, the courts of the United States possess the power to punish for contempt. And this inherent power is recognized and enforced by a statute expressly authorizing such courts to punish contempts of their authority when manifested by disobedience of their lawful writs, process, orders, rules, decrees, or commands. Surely it cannot be supposed that the question of contempt of the authority of a court of the United States, committed by a disobedience of its orders, is triable of right by a jury.”

We may safely trust the courts upon which this grave responsibility is placed. Fears are expressed that evil results may follow; these fears are groundless. I dare prophesy that the outcome will be wholesome. The suits by the government, the injunctions, the trials for their violation and the punishment of those found guilty will teach the people of this country who think they are above the law, to beware of the lightning of justice.

God grant that that may be the result. If there ever was a time since our forefathers struck the first blow for liberty when

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such a lesson was needed it was in this crisis through which we have just passed.

J. H. Raymond, of Illinois:

Mr. President: I want to add a word to what brother Sherman has said, perhaps because I am from Chicago. Blackstone said that where there is a wrong there is a remedy at common law. I am talking about the law. I am talking about the business of everybody who is practising law, or who presides on the bench, to find a remedy for a public wrong which threatens life, liberty and the pursuit of happiness. I believe the remedy was found in the West. Now, I am not going to make an argument. Perhaps I am over-modest about this matter, being a patent lawyer, and possibly I ought not to indulge in these discussions. I pretend to be a chancery lawyer. I do not believe that what has been done has been at all in the way of limitation upon common law jurisdiction at all. All of the common law remedies remain. But they were absolutely insufficient in this great crisis. Equitable jurisdiction had come in, and, although I am a patent lawyer, I object to the use of the word "invention" in connection with this matter. It is not an invention that a chancellor should do what has been done in the West, in my opinion.

Everett P. Wheeler, of New York:

Mr. President: There is one circumstance in connection with this matter, to which attention has not been called, that I think deserves consideration. Nobody can seriously doubt that under the circumstances that developed along the railways of the West, the President of the United States had the power to enforce the laws of the United States by the use of the army. The only obstacle that he encountered at the outset, and it was a serious one, was the novelty of the situation. Always before, so far as my recollection goes, in occasions of domestic violence the governor of the state had asked the President to intervene. That had become a tradition. Where the violence is simply against the laws of the state, the governor has the right to ask Federal assistance only when his own force is insufficient.

But in this case, while the violence was domestic, yet it was against not only the property, but the laws of the United States. The President, therefore, clearly had a right to intervene without waiting for a request from the Governor or anybody else. But it was an unprecedented exercise of power. It was, therefore, a great moral support to have a court determine in advance the necessity of intervention. That, it seems to me, is the real justification, from the standpoint of the statesman, of those orders of injunction. It would not follow that they were to be granted simply for that reason. We would all agree that unless they were defensible on well-settled principles of equity jurisprudence, they ought not to have been granted. But it seems to me clear that while they were an extension of equity action, as the courts had previously found it necessary to act, yet they were an extension on well-settled lines of equity jurisprudence. The mere fact that it was new is no objection. More than fifty years ago Lord Cranworth, who was certainly a very conservative chancellor, had occasion to say that it was one of the essential features of equity power that it adapted its procedure and remedies to the changing circumstances of society.* That, indeed, is the great advantage of our system of judge-made law, and that which gives it a distinction as compared with any possible code. It does mould itself to the exigencies of society and to the requirements of the occasion. Equity has always recognized the right to enjoin irreparable injuries to property. The chancellor did not consider whether or not there might also be a punishment for that offence if it should be committed. He sought by injunction to prevent it. He did not seek to prevent it because it was a crime. He did not look at that question. What he did consider was, whether it was an injury to property, and whether it was an irreparable injury within the meaning of that word as used in courts of equity. Clearly, all those circumstances combined in the recent railway strike. Here was a threatened injury to prop-

* See 4 Mylne & Cr., 635; 5 De Gex. McN. & G., 920.

erty of the most serious character. Enough had already been done to show that more was menaced unless something was done to prevent it. The position of the persons committing the injury was such that a remedy in damages would be of no value whatever. Under such circumstances we have all of us obtained injunctions—not, it is true, against the overturning of cars and the burning of railroad property, but against injuries to property about to be committed by persons who were insolvent, or where the property was of such a nature that monied compensation was unavailing. Let me give you an illustration of that, a very familiar one, and the instances are not without precedents in the reports of this State. Take the case of the robbery of negotiable bonds, which are found in the possession of persons who have received them with guilty knowledge. If you are able to show a threatened transfer of them, the fact that that transfer is a crime would not prevent a chancellor from enjoining it. If you will run over in your minds instances of injunctions, you will find that this question of whether or not the threatened act would be punishable under the criminal law is not relevant to the consideration whether or not an injunction should be granted.

There are one or two other objections that have been taken that I desire to speak of. It has been said that the injunctions ran against persons who were not named. Well, a court is not to be paralyzed by the fact that it cannot ascertain in advance the names of the persons. That is familiar to us in partition suits. So, again, it was criticised that the injunction should run against all persons. But that is a matter of common everyday practice in proceedings *in rem* in admiralty. If a Judge, sitting in admiralty, can bring in all the world, is there any intrinsic objection to a chancellor doing the same? It seems to me, therefore, that whether we look at the subject from the point of view of American citizens, or strictly as lawyers, we will find that in one case it was defensible as giving a sanction to an unusual act of executive authority, which sanction did lend it dignity, and did commend it undoubtedly to the

public mind. I think there can be no question that the fact that courts of justice had rendered these decisions made the action of President Cleveland in ordering out the troops and in ordering them to fire in case of necessity more generally approved. I think there can be no question that the public, and particularly the men who had been fomenting the strike, submitted to that action with far more readiness than if there had been no such previous judgment of the court. Then, as lawyers, it seems to me clear that, while an extension of equity action, these injunctions were an extension on well-settled principles that in every sense of the word was justifiable.

Woodrow Wilson, of New Jersey :

Mr. President : This is a family conference, I know, and I suppose that we should not go beyond the family point of view. Unless I be enjoined, however, I mean to take another point of view. I am obliged to differ with the last gentleman who spoke. So far from believing that these injunctions added to the respect which the public felt for the action of the President, I believe they took away from that respect, I believe that what supported the action of the President was the reasons that he gave in his directions to the General of the United States army. I am a lawyer, bred in the strictest school of that sect ; but lawyers must not deceive themselves by supposing that the general public are necessarily impressed by the things which impress them. In nine cases out of ten the people who express approval of President Cleveland's action never heard of the omnibus injunctions, and if they ever did hear of them they will say, what has been said to me by persons seeking to criticise our profession : " Why was it necessary for the courts to come in when the military of the United States had already taken possession of the field and with the public approval ? " I am not making any comments of my own. I am repeating comments which have come to me, not from lawyers, but from those who do not understand what an injunction is, and don't care what it is, so far as the making up of their opinion is concerned with regard to the action of the President. Not only that, but

you must remember that it has again and again been admitted in this debate that there was some ground for distrust in the public mind. Every one who has supported these injunctions has said that they were inoperative; it was inconvenient. It would have been inconvenient, it is said, to bring these men before a Commissioner. Mr. Sherman (E. B. Sherman, of Chicago), who urged this, is himself a United States Commissioner. I say it would have been inconvenient. But it would have been just as inconvenient, it was just as impossible, to arrest them for contempt of court. We have been told here that one interesting situation was created by a railroad beside a creek, where the military were present and injunctions were present, but where the trains did not move because of the intervention of women—who threw the coupling pins into the water.

E. B. Sherman, of Illinois (interposing):

If you had answered the people who asked you these questions and said to them that the injunctions were issued long before the troops were called out, and that the President expressly called out the troops for the purpose of enforcing the orders of the court, perhaps they would have understood the matter better.

Woodrow Wilson:

I think not. I think they would have understood it just as little. If it is necessary to support a process in equity by the military, for the purpose of doing what the military can do independently and without the process, the public will not understand it. I maintain that there is an intrinsic power in the Government to defend itself, and that that is what the public opinion supports. I am not now arguing the legal question of injunctions, because that has been sufficiently argued. It is the effect upon public opinion that I am arguing, and it is this, unless I have lost the art of reading public opinion as it comes to me, the impression has been created that the courts were put in a panic by the strike and that they therefore used an extraordinary process to meet a situation which would have been met in the ordinary way if it had not been for a circumstance which I do

not wonder the Illinois men feel a delicacy about mentioning, and that is the character of the Governor of the State of Illinois. If he had not been Governor, these processes would not have been necessary, and the presence of the troops would not have been required, and that is what public opinion perceives. It perceives that, although to little practical avail, except for the assistance of the army of the United States, the courts did intervene, by an extraordinary process; and that this happened because government was practically demoralized by reason of the character of the individual who stood at the head of the State Government.

Frederick N. Judson, of Missouri :

We had the same injunction in force in Missouri.

Woodrow Wilson :

I know that, but you had your injunctions operating under the processes of ordinary suits. I am arguing this question simply as a matter of the impression made upon the public mind of the way in which the public must inevitably have been impressed with regard to the powers of the courts. It was shown that extraordinary processes would be resorted to, and that they were dangerously weak. Whether you agree with me or not in diagnosing public opinion, is a matter of comparative indifference, except that I should hate to be wrong; but I wish you to understand that it is necessary to take other than a family point of view in regard to these matters, and that is my only excuse for speaking on this subject.

Frederick N. Judson, of Missouri :

It seems to me, Mr. Chairman, that this discussion is taking a very wide range. We are not only assuming to review cases pending in certain courts, wherein certain orders have been issued under statutes of the United States and parties are now on trial charged with contempt of those orders, and to discuss *pro* and *con* as to the propriety of the court's action, but we are even assuming to determine public opinion concerning such judicial action from the standpoint of political science. With all due deference to my professional brethren,

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I submit that in a body of this character there are obvious limits to such a discussion. Aside from that, however, the very careful and thorough papers of my townsman, Mr. Allen, and the drift of this discussion may lead us to the erroneous conclusion that the modern extension of the writ of injunction has been invoked only *against* organized labor.

It fell to my professional lot a few years ago to assert, on behalf of organized labor, for the benefit of organized labor, the right to an extension of the writ of injunction. I mention it now as this discussion would seem to indicate that the courts of equity are trying to suppress organized labor. The case was this:

Certain cigar makers, organized in an unincorporated association as the Cigar Makers' International Union of America, had adopted a label known as the "Union Label" to designate the goods manufactured by union labor, or by manufacturers employing union labor, so that such goods might be identified and purchased by the public. The business advantage in the use of this label induced the manufacture of a counterfeit, which was extensively used in procuring the sale of non-union cigars. The question arose, what, if any, remedy the courts could afford to organized labor in such a case? The Union was not itself a manufacturer and had no distinctive property right involved, and there was, therefore, a technical difficulty in bringing suit in its name. Suit was therefore brought in the name of a manufacturer who was a member of the union, and therefore had a right to use the label in common with the other members of the union, to enjoin the party charged with the counterfeiting. It was alleged that a pecuniary loss was sustained by complainant and the other members of the union through the deception of the public by the use of these counterfeit labels. It was contended on the other hand that complainant had no right of relief, as he had no exclusive property right in the label, and therefore no trademark, and that the purpose of the union in adopting such a label was against public policy, and not entitled to judicial protection. The court, however, sustained our posi-

tion; holding that the members of the union had a right to adopt such a label, and that each member had a property right in its use which the courts would protect, and that it was immaterial that complainant's property right did not answer the conditions of a technical trade-mark. (Carson vs. Ury, 39 Fed. Rep., 777). It was also claimed in that case that the counterfeiting was a crime under the statutes of the State. The principle thus declared was obviously of great importance to organized labor. It is important, therefore, to bear in mind that the modern expansion of the powers of equity in issuance of writs of injunction, of which so much has been said in this discussion, is not limited to cases against organized labor, but applies equally in its favor when cases proper for equitable cognizance are presented.

Waldo G. Morse, of New York :

Mr. President: Living in a city in which, in the name of organized labor, crimes have been committed and are threatened which prevent men who are not members of Trades Unions from earning their livelihood, and which prevent manufacturers from employing those whom they would like to employ and also securing the continuance of their business, I might say much regarding the necessity for stern dealing with organized labor. I think it safe to say that many a Government has been overturned for crimes committed in its name much less heinous than those committed in this country and charged to organized labor, but that wrong is not necessarily a justification for a retaliatory wrong. I do not mean to insinuate that an injunction against organized labor is a wrong. I simply wish to call attention to the fact that an injunction against organized labor only expresses in new terms something which is very old. In Massachusetts years ago they had the expression "The General Court," which very well characterizes the Legislature. The Legislature in our country takes one branch of the old Sovereignty of the King—the General Court. Then there are other special courts to interpret the acts of the general court, of which Chancery is one. The judiciary then takes another

branch of the sovereign power. And the executive takes a third branch of the sovereign power. The "General Court" of the United States, gentlemen, has promulgated its injunction against the commission of crime. It has served that injunction upon every citizen of the United States and has made him aware, under a presumption which cannot be rebutted, of the existence of that injunction. He is a party to the action. That injunction forbids riot. The State of Illinois has also issued its injunction against riot in the City of Chicago, and it has empowered the Executive with all the force of the State, and Congress has empowered the President with all the force of the United States, to enforce those injunctions. What can a Judge add? That to me is not plain. Then there is another thing. Shall the masses be taught that the interests of private capital appealing to a court for injunction are superior to the interests of the community appealing for the enforcement of the general laws of the Commonwealth or of the nation? I hope not. Then there is one other point. The greatest sufferer, it seems to me—the one who should be kept prominently before the mind of every one considering this subject—is the man who would earn his livelihood and cannot. His case is surely the hardest. If an injunction be issued, let it be issued in the name of the man who is prohibited from following his calling in this country. Then no communistic cry will go up that property is protected more than lives, that courts care more for the accumulated capital of the country than they do for the lives of those who labor. Such cries, although unfounded, must surely be considered in view of what we hear and see at the present time.

Charles Claffin Allen, of Missouri :

Mr. President: I should like to say a few words. I remember when a school boy to have learned by heart an old poem which seems to have almost gone from me now with the exception of the last two lines :

All that was left of them,
Left of six hundred.

I marched boldly forth, sir, and all that is left of me is once more upon the platform, but with that little I wish to say a few words in closing this debate because I think the discussion has wandered considerably away from anything which was stated in my paper and away from anything which I intended to suggest by my paper. I did hope that my paper might be suggestive. I did not expect it to be so suggestive, however. Several things have been said which attracted my attention, but I will speak of only two or three. I went over the authorities with such care as I could, and I was very deeply impressed by the importance of the subject that I was to consider. I read of the various incidents in the several cases. I read of the strike in New Orleans which led to the injunction against the Workingmen's Amalgamated Society, and I contemplated with the gravest sensations the conditions and the perils to industries in which the City of New Orleans was then environed. I contemplated the inability of the people to get food and drink. I contemplated their inability to conduct their business generally, and yet I reached the conclusion stated in my paper; but, sir, I am sure I should have reached an entirely different conclusion if I had known that by reason of that strike my learned brother from New Orleans was deprived of the pleasure of attending the opera. For I believe it is one of the declarations of the bill of rights in Louisiana that every man is entitled to his opera under any and all circumstances. There have been statements made here concerning the testimony of Mr. Debs before the Commission a few days ago in Chicago, which, as I understand the facts, are misleading. I am not aware of the source of information of the gentleman from Illinois who first spoke. I infer, however, as he has been here only a few days, and as the only testimony of Mr. Debs occurred on last Monday, that his information must have been derived through the public press. If that be so, the reports which have come to my attention do not bear out the statement made by him nor those made by the learned gentleman from New York who spoke this morning. On the contrary, the state-

ment made by Mr. Debs, as reported in the New York *Tribune* of the 21st of August, is as follows:

"It was not the soldiers, he said, nor the old labor organizations, but the Federal Courts that kept us from winning. By the arrest of the leaders the ranks of the strikers were demoralized."

The New York *World* has the account in a form substantially similar, but differing in a slight degree. After referring to a statement made by Mr. Debs that General Miles had claimed to have broken the backbone of the strike, the report continues:

"In this, Mr. Debs disagreed with General Miles, and declared that the courts killed the strike by having him and his associates arrested. This cut off the issuing of orders and demoralized the men."

I think I am not mistaken, sir, when I assert that Mr. Debs and the other strike leaders were arrested and the strike was broken under the criminal process of the United States of America issued out of the United States Circuit Court for the Northern District of Illinois, and that Debs was arrested and brought before the U. S. Commissioner and gave bail for a criminal offense against the United States and not as for a contempt of court. If that be true, then the conclusion that has been implied in such suggestions as I have made, that the injunction did not stop the strike, is borne out. It was the criminal process of the United States that stopped the strike, and not the civil process.

It would be a mistake for me to stand here with any impression which might be inferred from what I have said that I have unqualifiedly opposed any injunction under conditions in which there may be strikes or boycotts and in which laborers may interfere with the property of employers. I certainly have said nothing of the sort. What I did intend to convey was the impression, for the consideration of this body, that it is not a natural or a proper function of the civil court of equity to direct its process against vast bodies of men numbering

thousands when those men are engaged in violations of the criminal laws of the State or Nation. I have said nothing that implies that under no conditions might an injunction issue against laborers for interference with the private property of their employers, nor did I undertake to say that there was not a statute of the United States which gave jurisdiction to the Federal Courts in cases which arise under the Act of 1890, sometimes called the Sherman Law and sometimes called the Anti-Trust Law. But, sir, I did mean to imply that there were two possible dangers contained in what every one has admitted to have been a remarkable extension of the jurisdiction of the Courts of Equity. One was that by its failure to effect the purpose for which it was intended, be that purpose right or wrong, it became or might become but a mere pronunciamiento of no force, and therefore tending to bring the judicial process of a court of equity into disrepute. The other was, that if it had the power and the dignity which it ought to have, and which no lawyer surely wants to see taken away from it, it would tend to substitute in practice the punishment for contempt of court in lieu of the constitutional guarantees of trial by jury and the right of an accused man to be faced by witnesses. I do not know what lies before us, sir, if this jurisdiction be continued. My paper and what I have to say now are intended to be suggestive to the minds of those present; but, sir, I love the Constitution of the United States and its guarantees. I love everything connected with that Constitution which I believe to have brought into existence in definite form the greatest nation the world has ever seen. In times of peace and quiet our constitutional guarantees sounded like platitudes. We get used to them, and we laugh sometimes at their very repetition; but those guarantees were intended for the storm and stress period, and when that period comes we cannot guard too jealously every single sentiment contained in them, expressly or impliedly, and if we see that there is even the possibility of progressing to a point where civil procedure may tend to overcome those guarantees it

surely becomes the lawyers of the United States to watch with care and to jealously guard against that encroachment. I believe we should avoid by every means in our power the bringing of our laws into disrepute, or the making of them empty nothings. The law of this land is all that stands between the people and anarchy, and it should be in the minds of every one so earnestly that each man should stand ready, if need be, to sacrifice himself for those guarantees. Mr. President, there came into my hands a couple of days ago a quotation which is attributed to the lamented Lincoln, and which expresses so completely the sentiment that I feel in my heart that I wish to read it in closing :

“Let reverence of law be breathed by every mother to the lisping babe that prattles on her lap. Let it be taught in schools, seminaries and colleges. Let it be written in primers, spelling books and almanacs. Let it be preached from pulpits, and proclaimed in legislative halls, and enforced in courts of justice. In short, let it become the political religion of the nation.”

The President :

Gentlemen, are there any further remarks ? If not, this discussion will be declared closed.

Simeon E. Baldwin, of Connecticut :

Mr. President : I ask unanimous consent to amend a by-law for the purpose of carrying out the organization of the Section on Patent Law. Gentlemen will recollect that in the programme for this meeting members of the Association were invited to enroll themselves as members of the Section on Patent Law, so far as they were interested in that subject. Some thirty and more gentlemen have enrolled themselves this afternoon, and, with the permission of the Association, they propose to organize to-morrow as a Section, similar to the Section organized last year on Legal Education, and, following in general the lines of the by-laws under which that section is constituted, these gentlemen have prepared and have asked me to offer the following :

Resolved, That the fourteenth by-law of the Association be amended by the addition of the following sub-sections:

(6) A section of the Association to be known as the Section of Patent Law is hereby established, which shall meet annually in connection with the meeting of the Association, but not during such hours as the Association is in session.

(7) Its object shall be to discuss the subject of the law and practice relating to patents. It may report to the Association, and matters relating to patents may be referred to it.

(8) The proceedings of the Section may be published from time to time at the discretion of the Executive Committee and on the recommendation of the Committee on Publication.

(9) All members of the Association who desire may enroll themselves as members of the Section.

(10) The Section shall be organized by the appointment of a Chairman and Secretary by the Section, and a Chairman and a Secretary shall be thereafter annually elected by the Section for the year commencing upon the final adjournment of its meeting.

I move you, sir, the adoption of those sub-sections as an amendment to the fourteenth by-law of this Association.

The resolution amending the by-laws was adopted.

R. S. Taylor, of Indiana:

Mr. President, I have been requested by the gentlemen who have to-day enrolled themselves as members of the Section on Patent Law to ask consideration by the Association of the following resolution:

Resolved, That a special committee of nine members of the Section of Patent Law be appointed by the President with authority to take such action as they may deem wise in regard to any legislation concerning patent laws in Congress, provided that such committee shall have no power to urge or promote the passage of any amendments of existing laws without first submitting such proposed amendments to the association.

It is a matter of regret to the gentlemen concerned in this movement that it had not been begun earlier. It is considered

by them that no formal or affirmative action ought to be taken which would involve the recommendation and authority of this Association which had not first been communicated to the Association and debated in the full body, but it was thought that at this particular time it would be wise to have a committee of this Association, from this Section, which Committee should be empowered to use its discretion in making such suggestions as they might deem proper during the next session of Congress, deferring, however, the advocacy of any changes of the law until such suggestions as may occur to the members of this Section can be laid before this Association. That is what was in the minds of the gentlemen who asked the passage of this resolution.

E. B. Sherman, of Illinois :

I second the adoption of that resolution.

The resolution was adopted.

The President :

The next business before the Association is the reports of standing committees, the first of which is the report of the Committee on Jurisprudence and Law Reform.

E. B. Sherman, of Illinois :

By request of the Chairman of the Committee, who has been called away, I present the report.

(See the report in the Appendix.)

After being read, the report was adopted.

The meeting then adjourned until Friday, August 24th, 1894, at 10 o'clock A. M.

THIRD DAY.

Friday, August 24th, 1894. 10 A. M.

The President :

The first business this morning will be the report of the Committee on Judicial Administration and Remedial Procedure.

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George Hillyer, of Georgia :

Mr. President: I desire to move a reconsideration of the resolution adopted just before the close of last night's session without debate, on the subject of appointing a Committee to represent this Association before Congress in respect to the Patent Laws. I would ask the Secretary to read that resolution.

The Secretary (reading): "*Resolved*, That a special committee of nine members of the Section on Patent Law be appointed by the President with authority to take such action as they may deem wise in regard to any legislation concerning patent laws in Congress, provided that such committee shall have no power to urge and promote the passage of any amendments of existing laws without first proposing such proposed amendments to the Association."

George Hillyer :

It will be discovered from a careful consideration of the terms of that resolution that this Committee when appointed will have authority to appear before the Committees of Congress, or otherwise, to oppose any amendments to the Patent Laws as a Committee of this body. Now, it occurs to me that we ought not to send a Committee, or authorize one to appear before Congress, with a blank commission to oppose any amendments that may be agitated before Congress without our first knowing what those amendments are. I am not a patent lawyer, I never had a patent case in my life, and I do not speak as an expert on the subject ; but I have been a reader of the *Scientific American* for many years, and I recall allusions to complaints from time to time about abuses in the Patent Office. For instance, I think one of the abuses that I have heard of is that sometimes the examiners are appointed by political influence, and in that way persons not experts become examiners. We all know that it often happens that while the whole system of our patent law is designed for the benefit of the inventor, yet the inventor dies in poverty while somebody reaps the results of his genius. I conceive, therefore, that the Patent

Office system ought to be allowed to progress and to have its evolution with the times, and that it is dangerous for this Association to interpose itself as an obstacle in the way of any proposed improvements. I have some acquaintance with the Secretary of the Interior. I know him to be a gentleman of extraordinary good common sense and practical judgment, and I think it is quite probable that amendments may be recommended by him, and that they may be even sanctioned by the President, and the public good would be greatly promoted by their adoption. At any rate, for one, I am unwilling to commit myself in advance and blindly to oppose anything, no matter what. It seems to me it would be better to reconsider that resolution and so word it as to guard against such a result. I therefore move that the resolution be reconsidered.

R. S. Taylor, of Indiana :

It was not in the mind of the gentleman at whose request this resolution was introduced to oppose any particular legislation. There is a disposition abroad in the land, however, to amend the patent law, and there is no doubt that there are many points in which it needs amendment. It needs amendment very seriously, but amendments should be made only after careful consideration, and they ought to be with reference to some general reform in the law. It is the experience of almost every session of Congress that amendments to the patent law are offered by members possessing more or less knowledge of the subject, one to amend this and another to amend that provision. Now, it is the belief of the gentlemen who have interested themselves in this subject that the time has come for a careful consideration of the whole subject by those members of the Bar who are interested in it and who are best qualified to take it up. But the time is insufficient for that. The conference of members of this Association engaged in the patent branch of practice took place only yesterday, and the gentlemen interested have not had time themselves to formulate any ideas upon the subject, much less to present the subject to the Association. It was the intention to draw the resolution

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in such a way that it would permit a committee to do nothing more as a committee than to keep an eye upon the progress of legislation and use its influence in the way of advice and information to prevent any ill-advised amendments to the patent law at this time. If there is any change in the language of the resolution which would more effectually secure that end and justify the creation of the committee, I suppose no one would have any objection to it.

George Hillyer :

I merely call attention to the fact that the language is rather strong in that resolution. It says that "a special committee of nine members of the Section of Patent Law be appointed by the President *with authority*," etc. Now, the word "authority" is used there, and I think that is giving the committee a responsibility which the Association ought not to confer upon any committee. If the resolution be reconsidered, of course, then it would be open to amendment as the mover has suggested, and possibly its language might be improved.

John F. Dillon, of New York :

I second the motion to reconsider the resolution.

The motion to reconsider was carried.

George Hillyer :

I contemplated that the resolution should be sent back to the gentlemen who prepared it for the purpose of perfecting it, and I have some hesitation in framing any amendment to it myself. Perhaps, as the subject is an exceedingly important one and is brought forward at a late time, it would be better if I should move to lay it on the table.

John F. Dillon, of New York :

I second the motion to lay the resolution on the table.

E. B. Sherman, of Illinois :

Mr. President : I am aware that a motion to lay the resolution on the table is not debatable, but many of us who desire to be heard expected to be heard on this subject when amendment to the resolution was offered, and we are unwilling that

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a motion should now be made to lay the resolution on the table and thus prevent an expression of the opinion of this Association upon it.

George Hillyer :

It was not my desire to cut off debate. I am willing to give the motion any direction that would allow of full debate.

E. B. Sherman :

Mr. President: I suggest that the gentleman (Mr. Hillyer) confer with Judge Taylor and see if they cannot arrange the wording of the resolution so that it will be entirely acceptable.

George Hillyer :

Upon reflection, Mr. President, as the matter now has the attention of the Association, I think it would be better to test the sense of this body upon it now on its merits.

The President :

The Chair understands your motion is directed merely to the appointment of the Committee?

George Hillyer :

Yes, sir.

S. M. Cutcheon, of Michigan :

Mr. President: If the gentleman from Georgia will withdraw his motion for the present so as to permit of discussion, and if we limit the debate to a few minutes, I think we shall all be substantially agreed that this is unwise legislation and we shall agree to vote down this resolution on its merits.

George Hillyer :

Very well, sir; I will withdraw the motion for that purpose.

S. M. Cutcheon :

I now move that the entire time for debate on this subject be limited to ten minutes.

The President :

I think there is no necessity for that motion. The gentlemen understand the situation.

George Hillyer :

Mr. President: I have hastily drawn an amendment to this resolution which I will present. I move to amend the resolution by inserting the words "either to oppose or " after the word "power." So that the clause will then read: "Provided that such Committee shall have no power *either to oppose or to urge or promote the passage,*" etc.

The President :

The question before the Association is upon this amendment. Is there any discussion upon it ?

Austin Abbott, of New York :

The resolution precludes this Committee from promoting legislation, but it appears to leave them free to defeat legislation if they can. The amendment proposed withholds from them the power to represent this Association either in promoting or defeating legislation. Now, I will suggest this as a substitute, viz, that we should simply withhold the authority to defeat legislation, or any efforts in that line, except to watch legislation and procure such delay in doubtful legislation as may give this Association and the other Bar Associations of the country an opportunity to consider it. To that extent it appears to me that the services of such a committee as this will be very useful. I therefore move to add the following proviso at the end of the original resolution: *Provided,* That said Committee shall not be authorized to do any thing more on behalf of the Association than to watch the proceedings relative to legislation and promote its free discussion, and to obtain such delay in legislation which seems to them doubtful as may be necessary to secure opportunity for its consideration by the bar associations.

John F. Dillon, of New York :

Mr. President: I am of the opinion that the whole idea of this resolution is entirely wrong and ill-advised. Efforts have been made heretofore in this Association to commit it, and confer its authority on general committees, and that power has always been refused by the Association. If any gentleman

has any amendment to the Patent Law to propose that he thinks is of sufficient importance to bring before this Association for its judgment, let him bring it here and we will consider it and pronounce our judgment upon it. Do not let us clothe any committee with authority to represent this body generally and with power to go before Congress and say that this or that thing is the judgment of the American Bar Association. Why should patents be selected from the whole field of legislation and this Association appoint some committee on the subject? I have long been of opinion that the patent law needed serious amendment in the interest of the public. But I am opposed to this whole scheme *in toto*, and if I have to vote at all on this subject I shall vote for the amendment because it emasculates the resolution and renders it ridiculous.

A vote was then taken on Mr. Abbott's substitute, which was lost.

George Hillyer then moved to lay the whole matter on the table.

R. S. Taylor, of Indiana :

An invitation was extended to members of the bar connected with this Association to form a Section of Patent Law, and that invitation was responded to cordially. Now, if we lay this resolution upon the table to-day it is an affront cast upon members of this Association who have been invited to form this Section. I hardly think we can afford to do that. The Committee need not be vested with any powers at all. It may simply stand as one of the standing committees of this body to whom may be referred from time to time such matters as properly fall within its jurisdiction. I have been waiting to see what would be the result of this last amendment in order to move a substitute which would provide for no more than the simple appointment of a committee to report.

John F. Dillon :

To report to this body ?

R. S. Taylor :

Yes, sir.

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John F. Dillon :

I do not object to that.

E. B. Sherman :

I will second such a motion as that.

George Hillyer :

Mr. President: I will withdraw the motion to lay the resolution on the table.

Henry Hitchcock, of Missouri :

Mr. President: I was not present at the meeting last evening at which I understand action was taken respecting the establishment of a Section on Patent Law, and I rise for information.

The President :

There was such action taken.

Henry Hitchcock :

I should have supposed that the establishment of that Section was in itself sufficient, and therefore the appointment of a committee on the subject of Patent Law would be superfluous. I do not quite see why we should do both.

E. B. Sherman :

It seems entirely proper, Mr. President, if the Section is created that there should be a standing committee of the Section. It seems to me that we should at least cheerfully grant that. Then any matters that they desire to take into consideration during the session of this Association may be reported to this body for its action at the next meeting. I trust that the new infant which has been so lately christened will not be denied at least that badge of parentage.

The President :

Gentlemen, the question before the Association is upon the amendment proposed by Mr. Hillyer, of Georgia, to the original resolution.

R. S. Taylor :

The preceding amendment was defeated, Mr. Chairman, and I now offer the following amendment to the amendment proposed by Mr. Hillyer, namely :

To strike out all of the original resolution after the words "appointed by the President," and insert "to whom shall be referred all matters relating to patent law."

The resolution will then read:

Resolved, That a standing committee of nine members of the Section on Patent Law be appointed by the President, to whom shall be referred all matters relating to patent law."

James M. Lewis, of Missouri:

Mr. President: I wish to renew the motion to lay this resolution and all proposed amendments on the table. I have been a member of this Association for eight or nine years, and my observation has been that it is against the policy of the Association to send any committee to Washington in an endeavor to pass or influence any special legislation. I think it is unwise and inexpedient.

E. B. Sherman:

The gentleman is in error. This simply provides for the appointment of a standing committee to report to this body at the next session.

James M. Lewis:

Why do we want any special committee appointed to go to Washington? I press my motion to lay this whole subject on the table.

Mr. Dillon:

I second that motion.

The motion to lay the matter on the table was lost.

The President:

The question now recurs upon the amendment proposed by Mr. Taylor, of Indiana.

Henry Hitchcock:

Why should we appoint a standing committee on a subject for which a Section has been especially provided? I do not see anything to be gained by it.

E. B. Sherman:

This Association organized last year a Section on Legal Education, and it has honored that Section by giving it a stand-

ing committee. Now, it seems to me that we ought to extend the same courtesy to the Section on Patent Law.

Francis Rawle, of Pennsylvania:

Mr. President: I do not feel that this is a necessary amendment. Reading from the amendment to the by-laws adopted last night, creating a Section of Patent Law, it says: "Its object shall be to discuss the subject of the law and practice relative to patents, and it may report to the Association all matters relating to patents, and matters relating to patents may be referred to it." This appears to me to be the only Committee that is necessary.

Henry Wade Rogers, of Illinois:

Mr. President: Reference has been made to the Section of Legal Education, and the statement has been made that that Section has been honored by the creation of a Committee of Legal Education. That statement is hardly correct. The Committee on Legal Education existed before the Section was created and was not abolished after the Section was created. I must say that I do not see any reason why there should be a Section and a special committee also to consider the same questions.

E. F. Bullard, of New York:

I would suggest to Judge Taylor that five members would be more convenient than nine, as he proposes in his amendment.

R. S. Taylor:

No; I think nine is better.

The question was then put on Mr. Taylor's amendment, and it was lost.

The President:

The question is now on the amendment proposed by Mr. Hillyer, of Georgia, to amend the original resolution by inserting after the word "power" the words "either to oppose or," so that the resolution will read:

"*Resolved*, That a special committee of nine members of the Section of Patent Law be appointed by the President

with authority to take such action as they may deem wise in regard to any legislation concerning patent laws in Congress, provided that such committee shall have no power either to oppose or to urge or promote the passage of any amendments to existing laws without first submitting such proposed amendments to the Association."

R. S. Taylor :

Mr. President: The resolution as so amended would be useless. I, therefore, move to lay the whole subject on the table.

Alexander R. Lawton, of Georgia :

I second that motion.

The motion to lay the whole matter on the table was carried.

The President :

The report of the Committee on Judicial Administration and Remedial Procedure is now in order.

Thomas Dent, of Illinois :

Mr. President: In behalf of the Committee on Judicial Administration and Remedial Procedure, I am requested to read this report. Only two members of the Committee have been present at this meeting, but they have agreed upon the report which I now present.

(See the Report in the Appendix.)

The question was then put on the adoption of the report, and it was adopted.

The President :

The Committee on Legal Education and Admission to the Bar is next in order.

Austin Abbott, of New York :

Mr. President: The report of the Committee is as follows :

(See the Report in the Appendix.)

I have also to say, in behalf of the Section of Legal Education, that they desire to suggest an amendment, chiefly verbal, to the fifth sub-division or section of the by-law passed last year under which the Section was organized. That fifth subsection now reads: "The Section shall be organized by the

annual appointment of a Chairman and Secretary by the Section at its first session." The Section yesterday adopted a resolution recommending to the Association that sub-section 5 of By-Law XIV be amended to read as follows: "The Section shall be organized by the appointment of a Chairman and Secretary at its first meeting, and a Chairman and Secretary shall thereafter be elected annually by the Section." It is intended to make no change in the substance, but simply to make clear what the intention was.

The report of the Committee and the amendment were adopted.

The President:

The next standing committee in order is the Committee on Commercial Law.

George A. Mercer, of Georgia:

As Chairman of that Committee, I would state that no subject was referred to the committee, and they therefore have no report to submit.

The President:

The next is the Committee on International Law.

The report was then read by the Secretary.

(See the Report in the Appendix.)

The report was adopted.

The President:

The next standing committee is the Committee on Grievances.

T. J. O'Brien, of Michigan:

Mr. Garnett, the Chairman of the Committee, is abroad, and the committee has no report to make. I think there are no grievances.

The President:

This finishes the call of standing committees. Reports of special committees will next be considered. The first is a report of the Special Committee on Uniform State Laws.

Lyman D. Brewster, of Connecticut :

Mr. President and Gentlemen of the Association: The Special Committee on Uniform State Laws respectfully present to the Association the following report.

(See the Report in the Appendix.)

The report was adopted.

The President :

The next report in order is that of the Special Committee on Expression and Classification of the Law.

Emlin McClain, of Iowa :

The Chairman of that Committee is absent, but he has written me that he expects to be present at the next session and hopes at that time the Committee may be able to make a report, and he asks me to present to the Association the request that the Committee be continued.

The report was accepted, and the request of the Committee to be continued granted.

The President :

The Special Committee on a Federal Code of Criminal Procedure is next.

John F. Dillon, of New York :

Mr. President: I have the report signed by Mr. Hill, Mr. Allen and myself, as follows :

(See the Report in the Appendix.)

On motion, the report was received and the Committee continued.

The President :

The next business in order is the report of the Committee on Nomination of Officers.

Leonard A. Jones, of Massachusetts :

Mr. President: The General Council beg leave to submit the following nominations for officers of the Association for the coming year :

(See List of Officers Elected.)

The President :

If there is no objection the report will be accepted, and its adoption will be considered as the last business before we adjourn. Miscellaneous business is now in order.

James M. Lewis, of Missouri :

Mr. President : I have the following resolution which I desire to offer :

“Resolved, That the provisions of the By-Laws providing for the organization of separate Sections of the Association are hereby repealed.”

I wish to say very briefly in this connection that the motto “United we stand, divided we fall,” is applicable here. In union there is strength ; in division there is weakness. This is no sectional organization. This Association is composed of lawyers from forty-four States of the Union, and I think it is exceedingly unwise to establish these Sections in this Association.

B. F. Hughes, of Pennsylvania :

I should like to hear some reason advanced why more mischief would result in performing this educational work for the bar by this Association under the name of Section than under the name of committee. I fail to see any ground for offering this resolution, and I hope it will be voted down.

Judson Starr, of Illinois :

I would offer an amendment to that motion, viz : “Except the Section on Legal Education.” I think the splendid work of that Section should not be wiped out.

Edward O. Hinkley, of Maryland :

Mr. President : I see no reason why there should be any jealousy of these Sections on the part of the Association or any suspicion that the body will be more divided than it would be if we simply had committees on these subjects. Long years ago Adam Smith wrote an excellent book on “The Wealth of Nations,” and he showed conclusively that the more division there was of labor the more production there was of

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the thing which labor created. The idea seems to be on the part of some gentlemen that the establishment of these Sections is the cutting off, perhaps, from the Association. I am inclined to think that the word "Section" is not well chosen, and that a better word might be used. We speak of the sections of this great country. Perhaps we ought to learn the lesson which the Rebellion taught us, and that the country should not be divided and sectionized. We know it is composed of forty-four States, and the arrangements which have been made for the prevention of clashing by reason of State rights have hitherto proved very effectual. Perhaps the whole machine is one of the grandest and most beautiful political organizations that the world has ever seen. Why should we not be able to divide our forces in this Association in such a manner that they should not clash? I am sure that there is *esprit de corps* sufficient to keep us united, and that no section can ever do the Association any mischief. Now, there are two strong grounds for the establishment of these Sections. One is that there will always be a sufficient means for holding the members together. They will be dependent upon us, for instance, for the expense of printing their proceedings. Then another point which strikes me as being an argument in favor of these Sections is that the President of the Association in appointing a committee might err as to choosing the best men, and men not on such a committee might desire to get on it. Let all who desire unite together in the Section of Legal Education or in the Section of Patent Law. There is no limit placed on their numbers as there would be if committees were appointed. It must necessarily be that in a large body of between eleven and twelve hundred members, the minds of members will be directed to a great variety of subjects, and these Sections will give those of our members who are more particularly interested in the subject of patent law or in the subject of legal education, an opportunity to gratify each for himself his own particular inclination. It will enlarge our membership, because members of the Bar who have not

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hitherto been members of this Association will come into it for the benefit they may gain from attendance upon the meetings of these Sections. I see many good reasons why these Sections should be permitted to exist.

Judson Starr, of Illinois :

I withdraw my amendment, Mr. President.

S. M. Cutcheon, of Michigan :

Mr. President: I move that the resolution offered by the gentleman from Missouri (Mr. James M. Lewis) be laid on the table.

Benjamin F. Hughes, of Pennsylvania :

I second that motion.

The motion was carried.

Henry C. Tompkins, of Alabama :

Mr. President: I offer the following resolution :

“Resolved, That this Association recommend the adoption of an amendment to the law regulating appeals to the Circuit Courts of Appeal, so as to provide for appeals in interlocutory orders appointing receivers.”

I would not offer this resolution at this stage of the meeting but for the fact that this Association is committed by the bill which was prepared under its supervision for the establishment of these courts to the soundness of the doctrine of allowing appeals from such orders. It seems to me that this is a matter of very great importance and one of absolute justice. Appeals are allowed from interlocutory orders granting injunctions. Every reason which applies to allowing an appeal from such an order applies with still more force to allowing an appeal from orders appointing receivers. When an injunction is obtained it preserves the property or the condition of affairs in the same situation in which it is found at the time the injunction is obtained. In addition to that, the party applying for the injunction is required to give a bond which protects the defendant in any damages he may sustain. The status of property as a rule is not preserved where receivers are appointed. That is especially the case where receivers of per-

sonal property are appointed. The next thing in order is obtaining an order from the court requiring the sale of that property. It is sold at public sale, and as a result it brings frequently not more than fifty cents on the dollar. If, at the end of the litigation, it is determined that there is no case and a receiver never ought to have been appointed, the defendant is required to accept the proceeds of the sale and lose the difference between what he might have realized from the property and what it actually sold for at the forced sale. There ought to be a remedy for that. It seems to me that the Senate ought to pass the law, which has passed the House, authorizing appeals from these interlocutory orders. We have such provision in our State which was adopted in 1876, and it gives entire satisfaction to litigants and to members of the bar. Our law also provides for appeals from decisions refusing to appoint receivers. I trust the Association will adopt this resolution because it may have some effect upon the measure now pending in the United States Senate and may influence to some extent that body in its action upon that law.

Bradley G. Schley, of Wisconsin :

Mr. President : I move that the resolution be referred to the Committee on Judicial Administration and Remedial Procedure.

Waldo G. Morse, of New York :

I second that motion.

S. M. Cutcheon, of Michigan :

I understood the gentleman who offered the resolution (Mr. Tompkins) to say that the Committee virtually covered this subject by their report. Unfortunately, we could not hear the whole of that report, and some of us voted somewhat in the dark. If the report did cover the subject, what need is there of this resolution ? If the Committee has not considered it, then it is proper to refer the subject to them.

Henry C. Tompkins :

The Committee spoke of suggested changes in the law establishing courts of appeal, and among them they said there was

one providing for appeals from interlocutory orders appointing receivers. The Committee then went on to say that that provision was in the original bill prepared by this Association and submitted to Congress, and no reason had ever been given why it was omitted from the law as enacted by Congress. The Committee show in their report that this Association have approved such a provision, and the Committee express themselves now as in favor of it. My only object in introducing the resolution is to get this Association to express itself as being in favor of it. I conferred with the two members of the Committee. Judge Dent and Mr. Hill, before offering the resolution, and they both said they approved of it.

John F. Dillon, of New York :

I think if this matter were fully debated it would approve itself to my judgment. I think, however, that it is very unsafe in the closing hours of this meeting to adopt a resolution of this importance when it is evident that it has not had full consideration. I, therefore, think the motion to refer ought to be sustained.

Henry Hitchcock, of Missouri :

I agree with Judge Dillon, and I submit that the vote on this motion presented a moment ago would be without deliberation such as this Association ought to exercise. It may further be suggested that inasmuch as the only effect of any action of this sort would be to promote legislation by Congress, and we all know that Congress is now just about to adjourn, and the next Congress will be a short session, and this body will meet again before the regular session of the following Congress, and the whole matter can be considered with quite as much effect later.

The President :

The question is on the motion to refer this resolution to the Committee on Judicial Administration and Remedial Procedure.

The motion to refer the resolution to the Committee of Judicial Administration and Remedial Procedure was carried.

J. Randolph Tucker, of Virginia :

I desire to move that the name of Legh R. Watts, of Virginia, be added to the Local Council of that State.

The President :

If there is no objection, that name will be added to the Local Council for Virginia.

R. S. Taylor, of Indiana :

Mr. President : After consultation, I am requested to offer the following resolution in regard to the Section of Patent Law :

“ Resolved, That a special committee of fifteen be appointed by the President from the members of the Section of Patent Law to report at the next session of this Association what changes, if any, are desirable in the law and practice relating to patents for inventions.”

The reason for this resolution is that a reference to the by-laws of the Association has disclosed the fact that in the absence of a committee appointed by the Association there will be no way in which the subject of patent law can be brought before the Association at its next annual meeting, and the failure to provide such a committee would result in the postponement of all consideration of the subject for two years.

E. F. Bullard, of New York :

I second that resolution.

Spencer C. Doty, of New York :

I move to amend by making the number of the committee seven instead of fifteen.

The resolution as offered was adopted.

R. S. Taylor :

I beg to trespass upon the time of the Association to offer one further resolution :

“ Resolved, That the Committee on Jurisprudence and Law Reform be requested to submit to the Association at its next annual meeting a report comprising, first, a succinct history of the operations to date of the Act of Congress commonly known

as the Anti-Trust law, with such comments on its success and usefulness as seem to them pertinent: and, second, if it is believed by the Committee that any additional legislation within the constitutional power of Congress would increase the effectiveness of the Act or improve modes of procedure under it, such suggestions as shall seem to them advisable on that subject."

Simeon E. Baldwin, of Connecticut:

I second that resolution.

The resolution was adopted.

The President:

Is there any further miscellaneous business? If not, the election of the officers nominated for the ensuing year is in order.

The officers nominated by the General Council were then elected.

The President:

Is there any further business before the Association?

J. Newton Fiero, of New York:

Mr. President: I desire to offer the following resolution, at the suggestion of a number of members of the Association, growing out of some work which has been done in the direction pointed out by the resolution in the State of New York:

"Resolved, That a special committee of five be appointed by the President to ascertain the condition of law reporting throughout the Union, and to report at the next Annual Meeting."

I beg leave to say that I have been asked to present this resolution in view of the action which has been taken in the State of New York upon the subject and the investigation made with regard to reporting, out of which has grown a condition of affairs under which all the reports of the States are now official, and every opinion of a Court of Record is officially reported, reducing the number of reports very largely and also greatly decreasing the expense.

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E. F. Bullard, of New York :

I second the adoption of that resolution.

The resolution was adopted.

The President :

Gentlemen, as there seems to be no further business for the Association to transact, adjournment is in order.. The Chair congratulates the Association on the large accession to its membership at this meeting and on the fraternal spirit which has characterized its deliberations. I now declare the Seventeenth Annual Meeting of the American Bar Association adjourned without day.

JOHN HINKLEY,

Secretary.

SECRETARY'S REPORT.

The Report of the proceedings at our last meeting has been printed and distributed to all members, and also to the large number of libraries and Bar Associations on our free mailing list.

There were 1,102 members at the close of the last meeting. Eleven members have been elected by the Executive Committee between the meetings under the 4th Article of the Constitution as amended.

All of the States, except Nevada, are represented in our membership. We have also members from Indian Territory, Utah and Oklahoma Territories.

The list of delegates accredited from State and Local Bar Associations is larger than ever before, and will be printed in the proceedings.

The attention of the Vice-Presidents and Local Councils was called, by a circular letter from the Secretary, to the resolution on page 52 of the last report charging them with the duty of endeavoring to secure by legislation the appointment of Commissioners of Uniform Laws.

The register of those in attendance is kept on the table at the hall of meeting during the sessions, and it is at the reception room in the Grand Union Hotel in the intervals. This list is valuable for reference, and every member or delegate present is requested to sign it as early as convenient. A list of those present will be printed for distribution at the meeting and also included in the report.

There is a notice as to the prices for reports of the preceding years reprinted from the last report, and also a number of copies of the constitution and of the members of committees, and also forms of nomination on the Secretary's table for distribution.

Respectfully submitted,

JOHN HINKLEY,

Secretary.

REPORT OF THE TREASURER. 1893-94.

Dr.

To balance from last report, ...	\$2,709 47
" cash received—dues of members, ...	4,860 00
" " " —interest on deposit, ...	21 70
" " " —sale of Transactions, ...	42 50
	\$7,633 67

Cr.

1893.

Sept. 1. By cash paid—Incidental expenses of 16th annual meeting and dinner, ...	\$22 00	
1. " " " —Plymouth Church, use of auditorium for 16th an- nual meeting, ...	100 00	
1. " " " —Wright Drug Co., recep- tion room expenses, . .	11 00	
1. " " " —Geo. H. Bates, Esq., bal- ance of expenses as mem- ber of Committee on International Law, . .	10 00	
1, " " " —Expenses of M. D. Fol- lett, as member of Com- mittee on International Law, ...	30 00	
14. " " " —Expenses of Clerk to Treasurer to Milwaukee, 63 00		
Amount carried forward, . . .	\$236 00	\$7,633 67

1893.		By amount brought forward, . .	\$236 00	\$7,633 67
Sept. 16.		By cash paid—Expenses of Secretary		
		one year, ...	398 51	
18.	" "	" —Hotel Pfister, 16th annual dinner, ...	591 50	
18.	" "	" —Cigars for 16th annual dinner, ...	30 00	
20.	" "	" —C. A. Morrison, Stenographer, 16th annual meeting, ...	147 70	
Oct. 6.	" "	" —Three months' rent of storage room for Reports, ...	12 50	
13.	" "	" —G. M. Sharp, expenses of Committee on Legal Education, ...	100 00	
21.	" "	" —J. B. Sanborn, printing report of Indian Legislation Committee, ...	18 75	
23.	" "	" —Samuel Williston, expenses as a member of Committee on Legal Education, ...	102 80	
23.	" "	" —J. B. Thayer, copying petition to Congress, Indian Legislation Committee, ...	20 00	
Nov. 17.	" "	" —Stamped envelopes, ...	22 00	
1894.				
Jan. 27.	" "	" —United States Express Co., for delivering 1008 copies of 16th annual Report, ...	160 00	
Feb. 8.	" "	" —Three months' rent storage room for Reports, ...	12 50	
15.	" "	" —Printed stamped envelopes, ...	22 00	
Amount carried forward, . . .			\$1,874 26	\$7,633 67

REPORT OF THE TREASURER.

77

1894.		By amount brought forward, . .	\$1,874 26	\$7,633 67
March 3.	By cash paid—Insurance on Reports, .		4 00	
13.	" " " —United States Express Co., distributing additional copies 16th annual Report, ...		58 01	
26.	" " " —Expenses to Saratoga to secure hall for 17th annual meeting, ...		19 70	
April 9.	" " " —John Hinkley, on account expenses of Secretary for current year, ...		125 00	
May 17.	" " " —G. M. Sharp, on account of expenses of Committee on Legal Education, ...		100 00	
25.	" " " —Six months' rent of storage room for Reports, .		25 00	
June 16.	" " " —Stamped envelopes, . . .		22 00	
July 14.	" " " —Postage stamps, .		10 00	
20.	" " " —Dando Printing & Publishing Co., printing and binding 17th annual Report, ...		1,291 76	
20.	" " " —Dando Printing & Publishing Co., printing extra copies of addresses, papers, Committee Reports, boxes for distributing Reports, etc., . . .		381 05	
20.	" " " —Dando Printing & Publishing Co., printed stamped envelopes, circulars and general printing to date, ...		125 62	
Aug. 14.	" " " —Wm. F. Murphy's Sons Co., receipt book, . . .		6 00	

Amount carried forward, . . . \$4,042 40 \$7,633 67

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1894.	By amount brought forward, . .	\$4,042 40	\$7,633 67
Aug. 14.	By cash paid—C. G. Artzt, cigars for 17th annual meeting and dinner, ...	52 00	
14.	“ “ “ —Stamped envelopes, . .	22 00	
14.	“ “ “ —Clerk to Treasurer for one year's services to 17th annual meeting, ...	300 00	
14.	“ “ “ —Sundry expenses, tele- grams, expressage, por- terage, stationery, etc., for year, ...	54 70	
	Balance, ...	3,162 57	\$7,633 67

Which balance consists of—

Amount to credit of Treasurer in Seventh National Bank, Philadelphia, ...	\$2,645 50
Special deposit in Union Trust Company, Philadelphia, sub- ject to 10 days' notice, interest at 3 per cent., ...	500 00
Cash on hand, ...	17 07
	<u>\$3,162 57</u>

Respectfully submitted,

FRANCIS RAWLE,

Treasurer.

SARATOGA SPRINGS, N. Y., August 22, 1894.

Audited and found correct.

IGNATIUS C. GRUBB,
GILBERT D. MUNSON,

Auditing Committee.

August 22, 1894.

REPORT
OF THE
EXECUTIVE COMMITTEE.

August 22d, 1894.

The Executive Committee respectfully reports that under the amendment to the IV Article of the Constitution passed at the last meeting, providing for election of members by the Executive Committee between meetings, when nominated by a majority of the Local Council, the following 11 members were elected :

INDIAN TERRITORY.

SOPER, P. L., ... Muskogee.

IOWA.

McCONLOGUE, JAS. H., ... Mason City.

McCARTHY, J. J., ... Dubuque.

MARYLAND.

MARBURY, WILLIAM L., ... Baltimore.

NEBRASKA.

PATRICK, ROBT. W., ... Omaha.

AMES, JOHN H., ... Lincoln.

NEW YORK.

EVANS, THOS. G., ... New York.

MORSE, WALDO G., ... New York.

OKLAHOMA TERRITORY.

DILLE, JOHN I., ... El Reno.

SCOTT, HENRY W., ... Okhaloma City.

WISCONSIN.

BLOODGOOD, FRANCIS, JR., ... Milwaukee.

Your Committee further report that in accordance with the 12th By-Law appropriations were made for the use of certain

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committees upon their application, as will appear by the Treasurer's report. All committees for the ensuing year are requested to conform to this By-Law, which requires "previous application in advance of expenditure." Such applications should be made to the Executive Committee through the Secretary.

Respectfully submitted,

JOHN HINKLEY,

GEO. A. MERCER,

FRANCIS RAWLE,

ALFRED HEMENWAY,

BRADLEY G. SCHLEY,

Executive Committee.

MEMBERS REGISTERED
AT THE
SEVENTEENTH ANNUAL MEETING.
1894.

SAMUEL F. HUNT, ...	Ohio.
JOHN RANDOLPH TUCKER, ...	Virginia.
JOHN HINKLEY, ...	Maryland.
FRANCIS RAWLE, ...	Pennsylvania.
GEORGE A. MERCER, ...	Georgia.
BRADLEY G. SCHLEY, ...	Wisconsin.
ALFRED HEMENWAY, ...	Massachusetts.
J. J. MCCARTHY, ...	Iowa.
LEWIS E. STANTON, ...	Connecticut.
RICHARD VAUX, ...	Pennsylvania.
EDWARD OTIS HINKLEY, ...	Maryland.
F. P. POCHE, ...	Louisiana.
A. R. LAWTON, ...	Georgia.
J. F. J. CALDWELL, ...	South Carolina.
CHAS. CLAFLIN ALLEN, ...	Missouri.
JOHN F. DILLON, ...	New York.
CHARLES W. NEEDHAM, ...	District of Columbia.
SPENCER C. DOTY, ...	New York.
GEORGE L. BUIST, ...	South Carolina.
DWIGHT M. LOWREY, ...	Pennsylvania.
F. G. DU BIGNON, ...	Georgia.
SHEPARD BARCLAY, ...	Missouri.
DELANO C. CALVIN, ...	New York.
JOHN S. APPLEGATE, ...	New Jersey.
E. F. BULLARD, ...	New York.
HORACE W. FULLER, ...	Massachusetts.
JOSEPH W. FELLOWS, ...	New Hampshire.
LEONARD A. JONES, ...	Massachusetts.
WALTER B. HILL, ...	Georgia.
GEORGE M. SHARP, ...	Maryland.
W. H. ROBERTSON, ...	New York.
JOHN H. WIGMORE, ...	Illinois.
LYMAN D. BREWSTER, ...	Connecticut.
AMASA M. EATON, ...	Rhode Island.
THOMAS A. JENCKES, ...	Rhode Island.

W. H. VREDENBURGH, ...	New Jersey.
AUG. C. BALDWIN, ...	Michigan.
E. B. SHERMAN, ...	Illinois.
J. NEWTON FIERO, ...	New York.
CHARLES BORCHERLING, ...	New Jersey.
LEONARD E. WALES, ...	Delaware.
S. R. BOND, ...	District of Columbia.
THOMAS DENT, ...	Illinois.
S. C. SHURTLEFF, ...	Vermont.
AUSTIN ABBOTT, ...	New York.
WOODROW WILSON, ...	New Jersey.
GEORGE P. WANTY, ...	Michigan.
EGBERT WHITTAKER, ...	New York.
J. J. HALL, ...	Ohio.
R. S. TAYLOR, ...	Indiana.
HENRY R. GOETCHIUS, ...	Georgia.
E. SPENCER MILLER, ...	Pennsylvania.
FREDERIC ULLMAN, ...	Illinois.
JOHN S. MILLER, ...	Illinois.
JOHN C. RICHBERG, ...	Illinois.
JOHN L. SPRING, ...	New Hampshire
HAMPTON L. CARSON, ...	Pennsylvania.
JAMES F. COLBY, ...	New Hampshire,
CORTLANDT PARKER, ...	New Jersey.
JEROME C. KNOWLTON, ...	Michigan.
GEORGE TUCKER BISPHAM, ...	Pennsylvania.
THOS. H. HASKELL, ...	Maine.
WALDO G. MORSE, ...	New York.
JOSEPH W. SYMONDS, ...	Maine.
EDWARD WOODMAN, ...	Maine.
J. H. RAYMOND, ...	Chicago.
GEORGE GLUYAS MERCER, ...	Pennsylvania.
WM. RIDGELY LEAKEN, ...	Georgia.
FREDERICK N. JUDSON, ...	Missouri.
RICHARD WAYNE PARKER, ...	New Jersey.
IGNATIUS C. GRUBE, ...	Delaware.
BENJ. S. LIDDON, ...	Florida.
HENRY BUDD, ...	Pennsylvania.
HOWARD BRYANT, ...	Maryland.
RICHARD BERNARD, ...	Maryland.
EDWIN BURRITT SMITH, ...	Illinois.
GEORGE HILLYER, ...	Georgia.
EDWARD P. ALLINSON, ...	Pennsylvania.
GEORGE WHITELOCK, ...	Maryland.
JUDSON STARR, ...	Illinois.

WILLIAM E. TALCOTT, ...	Ohio.
FRANK C. SMITH, ...	New York.
SIMEON E. BALDWIN, ...	Connecticut.
ALEXANDER GRANT, ...	New Jersey.
GLENWAY MAXON, ...	Wisconsin.
WM. WIRT HOWE, ...	Louisiana.
R. LYON ROGERS, ...	Maryland.
M. ARNOLD, ...	Pennsylvania
GEORGE B. KULP, ...	Pennsylvania.
JOHN T. MASON, R, ...	Maryland.
HENRY HITCHCOCK, ...	Missouri.
W. A. BLOUNT, ...	Florida.
V. GILPIN ROBINSON, ...	Pennsylvania.
HENRY C. RANNEY, ...	Ohio.
JOEL W. TYLER, ...	Ohio.
JAMES M. LEWIS, ...	Missouri.
A. C. HARGROVE, ...	Alabama.
EUGENE WAMBAUGH, ...	Massachusetts.
EVERETT P. WHEELER, ...	New York.
CASS E. HERRINGTON, ...	Colorado.
JOHN A. MCGRATH, ...	New Jersey.
HENRY WADE ROGERS, ...	Illinois.
MORRIS GOODHART, ...	New York.
JOHN D. LAWSON, ...	Missouri.
T. J. O'BRIEN, ...	Michigan.
S. M. CUTCHEON, ...	Michigan.
EMLIN MCCLAIN, ...	Iowa.
LEGH R. WATTS, ...	Virginia
EDWARD TAGGART, ...	Michigan.
JOHN DAVIS, ...	Massachusetts.
P. W. MELDRIM, ...	Georgia.
H. O. WEAVER, ...	Iowa.
HENRY A. WYMAN, ...	Massachusetts.
CONRAD RENO, ...	Massachusetts.
AUGUSTUS N. FENN, ...	Connecticut.
HENRY M. CHEEVER, ...	Michigan.
B. F. HUGHES, ...	Pennsylvania.
JOSEPH T. TAYLOR, ...	Pennsylvania.
WM. H. SEAMAN, ...	Wisconsin.
SAMUEL E. WILLIAMSON, ...	Ohio.
H. C. TOMPKINS, ...	Alabama.
EDMUND WETMORE, ...	New York.
JAMES H. HOYT, ...	Ohio.
CHARLES E. MITCHELL, ...	Connecticut.
WILMARTH H. THURSTON, ...	Rhode Island.

C. W. McKEEHAN, ...	Pennsylvania.
J. Z. H. SCOTT, ...	Texas.
HECTOR T. FENTON, ...	Pennsylvania.
M. CLEILAND MILNOR, ...	New York.
SAMUEL G. ROGERS, ...	Ohio.
SETH SHEPARD, ...	District of Columbia.
A. J. MCCRAEY, ...	Iowa.
O. M. BARBER, ...	Vermont.
TIMOTHY J. FOX, ...	Connecticut.
J. HAMPDEN DOUGHERTY, ...	New York.
GILBERT D. MUNSON, ...	Ohio.
RICHARD N. DYER, ...	New York.
M. J. WADE, ...	Iowa.
RALPH WHELAN, ...	Minnesota.

DELEGATES, 1894.

ALABAMA STATE BAR ASSOCIATION.

A. C. HARGROVE, ... Tuscaloosa.
THOS. N. McCLELLAN, ... Montgomery.
D. P. BESTOR, ... Mobile.

COLORADO STATE BAR ASSOCIATION.

CASS E. HERRINGTON, ... Denver.

GEORGIA BAR ASSOCIATION.

HENRY R. GOETCHIUS, ... Columbus.
GEORGE HILLYER, ... Atlanta.
W. R. LEAKEN, ... Savannah.

ILLINOIS STATE BAR ASSOCIATION.

JOHN S. MILLER, ... Chicago.
SAMUEL P. WHEELER, ... Springfield.
JUDSON STARR, ... Peoria.

DUBUQUE BAR ASSOCIATION.

P. J. NELSON, ... Dubuque.
J. J. MCCARTHY, ... Dubuque.

POLK COUNTY BAR ASSOCIATION, IOWA.

C. H. GATCH, ...
A. B. CUMMINS, ...

KANSAS STATE BAR ASSOCIATION.

R. B. WELCH, ... Topeka.

BAR ASSOCIATION OF THE CITY OF BOSTON.

MOORFIELD STOREY, ... Boston.
ALFRED HEMENWAY, ... Boston.

HAMPDEN COUNTY BAR ASSOCIATION, MASSACHUSETTS.

GEORGE D. ROBINSON, ... Chicopee.
DANIEL E. WEBSTER, ... Springfield.

MICHIGAN STATE BAR ASSOCIATION.

DON M. DICKINSON, ... Detroit.
 THOMAS J. O'BRIEN, ... Grand Rapids.
 ERASTUS PECK, ... Jackson.

MISSOURI STATE BAR ASSOCIATION.

JOHN W. NOBLE, ... St. Louis.
 J. J. RUSSELL, ... Charleston.
 R. F. WALKER, ... Jefferson City.

SOUTHERN NEW HAMPSHIRE BAR ASSOCIATION.

JOS. W. FELLOWS, ... Manchester.

NEW YORK STATE BAR ASSOCIATION.

WM. H. ROBERTSON, ... Katonah.
 J. NEWTON FIERO, ... Albany.
 GEO. ZABRISKIE, ... New York

MONMOUTH COUNTY BAR ASSOCIATION, NEW JERSEY.

WILLIAM H. VREDENBURGH, ... Freehold
 JOHN S. APPLGATE, ... Red Bank.

OHIO STATE BAR ASSOCIATION.

WILLIAM J. GILMORE, ... Columbus.
 JAMES H. HOYT, ... Cleveland.
 WILLIAM T. MOONEY, ... St. Mary's.

ALLEGHANY COUNTY BAR ASSOCIATION, PENNSYLVANIA.

JOHN DALZELL, ... Pittsburgh.
 M. A. WOODWARD, ... Pittsburgh.

DELAWARE COUNTY BAR ASSOCIATION, PENNSYLVANIA.

V. GILPIN ROBINSON, ... Media
 GEORGE B. LINDSAY, ... Chester.

LAWRENCE COUNTY BAR ASSOCIATION, PENNSYLVANIA.

S. W. DANA, ... Newcastle.
 B. A. WINTERNITZ, ... Newcastle.

SOUTH CAROLINA BAR ASSOCIATION.

GEO. LAMB BUIST, ... Charleston.

TEXAS BAR ASSOCIATION.

J. Z. H. SCOTT, ... Galveston.
SETH SHEPARD, ... Dallas.
WILLIAM AUBREY, ... San Antonio.

TERRITORIAL BAR ASSOCIATION, UTAH.

J. H. MacMILLAN, ...
H. P. HENDERSON, ...
P. L. WILLIAMS, ...

VERMONT BAR ASSOCIATION.

JOHN W. STEWART, ... Middlebury.
O. M. BARBER, ... Arlington.
GILBERT A. BAKER, ... Windsor.

LIST OF MEMBERS ELECTED.

ALABAMA.

HARGROVE, A. C., ... Tuscaloosa.

CALIFORNIA.

CHICKERING, W. H., ... San Francisco.

COLORADO.

HERRINGTON, CASS E., ... Denver.

CONNECTICUT.

BEERS, GEORGE E., ... New Haven.
FENN, AUGUSTUS H., ... Winchester.
FOX, TIMOTHY J., ... New Haven.
MITCHELL, CHARLES E., ... New Britain.
ROBINSON, WILLIAM C., ... New Haven.
ROGERS, EDWARD H., ... New Haven.
SIMONDS, W. E., ... Hartford.
TERRY, GEORGE E., ... Waterbury.
TYLER, MORRIS F., ... New Haven.
WAYLAND, FRANCIS, ... New Haven.
WHITE, HENRY C., ... New Haven.
WOOLSEY, THEO. S., ... New Haven.

DISTRICT OF COLUMBIA.

HAYDEN, JAMES H., ... Washington.
SHEPARD, SETH, ... Washington.

FLORIDA.

BLOUNT, WILLIAM A., ... Pensacola.
RANEY, GEORGE P., ... Tallahassee.

ILLINOIS.

ANDREWS, JAMES D., ... Chicago.
BANNING, EPHRAIM, ... Chicago.
BROWN, TAYLOR E., ... Chicago.
CURTIS, RUSSELL H., ... Chicago.
LEE, BLEWETT, ... Chicago.
STARR JUDSON, ... Peoria.

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CLIGGETT, JOHN, ...	Mason City.
MARBLEY, J. E. E., ...	Mason City.
MOFFIT, JOHN T., ...	Tipton.
WADE, M. J., ...	Iowa City.
WEAVER, H. O., ...	Wapello.

LOUISIANA.

KERNAN, THOMAS J., ...	Baton Rouge.

MARYLAND.

BAER, THOMAS S., ...	Baltimore.
BRANTLY, WILLIAM T., ...	Baltimore.
BRYANT, HOWARD, ...	Baltimore.
CAMPBELL, WILLIAM F., ...	Baltimore.
GANS, EDGAR H., ...	Baltimore.
HALL, THOMAS W., ...	Baltimore.
HARLAN, HENRY D., ...	Baltimore.
PHELPS, CHAS. E., ...	Baltimore.
STEUART, ARTHUR, ...	Baltimore.

MASSACHUSETTS.

ALBERS, HOMER, ...	Boston.
ANDERSON, GEORGE W., ...	Boston.
BEALE, JOSEPH HENRY, ...	Cambridge.
BENNETT, S. C., ...	Boston.
CLARKE, T. W., ...	Boston.
CONANT, ERNEST LEE, ...	Cambridge.
DREW, C. H., ...	Boston.
PAYSON, EDWARD P., ...	Boston.
RENO, CONRAD, ...	Boston.
RICHARDSON, W. K., ...	Boston.
ROBERTS, GEORGE L., ...	Boston.
ROBERTS, J. L. S., ...	Boston.
SMITH, JEREMIAH, ...	Cambridge.
SMITH, JOSEPH R., ...	Boston.
STORROW, JAMES J., JR., ...	Boston.
SWAN, CHARLES H., ...	Boston.
TYLER, CHARLES H., ...	Boston.
WAMBAUGH, EUGENE, ...	Cambridge.
WELLMAN, ARTHUR H., ...	Boston.
WYMAN, HENRY A., ...	Boston.

MICHIGAN.

BARRY, EDMUND D., ...	Grand Rapids.
FITZGERALD, JOHN C., ...	Grand Rapids.

MICHIGAN—Continued.

LOTHROP, GEORGE H., ...	Detroit.
TAGGART, EDWARD, ...	Grand Rapids.

MINNESOTA.

COHEN, EMANUEL, ...	Minneapolis.
WHELAN, RALPH, ...	Minneapolis.

MISSOURI.

BAKEWELL, PAUL, ...	St. Louis.
CHRISTIE, HARVEY L., ...	St. Louis.
DOUGLAS, WALTER B., ...	St. Louis.
FINKELNBURG, G. A., ...	St. Louis.
FOWLER, A. C., ...	St. Louis.
HARKLESS, JAMES H., ...	Kansas City.
JOHNSON, JOHN D., ...	St. Louis.
KNIGHT, GEORGE H., ...	St. Louis.
LAWSON, JOHN D., ...	Columbia.
THOMAS, JOHN L., (Washington, D. C.), ...	De Soto.

NEW JERSEY.

APPLEGATE, JOHN S., ...	Red Bank.
COLIE, EDWARD M., ...	Newark.
VREDENBURGH, WILLIAM H., ...	Freehold.
WILSON, WOODROW, ...	Princeton.

NEW YORK.

BURDICK, FRANCIS M., ...	New York.
CUMMING, GEORGE M., ...	New York.
DYER, RICHARD N., ...	New York.
ERWIN, FRANK A., ...	New York.
FIERO, J. NEWTON, ...	Albany.
FORBES, FRANCIS, ...	New York.
KEENER, WILLIAM A., ...	New York.
KENYON, WILLIAM H., ...	New York.
KIDDLE, ALFRED W., ...	New York.
KIRCHWAY, GEORGE W., ...	New York.
KNIGHT, HERBERT, ...	New York.
MILNOR, M. CLEILAND, ...	New York.
O'REILLY, PHILIP J., ...	New York.
PETTY, ROBERT D., ...	New York.
REDDING, WM. A., ...	New York.
REEVES, ALFRED G., ...	New York.
RUSSELL, ISAAC F., ...	New York.
TIEDEMAN, CHRISTOPHER G., ...	Brooklyn.
WETMORE, EDMUND, ...	New York.

LIST OF MEMBERS ELECTED.

91

NORTH DAKOTA.

NEWTON, GEORGE W., ... Bismarck.

OHIO.

HOYT, JAMES H., ... Cleveland.
MUNSON, GILBERT D., ... Zanesville.
SMEDES, JOHN MARSHALL, ... Cincinnati.

PENNSYLVANIA.

ALLINSON, EDWARD P., ... Philadelphia.
BROWN, JOHN A., ... Philadelphia.
CARTY, JEROME, ... Philadelphia.
DALE, RICHARD C., ... Philadelphia.
FENTON, HECTOR T., ... Philadelphia.
FRALEY, JOSEPH C., ... Philadelphia.
HOWSON, CHARLES, ... Philadelphia.
KAY, JAMES I., ... Pittsburgh.
MCKEEHAN, C. W., ... Philadelphia.
PEPPER, GEORGE W., ... Philadelphia.
PETTIT, HORACE, ... Philadelphia.
ROBINSON, V. GILPIN, ... Media.
SMEAD, A. D. B., ... Carlisle.
STOUGHTON, A. B., ... Philadelphia.
STRAWBRIDGE, WILLIAM C., ... Philadelphia.
TAYLOR, JOSEPH T., ... Philadelphia.
TRICKETT, WILLIAM, ... Carlisle.

RHODE ISLAND.

LESTER, JOHN ERASTUS, ... Providence.
THURSTON, WILMARTH H., ... Providence.

TEXAS.

LEAKE, W. W., ... Dallas.
MILLER, T. S., ... Dallas.
SCOTT, J. Z. H., ... Galveston.

VERMONT.

BARBER, O. M., ... Arlington.

VIRGINIA.

CABELL, JAMES ALSTON, ... Richmond.
HATTON, GOODRICH, ... Portsmouth.

Number elected at meeting, 128.

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ELECTED BY EXECUTIVE COMMITTEE BETWEEN MEETINGS
1893-1894.

INDIAN TERRITORY.

SOPER, P. L., ... Muskogee.

IOWA.

MCCARTHY, J. J., ... Dubuque.

MC CONLOGUE, JAMES H., ... Mason City.

MARYLAND.

MARBURY, WILLIAM L., ... Baltimore.

NEBRASKA.

AMES, JOHN H., ... Lincoln.

PATRICK, ROBERT W., ... Omaha.

NEW YORK.

EVANS, THOMAS G., ... New York.

MORSE, WALDO G., ... New York.

OKLAHOMA TERRITORY.

DILLE, JOHN I., ... El Reno.

SCOTT, HENRY W., ... Oklahoma City.

WISCONSIN.

BLOODGOOD, FRANCIS, Jr., ... Milwaukee.

Number elected by Executive Committee, 11.

RECAPITULATION.

Alabama, ...	1	Nebraska, ...	2
California, ...	1	New Jersey, ...	4
Colorado, ...	1	New York, ...	21
Connecticut, ...	12	North Dakota, ...	1
District of Columbia, ...	2	Ohio, ...	3
Florida, ...	2	Oklahoma Territory, ...	2
Illinois, ...	6	Pennsylvania, ...	17
Indian Territory, ...	1	Rhode Island, ...	2
Iowa, ...	7	Texas, ...	3
Louisiana, ...	1	Vermont, ...	1
Maryland, ...	10	Virginia, ...	2
Massachusetts, ...	20	Wisconsin, ...	1
Michigan, ...	4		—
Minnesota, ...	2	Total, ...	139
Missouri, ...	10		

MEMORANDUM.

The Annual Dinner was given on Friday, August 24th, at the Grand Union Hotel. Edmund Wetmore, of New York, presided.

LIST OF PRESIDENTS.

1. 1878-79-JAMES O. BROADHEAD, . . . St. Louis, Missouri.
2. 1879-80-BENJAMIN H. BRISTOW, . . . New York, New York.
3. 1880-81-EDWARD J. PHELPS, . . . Burlington, Vermont.
4. 1881-82-*CLARKSON N. POTTER, . . . New York, New York.
5. 1882-83-ALEXANDER R. LAWTON, . . Savannah, Georgia.
6. 1883-84-CORTLANDT PARKER, . . . Newark, New Jersey.
7. 1884-85-*JOHN W. STEVENSON, . . . Covington, Kentucky.
8. 1885-86-WILLIAM ALLEN BUTLER, . . . New York, New York.
9. 1886-87-THOMAS J. SEMMES, . . . New Orleans, Louisiana.
10. 1887-88-GEORGE G. WRIGHT, . . . Des Moines, Iowa.
11. 1888-89-*DAVID DUDLEY FIELD, . . . New York, New York.
12. 1889-90-HENRY HITCHCOCK, . . . St. Louis, Missouri.
13. 1890-91-SIMEON E. BALDWIN, . . . New Haven, Connecticut.
14. 1891-92-JOHN F. DILLON, . . . New York, New York.
15. 1892-93-J. RANDOLPH TUCKER, . . . Lexington, Virginia.
16. 1893-94-THOMAS M. COOLEY, . . . Ann Arbor, Michigan.
17. 1894-95-JAMES C. CARTER, . . . New York, New York.

*Deceased.

CONSTITUTION.

NAME AND OBJECT.

ARTICLE I.—This Association shall be known as “THE AMERICAN BAR ASSOCIATION.” Its object shall be to advance the science of jurisprudence, promote the administration of justice and uniformity of legislation throughout the Union, uphold the honor of the profession of the law, and encourage cordial intercourse among the members of the American Bar.

QUALIFICATIONS FOR MEMBERSHIP.

ARTICLE II.—Any person shall be eligible to membership in this Association who shall be, and shall, for five years next preceding, have been a member in good standing of the Bar of any State, and who shall also be nominated as hereinafter provided.

OFFICERS AND COMMITTEES.

ARTICLE III.—The following officers shall be elected at each Annual Meeting for the year ensuing: A President (the same person shall not be elected President two years in succession); one Vice-President from each State; a Secretary; a Treasurer; a Council, consisting of one member from each State (the Council shall be a standing committee on nominations for office); an Executive Committee, which shall consist of the President, the last ex-President, the Secretary, and the Treasurer, all of whom shall be *ex officio* members, together with three other members, to be chosen by the Association; and

the President, and in his absence the ex-President, shall be the Chairman of the committee.

The following committees shall be annually appointed by the President for the year ensuing, and shall consist of five members each :

- On Jurisprudence and Law Reform ;
- On Judicial Administration and Remedial Procedure ;
- On Legal Education and Admissions to the Bar ;
- On Commercial Law ;
- On International Law ;
- On Publications ;
- On Grievances.

A majority of those members of any committee, including the Council, who may be present at any meeting of the Association, shall constitute a quorum of such committee for the purpose of such meeting.

The Vice-President for each State, and not less than two other members from such State, to be annually elected, shall constitute a Local Council for such State, to which shall be referred all applications for membership from such State. The Vice-President shall be, *ex officio*, Chairman of such Council.

A committee of three, of whom the Secretary shall always be one, shall be appointed by the President at each Annual Meeting of the Association, whose duty it shall be to report to the next meeting the names of all members who shall, in the interval, have died, with such notices of them as shall, in the discretion of the committee, be proper.

It shall be the duty of the Vice-President from each State and Territory to report the deaths of members within the same to the said committee.

ELECTION OF MEMBERS.

ARTICLE IV.—All nominations for membership shall be made by the Local Council of the State to the Bar of which

the persons nominated belong. Such nominations must be transmitted in writing to the Chairman of the General Council, and approved by the Council, on vote by ballot.

The General Council may also nominate members from States having no Local Council, and at the Annual Meeting of the Association, in the absence of all members of the Local Council of any State; *Provided*, That no nomination shall be considered by the General Council, unless accompanied by a statement in writing by at least three members of the Association from the same State with the person nominated, or, in their absence, by members from a neighboring State or States, to the effect that the person nominated has the qualifications required by the Constitution and desires to become a member of the Association, and recommending his admission as a member.

All nominations thus made or approved shall be reported by the Council to the Association, and all whose names are reported shall thereupon become members of the Association; *Provided*, That if any member demand a vote upon any name thus reported, the Association shall thereupon vote thereon by ballot.

Several nominees, if from the same State, may be voted for upon the same ballot; and in such case placing the word "No" against any name or names upon the ticket shall be deemed a negative vote against such name or names, and against those only. Five negative votes shall suffice to defeat an election.

During the period between the Annual Meetings, members may be elected by the Executive Committee upon the written nomination of a majority of the Vice-President and members of the Local Council of any State.

ARTICLE V.—All members of the Conference adopting the Constitution, and all persons elected by them upon the recommendation of the committee of five appointed by such Conference, shall become members of the Association upon payment of the annual dues for the current year herein provided for.

ARTICLE VI.—By-Laws may be adopted at any Annual Meeting of the Association by a majority of the members present. It shall be the duty of the Executive Committee, without delay, to adopt suitable By-Laws, which shall be in force until rescinded by the Association.

DUES.

ARTICLE VII.—Each member shall pay five dollars to the Treasurer as annual dues, and no person shall be qualified to exercise any privilege of membership who is in default. Such dues shall be payable, and the payment thereof enforced, as may be provided by the By-Laws. Members shall be entitled to receive all publications of the Association free of charge.

ANNUAL ADDRESS.

ARTICLE VIII.—The President shall open each Annual Meeting of the Association with an address, in which he shall communicate the most noteworthy changes in statute law on points of general interest made in the several States and by Congress during the preceding year. It shall be the duty of the member of the General Council from each State to report to the President, on or before the first day of May, annually, any such legislation in his State.

ANNUAL MEETINGS.

ARTICLE IX.—This Association shall meet annually, at such time and place as the Executive Committee may select, and those present at such meeting shall constitute a quorum.

AMENDMENTS.

ARTICLE X.—This Constitution may be altered or amended by a vote of three-fourths of the members present at any

Annual Meeting, but no such change shall be made at any meeting at which less than thirty members are present.

CONSTRUCTION.

ARTICLE XI.—The word “*State*,” whenever used in this Constitution, shall be deemed to be equivalent to *State, Territory*, and the *District of Columbia*.

BY-LAWS.

MEETING OF THE ASSOCIATION.

I.—The Executive Committee, at its first meeting after each Annual Meeting, shall select some person to make an address at the next Annual Meeting, and not exceeding six members of the Association to read papers.

II.—The order of exercises at the Annual Meeting shall be as follows :

- (a) Opening Address of the President.
- (b) Nominations and Election of Members.
- (c) Election of the General Council.
- (d) Reports of Secretary and Treasurer.
- (e) Report of Executive Committee.
- (f) Reports of Standing Committees :
 - On Jurisprudence and Law Reform ;
 - On Judicial Administration and Remedial Procedure ;
 - On Legal Education and Admissions to the Bar ;
 - On Commercial Law ;
 - On International Law ;
 - On Publications ;
 - On Grievances.
- (g) Reports of Special Committees.
- (h) The Nomination of Officers.
- (i) Miscellaneous Business.
- (j) The Election of Officers.

The address, to be delivered by a person invited by the Executive Committee, shall be made at the morning session of the second day of the Annual Meeting.

The reading and delivering of essays and papers shall be on the same day, or at such other time as the Executive Committee may determine.

III.—No person shall speak more than ten minutes at a time or more than twice on one subject.

A stenographer shall be employed at each Annual Meeting.

IV.—Each State Bar Association may annually appoint delegates, not exceeding three in number, to the next meeting of the Association. In States where no State Bar Association exists, any City or Country Bar Association may appoint such delegates not exceeding two in number. Such delegates shall be entitled to all the privileges of membership at and during the said meeting.

V.—At any of the meetings of the Association, members of the Bar of any foreign country or of any State who are not members of the Association may be admitted to the privileges of the floor during such meeting.

VI.—All papers read before the Association shall be lodged with the Secretary. The Annual Address of the President, the reports of committees, and all proceedings at the Annual Meeting shall be printed; but no other address made or paper read or presented shall be printed, except by order of the Committee on Publications.

Extra copies of reports, addresses, and papers read before the Association may be printed by the Committee on Publications for the use of their authors, not exceeding two hundred copies for each of such authors.

The Secretary and the Chairman of the Executive Committee shall endeavor to arrange with the Smithsonian Institution, or otherwise, a system of exchanges by which the *Transactions*

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can be annually exchanged with those of other associations in foreign countries interested in jurisprudence or governmental affairs; and the Secretary shall exchange the *Transactions* with those of the State and Local Bar Associations; and all books thus acquired shall be bound and deposited in the charge of the New York City Bar Association, subject to the call of this Association, if it ever desires to withdraw or consult them, if the former Association agrees to such deposit.

The Secretary shall send one copy of the Report of the proceedings of this Association to the President of the United States, and to each of the Judges of the Supreme Court thereof, and to the Library of the State Department, and of the Department of Justice thereof, and to the Library of Congress, and the Library of the Supreme Court thereof, and to the Governor, and to the Chief Judge of the court of last resort of each State, and to the State Librarian thereof, and to all public law libraries, and other principal public and college libraries in the United States, and to such other persons or bodies as the Executive Committee may direct.

No resolution complimentary to an officer or member for any service performed, paper read, or address delivered shall be considered by the Association.

OFFICERS AND COMMITTEES.

VII.—The terms of office of all officers elected at any Annual Meeting shall commence at the adjournment of such meeting, except the Council, whose term of office shall commence immediately upon their election.

VIII.—The President shall appoint all committees, except the Committee on Publications, within thirty days after the Annual Meeting, and shall announce them to the Secretary, and the Secretary shall promptly give notice to the persons appointed. The Committee on Publications shall be appointed on the first day of each meeting.

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IX.—The Treasurer's Report shall be examined and audited annually, before its presentation to the Association, by two members to be appointed by the Chairman of the Executive Committee.

X.—The Council and all standing committees shall meet on the day preceding each Annual Meeting, at the place where the same is to be held, at such hour as their respective Chairmen shall appoint. If at any Annual Meeting of the Association any member of any committee shall be absent, the vacancy may be filled by the members of the committee present.

The Secretary of the Association shall be the Secretary of the Council.

XI.—The Committee on Publications shall also meet within one month after each Annual Meeting, at such time and place as the Chairman shall appoint.

XII.—Special meetings of any committee shall be held at such times and places as the Chairman thereof may appoint. Reasonable notice shall be given by him to each member by mail.

The traveling and other necessary expenses incurred by any committee, standing or special, for meetings of such committee, during the interval between the Annual Meetings of the Association, shall be paid by the Treasurer, on the approval and by the order of the Executive Committee, out of such appropriation, as to the Executive Committee may seem necessary in each case, on previous application in advance of its expenditure.

All committees may have their reports printed by the Secretary before the Annual Meeting of the Association; and any such report, containing any recommendation for action on the part of the Association, shall be printed and shall be distributed by mail by the Secretary to all the members of the Association

at least fifteen days before the Annual Meeting at which such report is proposed to be submitted.*

It shall be the duty of each Vice-President and member of the General Council of this Association to endeavor to procure the enactment by the legislature of their State of each and every law recommended by the Association, and the Secretary shall furnish them with copies of each and every recommendation and draft of bill, when there shall be such draft; and whenever this Association shall by resolution recommend the enactment of any law or laws, the Secretary shall, as soon as possible, furnish a copy of the resolution to the President of each State Bar Association, with the request of this Association that such State Bar Association shall co-operate with the local Vice-President and member of the General Council of this Association in having a bill introduced in the legislature of its State containing the subject-matter recommended by such resolution, and use proper means to procure the enactment of the same into law. In every State where there is no State Bar Association, a copy of such resolution with a similar request, shall be sent to the President of the Bar Association of the principal city in such State; and in every instance where the form of bill has been recommended with the resolution, a copy of such form of bill shall also be sent with the resolution.

ANNUAL DUES.

XIII.—The Annual Dues shall be payable at the Annual Meeting in advance. If any member neglects to pay them for any year at or before the next Annual Meeting, he shall cease to be a member. The Treasurer shall give notice of this By-Law, within sixty days after each meeting, to all members in default.

*The following resolution was adopted on August 30, 1889:

"Resolved, That any standing or special committee hereafter reporting necessary legislation, shall prepare a bill embodying their views, for the approval of the Association.

A member who has been dropped from the roll for non-payment of dues may be restored to membership by the Executive Committee upon the payment of all back dues. *Provided*, such restoration shall be recommended by a member of the Local Council of his State, or in their absence, at an Annual Meeting, by any two members of the Association.

XIV.—(1.) A Section of the Association, to be known as the Section of Legal Education, is hereby established, which shall meet annually in connection with the Meeting of the Association, but not during such hours as the Association is in session.

(2.) Its object shall be the discussion of methods of Legal Education, and it may make recommendations to the Association, which shall be referred by the Association to the Committee on Legal Education.

(3.) The proceedings of the Section may be published from time to time, at the discretion of the Executive Committee, and on the recommendation of the Committee on Publications.

(4.) All members of the Association, who desire, may enroll themselves as members of the Section, and persons not eligible for membership in the Association, but who are engaged in teaching law, may be admitted to the privilege of the floor at any meeting of the Section, by vote of the Section.

(5.) The Section shall be organized by the appointment of a Chairman and Secretary, at its first session; and a Chairman and Secretary shall thereafter be elected annually by the Section.

(6.) A Section of the Association, to be known as the Section of Patent Law, is hereby established, which shall meet annually in connection with the meeting of the Association, but not during such hours as the Association is in session.

(7.) Its object shall be to discuss the subject of the law and practice relating to patents. It may report to the Association; and matters relating to patents may be referred to it.

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(8.) The proceedings of the Section may be published from time to time, at the discretion of the Executive Committee, and on the recommendation of the Committee on Publications.

(9.) All members of the Association, who desire, may enroll themselves as members of the Section.

(10.) The Section shall be organized by the appointment of a Chairman and Secretary by the Section, and a Chairman and Secretary shall be thereafter annually elected by the Section for the year commencing upon the final adjournment of its meeting.

OFFICERS.

1894-95.

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JAMES C. CARTER,

New York, New York.

SECRETARY,

JOHN HINKLEY,

215, North Charles Street, Baltimore, Maryland.

TREASURER,

FRANCIS RAWLE,

328, Chestnut Street, Philadelphia, Pennsylvania.

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EX OFFICIO.

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JOHN HINKLEY, SECRETARY.

FRANCIS RAWLE, TREASURER.

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1894—1895.

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WILLISTON, SAMUEL, ...	Boston, Mass.
WILLISTON, W. C., ...	Redwing, Minn.
WILLSON, AUGUSTUS E., ...	Louisville, Ky.
WILMER, SKIPWITH, ...	Baltimore, Md.
WILSON, CHARLES M., ...	Grand Rapids, Mich.
WILSON, F. A., ...	Bangor, Me.
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WILSON, JOHN R., ...	Indianapolis, Ind.

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WILTBANK, WILLIAM W., ...	Philadelphia, Pa.
WINDLE, WILLIAM S., ...	West Chester, Pa.
WINKLER, FREDERICK C., ...	Milwaukee, Wis.
WINTERNITZ, BENJAMIN A., ...	New Castle, Pa.
WISE, JOHN S., ...	New York, N. Y.
WISNER, HENRY C., ...	Detroit, Mich.
WITHINGTON, DAVID L., ...	San Diego, Cal.
WITHROW, JAMES E., ...	St. Louis, Mo.
WOLVERTON, SIMON P., ...	Sunbury, Pa.
WOODARD, CHARLES F., ...	Bangor, Me.
WOODMAN, EDWARD, ...	Portland, Me.
WOODRUFF, GEORGE M., ...	Litchfield, Conn.
WOODRUFF, ROBERT S., ...	Trenton, N. J.
WOODS, CHARLES A., ...	Marion, S. C.
WOODS, WILLIAM A., ...	Indianapolis, Ind.
WOOLSEY, THEO. S., ...	New Haven, Conn.
WOOLWORTH, JAMES M., ...	Omaha, Neb.
WORKS, JOHN D., ...	San Diego, Cal.
WRIGHT, BOYKIN, ...	Augusta, Ga.
WRIGHT, GEORGE G., ...	Des Moines, Ia.
WRIGHT, J. W., ...	Clark, S. D.
WYMAN, HENRY A., ...	Boston, Mass.
YOUNG, GEORGE B., ...	St. Paul, Minn.
YOUNG, GEORGE R., ...	Dayton, O.
YOUNG, HENRY E., ...	Charleston, S. C.

MEMBERS—AUGUST, 1894-1895.

ALABAMA.

CLAYTON, H. D.,	Eufaula.
HARGROVE, A. C.,	Tuscaloosa.
LONDON, ALEXANDER T.,	Birmingham.
MCCLELLAN, THOMAS N.,	Montgomery.
ROQUEMORE, JOHN D.,	Montgomery.
RUSSELL, EDWARD L.,	Mobile.
SANFORD, JOHN W. A.,	Montgomery.
SAYRE, T. SCOTT,	Montgomery.
SMITH, LUTHER R.,	Mt. Sterling.
TOMPKINS, HENRY C.,	Montgomery.
TROY, D. S.,	Montgomery.
WATTS, THOMAS H.,	Montgomery.
WILLETT, JOSEPH J.,	Anniston.

ARKANSAS.

CALDWELL, HENRY C.,	Little Rock.
COHN, M. M.,	Little Rock.
DUVAL, BENJAMIN T.,	Fort Smith.
HORNER, JOHN J.,	Helena.
ROSE, U. M.,	Little Rock.
THWEATT, P. O.,	Helena.

CALIFORNIA.

BOYCE, JOHN J.,	Santa Barbara.
CHICKERING, W. H.,	San Francisco.
FULLER, GEORGE,	San Diego.
GIBSON, JAMES A.,	San Diego.
HAYNE, ROBERT Y.,	San Francisco.
MONROE, CHARLES,	Los Angeles.
MCDONALD, J. WADE,	San Diego.
REDDING, JOSEPH D.,	San Francisco.
THOMPSON, SEYMOUR D.,	San Francisco.
TITUS, H. L.,	San Diego.
WHITE, STEPHEN M.,	Los Angeles.
WITHINGTON, DAVID L.,	San Diego.
WORKS, JOHN D.,	San Diego.

COLORADO.

BISSELL, J. B., ...	Denver.
BOAL, GEORGE J., ...	Denver.
BUTLER, HUGH, ...	Denver.
DECKER, WESTBROOK S., ...	Denver.
HALLETT, MOSES, ...	Denver.
HERRINGTON, CASS E., ...	Denver.
HOBSON, HENRY W., ...	Denver.
HUGHES, CHARLES J., JR., ...	Denver.
ROGERS, PLATT, ...	Denver.
TELLER, WILLARD, ...	Denver.

CONNECTICUT.

AUSTIN, LEVERETT N., ...	Hartford.
BALDWIN, SIMEON E., ...	New Haven.
BARTLETT, JOHN P., ...	New Britain.
BEERS, GEORGE E., ...	New Haven.
BREWSTER, LYMAN D., ...	Danbury.
BRISCOE, CHARLES H., ...	Hartford.
CLARK, JAMES GARDNER, ...	New Haven.
COLE, CHARLES J., ...	Hartford.
CONANT, GEORGE A., ...	Hartford.
CULVER, M. EUGENE, ...	Middletown.
CURTIS, JULIUS B., ...	Stamford.
EGGLESTON, ARTHUR F., ...	Hartford.
FENN, AUGUSTUS H., ...	Winchester.
FOX, TIMOTHY J., ...	New Haven.
GAGER, EDWIN B., ...	Birmingham.
GROSS, CHARLES E., ...	Hartford.
HALSEY, JEREMIAH, ...	Norwich.
HARRISON, LYNDE, ...	New Haven.
HURLBUTT, J. BELDEN, ...	Norwalk.
HYDE, WILLIAM W., ...	Hartford.
JENNINGS, JOHN J., ...	Bristol.
KELLOGG, STEPHEN W., ...	Waterbury.
KNAPP, HOWARD H., ...	Bridgeport.
MARKHAM, DANIEL A., ...	Hartford.
MITCHELL, CHARLES E., ...	New Britain.
MORRIS, DWIGHT, ...	Bridgeport.
RAYNOLDS, EDWARD V., ...	New Haven.
ROBBINS, EDWARD D., ...	Hartford.
ROBERTSON, A. HEATON, ...	New Haven.
ROBINSON, WILLIAM C., ...	New Haven.
ROGERS, EDWARD H., ...	New Haven.

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SCOFFIELD, EDWIN L., ...	Stamford.
SCOTT, HOWARD B., ...	Danbury.
SEARLES, CHARLES E., ...	Putnam.
SIMONDS, W. E., ...	Hartford.
STANTON, LEWIS E., ...	Hartford.
TERRY, GEORGE E., ...	Waterbury.
TOWNSEND, WILLIAM K., ...	New Haven.
TYLER, MORRIS F., ...	New Haven.
WARNER, DONALD T., ...	Salisbury.
WATROUS, GEORGE D., ...	New Haven.
WAYLAND, FRANCIS, ...	New Haven.
WELCH, GIDEON H., ...	Torrington.
WHEELER, GEORGE W., ...	Bridgeport.
WHITE, HENRY C., ...	New Haven.
WILCOX, W. F., ...	Deep River.
WOODRUFF, GEORGE M., ...	Litchfield.
WOOLSEY, THEO. S., ...	New Haven.

DELAWARE.

BATES, GEORGE H., ...	Wilmington.
BAYARD, THOMAS F., ...	Wilmington.
BRADFORD, EDWARD G., ...	Wilmington.
GARLAND, SPOTTSWOOD, ...	Wilmington.
GRAY, GEORGE, ...	Wilmington.
GRUBB, IGNATIUS C., ...	Wilmington.
HIGGINS, ANTHONY, ...	Wilmington.
HILLES, WILLIAM S., ...	Wilmington.
LOBE, CHARLES B., ...	Wilmington.
NICHOLSON, JOHN R., ...	Dover.
SAULSBURY, WILLARD, ...	Wilmington.
WALE, LEONARD E., ...	Wilmington.

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BOND, S. R., ...	Washington.
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MORSE, A. PORTER, ...	Washington.
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MURPHY, D. F., ...	Washington.
MCCAMMON, JOSEPH K., ...	Washington.
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WILSON, NATHANIEL, ...	Washington.

FLORIDA.

BLOUNT, WILLIAM A., ...	Pensacola.
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CHARLTON, WALTER G., ...	Savannah.
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ERWIN, R. G., ...	Savannah.
FALLIGANT, ROBERT, ...	Savannah.
GARRARD, WILLIAM, ...	Savannah.
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HILL, WALTER B., ...	Macon.
JACKSON, HENRY, ...	Atlanta.
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LAWTON, ALEXANDER R., JR., ...	Savannah.
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MERCER, GEORGE A., ...	Savannah.
MILLER, FRANK H., ...	Augusta.
MILLER, WILLIAM K., ...	Augusta.
NEWMAN, EMILE, ...	Savannah.
OWENS, GEORGE W., ...	Savannah.
REESE, WILLIAM M., ...	Washington.
SMITH, BURTON, ...	Atlanta.
SMITH, HOKE, ...	Atlanta.
THOMAS, GEORGE DUDLEY, ...	Athens.
TOMPKINS, HENRY B., ...	Atlanta.
WRIGHT, BOYKIN, ...	Augusta.

IDAHO.

GREGORY, HENRY STUART, ...	Wallace.

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CASS, GEORGE W., ...	Chicago.
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CRAWFORD, ANDREW, ...	Chicago.
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EASTMAN, SIDNEY C., ...	Chicago.
ENNIS, ALFRED, ...	Chicago.
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KOERNER, GUSTAVE, ...	Belleville.
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LACKNER, FRANCIS, ...	Chicago.

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MOSES, ADOLPH, ...	Chicago.
PALMER, JOHN M., ...	Springfield.
PAYNE, JOHN BARTON, ...	Chicago.
PECK, GEORGE R., ...	Chicago.
POLLASKY, MARCUS, ...	Chicago.
PRUSSING, EUGENE E., ...	Chicago.
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REMY, CURTIS H., ...	Chicago.
RICHBERG, JOHN C., ...	Chicago.
RINAKER, JOHN I., ...	Carlinville.
ROGERS, HENRY WADE, ...	Evanston.
ROSENTHAL, JULIUS, ...	Chicago.
RUNNELLS, JOHN S., ...	Chicago.
SHERMAN, E. B., ...	Chicago.
SMITH, EDWIN BURRITT, ...	Chicago.
SMITH, FRANK J., ...	Chicago.
STARR, JUDSON, ...	Peoria.
TENNY, DANIEL K., ...	Chicago.
THOMAN, LEROY D., ...	Chicago.
TRUMBULL, LYMAN, ...	Chicago.
TUTHILL, RICHARD S., ...	Chicago.
ULLMAN, FREDERIC, ...	Chicago.
VARNUM, CLARK, ...	Chicago.
VOCKE, WILLIAM, ...	Chicago.
WEGG, DAVID S., ...	Chicago.
WIGMORE, JOHN H., ...	Evanston.
WILE, DAVID J., ...	Chicago.
WILLARD, GEORGE, ...	Chicago.

INDIAN TERRITORY.

McLOUD, J. W., ...	South McAlester.
SOPER, P. L., ...	Muskogee.

INDIANA.

BROWN, EDGAR A., ...	Indianapolis.
BUTLER, JOHN M., ...	Indianapolis.
BUTLER JOHN MAURICE, ...	Indianapolis.
BUTLER, NOBLE C., ...	Indianapolis.
DUNCAN, JOHN S., ...	Indianapolis.
ELLIOTT, BYRON K., ...	Indianapolis.

INDIANA.—Continued.

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FAIRBANKS, CHAS. W., ...	Indianapolis.
FISHBACK, W. P., ...	Indianapolis.
FREY, PHILIP W., ...	Evansville.
HARRISON, BENJAMIN, ...	Indianapolis.
JAMESON, OVID B., ...	Indianapolis.
KERN, JOHN W., ...	Indianapolis.
MOORES, MERRILL, ...	Indianapolis.
MORRIS, NATHAN, ...	Indianapolis.
PICKINS, SAMUEL O., ...	Indianapolis.
SAYLER, HENRY B., ...	Huntington.
SAYLER, SAMUEL M., ...	Huntington.
SMITH, CHARLES W., ...	Indianapolis.
SNOW, ALPHEUS H., ...	Indianapolis.
STUART, CHARLES B., ...	Lafayette.
TAYLOR, R. S., ...	Fort Wayne.
WILSON, JOHN R., ...	Indianapolis.
WOODS, WILLIAM A., ...	Indianapolis.

IOWA.

CLIGGETT, JOHN, ...	Mason City.
CUMMINS, A. B., ...	Des Moines.
DANIELS, FRANCIS B., ...	Dubuque.
DEERY, JOHN, ...	Dubuque.
DUNCOMBE, JOHN F., ...	Fort Dodge.
GUERNSEY, NATHANIEL T., ...	Des Moines.
MARKLEY, J. E. E., ...	Mason City.
MOFFIT, JOHN T., ...	Tipton.
MCCARTHY, J. J., ...	Dubuque.
MCCLAIN, EMLIN, ...	Iowa City.
MCCONLOGUE, JAMES H., ...	Mason City.
MCCRARY, A. J., ...	Keokuk.
SHIRAS, OLIVER P., ...	Dubuque.
WADE, M. J., ...	Iowa City.
WEAVER, H. O., ...	Wapello.
WRIGHT, GEORGE G., ...	Des Moines.

KANSAS.

DILLON, HIRAM P., ...	Topeka.
GARVER, T. F., ...	Salina.
GILLPATRICK, J. H., ...	Leavenworth.
GLEED, CHARLES S., ...	Topeka.
MILLIKEN, JOHN D., ...	McPherson.
NICHOLSON, M. B., ...	Council Grove.

KANSAS.—Continued.

PERRY, WILLIAM C., ...	Fort Scott.
SMITH, CHARLES B., ...	Topeka.
WAGGENER, BALIE P., ...	Atchison.

KENTUCKY.

BUCKNER, B. F., ...	Louisville.
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GOEBEL, WILLIAM, ...	Covington.
HENDRICK, W. J., ...	Frankfort.
MORTON, J. R., ...	Lexington.
PIRTLE, JAMES S., ...	Louisville.
SCOTT, C. SUYDAM, ...	Lexington.
STONE, HENRY L., ...	Louisville.
SUDDUTH, W. A., ...	Louisville.
TEABUE, E. F., ...	Louisville.
WILLSON, AUGUSTUS E., ...	Louisville.

LOUISIANA.

ALEXANDER, TALIAFERRO, ...	Shreveport.
BENEDICT, W. S., ...	New Orleans.
BREAUX, G. A., ...	New Orleans.
BRICE, ALBERT G., ...	New Orleans.
BRYAN, H. H., ...	New Orleans.
DART, HENRY P., ...	New Orleans.
DENÈGRE, GEORGE, ...	New Orleans.
DENÈGRE, WALTER D., ...	New Orleans.
FARRAR, EDGAR H., ...	New Orleans.
FORMAN, BENJAMIN RICE, ...	New Orleans.
HALL, HARRY H., ...	New Orleans.
HART, W. O., ...	New Orleans.
HOWE, WILLIAM WIRT, ...	New Orleans.
HUNT, CARLETON, ...	New Orleans.
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LEGÈNDRE, JAMES, ...	New Orleans.
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MERRICK, EDWIN T., ...	New Orleans.
MERRICK, EDWIN T., JR., ...	New Orleans.
MCCALEB, E. HOWARD, ...	New Orleans.
MCCLOSKEY, BERNARD, ...	New Orleans.
POCHÉ, F. P., ...	New Orleans.
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DREW, FRANKLIN M., ...	Lewiston.
EMERY, LUCILLIUS A., ...	Ellsworth.
HALE, CLARENCE, ...	Portland.
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HASKELL, THOMAS H., ...	Portland.
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LOCKE, JOSEPH A., ...	Portland.
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STROUT, A. A., ...	Portland.
STROUT, SEWALL C., ...	Portland.
SYMONDS, JOSEPH W., ...	Portland.
WILSON, F. A., ...	Bangor.
WOODARD, CHARLES F., ...	Bangor.
WOODMAN, EDWARD, ...	Portland.

MARYLAND.

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ALEXANDER, JULIAN J., ...	Baltimore.
BAER, THOMAS S., ...	Baltimore.
BERNARD, RICHARD, ...	Baltimore.
BONAPARTE, CHARLES J., ...	Baltimore.
BRANTLY, WILLIAM T., ...	Baltimore.
BRYANT, HOWARD, ...	Baltimore.
CAMPBELL, WILLIAM F., ...	Baltimore.
COWEN, JOHN K., ...	Baltimore.
CROSE, E. J. D., ...	Baltimore.
DONALDSON, JOHN J., ...	Baltimore.
FISHER, WILLIAM A., ...	Baltimore.
GANS, EDGAR H., ...	Baltimore.
GREGG, MAURICE, ...	Baltimore.
HALL, THOMAS W., ...	Baltimore.
HARLAN, HENRY D., ...	Baltimore.
HINKLEY, EDWARD OTIS, ...	Baltimore.
HINKLEY, JOHN, ...	Baltimore.
HUGHES, THOMAS, ...	Baltimore.
KNOTT, A. LEO, ...	Baltimore.
MARBURY, WILLIAM L., ...	Baltimore.

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MASON, JOHN T. (JOHN T. MASON, B.).	Baltimore.
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MULLIN, MICHAEL A., ...	Baltimore.
MUNNIKHUYSEN, HOWARD, ...	Baltimore.
PHELPS, CHARLES E., ...	Baltimore.
ROGERS, ROBERT LYON, ...	Baltimore.
SHARP, GEORGE M., ...	Baltimore.
SMITH, EDWIN HARVIE, ...	Baltimore.
STUART, ARTHUR, ...	Baltimore.
STOCKBRIDGE, HENRY, ...	Baltimore.
STOCKETT, J. SHAAFF, ...	Annapolis.
VENABLE, RICHARD M., ...	Baltimore.
WATERS, J. S. T., ...	Baltimore.
WHITELOCK, GEORGE, ...	Baltimore.
WILMER, SKIPWITH, ...	Baltimore.

MASSACHUSETTS.

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ALLEN, FRANK D., ...	Boston.
ALLEN, HORACE G., ...	Boston.
ALLEN, M. T., ...	Boston.
AMES, JAMES BARR, ...	Cambridge.
ANDERSON, GEORGE W., ...	Boston.
APPLETON, JOHN H., ...	Boston.
BANCROFT, SOLON, ...	Boston.
BEALE, JOSEPH HENRY, ...	Cambridge.
BELL, C. U., ...	Lawrence.
BENNETT, EDMUND H., ...	Taunton.
BENNETT, S. C., ...	Boston.
BIGELOW, MELVILLE M., ...	Boston.
BRANDEIS, LOUIS D., ...	Boston.
BROOKS, FRANCIS A., ...	Boston.
BULLOCK, A. G., ...	Worcester.
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BURNS, GEORGE J., ...	Ayer.
CARVER, EUGENE P., ...	Boston.
CHAMPLIN, EDGAR R., ...	Boston.
CHANDLER, ALFRED D., ...	Boston.
CLARK, I. R., ...	Boston.
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MASSACHUSETTS.—Continued.

CLARKE, T. W., ...	Boston.
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CONANT, ERNEST LEE, ...	Cambridge.
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COPELAND, ALFRED M., ...	Springfield.
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COTTER, JAMES E., ...	Boston.
CRAPO, WILLIAM W., ...	New Bedford.
CROCKEE, GEORGE G., ...	Boston.
CUNNINGHAM, FREDERIC, ...	Boston.
DABNEY, L. S., ...	Boston.
DANA, WILLIAM S., ...	Turner's Falls.
DAVIS, JOHN, ...	Lowell.
DAVIS, SIMON, ...	Boston.
DEAN, BENJAMIN, ...	South Boston.
DICKINSON, M. F., JR., ...	Boston.
DILLAWAY, W. E. L., ...	Boston.
DODGE, FREDERIC, ...	Boston.
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ELDER, SAMUEL J., ...	Boston.
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ENDICOTT, WM. C., ...	Salem.
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ESTABROOK, GEORGE W., ...	Boston.
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FALL, GEORGE HOWARD, ...	Boston.
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FOSTER, ALFRED D., ...	Boston.
FOSTER, REGINALD, ...	Boston.
FRENCH, WILLIAM B., ...	Boston.
FULLER, HORACE W., ...	Boston.
GALLAGHER, CHARLES T., ...	Boston.
GARGAN, THOMAS J., ...	Boston.
GOODWIN, FRANK, ...	Boston.
GRAY, JOHN C., ...	Boston.
HALE, GEORGE S., ...	Boston.
HALL, BORDMAN, ...	Boston.
HAMMOND, JOHN C., ...	Northampton.
HEMENWAY, ALFRED, ...	Boston.
HEMENWAY, GEORGE L., ...	Hopkinton.
HESELDTINE, FRANCIS S., ...	Boston.
HILTON, G. ARTHUR, ...	Boston.

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 MASSACHUSETTS.—Continued.

HOOPER, ARTHUR W., ...	Boston.
HOPKINS, W. S. B., ...	Worcester.
HOWE, ELMER P., ...	Boston.
HUNT, FREEMAN, ...	Boston.
HURLBUTT, HENRY F., ...	Lynn.
JENNINGS, ANDREW J., ...	Fall River.
JOHNSON, BENJAMIN N., ...	Boston.
JONES, LEONARD A., ...	Boston.
KEITH, IRA B., ...	Lynn.
KELLEN, WILLIAM V., ...	Boston.
KENNEDY, JOHN C., ...	Boston.
LADD, BABSON S., ...	Boston.
LADD, NATH. W., ...	Boston.
LAMB, SAMUEL O., ...	Greenfield.
LONG, JOHN D., ...	Boston.
LOWELL, JOHN, ...	Boston.
MARSHALL, JOSHUA N., ...	Lowell.
MAXWELL, J. AUDLEY, ...	Boston.
MORSE, GODFREY, ...	Boston.
MORSE, ROBERT M., ...	Boston.
MUNROE, WILLIAM A., ...	Boston.
MYERS, JAMES J., ...	Boston.
McEVoy, JOHN W., ...	Lowell.
McINTIRE, CHARLES J., ...	Cambridge.
PARKER, EDMUND M., ...	Boston.
PAUL, FRANK, ...	Boston.
PAYSON, EDWARD P., ...	Boston.
PILLSBURY, ALBERT E., ...	Boston.
PROCTOR, THOMAS W., ...	Boston.
PUTNAM, HENRY W., ...	Boston.
RANNEY, FLETCHER, ...	Boston.
RENO, CONRAD, ...	Boston.
RICHARDSON, GEORGE F., ...	Lowell.
RICHARDSON, JAMES B., ...	Boston.
RICHARDSON, W. K., ...	Boston.
ROBERTS, GEORGE L., ...	Boston.
ROBERTS, J. L. S., ...	Boston.
RUSSELL, CHARLES T., Jr., ...	Cambridge.
RUSSELL, WILLIAM G., ...	Boston.
SAWYER, ALFRED P., ...	Lowell.
SCAIFE, LAURISTON L., ...	Boston.
SCHOFIELD, WILLIAM, ...	Boston.
SEARS, PHILIP H., ...	Boston.
SHATTUCK, GEORGE O., ...	Boston.

MASSACHUSETTS.—Continued.

SHEPARD, HARVEY N., ...	Boston.
SMITH, HENRY HYDE, ...	Boston.
SMITH, JEREMIAH, ...	Cambridge.
SMITH, JOSEPH R., ...	Boston.
STIMSON, FREDERIC J., ...	Boston.
STOREY, MOORFIELD, ...	Boston.
STORROW, JAMES J., ...	Boston.
STORROW, JAMES J., JR., ...	Boston.
SWAN, CHARLES H., ...	Boston.
SWAN, WILLIAM W., ...	Boston.
SWASEY, GEORGE R., ...	Boston.
TEELE, JOHN OSCAR, ...	Boston.
THAYER, JAMES BRADLEY, ...	Cambridge.
THOMAS, SETH J., ...	Boston.
TUCKER, GEORGE F., ...	Boston.
TURNER, WILLIAM D., ...	Boston.
TYLER, CHARLES H., ...	Boston.
WAMBAUGH, EUGENE, ...	Cambridge.
WARE, DARWIN E., ...	Boston.
WARREN, SAMUEL D., ...	Boston.
WELLMAN, ARTHUR H., ...	Boston.
WELLS, SAMUEL, ...	Boston.
WENTWORTH, ALONZO B., ...	Dedham.
WESTON, MELVILLE M., ...	Boston.
WESTON-SMITH, R. D., ...	Boston.
WHEELER, CHARLES, ...	Boston.
WHITE, GEORGE, ...	Boston.
WHITE, LUTHER, ...	Chicopee.
WILLIAMS, DAVID W., ...	Boston.
WILLISTON, SAMUEL, ...	Boston.
WYMAN, HENRY A., ...	Boston.

MICHIGAN.

BAKER, HERBERT L., ...	Detroit.
BALDWIN, AUGUSTUS C., ...	Pontiac.
BALL, DAN. H., ...	Marquette.
BARRY, EDMUND D., ...	Grand Rapids.
BATES, GEORGE W., ...	Detroit.
CHADBOURNE, THOMAS L., ...	Houghton.
CHAMPLIN, JOHN W., ...	Grand Rapids.
CONELY, EDWIN F., ...	Detroit.
CONELY, JOHN D., ...	Detroit.
COOLEY, THOMAS M., ...	Ann Arbor.
CUTCHEON, SULLIVAN M., ...	Detroit.
DICKINSON, DON M., ...	Detroit.

MICHIGAN.—Continued.

DUFFIELD, HENRY M., ...	Detroit.
FITZGERALD, JOHN C., ...	Grand Rapids.
FLETCHER, NIRAM A., ...	Grand Rapids.
GRIFFIN, LEVI T., ...	Detroit.
HOEMER, GEORGE S., ...	Detroit.
KEENEY, WILLARD F., ...	Grand Rapids.
KENT, CHARLES A., ...	Detroit.
KNOWLTON, JEROME C., ...	Ann Arbor.
LOTHROP, GEORGE H., ...	Detroit.
MEDDAUGH, ELIJAH W., ...	Detroit.
MCGARY, THOMAS F., ...	Grand Rapids.
O'BRIEN, THOMAS J., ...	Grand Rapids.
PENDLETON, EDWARD W., ...	Detroit.
RUSSELL, ALFRED, ...	Detroit.
RUSSELL, W. H. H., ...	Detroit.
TAGGART, EDWARD, ...	Grand Rapids.
WANTY, GEORGE P., ...	Grand Rapids.
WEADOCK, THOMAS A. E., ...	Bay City.
WILSON, CHARLES M., ...	Grand Rapids.
WISNER, HENRY C., ...	Detroit.

MINNESOTA.

BACON, SELDEN, ...	Minneapolis.
COHEN, EMANUEL, ...	Minneapolis.
ELLIOTT, CHARLES B., ...	Minneapolis.
ENSIGN, JOSIAH D., ...	Duluth.
FLANDRAU, CHARLES E., ...	St. Paul.
HAHN, WILLIAM J., ...	Minneapolis.
HAMMONS, EVERETT, ...	Anoka.
PATTEE, W. S., ...	Minneapolis.
SANBORN, JOHN B., ...	St. Paul.
SANBORN, WALTER H., ...	St. Paul.
SHAW, JOHN M., ...	Minneapolis.
STEVENS, HIRAM F., ...	St. Paul.
WHELAN, RALPH, ...	Minneapolis.
WILLISTON, W. C., ...	Redwing.
YOUNG, GEORGE B., ...	St. Paul.

MISSISSIPPI.

BOWERS, E. J., ...	Bay St. Louis.
HILL, R. A., ...	Oxford.
HOWRY, CHARLES B., ...	Oxford.
MONTGOMERY, M. A., ...	Oxford.
SULLIVAN, W. V., ...	Oxford.
THOMPSON, R. H., ...	Brookhaven.

MISSOURI.

ADAMS, E. B., ...	St. Louis.
ALLEN, CHARLES CLAFLIN, ...	St. Louis.
ASHLEY, HENRY D., ...	Kansas City.
BAKEWELL, PAUL, ...	St. Louis.
BARCLAY, SHEPARD, ...	Jefferson City.
BLAIR, JAMES L., ...	St. Louis.
BROADHEAD, JAMES O., ...	St. Louis.
CHRISTIE, HARVEY L., ...	St. Louis.
COCHRAN, ALEXANDER G., ...	St. Louis.
COSTE, PAUL F., ...	St. Louis.
DOBSON, CHARLES L., ...	Kansas City.
DONALDSON, WILLIAM R., ...	St. Louis.
DOUGLAS, WALTER B., ...	St. Louis.
FINKELNBURG, G. A., ...	St. Louis.
FISSE, WILLIAM E., ...	St. Louis.
FOWLER, A. C., ...	St. Louis.
GANTT, JAMES B., ...	Jefferson City.
HAGERMAN, FRANK, ...	Kansas City.
HAGERMAN, JAMES, ...	Kansas City.
HARKLESS, JAMES H., ...	Kansas City.
HITCHCOCK, HENRY, ...	St. Louis.
JOHNSON, JOHN D., ...	St. Louis.
JUDSON, FREDERICK N., ...	St. Louis.
KARNES, J. V. C., ...	Kansas City.
KEHR, EDWARD C., ...	St. Louis.
KENNA, EDWARD D., ...	St. Louis.
KNIGHT, GEORGE H., ...	St. Louis.
KRAUTHOFF, L. C., ...	Kansas City.
LATHROP, GARDINER, ...	Kansas City.
LAWSON, JOHN D., ...	Columbia.
LEWIS, JAMES M., ...	St. Louis.
LIONBERGER, ISAAC H., ...	St. Louis.
MADILL, GEORGE A., ...	St. Louis.
MCKEIGHAN, JOHN E., ...	St. Louis.
NAGEL, CHARLES, ...	St. Louis.
NOBLE, JOHN W., ...	St. Louis.
OTTOFY, L. FRANK, ...	St. Louis.
PRATT, WALLACE, ...	Kansas City.
SHERWOOD, ADIEL, ...	St. Louis.
SPENCER, SELDEN P., ...	St. Louis.
TAUSSIG, CHARLES S., ...	St. Louis.
TAUSSIG, JAMES, ...	St. Louis.
THOMAS, JOHN L., (Washington, D. C.), ...	De Soto.
WITHROW, JAMES E., ...	St. Louis.

MONTANA.

SANDERS, JAMES U., ...	Helena.
SANDERS, WILBUR F., ...	Helena.

NEBRASKA.

AMES, JOHN H., ...	Lincoln.
COWIN, J. C., ...	Omaha.
GREENE, CHARLES J., ...	Omaha.
HARWOOD, N. S., ...	Lincoln.
MANDERSON, CHARLES F., ...	Omaha.
PATRICK, ROBERT W., ...	Omaha.
WEBSTER, JOHN L., ...	Omaha.
WILSON, HENRY H., ...	Lincoln.
WOOLWORTH, JAMES M., ...	Omaha.

NEW HAMPSHIRE.

ALBIN, JOHN H., ...	Concord.
ATHERTON, HENRY B., ...	Nashua.
BAILEY, WILLIAM W., ...	Nashua.
BATCHELDER, CHARLES E., ...	Portsmouth.
BINGHAM, HARRY, ...	Littleton.
BURNHAM, HENRY E., ...	Manchester.
BURNS, CHARLES H., ...	Wilton.
COLBY, JAMES F., ...	Hanover.
CROSS, DAVID, ...	Manchester.
EASTMAN, SAMUEL C., ...	Concord.
FELLOWS, JOSEPH W., ...	Manchester.
HOITT, C. W., ...	Nashua.
PARSONS, FRANK N., ...	Franklin.
SPRING, JOHN L., ...	Lebanon.
STREETER, FRANK S., ...	Concord.

NEW JERSEY.

ALLEN, ROBERT, JR., ...	Red Bank.
APPLEGATE, JOHN S., ...	Red Bank.
BORCHERLING, CHARLES, ...	Newark.
BUCHANAN, JAMES, ...	Trenton.
COLIE, EDWARD M., ...	Newark.
DICKINSON, S. MEREDITH, ...	Trenton.
FLEMMING, JAMES, ...	Jersey City.
GARRETSON, A. Q., ...	Jersey City.
GOBLE, L. SPENCER, ...	Newark.
GRANT, ALEXANDER, JR., ...	Newark.
GREY, SAMUEL H., ...	Camden.

NEW JERSEY.—Continued.

KEASBEY, ANTHONY Q., ...	Newark.
KEASBEY, EDWARD Q., ...	Newark.
MCCARTER, THOMAS N., ...	Newark.
MCGRATH, JOHN A., ...	Jersey City.
PARKER, CORTLANDT, ...	Newark.
PARKER, R. WAYNE, ...	Newark.
RANDOLPH, JOSEPH F., ...	Jersey City.
TERRELL, WILLIAM J., ...	Burlington.
VREDENBURGH, JAMES B., ...	Jersey City.
VREDENBURGH, WILLIAM H., ...	Freehold.
VROOM, GARRET D. W., ...	Trenton.
WEART, JACOB, ...	Jersey City.
WEEKS, WILLIAM R., ...	Newark.
WILSON, WOODROW, ...	Princeton.
WOODRUFF, ROBERT S., ...	Trenton.

NEW YORK.

ABBOT, EVERETT V., ...	New York.
ABBOTT, AUSTIN, ...	New York.
AVERY, FRANK C., ...	New York.
BAKER, ASHLEY D. L., ...	Gloversville.
BEACH, CHARLES F., JR., ...	New York.
BELL, CLARK, ...	New York.
BENEDICT, ROBERT D., ...	New York.
BISCHOFF, HENRY, JR., ...	New York.
BONNEY, GEORGE B., ...	New York.
BRIGGS, JAMES E., ...	Rochester.
BRISTOW, BENJAMIN H., ...	New York.
BROWN, ADDISON, ...	New York.
BRUNO, RICHARD M., ...	New York.
BULLARD, E. F., ...	Saratoga Springs.
BURDICK, FRANCIS M., ...	New York.
BURNETT, HENRY L., ...	New York.
BUTLER, CHARLES, ...	New York.
BUTLER, CHARLES HENRY, ...	New York.
BUTLER, WILLIAM ALLEN, ...	New York.
BUTLER, WILLIAM ALLEN, JR., ...	New York.
CALVIN, DELANO C., ...	New York.
CARTER, JAMES C., ...	New York.
CHAMBERLAIN, D. H., ...	New York.
CHASE, GEORGE, ...	New York.
CLARK, THOMAS ALLEN, ...	Albany.
CLINTON, HENRY L., ...	New York.

NEW YORK.—Continued.

COLLIER, M. DWIGHT, ...	New York.
COOK, WILLIAM W., ...	New York.
CUMING, JAMES R., ...	New York.
CUMMING, GEORGE M., ...	New York.
DAVISON, CHARLES A., ...	New York.
DESTY, ROBERT, ...	Rochester.
DILLON, JOHN F., ...	New York.
DOS PASSOS, JOHN R., ...	New York.
DOTY, SPENCER C., ...	New York.
DOUGHERTY, J. HAMPDEN, ...	New York.
DOYLE, LOUIS F., ...	New York.
DYER, RICHARD N., ...	New York.
EATON, SHERBURNE B., ...	New York.
ERWIN, FRANK A., ...	New York.
EVANS, THOMAS G., ...	New York.
EVARTS, WILLIAM M., ...	New York.
FEARONS, GEORGE H., ...	New York.
FIERO, J. NEWTON, ...	Albany.
FLEISCHMANN, SIMON, ...	Buffalo.
FORBES, FRANCIS, ...	New York.
FOSTER, ROGER, ...	New York.
FOX, AUSTEN G., ...	New York.
GOODHART, MORRIS, ...	New York.
GRINNELL, W. MORTON, ...	New York.
HAWKESWORTH, R. W., ...	New York.
HERENDEN, EDWARD G., ...	Elmira.
HOADLY, GEORGE, ...	New York.
HOLT, GEORGE C., ...	New York.
HORNBLOWER, WILLIAM B., ...	New York.
HOUSTON, WILLIAM T., ...	New York.
HUBBARD, THOMAS H., ...	New York.
INGALSBE, GRENVILLE M., ...	Sandy Hill.
ISAACS, M. S., ...	New York.
JOHNSON, EDGAR M., ...	New York.
JOLINE, ADRIAN H., ...	New York.
KEENER, WILLIAM A., ...	New York.
KENYON, WILLIAM H., ...	New York.
KIDDLE, ALFRED W., ...	New York.
KIRCHEWAY, GEORGE W., ...	New York.
KNIGHT, HERBERT, ...	New York.
LAMBERTON, C. L., ...	New York.
LEAVITT, JOHN BROOKS, ...	New York.
LEWIS, CHARLTON T., ...	New York.
LOGAN, WALTER S., ...	New York.

NEW YORK.—Continued.

MACFARLAND, W. W., ...	New York.
MILNOR, M. CLEILAND, ...	New York.
MOORE, JOHN B., ...	New York.
MOOT, ADELBERT, ...	Buffalo.
MORGAN, ROLLIN M., ...	New York.
MORSE, WALDO G., ...	New York.
MYERS, NATHANIEL, ...	New York.
MCCOOK, JOHN J., ...	New York.
NASH, STEPHEN P., ...	New York.
NICHOLS, GEORGE L., ...	New York.
NICOLL, DELANCEY, ...	New York.
OLMSTEAD, DWIGHT H., ...	New York.
OPDYKE, WILLIAM S., ...	New York.
O'REILLY, PHILIP J., ...	New York.
PARMENTER, ROSWELL A., ...	Troy.
PEABODY, CHARLES A., ...	New York.
PETTY, ROBERT D., ...	New York.
PIERCE, WINSLOW S., ...	New York.
POTTER, FREDERICK, ...	New York.
PRIME, RALPH E., ...	Yonkers.
PRYOR, ROGER A., ...	New York.
REDDING, WILLIAM A., ...	New York.
REEVES, ALFRED G., ...	New York.
ROBERTSON, WILLIAM H., ...	Katonah.
ROGERS, SHERMAN S., ...	Buffalo.
ROPES, CHARLES H., ...	New York.
RUSSELL, ISAAC F., ...	New York.
SEWELL, ROBERT, ...	New York.
SHACK, FERDINAND, ...	New York.
SMITH, FRANK C., ...	New York.
SMITH, NELSON, ...	New York.
SPEIR, GILBERT M., JR., ...	New York.
SPRAGUE, E. C., ...	Buffalo.
STERNE, SIMON, ...	New York.
STICKNEY, ALBERT, ...	New York.
STILES, SOMNER B., ...	New York.
STILLMAN, THOMAS E., ...	New York.
TAGGART, RUSH, ...	New York.
TAYLOR, JOHN D., ...	New York.
TIEDEMAN, CHRISTOPHER G., ...	Brooklyn.
TOMPKINS, HAMILTON B., ...	New York.
TURNER, HERBERT B., ...	New York.
VAN SLYCK, GEORGE W., ...	New York.
VAN VECHTEN, A. V. W., ...	New York.

NEW YORK.—Continued.

VIEU, HENRY A., ...	New York.
WARD, HENRY GALBRAITH, ...	New York.
WARD, JOHN E., ...	New York.
WETMORE, EDMUND, ...	New York.
WHEELER, EVERETT P., ...	New York.
WHITTAKER, EGBERT, ...	Saugerties.
WILCOX, ANSLEY, ...	Buffalo.
WILDS, HOWARD PAYSON, ...	New York.
WISE, JOHN S., ...	New York.

NORTH CAROLINA.

BRIDGERS, JOHN L., ...	Tarboro.

NORTH DAKOTA.

CORBET, BURKE, ...	Grand Forks.
NEWTON, GEORGE W., ...	Bismarck.

OHIO.

BALDWIN, CHARLES C., ...	Cleveland.
BURKET, JACOB F., ...	Findlay.
COLSTON, EDWARD, ...	Cincinnati.
COON, JOHN, ...	Cleveland.
DOYLE, JOHN H., ...	Toledo.
FERGUSON, E. A., ...	Cincinnati.
FERRIS, AARON A., ...	Cincinnati.
FISHER, ELAM, ...	Eaton.
FITCH, EDWARD H., ...	Jefferson.
FOLLETT, MARTIN D., ...	Marietta.
GOULDER, HARVEY D., ...	Cleveland.
GREEN, EDWIN P., ...	Akron.
GUNCKEL, LEWIS B., ...	Dayton.
HALL, JOHN J., ...	Akron.
HARRIS, STEPHEN R., ...	Bucyrus.
HARRISON, RICHARD A., ...	Columbus.
HOYT, JAMES H., ...	Cleveland.
HUNT, SAMUEL F., ...	Cincinnati.
JONES, ASAHEL W., ...	Youngstown.
KENNON, NEWELL K., ...	St. Clairsville.
MACKOY, WILLIAM H., ...	Cincinnati.
MATTHEWS, C. BENTLEY, ...	Cincinnati.
MAXWELL, LAWRENCE, JR., ...	Cincinnati.
MUNSON, GILBERT D., ...	Zanesville.

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OHIO.—Continued.

PIKE, LOUIS H., ...	Toledo.
PILLARS, ISAIAH, ...	Lima.
PRATT, CHARLES, ...	Toledo.
RAMSEY, WILLIAM M., ...	Cincinnati.
RANNEY, HENRY C., ...	Cleveland.
ROGERS, SAMUEL G., ...	Akron.
SHAW, R. K., ...	Marietta.
SMEDES, JOHN MARSHALL, ...	Cincinnati.
SULLIVAN, JOHN D., ...	Columbus.
TALCOTT, WILLIAM E., ...	Cleveland.
WHEELER, SETH S., ...	Lima.
WILLIAMSON, SAMUEL E., ...	Cleveland.
YOUNG, GEORGE R., ...	Dayton.

OKLAHOMA TERRITORY.

DILLE, JOHN I., ...	El Reno.
SCOTT, HENRY W., ...	Oklahoma City.

OREGON.

CAREY, CHARLES H., ...	Portland.
COX, L. B., ...	Portland.

PENNSYLVANIA.

ALLINSON, EDWARD P., ...	Philadelphia.
ARNOLD, MICHAEL, ...	Philadelphia.
ATHERTON, THOMAS H., ...	Wilkesbarre.
BAER, GEORGE F., ...	Reading.
BAUSMAN, J. W. B., ...	Lancaster.
BECK, JAMES M., ...	Philadelphia.
BEDFORD, GEORGE R., ...	Wilkesbarre.
BEEBER, DIMNER, ...	Philadelphia.
BISPHAM, GEORGE TUCKER, ...	Philadelphia.
BREDIN, JAMES, ...	Pittsburgh.
BROADHEAD, J. DAVIS, ...	So. Bethlehem.
BROWN, JOHN A., ...	Philadelphia.
BROWN, JOHN DOUGLASS, JR., ...	Philadelphia.
BUDD, HENRY, ...	Philadelphia.
BURNETT, WILLIAM H., ...	Philadelphia.
CARSON, HAMPTON L., ...	Philadelphia.
CARTY, JEROME, ...	Philadelphia.
CONARROE, GEORGE M., ...	Philadelphia.
DALE, RICHARD C., ...	Philadelphia.
DANA, SAMUEL W., ...	New Castle.

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DERR, ANDREW F.,	Wilkesbarre.
EDWARDS, TRYON H.,	Harrisburg.
FARQUHAR, GUY E.,	Pottsville.
FENTON, HECTOR T.,	Philadelphia.
FISHER, WILLIAM RIGHTER,	Philadelphia.
FRALEY, JOSEPH C.,	Philadelphia.
GILBERT, LYMAN D.,	Harrisburg.
GRAHAM, GEORGE S.,	Philadelphia.
GREEN, BENJAMIN W.,	Emporium.
GUTHRIE, GEORGE W.,	Pittsburgh.
HANDLEY, JOHN,	Scranton.
HAUSE, J. FRANK E.,	West Chester.
HEMPHILL, JOSEPH,	West Chester.
HENSEL, W. U.,	Lancaster.
HIESTER, ISAAC,	Reading.
HINCKLEY, ROBERT H.,	Philadelphia.
HOWSON, CHARLES,	Philadelphia.
HUEY, SAMUEL B.,	Philadelphia.
HUGHES, BENJAMIN F.,	Philadelphia.
JAYNE, H. LABARRE,	Philadelphia.
JONES, J. LEVERING,	Philadelphia.
KAUFFMAN, A. J.,	Columbia.
KAY, JAMES I.,	Pittsburgh.
KULT, GEORGE B.,	Wilkesbarre.
LAMBERTON, WILLIAM B.,	Harrisburg.
LEACH, J. GRANVILLE,	Philadelphia.
LEAR, HENRY,	Doylestown.
LOGAN, JAMES A.,	Philadelphia.
LOWREY, DWIGHT M.,	Philadelphia.
MARTIN, J. WILLIS,	Philadelphia.
MERCER, GEORGE GLUYAS,	Philadelphia.
MERCUR, RODNEY A.,	Towanda.
MILLER, E. SPENCER,	Philadelphia.
MILLER, N. DUBOIS,	Philadelphia.
MITCHELL, JAMES T.,	Philadelphia.
MONAGHAN, ROBERT E.,	West Chester.
MONAGHAN, R. JONES,	West Chester.
MORGAN, RANDAL,	Philadelphia.
MUHLENBERG, HENRY A.,	Reading.
MUNSON, C. LA RUE,	Williamsport.
MCCARTHY, HENRY J.,	Philadelphia.
MCCCLINTOCK, ANDREW H.,	Wilkesbarre.
McKEEHAN, C. W.,	Philadelphia.
NORTH, E. D.,	Lancaster.

PENNSYLVANIA.—Continued.

NORTH, HUGH M., ...	Columbia
OSBORNE, EDWIN S., ...	Wilkes-barre.
PALMER, HENRY W., ...	Wilkesbarre.
PARSONS, HENRY C., ...	Williamsport.
PATTERSON, T. ELLIOTT, ...	Philadelphia.
PENNYPACKER, CHARLES H., ...	West Chester.
PENNYPACKER, SAMUEL W., ...	Philadelphia.
PEPPER, GEORGE W., ...	Philadelphia.
PERKINS, EDWARD L., ...	Philadelphia.
PERKINS, SAMUEL C., ...	Philadelphia.
PETTIT, HORACE, ...	Philadelphia.
PRICE, J. SERGEANT, ...	Philadelphia.
PRICHARD, FRANK P., ...	Philadelphia.
RAWLE, FRANCIS, ...	Philadelphia.
REED, HENRY, ...	Philadelphia.
ROBINSON, V. GILPIN, ...	Media.
SEIBERT, W. N., ...	New Bloomfield.
SHAPLEY, RUFUS E., ...	Philadelphia.
SHIRAS, GEORGE, JR., ...	Pittsburgh.
SLAGLE, JACOB F., ...	Pittsburgh.
SMEAD, A. D. B., ...	Carlisle.
SMITH, WALTER GEORGE, ...	Philadelphia.
STEWART, W. F. BAY, ...	York.
STOEVER, WILLIAM C., ...	Philadelphia.
STOUGHTON, A. B., ...	Philadelphia.
STRAWBRIDGE, WILLIAM C., ...	Philadelphia.
SULZBERGER, MAYER, ...	Philadelphia.
SWAIN, CHARLES M., ...	Philadelphia.
TAYLOR, JOSEPH T., ...	Philadelphia.
TODD, H. HAMPTON, ...	Philadelphia.
TRICKETT, WILLIAM, ...	Carlisle.
VALENTINE, JOHN K., ...	Philadelphia.
VAUX, RICHARD, ...	Philadelphia.
WAGNER, SAMUEL, ...	Philadelphia.
WALKER, ROBERT J. C., ...	Philadelphia.
WATSON, D. T., ...	Pittsburgh.
WILLARD, EDWARD N., ...	Scranton.
WILTBANK, WILLIAM W., ...	Philadelphia.
WINDLE, WILLIAM S., ...	West Chester.
WINTERNITZ, BENJAMIN A., ...	New Castle.
WOLVERTON, SIMON P., ...	Sunbury.

RHODE ISLAND.

ANGELL, WALTER F., ...	Providence.
BAKER, DARIUS, ...	Newport.

RHODE ISLAND.—Continued.

BRADLEY, CHARLES, ...	Providence.
EATON, AMASA M., ...	Providence.
ELY, JOSEPH C., ...	Providence.
GLEZEN, EDWARD K., ...	Providence.
JENCKES, THOMAS A., ...	Providence.
LESTER, JOHN ERASTUS, ...	Providence.
MILLER, AUGUSTUS S., ...	Providence.
MCGUINNESS, EDWIN D., ...	Providence.
ROELKER, WILLIAM G., ...	Providence.
SOUTHWICK, ISAAC H., JR., ...	Providence.
THURSTON, WILMARTH H., ...	Providence.
TILLINGHAST, JAMES, ...	Providence.

SOUTH CAROLINA.

ABNEY, B. L., ...	Columbia.
ALDRICH, ROBERT, ...	Barnwell.
BUIST, GEORGE LAMB, ...	Charleston.
CALDWELL, J. F. J., ...	Newberry.
GILLAND, THOMAS M., ...	Kingstree.
JOHNSTONE, GEORGE, ...	Newberry.
MORDECAI, T. MOULTRIE, ...	Charleston.
NETTLES, CLARENCE S., ...	Darlington.
PARKER, WILLIAM H., ...	Abbeville.
SMYTHE, AUGUSTINE T., ...	Charleston.
WOODS, CHARLES A., ...	Marion.
YOUNG, HENRY E., ...	Charleston.

SOUTH DAKOTA.

WRIGHT, J. W., ...	Clark.

TENNESSEE.

BAXTER, ED., ...	Nashville.
BONNER, J. W., ...	Nashville.
CAMPBELL, LEMUEL R., ...	Nashville.
CARROLL, WILLIAM H., ...	Memphis.
COOPER, EDMUND, ...	Shelbyville.
DICKINSON, J. M., ...	Nashville.
ESTES, BEDFORD M., ...	Memphis.
GAINES, JOHN W., ...	Nashville.
GAUT, JOHN M., ...	Nashville.
JACKSON, ROBERT F., ...	Nashville.
LEA, OVERTON, ...	Nashville.
MARKS, ALBERT D., ...	Nashville.
PILCHER, JAMES S., ...	Nashville.

WISCONSIN.—Continued.

JEFFRIES, MALCOLM G., ...	Janesville.
JENKINS, JAMES G., ...	Milwaukee.
JOHNSON, D. H., ...	Milwaukee.
JONES, BURR W., ...	Madison.
KENNAN, THOMAS L., ...	Milwaukee.
LEWIS, H. M., ...	Madison.
LUDWIG, JOHN C., ...	Milwaukee.
MALLORY, JAMES A., ...	Milwaukee.
MARTIN, P. H., ...	Green Bay.
MAXON, GLENWAY, ...	Milwaukee.
MILLER, B. K., ...	Milwaukee.
MILLER, B. K., JR., ...	Milwaukee.
MILLER, GEORGE P., ...	Milwaukee.
MORRIS, HOWARD, ...	Milwaukee.
NOYES, GEORGE H., ...	Milwaukee.
OGDEN, LEWIS M., ...	Milwaukee.
ORTON, PHILO A., ...	Darlington.
PALMER, H. L., ...	Milwaukee.
PERELES, JAMES M., ...	Milwaukee.
PERELES, THOMAS JEFFERSON, ...	Milwaukee.
QUARLES, CHARLES, ...	Milwaukee.
QUARLES, JOSEPH V., ...	Milwaukee.
REED, MYRON, ...	West Superior.
RUSK, L. J., ...	Chippewa Falls.
SANBORN, A. L., ...	Madison.
SCHLEY, BRADLEY G., ...	Milwaukee.
SEAMAN, WILLIAM H., ...	Sheboygan.
SILVERTHORN, W. C., ...	Wausau.
SMITH, FRANKLIN T., ...	Milwaukee.
SPENCE, THOMAS W., ...	Milwaukee.
SPOONER, JOHN C., ...	Hudson.
STARK, JOSHUA, ...	Milwaukee.
STEVENS, BREEZE J., ...	Madison.
SUTHERLAND, GEORGE E., ...	Milwaukee.
TURNER, W. J., ...	Milwaukee.
VAN DYKE, GEORGE D., ...	Milwaukee.
VAN DYKE, WILLIAM D., ...	Milwaukee.
VILAS, EDWARD P., ...	Milwaukee.
VROMAN, CHARLES E., ...	Green Bay.
WEBSTER, W. H., ...	Oconto.
WIGMAN, J. H. M., ...	Green Bay.
WINKLER, FREDERICK C., ...	Milwaukee.

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BLAKE, JOHN W., ...	Laramie.
GROESBECK, HERMAN V. S., ...	Laramie.
LACEY, JOHN W., ...	Cheyenne.
POTTER, CHARLES N., ...	Cheyenne.
RINEB, JOHN A., ...	Cheyenne.
TORREY, J. L., ...	Embar.
VAN DEVANTER, WILLIS, ...	Cheyenne.

RECAPITULATION.

STATES.	NO OF MEMBERS.	STATES.	NO OF MEMBERS.
Alabama, ...	13	Nebraska, ...	9
Arkansas, ...	6	New Hampshire, ...	15
California, ...	13	New Jersey, ...	26
Colorado, ...	10	New York, ...	123
Connecticut, ...	49	North Carolina, ...	1
Delaware, ...	12	North Dakota, ...	2
District of Columbia, ...	49	Ohio, ...	37
Florida, ...	4	Oklahoma Territory, ...	2
Georgia, ...	34	Oregon, ...	2
Idaho, ...	1	Pennsylvania, ...	105
Illinois, ...	80	Rhode Island, ...	14
Indian Territory, ...	2	South Carolina, ...	12
Indiana, ...	24	South Dakota, ...	1
Iowa, ...	16	Tennessee, ...	16
Kansas, ...	9	Texas, ...	7
Kentucky, ...	11	Utah Territory, ...	1
Louisiana, ...	26	Vermont, ...	7
Maine, ...	20	Virginia, ...	18
Maryland, ...	37	Washington, ...	2
Massachusetts, ...	144	West Virginia, ...	4
Michigan, ...	32	Wisconsin, ...	74
Minnesota, ...	15	Wyoming, ...	7
Mississippi, ...	6		
Missouri, ...	44		
Montana, ...	2		
		Total, ...	1,144

APPENDIX.

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ADDRESS OF THE PRESIDENT,

THOMAS M. COOLEY,

OF ANN ARBOR, MICHIGAN.

Gentlemen of the Association :

It is made my duty by our constitution to open this meeting with an address, in which shall be communicated the most noteworthy changes in statutory law on points of general interest which have been made in the several States and by Congress during the preceding year. It is understood that the report should cover territorial legislation also. The report is necessarily imperfect owing to the short time that remained for preparing it after the legislative adjournments, and to the fact that in some cases the laws were not printed in full when this work was done.

No legislative sessions have been held within the year in Alabama, Arizona, Arkansas, California, Colorado, Kentucky, Delaware, Florida, Idaho, Illinois, Indiana, Kansas, Maine, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Oklahoma Territory, Oregon, Pennsylvania, South Dakota, Tennessee, Texas, Vermont, Washington, West Virginia, Wisconsin or Wyoming.

A regular session of the legislature of Colorado was not to be held within the present year, but on December 27th, 1893, the Governor, under the power conferred upon him by the constitution to summon the legislature on extraordinary occasions, issued a proclamation convening the two houses in special session on January 10th, 1894. The proclamation enumerated five special reasons as constituting such an occa-

sion, the two leading of which were: "*First*, the mining interests of these States have been unjustly and unconstitutionally attacked by Congress and by the present and preceding national administrations, and the price of silver bullion been forced to so low a figure as to compel the bulk of the silver mines of the State to close down.

"*Second*.—The late panic which was brought about by the bankers of the country as a part of the war upon silver, to compel an unconditional repeal of the Sherman Act, and practically to give to the United States the gold standard of Great Britain." The harmful results in each case were specified.

By the constitution the action of the special session would be limited to the subjects specified by the Governor in his proclamation, and the first two of these were, "*First*, to restore that ancient landmark which existed in the history of this country for eighty-one years, from 1776 to 1857, and in pursuance of Section 10, Article I, of the United States Constitution, which declares the right of the States to make gold and silver coin a tender in the payments of debts, to provide that all silver dollars, domestic and foreign, containing not less than $371\frac{1}{4}$ grains of fine silver, or not less than $412\frac{1}{2}$ grains nine-tenths fine silver, and upon the present ratio of sixteen ounces of silver to one ounce of gold, shall be legal tender for the payment of all debts, public and private, collectible within the State of Colorado.

"*Second*.—To enact a law against making any trust deed, mortgage, contract or obligation of any kind or character, or any part thereof, or any interest payable thereon, after this act shall become a law, payable in gold, and providing that any trust deed, mortgage, or contract or obligation, or any part thereof, or any interest payable thereon, made payable in gold and executed after this act shall become a law shall be declared payable in the same money or currency in which an ordinary debt or obligation is now payable by law."

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There were thirty-one others specified, but upon the majority, including the two above set forth, the legislature failed to act. Such legislation as actually resulted, and as seems to fall within my duty to notice in this address, will receive attention further on.

A special session of the legislature of Mississippi was also held in January of the present year, on the call of the Governor, but its action in the enactment of laws was limited by him to matters of importance within the State only, and will call for no further notice at this time.

The Florida laws of 1893 were not in print when the last meeting of the Association took place, and a few references are made to them further on.

CONSTITUTIONAL CHANGES.—Changes in the constitutions of the states have not been numerous within the year. Some have been submitted in Georgia to be passed upon by the people at the next general election, but they are of special interest only to the people of that state.

A constitutional convention is in session in the state of New York, which it is expected will propose to the people of the state for their approval or rejection, a new constitution throughout.

Virginia submits to her voters this year a proposition to so amend her constitution that in all criminal trials, where the penalty for the crime is not death or confinement in the penitentiary, the legislature may provide for a trial otherwise than by a jury. It is to be voted on in November.

In New Jersey, a constitutional question decided judicially may perhaps be with propriety mentioned, because directly affecting the power to legislate. The members of the Senate in that state are chosen at different times, so that always when the Senate is to be organized, there are some new members and some who hold over. The "hold-overs" this year claimed exceptional rights over the others in the organization of the body, but it was held they had none.

CONVICT-MADE GOODS.—In Kentucky, all goods, wares or merchandise manufactured by convicts in other states and brought into the state for the purposes of sale are required to be marked, branded or labeled as convict-made goods.

In New York, several acts were passed, the general purpose of which was to restrict convict-made goods coming in competition with the results of free labor. In that state and also in Ohio provision was made requiring those selling therein goods made by convicts in other states to be licensed and to submit to important regulations. In Massachusetts, an act was passed limiting to seventy-five the number of convicts who may be employed in the manufacture of reed or rattan goods.

In New York, the law for employing convicts upon the public highways was somewhat amended. And in Iowa provision was made for furnishing from one of its prisons stone broken by prison labor, to be used on the highways.

ITINERANT DEALERS IN CLOTHING.—Ohio and New York have passed laws to prevent and punish frauds in sales of wearing apparel by itinerant vendors, and to regulate their sales. State and local licenses are required, which are to be obtained on a showing of the names and residences of the parties concerned. Other regulations of importance are made and penalties for a disregard of them provided for.

WORKERS IN FACTORIES AND MINES.—Laws were passed in Rhode Island and in New Jersey to increase the security against personal injury and loss of life by fire or other casualty to women and others employed in factories, and to persons employed in mines. An act passed in Maryland for the protection of workmen on buildings makes careful provision for an inspection of scaffolding, ropes, blocks, etc., used in the construction, repairing or painting of buildings.

In Rhode Island, a strong and carefully-drawn statute was passed to prevent cruelty to children by parents or others having the custody of them. This is mentioned here because the cruelty is often connected with factory working. No

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child under twelve years of age is allowed to be employed in any factory, manufacturing or mercantile establishment.

The law of Massachusetts, noticed further on, makes elaborate provision for the protection of workmen in factories and elsewhere, and especially of minors.

In Maryland, rigorous provisions are made to prevent the spread of disease by the sale of goods made in "sweat shops."

LABOR DAY.—Congress at its present session has passed an act making the first Monday in September a legal holiday in the District of Columbia under the designation of Labor Day. The closing of all federal offices throughout the Union on that day is put under the same regulations as on Christmas and other legal holidays. The legislature of Georgia has passed a similar act. That of Florida at its last session did the like, but names September 12th as the day.

A LABORER'S DAY.—Among the few laws of general importance passed at the special session in Colorado was one providing that "in all work hereafter undertaken in behalf of the state, or any county, township or school district, municipality, or incorporated town, it shall be unlawful for any board, officer, agent, or any contractor or sub-contractor thereof, to employ any mechanic, workingman or laborer in the prosecution of any work for more than eight hours a day." Exception is made for cases of emergency, but overwork for any one day is to be allowed as so much on the time of the next day, and in no one week of seven days shall there be permitted more than forty-eight hours of labor. Violation of the law is made a misdemeanor. A law to the same effect in Utah was made somewhat more specific this year.

In New York, a similar law was so amended as to provide that it "shall apply to all mechanics, workingmen and laborers now or hereafter employed by the state or any municipal corporation therein, through its agents or officers, or in the employ of persons contracting with the state or such corporation for performance of public works. And all such mechanics, workingmen and laborers so employed shall receive

not less than the prevailing rate of wages in the respective trades or callings in which such mechanics, workingmen and laborers are employed in said locality. And in all such employment none but citizens of the United States shall be employed."

In Massachusetts, nine hours are now to constitute a day's work by laborers for the commonwealth or any municipal corporation, or for any contractor for a public work. Provision is made against oppressive over work in other cases.

In Florida, transportation companies are forbidden to employ a person more than thirteen hours consecutively unless in case of accident.

EMPLOYER AND EMPLOYÉ.—In Massachusetts, a very important act has been passed regulating the relation of employé in many particulars, in most of which the protection of the laborer has been had specially in view. Where by contract the laborer is subjected to a penalty for leaving the service without notice, the employer is made subject to a like penalty for discharging without notice. Intimidation by outside parties is provided against, and no employer shall require anyone to agree not to become a member of any labor organization as a condition of employment. Care is taken that laborers, if voters, shall have opportunity to attend elections and not be coerced in voting. Laborers shall not be made to agree to surrender any legal claim that may arise in their favor to recover damages for injuries while in service. What shall constitute a laborer's day in certain employments is specified. The cases of minors under eighteen and of women are provided for specially and in detail. Employment of these classes in any manufactory between the hours of ten at night and six in the morning is expressly forbidden. No child under fourteen shall be employed in any manner before the hour of six in the morning or after that hour in the evening. These are only a few of the numerous provisions made in the interest of the laborer. No more important law was passed during the year in any State.

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In Florida, railroad companies are forbidden to blacklist employes. Persons and corporations are forbidden to combine against employes to prevent the employment by any of their number of such as have been discharged by another.

ARBITRATION IN LABOR DIFFICULTIES.—Ohio has a State board of arbitration for the settlement of differences between employers and employes. A law providing therefor was somewhat remodeled. It now requires that an application for the action of the board, whether by employer or employes shall contain a concise statement of the grievances, and promises to continue on in business or at work in the same manner as at the time of the application, without any lockout or strike until the decision of the board; that the decision shall be made within ten days of the filing of the application, and an application may contain the stipulation that the decision of the board shall be binding upon the parties to the extent stipulated. Where this is the case the decision to such extent may be made and enforced as a rule of court in the court of common pleas of the county.

There is a further provision that whenever it is made to appear to the mayor of a city or village, or the judge of probate of a county, that a strike or lockout is seriously threatened or actually occurs, such officer shall at once notify the State board of the facts. Whenever the board is thus notified, or otherwise learns that a strike or lockout is seriously threatened or has actually occurred, the board must put itself in communication as soon as may be with the employer and employes. This provision applies only where not less than twenty-five persons are employed in the same general line of business in such city, village or county.

THE UNEMPLOYED.—In Massachusetts, the appointment of a board to consider the subject of the unemployed and measures for their relief has been provided for. It consists of three persons who are to hold office until March 1st, 1895.

LABOR BY PAUPERS—In Ohio, an act was passed authorizing the recipients of public charity in certain classes of

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institutions to be employed at manual labor on public parks, highways, etc., in return therefor.

In Maryland, charitable institutions which receive needy persons for food or lodging may now require them to perform labor in return, and if they accept assistance on those terms and then fail or refuse to perform the labor, they may be proceeded against as vagrants.

EDUCATION.—New York made thorough revision of its laws upon this subject. Public education of children between the ages of eight and sixteen is made compulsory. New Jersey, Kentucky and Georgia also, to a considerable extent, revised their laws. In New Jersey, furnishing of free school books and all necessary supplies to scholars attending public schools is required. The space in the text book devoted to the consideration of the nature and effects of alcoholic drinks and narcotics is required to be sufficient for a full and adequate treatment of the subject, and it is made compulsory to teach the injurious effects of alcohol on the human system. Industrial education may be added, and the day before the customary national holidays is to be devoted to teaching patriotism. In Iowa, school books are furnished free to indigent scholars.

School boards are made elective in Florida for the first time.

One of the most important laws for the protection of higher education was that passed in New York to prevent hazing in colleges. It makes all persons who shall take part in the hazing of students guilty of a misdemeanor punishable by fine or imprisonment. Whenever any tattooing or permanent disfigurement of the body, limbs, or features of any person or persons is caused wholly by the hazing, through the use of nitrate of silver, or any like substance, it shall be held to be a crime of the degree of mayhem, and may be punished by imprisonment for not less than three nor more than fifteen years.

In Louisiana, an act was passed "to prohibit the board of school directors of the several parishes of this State from com-

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bining the public schools thereof with any private or parochial schools or other institutions of learning under the control or management of any church, religious order or association, or any religious sect or denomination, and to prohibit them from employing as professors or teachers in the public schools of this State any preacher, minister of the gospel, priest or other minister of religion, member of any monastic or other religious order, who is in the actual service of any church or religious order of any sect or denomination whatever, as a teacher or minister of religion."

Virginia has empowered the city council of any city to adopt any reasonable ordinance necessary to prevent any improper interference with or annoyance of the scholars attending or boarding at any female school in such city.

Virginia has also made provision for State summer normal schools "to familiarize the teachers in the public schools of this State with more advanced methods of teaching, and to furnish such additional academic training as will tend to promote the usefulness of the public schools."

HUSBAND AND WIFE.—In Kentucky, the laws regarding the property rights of married women were thoroughly revised, and the purpose of the revision seems to have been to make the property rights of husband and wife as nearly equal as possible, and to give to each a similar control and power of disposal, with the exception that the wife cannot convey real estate unless the husband unites with her in the conveyance.

The law provides that marriage shall give to the husband, during the life of the wife, no estate or interest in the wife's property, real or personal, owned at the time or acquired after the marriage. During the existence of the marriage relation the wife shall hold and own all her estate to her separate and exclusive use and free from the debts, liabilities or control of her husband. No part of a married woman's estate shall be subjected to the payment or satisfaction of any liability upon a contract made after marriage to answer for the debt, default or misdoing of another, unless such estate shall have been set

apart for that purpose, by deed or mortgage or other conveyance; but her estate shall be liable for her debts and responsibilities contracted or incurred before marriage or contracted after marriage, except as the act provides. A married woman may make, take, acquire and hold property, real and personal, by gift, devise or descent, or by purchase, and she may in her own name, as though she were unmarried, sell and dispose of all her personal property. She may make contracts, and sue and be sued as a single woman. The husband is not to be liable for any debt or responsibility of the wife, except to the amount or value of property he may receive from or by her by virtue of the marriage, but he is to be liable for necessities furnished her after marriage.

After the death of either husband or wife, the survivor is to have an estate for his or her life in one-third of all the real estate of which the other was seized of an estate in fee simple during the coverture, unless the right thereto shall have been barred, forfeited or relinquished, and the survivor is to have one-half of the surplus personalty left by the deceased.

If, however, either party shall voluntarily abandon the other and live in adultery, the party so offending shall forfeit all right to or interest in the property and estate of the other, unless they afterwards become reconciled and live together as husband and wife.

Divorce from the bonds of matrimony is to bar all claim of either husband or wife to the property, real or personal, of the other after his or her decease. A married woman is given power to dispose of her estate by will, subject to the provisions of the act. As conveyance by the wife of her real estate requires the consent of the husband, it is proper to add that a conveyance by him of his estate in which she does not unite will leave such prospective interest as otherwise, in the absence of such conveyance, she might claim therein unaffected. Such, at least, would seem to be the case.

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In Virginia, husband and wife are made competent witnesses for or against each other in all civil causes, except in proceedings by creditors to avoid or impeach conveyances or transfers from the one or the other on the ground of fraud or want of consideration. This law does not apply to proceedings for divorce. Communications made by one to the other during marriage are privileged, not only while the marriage shall continue, but after the relation shall have ceased.

In Massachusetts, the marriage of any male under eighteen years of age and of any female under fifteen is provided against. But the judge of probate may allow it after a hearing, on consent of the father, or, if there be no father living, then of the mother, and if no parent be living, then of a legal guardian. In the general law of marriage, some changes are made in Massachusetts, for the most part relating to the notice of intention to marry.

Georgia has undertaken to guard against one class of fraudulent divorces by providing that no court in the State shall grant a divorce of any character to any person who has not been a *bona fide* resident of the State twelve months before filing application therefor.

In New York, it is provided that in case of divorce the legitimacy of any child of the marriage, born or begotten before the commencement of the action, is not to be affected by the judgment. Some other changes having the wife's interests in view are made in the law of divorce.

In Massachusetts, when a person having a wife or minor child shall absent himself without making proper provision for support, a receiver of his estate may be appointed by the probate court on petition of such wife or child.

In Florida, a married woman owning real estate in her own right, whose husband has been adjudged insane, and who has been insane for a year or more, may sell, mortgage or convey such real estate without the consent, signature or joinder of the husband.

In New Jersey, on the death of husband or wife having real estate owned in fee, but not leaving heirs, such real estate is now made to pass in fee to the survivor.

In Maryland, provision is made for the conveyance by a married woman who is under twenty-one but over eighteen years of age, of real estate owned by her, the husband joining in the conveyance. Also for release of dower-rights.

PARTNERSHIPS.—In Ohio, a partnership transacting business under a fictitious name, or a designation not showing the names of the persons interested as partners, must file with the clerk of the court of common pleas of the county in which its principal office or place of business is situated a certificate stating names in full of all members and their places of residence, and must publish the same in a newspaper in the county. The certificate must be signed by the partners and acknowledged as is required in cases of conveyance of lands. There must be a new certificate with new publication whenever a change in partnership takes place. A similar provision to this last is made in New York.

MOB VIOLENCE.—In an attempt to prevent mob violence, and to prescribe proper punishment for the same, an act was passed in Georgia conferring upon peace officers large powers for arresting persons engaged in the same, and for holding them in custody to be dealt with as the law directs. The act makes all persons engaged in mob violence guilty of felony, and if a death results from such violence, indictable for the crime of murder.

The peace officer who fails to attempt in good faith to suppress an assembly of persons collected for the purpose of mob violence, or to summon a posse for the necessary assistance, is made guilty of misdemeanor. Any person summoned to assist in suppressing any mob violence which is being committed or about to be committed is also made guilty of misdemeanor. The persons summoned may be required to bring with them such fire-arms or other weapons as are necessary to be used in the suppression of such mob violence,

and the officer and his posse may, if the exigency of the case requires, in order to prevent human life being taken by mob violence, take the life of any person or persons attempting to commit it. But life is not to be taken unless it be necessary to save the life or lives of the person or persons being mobbed, or to protect the lives of the arresting officer or his posse.

This legislation is highly commendable and worthy of being followed in other States. Great numbers of the citizens of Louisiana are now petitioning their legislature for a law of like purport.

MASTER IN CHANCERY.—This officer is now required in Florida, to be a member of the bar, which was not necessary before.

POOL SELLING.—The first legislation of the year in New Jersey was to repeal an act concerning the maintaining of race courses in the State, and licensing and regulating the same. This was followed by another annulling all licenses theretofore granted, and by still another repealing the act which had made betting and book-making upon horse races legal. Telegraph companies, telephone companies, express companies and other corporations engaged in business as common carriers were then prohibited from carrying any message that was to further or promote the interests of unlawful pursuits, or, in any way enable any person or persons to carry on any business or practice declared illegal by the State laws. Violation of this last act was made punishable by a fine of a thousand dollars. It aimed to check pool selling in New York and elsewhere on New Jersey races.

Rhode Island revised its laws against gambling and pool selling, but by one section of the new act provided that "every incorporated agricultural society owning a race track is permitted to run or trot horses for purses upon its own track, for the purpose of improving the breed of horses, whether for the improvement of the thoroughbred or the trotting horse," the privilege being confined to the period between the fifteenth of May and the fifteenth of November.

Virginia revised its law against book-making and pool selling on races and made it very stringent, but with exceptions for those made on grounds of agricultural associations, county or city fairs and driving clubs duly chartered.

PRIZE FIGHTING.—South Carolina passed an act prohibiting prize fighting within the State and making all offenders and their seconds punishable criminally.

DAIRY PRODUCTS.—Laws were passed during the year in Iowa, Utah and Ohio, the purpose of which was to preclude the putting upon the market of simulated dairy products, unless the same were properly labeled, so that the purchaser would distinctly understand what he was buying.

The substance of a law in Iowa may be stated as an illustration. No imitation butter or cheese which is colored to resemble the genuine article can be manufactured or sold in the State after July 4th without subjecting the manufacturer or seller to a fine of not less than fifty dollars for the first offense, and two hundred and fifty dollars for the second. Imprisonment may be substituted in either case. Simulated dairy products must be properly labeled, or the seller is liable to a heavy fine.

Every creamery or cheese factory using a chemical test to determine the quality of butter-fat in milk is required to produce from the State Dairy Commissioner a test bottle, and a failure to comply will subject the person to a fine of not less than fifty dollars.

MUNICIPAL GOVERNMENT.—In New Jersey, as well as in Kentucky, very considerable changes were made in the laws on this subject, and there were changes also in Iowa and New York, but the changes do not appear to call for special notice here.

RAILROAD EQUIPMENT.—To the States and Territories which heretofore have by law made provision for conditional sales of railway equipment on the Car Trust Plan—namely, Alabama, Arizona, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Kentucky, Mary-

land, Montana, Maine, Michigan, New Hampshire, New Jersey, New Mexico, Oklahoma, Rhode Island, Virginia, Washington, West Virginia, Wisconsin—may now be added Massachusetts, South Carolina, Louisiana and Iowa, which passed similar laws this year. More will doubtless be added from year to year.

UNIFORMITY IN LEGISLATION.—In the list of States and Territories which have heretofore provided by law for the appointment of commissioners to consider and ascertain the best means for bringing about uniformity of legislation in all—namely, Alabama, Delaware, Georgia, Kentucky, Maryland, Minnesota, Mississippi, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, South Dakota, Tennessee, Washington and Wisconsin—may now be added Virginia and South Carolina, such provision having been made by them within the year. I trust it will not be long before the last of the States will have taken similar action. It is not supposed that complete uniformity will ever be attained, or even be desirable, but many great and troublesome differences which now exist would rapidly be removed if once brought to the notice of legislatures by a body of commissioners, appointed severally by the States to consider and report upon them.

Massachusetts this year passed an act “to establish a law uniform with the laws of other States, for a uniform standard of weights and measures.” Also an act “to establish a law uniform with the laws of other States for the acknowledgment and execution of written instruments.”

CORPORATIONS.—Many changes were made in the several States in their laws for the organization and regulation of corporations, but they do not for the most part seem to require special notice here. Several of the more important concerned the rights of foreign corporations doing business within the States, and their obligations to submit to conditions and regulations made especially needful by the fact that they do not come under the control of the general laws relating to

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domestic corporations which in many particulars could not be made applicable to them.

In Maryland, corporations hereafter incorporated, with some exceptions, are required to pay to the State treasurer, for the use of the State, a bonus of one per centum on the amount of their authorized capital, and a like bonus on any subsequent increase of capital.

Several statutes for the regulation of transportation companies were passed in Florida. They must not demand pay for freight on goods carried until they are ready for delivery at the place of destination. They must notify consignees immediately on receipt of goods. Other provisions are made to insure impartiality of service. The specific performance of contracts of railroad companies for the construction of depots, side tracks and warehouses may be enforced. The companies must build side tracks, switches, etc., where their roads connect.

In Massachusetts, the issue of bonds by railroad and street railway companies is now required to have the approval of the State board of railroad commissioners.

In the same State, a general law now regulates the increase of capital stock of such companies, and also of gas light, electric light, telegraph, telephone, aqueduct and water companies. If a foreign corporation which owns or controls a majority of the capital stock of a domestic street railway, gas light or electric light corporation, shall issue stock or evidence of indebtedness based upon or secured by the property of such domestic corporation, without being authorized by law, the Supreme Judicial Court may dissolve such domestic corporation.

In New Jersey, the consent of a municipality is required to the building of a street railway in its streets, and the owners of a majority of the linear frontage of the line must petition for it.

HIGHWAYS.—New Jersey has provided for a State commissioner of roads. A law has also been passed that in country

districts, on a petition signed by the owners of at least two-thirds of the lands bordering on any public road or any section thereof, not being less than one mile in length, such owners may have the road improved, and one-tenth the cost assessed on their lands, in consideration of the peculiar benefits.

Massachusetts has a State highway commissioner. An act was this year passed whereby the Commonwealth may take charge of a new or an existing road as a highway, and construct and keep the same in good repair and condition at the expense of the Commonwealth.

In Iowa, a change of law was made in the direction of securing money to be used in the working of highways in place of the labor assessments which have heretofore been made.

The use of bicycles on public streets and sidewalks is regulated by general law in Massachusetts. Limited powers are given to the mayor of a city or selectmen of a town to give exceptional privileges in some cases.

BANKING.—A general law for the voluntary incorporation of persons to carry on the business of banking has been passed in Georgia. When the corporation is formed, circulating notes may be issued to it by the State commissioners, consisting of the governor, the treasurer and the controller general, in denominations not greater than one thousand dollars nor less than one dollar, on application being made therefor, and on compliance with conditions prescribed. The capital stock must not be less than twenty-five thousand dollars, fully paid in, in gold, silver or legal currency of the United States. One-half of the cash paid in on capital stock shall be kept as a fund for the redemption of bills issued, and shall be used for no other purpose. The remaining one-half shall be invested in valid county, municipal, State or United States bonds, not less than one-half of which shall be State or United States bonds, but none of the bonds shall be below par of their face value, and they shall be approved by the bank commissioners and deposited with the state treasurer.

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The amount of circulating notes that may be so issued to the bank shall equal three times the amount of all United States legal tender, coins or currency deposited in the bank as a fund for redemption. The notes when in circulation must be promptly redeemed on demand in legal tender, United States coins or currency.

The securities deposited with the state treasurer are to remain in pledge for the redemption and payment of all circulating notes, and as additional security, the shareholders of the bank are made liable to the extent of the amount of their stock therein, at the par value thereof, in addition to the amount invested in their shares. If at any time an impairment or reduction of the funds of the bank devoted to the redemption of circulating notes, shall occur, so that the funds shall amount to less than one-third the outstanding circulation, it shall immediately be increased and made equal to one-third such outstanding notes. The liability of stockholders who transfer their shares is continued for the period of sixty days from the date of the transfer.

Each bank is required to have and keep as a reserve fund, in cash, an amount equal to twenty-five per cent. of its deposits, and the shareholders are personally liable if this requirement is not observed. If any bonds deposited with the state treasurer shall depreciate in value, the commissioners may require them to be replaced with such as are valid. It is made unlawful for any bank to loan in the aggregate more than twenty-five per cent. of the amount of its capital stock to the officers and directors thereof, or to loan more than ten per cent. thereof to any one such officer or director, or to loan any of its funds to any person or persons on the indorsement of any of its officers or directors.

Dividends can only be declared after setting apart annually five per cent. of the net earnings of the bank, to be retained as surplus earnings. These are the most important provisions of the act.

In New York, days of grace are abolished.

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In Rhode Island, it is provided that all notes, drafts, checks, acceptances, bills of exchange, bonds or other evidences of indebtedness, falling due on Sunday or on a public holiday shall, for every purpose, be considered due on the next following business day. Like provision is made in Massachusetts.

In Rhode Island, the law further provides that on Saturday of each week banking hours shall end at twelve o'clock, and Saturday shall, for the acceptance and maturity of paper above referred to, be treated as a holiday, but this last provision is not to apply to checks or demand drafts on banks or bankers presented before twelve o'clock.

In Louisiana, bank officers are authorized to transfer balances in the bank in favor of one who has deceased to his representatives.

In Maryland, reports by savings banks to the State controller of the names of those having accounts who have neither made a deposit or withdrawn money within twenty years must be made every two years.

In Kentucky, the laws relating to banking are this year amended in respect to loans to stockholders and to firms, etc., in which corporations are interested, and also as to the institution of proceedings by the Attorney General for closing up banking institutions.

The laws relative to loans by co-operative banks have been somewhat changed in Massachusetts, and those relative to savings banks and savings institutions revised and codified.

Virginia has made the receipt of money as a deposit by any banker, broker or officer of any trust or savings institution, or of any bank, with actual knowledge that such banker, broker or institution or bank is insolvent, the crime of embezzlement.

LEGAL PROCEDURE.—In Georgia, an act has been passed requiring the plaintiff in civil actions to set forth his cause of action in orderly and distinct paragraphs, numbered consecutively. It also requires that the defendant shall severally and distinctly answer each paragraph, and not file a mere general denial, as has been the practice. All the affirmations not

denied are to be taken as *prima facie* true, unless the defendant states that he can neither admit nor deny because of the want of sufficient information.

In Ohio, in jury trials, the court when requested must now instruct the jury, if they find a general verdict, to find specially upon particular questions of fact to be stated in writing, their finding to be in writing also. In Maryland, special findings of facts in jury trials are now provided for.

Very important changes are made in the attachment laws of Colorado, and some also in those of New Jersey. In Iowa, an attempt was made to get rid of the professional juror. The names of all residents of the town or city in which court is held who are liable to jury duty, and not on the regular panel, are placed in a separate box, and from these talesmen are drawn, instead of the jury being completed by the officer from hangers-on in the court room. A modification of the law looking to the same end was also made in New York. Ohio has also the same purpose in view in providing for a jury commissioner and amending the prior law as to the drawing of jurors. Careful regulations as to drawing jurors were this year made in Maryland and for city courts in Massachusetts, the last being specially aimed at checking evasions of jury duty.

In Maryland, a probated will is now subject to caveat only within three years from probate.

In Maryland, the attachment law is so changed as to admit of the issue of the writ in certain cases before the debt falls due.

FRATERNAL BENEFICIARY ORGANIZATIONS.—The incorporation of such organizations is provided for in Massachusetts, and their business and also that of organizations formed outside but doing business within the State is regulated.

Where fraternal beneficiary societies, orders or organizations grant insurance to their members, regulations are made in Maryland to govern them in this respect.

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PUBLIC RECORDS.—Standard inks for public records are now required in Massachusetts, and they are to be furnished by the secretary of state.

PLUMBING.—This business is now regulated in Massachusetts, and those who follow it are to be licensed.

CONDITIONAL SALES.—In Maryland, it is made a misdemeanor for the purchaser of personal property which is the subject of an unrecorded conditional contract of sale to dispose of such property.

CHATTEL DUE BILLS.—The issue by merchants or corporations of tickets redeemable only in goods at their own places of business is now made illegal in Louisiana.

ELECTIONS.—Several laws have been passed within the year, founded in great measure upon what is known as the Australian System, the general purpose being to protect voters in casting their ballots independent of party or other influence or control, and to render certain a truthful declaration of the result.

Virginia, New York, Colorado, Massachusetts and Ohio have new provisions on this subject, all having in view the same general purpose.

In Iowa and Ohio, women have been given the suffrage in school elections, and in Colorado, in view of the constitutional change, which gives them the right to vote generally, careful directions are given for registration.

In New York, provision is made for allowing use of the Myers Automatic ballot machine by the towns and cities of the State, but the use is not compulsory. A prompt and simple method verifying the results of elections when fraud or mistake is charged is also provided.

In Rhode Island, the plurality rule is now made applicable to the election of members of Congress as in other States.

The law for recounting votes cast at elections was revised this year in Massachusetts. And the law for deciding contested elections was revised in Kentucky.

CRIMINAL PROCEEDINGS.—In Louisiana the use of the uncovered patrol wagon is now prohibited.

Persons imprisoned for non-payment of criminal fees may be set to work by police jurors in Louisiana in satisfaction thereof, or they may be hired out by the police jurors to other persons.

The sale of vicious literature is provided against as a crime in Maryland, and the case of sale of criminal news to minors is specially embraced.

Kentucky has also made stringent provisions against the circulation of obscene literature with special reference to the protection of minors.

The number of grand jurors was reduced in 1891, in Florida, to twelve. It is now made not less than fifteen nor nor more than eighteen, and twelve must unite in finding an indictment.

LIBELOUS INFORMATION.—New York has undertaken to check what has become a serious evil by providing that “any person who wilfully states, delivers or transmits, by any means whatever, to any manager, editor, publisher, reporter or other employé of a publisher of any newspaper, magazine, publication, periodical or serial, any statement concerning any person or corporation which, if published therein, would be a libel, is guilty of a misdemeanor.” Georgia at the same time protects the publishers of newspapers from libel suits in one class of cases where the common law might inflict upon them damages by enacting that “a fair and honest report of the proceedings of legislative or judicial bodies, or court proceedings, or a truthful report of information received from any arresting officer or police authorities, shall be deemed privileged communication, and in any action brought for newspaper libel the rule of the law as to privileged communications shall apply.”

DOGS OF BAD REPUTATION.—The running at large of dogs having the reputation of killing sheep is forbidden in Florida, and when not accompanied by their owners or by agents of the owners, it is lawful to kill them as *run-a-bouts*.

FALSE WEIGHTS AND MEASURES.—It is now made criminal in Louisiana to falsely sell or buy any merchandise or produce by false weights or measure.

Inspection of fertilizers is also provided for to prevent false sales and deceptions.

RAILROADS.—A railroad commission is provided for in Louisiana with power over rates. Equal but separate accommodations must be provided for white and black passengers. And see Corporations, *supra*.

The law regarding the keeping open of station houses and the sale of railroad tickets is revised in Kentucky.

PUBLIC TRUSTEE.—In Colorado, the appointment of a public trustee, to whom all trust deeds are to be executed, is provided for. If one is given naming any other person as trustee it is to be held to be a mortgage only, and subject to judicial foreclosure.

VOLUNTARY ASSIGNMENTS BY DEBTORS.—The law for the regulation of procedure under such assignments is amended in Kentucky so as to give county courts jurisdiction to supervise the action of assignees and require accounting and settlements when reasonable. In New Jersey, a like power is given to surrogates, and in New York a section of a prior statute on the subject is amended so as to make the judicial authority more effective.

PRACTICE OF MEDICINE.—Several laws during the year were passed for the purpose of regulating the medical practice, and excluding therefrom mere pretenders, who were without the proper training, and could give no evidence of their fitness to be trusted with the health and lives of others.

In Virginia, the subject received special attention, and a general law to regulate the practice of medicine and surgery in the State was passed. Others were passed in New Jersey, Ohio, Maryland, Kentucky and Utah, and in each jurisdiction only classes of persons designated, and who furnish evidence of proper training, are now suffered to practice.

In Utah, a general law was also passed to regulate the practice of dentistry, and in New Jersey a law on that subject was made more stringent.

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In Massachusetts, a general law now requires the registration of practicing physicians and surgeons.

In Maryland, the practice of veterinary medicine is now regulated.

In Louisiana, women may now be licensed to practice medicine and pharmacy. The privilege is extended to the practice of law also.

In Maryland, to guard against blindness in children, the attendance of a qualified physician is made imperative when at any time within two weeks after the birth of an infant certain diseased conditions of the eyes appear.

TAXATION.—Among the most important acts passed within the year was one adopted in Ohio, imposing a collateral inheritance tax. It provides that “all property within the jurisdiction of this state, and any interest therein, whether belonging to inhabitants of this state or not, and whether tangible or intangible, which shall pass by will or by intestate laws of this state, or by deed, grant, sale or gift made or intended to take effect in possession or enjoyment after the death of the grantor, to any person in trust or otherwise, other than to or for the use of the father, mother, husband, wife, brother, sister, niece, nephew, lineal descendant, adopted child, or person recognized as an adopted child and made a legal heir under the provisions of section 4182 of the Revised Statutes of Ohio, or the lineal descendant thereof, or the lineal descendant of any adopted child, the wife or widow of a son, the husband of the daughter of a decedent, shall be liable to a tax of five per centum of its value, above the sum of two hundred dollars; seventy-five per centum of such tax to be for the use of the state, and twenty-five per centum for the use of the county wherein the same is collected.” This was followed by an act to impose a direct inheritance tax, the provisions of which are that “all property within the jurisdiction of this state, and any interest therein, whether belonging to inhabitants of this state or not, or whether tangible or intangible, including annuities, which shall pass by will or

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by the intestate laws of this state, or by deed, grant, sale or gift made or intended to take effect in possession or enjoyment after the death of the grantor, to the use of the father, mother, husband, wife, brother, sister, niece, nephew, lineal descendant, adopted child, or person recognized as an adopted child and made a legal heir under the provisions of section 4182 of the Revised Statutes of Ohio, or the lineal descendant thereof, the lineal descendant of any adopted child, the wife or widow of a son, the husband of a daughter of decedent, or to any one in trust for such person or persons, shall be liable to a tax as follows, to-wit:

“When the value of the entire property of such descendant exceeds the sum of twenty thousand dollars and does not exceed the sum of fifty thousand dollars, one per cent.; when it exceeds fifty thousand dollars and does not exceed one hundred thousand dollars, one and one-half per cent.; when it exceeds one hundred thousand dollars and does not exceed two hundred thousand dollars, two per cent.; when it exceeds two hundred thousand dollars and does not exceed three hundred thousand dollars, three per cent.; when it exceeds three hundred thousand dollars and does not exceed five hundred thousand dollars, three and one-half per cent.; when it exceeds five hundred thousand dollars and does not exceed one million dollars, four per cent.; and when it exceeds one million dollars, five per cent.; seventy-five per cent. of such tax to be for the use of the state, and twenty-five per cent. for the use of the county wherein the same is collected.”

New Jersey also adopted a law for the taxing of collateral inheritances. It provides “that after the passage of this act all property which shall pass by will or by the intestate laws of this state from any person who may die seized or possessed of the same while being a resident of the state, and all property which shall be within this state, and any part of such property and any interest therein or income therefrom, which shall be transferred by inheritance, distribution, bequest, devise, deed, grant, sale or gift aforesaid, made or

intended to take effect in possession or enjoyment after the death of the intestate, testator, grantor or bargainor, to any person or persons, or to a body politic or corporate, excepting churches, hospitals and orphan asylums, public libraries, Bible and tract societies, and all religious, benevolent and charitable institutions and organizations, in trust or otherwise, or by reason whereof any person or body politic or corporate shall become beneficially entitled, in possession or expectancy, to such property, or to the income thereof, other than to or for the use of a father, mother, husband, wife, children, brother or sister, or lineal descendants born in lawful wedlock, or the wife or widow of a son, or the husband of a daughter, shall be subject to a tax of five dollars on every hundred dollars of the clear market value of such property, to be paid to the treasurer of the state of New Jersey for the use of the state."

These acts are likely to attract much attention, and to have an important influence in other states, when revisions of their tax systems are made.

In Ohio, a law for the taxing of cigarettes and the business of dealing in them was passed. The provisions are very stringent. Also a law for the taxing of sleeping car companies doing business or owning cars operated in the state. The tax is to be one per cent. of the estimated value of the capital stock representing capital and property of such companies, owned or used in Ohio, after deducting the value of its real estate in Ohio as assessed.

Florida has made some changes in its revenue laws, and Kentucky quite a number.

Kentucky has changed her law for the taxation of peddlers. Persons who under cover of *bona fide* merchants, come into or take up a temporary residence in any county, city or town of the commonwealth for the purpose of disposing of goods, etc., otherwise than as provided by law, are classed as peddlers.

INTOXICATING DRINKS.—It seems proper at this time to call attention anew to two pieces of legislation referred to by President Tucker at the last meeting of the Association,

because of the action taken by the courts in respect to them since.

By acts passed in 1892 and 1893, the state of South Carolina undertook to take into its own hands all power to dispose of intoxicating drinks of any description within the state. The primary objects in view were the breaking up of saloons and all other places to which persons were accustomed to resort for the purpose of indulging in such drinks; the making it reasonably certain that all such drinks sold within the state should be pure; and the appropriation by the state and its municipalities of whatever profit should arise from the sales. The general plan of the legislation was that a commissioner, appointed by the Governor with the approval of the Senate, who should himself be an abstainer from intoxicants, should make for the state all purchases of intoxicating drinks to be sold therein, that the liquors purchased should be tested by the chemist of the South Carolina College, and declared to be pure and unadulterated, that the commissioner should sell to the county dispensers, to be appointed under the law, liquors so purchased, at not more than fifty per cent. above the net cost thereof, that the county dispensers alone should be authorized to make sales, and that the liquors sold should be put up in packages, and these not to be opened on the premises. The profit accruing on sales made by the state commissioner were to be paid to the treasurer of the state monthly, those accruing on sales made by each county dispenser were also to be paid over monthly, one-half to the county treasurer, and one-half to the municipal corporation in which the sales were made. Many precautions were required to prevent sales being made to minors or persons in the habit of using intoxicating liquors to excess. Licensed druggists could purchase of the county dispenser, but not to be used otherwise than in their business. All places where intoxicating liquors were sold, bartered or given away in violation of the act, or where persons were permitted to resort for the

purpose of drinking intoxicating liquors as a beverage, were declared to be common nuisances.

The validity of the legislation was attacked upon constitutional grounds, one of the positions being that by its provisions the state was embarked in a commercial undertaking which was entirely outside the province of government and therefore inadmissible. This objection went to the very vital principle of the legislation, and as a majority of the Supreme Court of the state composed of three judges sustained it, the two acts referred to, both of which involved the same principle, have until recently been supposed to have been nullified. But the term of office of one of the two judges who joined in the decision expired August 1, 1894, and the governor gave notice some little time since that on that day the dispensaries which had been closed after the decision would be opened again. His reason for this as publicly given is that the judges in their opinion did not in terms refer to the act of 1892, and he expects the Court to sustain that act when another case comes up.

The other legislation above referred to was an act of the legislature of Michigan which provided that in certain cases where parties were convicted on a charge of drunkenness, the court in which the conviction took place might order their being transferred to and confined in hospitals or other institutions established for the administration of what is known as the "Gold Cure" treatment. This law also, upon a test case being made, was declared to be unwarranted by constitutional principles and therefore void.

Legislation for the regulation of sales of intoxicating drinks has been less within the year just passed than usual.

In Georgia, each county is given a law by itself, and this is supposed to correspond to the local sentiment.

How the enactments vary will be seen from the following:

For Carroll County, an act was passed prohibiting the manufacture of distilled spirits therein. For Coweta County, a prohibition law previously in existence was repealed. For Pierce

County, the license fee for carrying on the sale of spirituous or intoxicating liquors was increased from fifteen hundred to twenty thousand dollars. For Tatnall County, where the annual license fee is twenty-five hundred dollars, the person seeking a license must have the written consent of two-thirds of the freeholders living within three miles of the proposed place of sale. In Troup County, the manufacture of intoxicating liquors is prohibited with an exception of domestic wine. Special regulations are made for sale of domestic wine in Catoosa County, the chief purpose being to limit the sale to quantities of not less than ten gallons at any one time. In still another county a regulating act was not to have effect unless approved by the voters of the county at an election to be held thereon. Local option elections are provided for in some counties of Maryland.

Kentucky, by an act passed in March, gives to the voters of any county, city, town, district or precinct the right to determine, by a vote cast upon that specific question, whether the sale, barter or loan of intoxicating drinks shall be allowed therein or shall be totally prohibited, or whether any prohibition before established therein by popular vote shall be allowed longer to continue. The order for an election is to be made by the judge of the county court on petition presented to him by voters desiring it, but an election is not to be ordered oftener than once in three years, and if a negative vote is cast, it is not to apply to the manufacturer or wholesale dealer, who in good faith and in the usual course of trade sells in quantities of not less than five gallons delivered at one time, and not to be drunk on the premises, nor to the druggist using such liquors properly in his business, unless the case of druggist is expressly covered by the petition and the order for an election.

Kentucky has within the year added to her statutes on this subject, one relating to cider, which requires that any one selling or exposing to sale that which is composed of nothing but pure apple juice, and such ingredients as may be necessary to preserve the same, shall conspicuously label or brand every

barrel, cask, etc., in which the same is kept, with the words "pure apple cider," and one selling or exposing to sale any cider not thus pure shall label or brand the barrels, casks, etc., with the words "chemical cider." Disobedience of the law is made a misdemeanor.

In Ohio it has been made a criminal offense to sell or give away any spirituous, vinous, malt or other intoxicating liquors in any house of ill fame or on the adjoining premises.

In Louisiana, females must not be employed at concert halls or saloons to dispense or distribute liquors among the persons present. Careful provision is also made to prevent the selling or giving of liquors to minors.

In Maryland, it is provided that on petition of one of kin to an habitual drunkard, or of a friend, a judge of the Circuit Court may consign such drunkard to some institution for the cure of drunkenness.

In Massachusetts, conviction of illegal sale of intoxicating liquors, or of gaming, in the rooms of any incorporated club is made to forfeit the charter of the club.

Virginia revised its law as to closing bar-rooms on election days so as to require all places for the sale of intoxicating liquors in the county, corporation or district in which an election is held to be closed from sunset on the day previous until sunrise of the day after such election.

LIEN LAWS.—The laws giving liens to mechanics are revised in Ohio, Virginia and Utah, with a view to increasing their efficiency and usefulness. A change in Florida is for the protection of builders against whom a lien is claimed.

In Utah, a lien is now given to lessors, which is made to have priority over all other liens except taxes, mortgages for purchase money, and liens of employees for services. The lien continues so long as the lessee occupies the leased premises and for thirty days thereafter, and applies to all property of the lessee not exempt from execution.

In Kentucky, employees in mines and the persons who furnish materials or supplies for the carrying on of the business,

are given liens upon the property and effects involved in the business, and all the accessories connected therewith, including the real estate. In Louisiana, workers in sugar cane are given a lien.

In Iowa, persons who grade lands or lots are given a lien thereon for their compensation.

In New York, the lien of an innkeeper on the goods of his guests is extended to embrace the case of boarders.

Georgia has a very broad lien law which has now been somewhat amended. It extends to improvements on real estate, and when these are made for one not the true owner, extends to twenty-five per cent. of the contract price.

THE YEAR IN ITS CONSTITUTIONAL ASPECTS: THE LAWYER AS A TEACHER AND LEADER.

The year which has elapsed since the last meeting of the Association is in some very striking particulars one of the most notable in the history of the country, and I think I cannot more usefully occupy your time on this occasion than by calling attention to these, and inviting your patient and thoughtful consideration of some of the phases of social and public life, which in a constitutional point of view appear to merit notice at our hands. They have a bearing upon the vital principles of our political institutions, and seem to indicate a necessity for reviewing the work of those whom we have been accustomed to admire and respect as the founders of liberty in the western world, and for considering and judging for ourselves whether the structure they created, and which has hitherto been the admiration of the world, is worthy of the praise it has received. The question is stated with some hesi-

tation, because it seems presumptuous for a citizen of a country whose political institutions have been so greatly praised to seem to admit, by action or suggestion, that the fundamental principles of American liberty can be in need of his championship, so self-evident has their excellence appeared, and so important to the happiness and well-being of any people who have learned to consider liberty an unquestionable blessing. But the experience of the year has taught us, if we needed the lesson, that times may and will come when the fact that for a century political institutions have had beneficent operation, and the excellence of their principles has seemed unquestionable to those who have enjoyed them, may perhaps no longer be accepted as conclusive evidence of their consistency with true liberty or with the highest good of a free people. The careless or interested criticism of one whose political following seems to be discontented with whatever of government now exists may suffice to put our constitutional structure under suspicion, and the outcry of persons who not unlikely are so new to our country that they speak but imperfectly its language, and cannot read a clause of its constitution, may be enough to raise, in the mind of one who courts their favor, doubts, real or pretended, whether the freedom we are supposed to enjoy is more than nominal.

When such a time comes, the most fundamental principles may be in need, not merely of tacit acceptance, but of a defence that shall consist in active and aggressive warfare upon those who in disorderly or unconstitutional ways assail them. I must rely upon this for my justification, if in what I shall proceed to say I shall seem at any point to be calling attention to matters of less dignity and importance than those which are commonly brought to your notice on these occasions. It can never be unimportant that those whose vocation is the law should at all times have in mind the great truth that the customary laws and even the fundamental institutions of any country are moulded and modified by the every-day life and thought of the people, and that sometimes even the carelessly

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tolerated disregard of existing law, and of constitutional principles, which no one would directly propose to change, may tend in the same direction.

I shall first refer briefly to that extraordinary spectacle witnessed early in the year of considerable bodies of men collected in various sections of the country under the leadership of persons who assumed military titles, and who proposed to march upon Washington and make demand in the name of the people for legislation in the supposed interest of those among us who were out of employment. They called themselves, or were called by their leaders or sympathizers, by names supposed to indicate that they were of the working classes, but temporarily idle without their own fault, and they proposed in an impressive manner to remind the federal government of a duty resting upon it to see that every deserving citizen was furnished the means of earning a livelihood.

The thought actuating the movement, if we may judge from such means as were furnished us for understanding it, was that the country of their birth or which they had selected to live in, owed them the duty to see that the means of support were provided them, and that the government must perform this duty. No attention seems to have been taken by them of the apportionment of powers between the states and the general government; the states were passed unnoticed, though to one familiar with our institutions it was plain enough that the duty insisted upon, if it existed at all, must rest upon the states; and the armies marched directly upon the national capital to demand the action of the general government. The national legislature must provide these idle men with the means of obtaining a living. The march and the demand presented a new phase in our national life, and though supremely absurd, they deserve more than a passing thought.

When any particular legislation was mentioned, we heard most often of provision for the construction of better highways than now exist, and for the employment upon these of all whom the industrial and financial crisis had left without work.

Two governmental duties would thus be performed—the duty to furnish laborers with work, and the duty to provide good roads. As they marched upon Washington, they may be said to have lived upon the country, for though their leaders were in some cases men of considerable means, their followers for the most part were only vagrants drawn together for the time being, and with no provision made in advance for the needs of their march, so that the communities through which they moved seemed to have no alternative but to feed them and hurry them along on their journey, or see them break up and become needy dependants where they were. In many cases they seized upon railroad trains or loaded themselves into cars for free transportation, and this they did in persistent defiance of law, as if their claim to be moving in the interest of labor entitled them to appropriate the means of public transportation to a use which they assumed was in the public interest.

All this they did in the name of the American people, for whom they professed to speak, and the country looked on with perhaps some degree of wonderment, but without interposing any effectual protest. On the contrary, the expressions of public opinion in regard to the movement were for a long time more of apology or excuse for the organized bodies of idlers who called themselves industrials or commonwealers, than of censure or criticism, and the condemnation was reserved for what was vaguely called the money power, which in some mysterious way was supposed to find its profit in the stagnation of industry and the financial distress and enforced idleness of the people.

But for its demoralizing effect upon those who took part in it, and who were, as was pretended, desirous of a life of industry, and also upon all who in any way lent it countenance, this march upon the national Capitol might well have appeared to the observer ludicrous in the extreme. It assumed to be made in the name as well as in the interest of the American people, and its leaders spoke unblushingly as the prophets of the people, though not a single state or county or municipality

of the Union had sanctioned the movement, or authorized these leaders or the organized tramps they led to speak for it when Washington should be reached.

The whole number enlisted in the several divisions of the industrial army, if brought together, would have formed but an insignificant fraction of the voters of the country, and if acting in concert in general elections would not have been likely to affect to any considerable extent the result in the choice of our national legislators. But, had this number been vastly greater, the pretence of speaking for the American people was so distinctly antagonistic to the fundamental principles of American liberty as to be preposterous. That liberty is founded in representative institutions, and the citizen selects his representative in elections held in accordance with law, and not otherwise. These men coming to the Capitol represented nobody, not even themselves, for their representatives, duly chosen, were already there and engaged in legislative work. The movement was distinctly antagonistic to the most conspicuous and most indispensable feature of our constitutional fabric.

As the band approached Washington, and found their numbers dwindling, their call for remedial legislation became less emphatic, and any purpose to coerce the national legislature was disclaimed. The leaders protested that they only desired to go to the Capitol that they might in person exercise their constitutional right of petition, and present to the two houses in session the written expression of their views and needs. This was as idle as any of their other pretences. Such personal appearance might be permitted on special occasions, but it is not a matter of right and cannot well be. The Constitution contemplates no visit of the citizen to inform the two houses by word of mouth or otherwise of his opinion or his desires; he has an indefeasible right to do this by representatives; any other method would not only be without value, but might even be employed in legislative halls for the most

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mischievous and obstructive purposes. Their claim in this particular was as baseless as all the others.

These vagrant bands marched across the country to the great injury of its industrial life. While they pretended to represent the doctrine that the government was under obligation to provide for its people the means whereby a comfortable living might be had, they found sympathizers among those temporarily out of employment, and also among other well-meaning people who had of the true functions of government only vague and unsettled notions. They caused unrest everywhere, and as they represented notions which are antagonistic to the existing social and political state, they were everywhere a public danger. Town after town fed them and passed them along lest they might remain exciting disorder while feeding upon the public where they were. The comfortable living they wanted the political society to furnish them they showed no anxiety to labor for, and many times employment offered them was rejected. The teaching of the whole movement was socialistic, though often-times doctrines deserving of still harsher designation found utterance among them. But they were, nevertheless, tolerated to an extent that for a long time rendered their roving life one of unaccustomed enjoyment to many of their number, so that we may almost say that armies like them are encouraged to live upon the country, marching under like dangerous pretences hereafter. They claimed to represent an unacknowledged but fundamental right of the people, when in fact they represented only idleness and disorder, and their seizure of means of transportation and demand for food and shelter as they moved along were directly in the line of, and only warranted, if at all, by socialistic notions. But their treatment, we are obliged to admit, was in very many cases such as, instead of repressing the public mischief, has only tended to perpetrate it.

I have thought this episode in the life of our people worthy of this slight notice, when about to proceed as I now shall, to call your attention to an obligation resting upon us as mem-

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bers of the legal profession, and which, I think, goes quite beyond that which under the same state of facts would rest upon citizens in general. When industrial armies dissolve into roving vagabonds and beggars, the absurdity of their claims and pretenses makes them the subject of contempt and ridicule, but if their mischievous doctrines have taken root among any class of our people and their demoralizing raids upon the industry of the country are likely to be repeated by themselves or by others, it is not by a thoughtless and contemptuous word that the mention of them can be wisely dismissed. Especially is this the case as regards the members of the legal profession, if I am correct in the view I shall now proceed to take of their obligations to organized society, for I shall seek to show that a special duty rests upon them to give active and effectual aid to established institutions whenever revolutionary doctrines are brought forward, or when the fundamental rights we have supposed were made secure under constitutional guaranties are invaded or appear to be put in peril.

Let us for a moment recur to the obligations which, because of our profession, we assume. Every lawyer, when he is given license to practice, takes solemn oath to support the Constitution of the United States and of the State of which he is a citizen. He also undertakes to observe all due fidelity to the courts in which he may practice. He is not licensed until, upon special examination, he is found to be learned in the law and in the fundamental principles of the government of his country, and this learning is supposed to be quite beyond what can be expected of the people in general, and to render him capable of giving sound advice to his fellow-citizens when the true meaning of any branch of the law, whether customary, statutory or constitutional, is in question. His license is a special and valuable privilege which makes him a prominent character in the community in which he lives, and leads to his being made the trusted counsellor of persons in other occupations, as well as of the public authorities. His advice,

thoughtfully given, tends to prevent controversies and dissensions in the community, having their origin in different views of legal rights, and he may be influential in calming passionate excitements, and keeping the wheels of industry moving peacefully and prosperously where otherwise mischievous counsels might prevail. The power to be thus useful imposes upon him duties and obligations special in their nature, and quite beyond those which rest upon persons in other employments. None of us would question this.

Every citizen is under obligation to support the constitution and laws of his country, and he may be summoned in performance of that obligation to assist the State force in the preservation of public order, though thereby his life is put in peril. He may, even against his will, be made to bear arms against public enemies whether they are brought here in organized armies from abroad or become enemies because of discontent with the established order at home. And the obligation which rests upon him to resist the inroads of revolutionary doctrines may be quite as imperative though not expressed in written law. But the lawyer, in the performance of the duty he specially assumes when admitted to practice, may very often more effectually support the constitution and laws by assisting to build up a public sentiment that shall constitute an impregnable bulwark against those who either through malice or ignorance or with revolutionary purpose assail them, than it would be possible for him to do by personal service as a soldier, or by physical assistance in the suppression of rebellion or of domestic disorder.

What I desire to impress at this time upon members of the legal profession is that every one of them is or should be, from his very position and from the license which gives him special privileges in the determination of legal questions and controversies, a public leader and teacher, whose obligation to support the Constitution and laws and to act with all due fidelity to the courts is not fully performed when the fundamental organization of society is assailed or threatened, or the

laws defied or likely to be in the community in which he lives, as a result of revolutionary purpose or of ignorance or unreasoning passion, unless he comes to the front as a supporter of settled institutions and of public order, and does what he properly and lawfully can to correct any sentiment, general or local, that would in itself be a public danger, or be likely to lead to disorder or unlawful violence.

It is a low and very unworthy view any one takes of his office when he assumes that he has nothing to do with public ignorance of the duty of subordination to the institutions of organized society, or with breaches of law existing or threatened, except as he may be called upon to prosecute or defend in the courts for a compensation to be paid him.

Perhaps I shall present my own thoughts upon this subject more distinctly and forcibly if I call to your minds the fact that the last year has been specially prolific in acts of violence against individuals who were charged with crime of a particularly disgusting or horrifying character, or who for any reason had made themselves specially obnoxious or repulsive to their neighbors or to some specially influential or numerous class of the community. Until recently it has been assumed by some of our people that one section of the country only was justly subject to the reproach that its public sentiment tolerated the crime of inflicting punishment by lawless force, and that even in that section it was limited for the most part to one very gross and disgusting class of offenses. But no one section can longer reproach any other in this particular; lynchings have during the year been numerous north and south and west, in cases where murder and sometimes when only an invasion of property rights was charged, as well as in gross cases of violation of female chastity, and the alarming feature of the utter and reckless defiance of law which has accompanied them is that, in very many cases, there was no attempt at concealment, and no pretence that violence was necessary to prevent justice being cheated of its dues; they took place sometimes when the process of the law had already been invoked

against the parties lynched and was leading to certain punishment; and the participants in the lawless tragedy in some cases could openly and truthfully boast that those who were accounted the best citizens in the community approved what they had done and would not suffer the actors therein to be punished for thus setting law at defiance.

That this boast had in many cases full warrant is a fact that one would think ought to make the most careless citizen pause and reflect upon the danger to liberty and to settled government which this species of crime is bringing upon us. A few days ago we were horrified by the announcement that the President of the French Republic, a man highly esteemed the world over, and a true friend of liberty, had been assassinated by an anarchist. The assassin had as an individual no grievance whatever to allege against his victim; he was not even pretending to redress a wrong; he was complaining of no violation by his distinguished victim of the liberty of himself or of any other person. The murderer was simply an anarchist, and the man he murdered was the representative of law and settled institutions; free and just institutions, established by and for the people themselves; but the anarchist will have no settled institutions whatever; he will have chaos.

Now, we have anarchists in our own country; they will submit to no government if they can escape it, even if to that end they must make use of the dagger or the bomb or the incendiary torch, and they openly applaud the murder of the good French President. They have gathering places where by frantic appeals to passions and prejudices they seek to make converts to their doctrines, and when anything occurs to excite other classes to a temporary disregard of law, they are ever ready and ever willing to swell as much as possible the ranks of discontent, and to give destructive effect, so far at least as they may with safety do so, to their hatred of government, but not hesitating in some cases to take great personal risks.

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We justly look upon these men as foes to the human race, for their doctrines, if given full effect, would plunge us into a condition of worse savagery than history shows to have heretofore existed. We have no account that any nation or tribe, even in the earliest ages, has been absolutely without governmental authority which could impose restraint upon the passions of those subject to it, and give some protection to the community against lawless conduct of individuals. The anarchist, if he could have his way, would be under no such subjection; his ideal society would be without law, and the freedom he seeks is like the freedom which prevails among the beasts of prey in African deserts or the jungles of India. A people would not simply give up their civilization by accepting his doctrines; they would give up such restraints upon the human passions as are expected even among the savages.

Every American-born citizen regards these people with horror, and so does every man among us who has come from foreign lands with any respect whatever for free institutions, or even for law. When, therefore, their sentiments are openly avowed, we have very little occasion to fear them. But we are not unfrequently reminded, when an act of tolerated mob violence takes place, that a community may have an abhorrence of anarchy and yet so conduct themselves when they see the law openly and publicly set at defiance that the respect for it which should be its chief support will become more nominal than real, and perhaps be replaced by disregard and contempt. If they look on with unconcern while such an act is taking place, if they give no aid when steps are being taken for the punishment of the participants, a condition of public insensibility to this class of offenses is likely to be brought about, the result of which is that whenever the community is excited and therefore specially in need of legal restraint the law is found to be powerless.

If every citizen who thus countenances or refuses to aid in repressing crimes of this nature would consider a little what must be the natural consequences of his action or of his

failure to act, he might perhaps come to appreciate the serious nature of his fault, and to understand how little he would himself deserve the protection of the law if some mob should select him as a victim of lawless violence. He would then have the conviction forced upon him that by his course he is teaching disregard of law ; that the act he aids or excuses is one step in the direction of the chaos the anarchist would establish ; that his example in countenancing disorder is aiding to create a public sentiment which may by and by tolerate and protect the lynching of any person whomsoever, for any act, bad or good, which happens to arouse public animosity, or even for no other cause than that the obnoxious person has in worldly pursuits been more successful than his fellow-citizens. He will, perhaps, reflect also that when the disorder which he countenances in a single instance becomes general, it will not be the vagabond or the beggar that lawless classes will select for victims, but the man who for any reason is important and prominent in the community.

Perhaps I may here assume as a possibility that in some cases members of our profession, if not actually present at one of these anarchistical demonstrations, have been fully aware that one was likely to take place, and have raised no voice of warning, or done anything to correct the dangerous public sentiment. On the contrary, they may perhaps have looked on undisturbed while their neighbors, who intend in general to be law-abiding and to give their support to the institutions to which alone they could look for protection in life, liberty and property, were nevertheless lending their aid to weaken and undermine those very institutions by treating the restraints they impose for the protection of all the people with contempt or indifference. If this assumption is warranted by fact, may we not with propriety turn to one of this number and challenge him to explain to us how, when liberty is thus taken away and life perhaps destroyed under circumstances amounting in law to criminal homicide, he can justify his own action or non-action in view of the duty assumed when he took the

oath of admission to the bar, and in what manner he would have us understand he has been supporting the Constitution of the Union and of his State, or showing fidelity to the courts in which he practices, and whose authority he has suffered without protest to be disregarded and defied by bodies of men who for the time mocked at the restraints by which alone the political society can render liberty possible? May we not justly ask him to place himself in his hours of reflection by the side of a physician who, knowing that a malignant and contagious disease exists in the community, and that the people, ignorant of the fact, are continually exposing themselves to the danger, nevertheless gives no warning of its presence? If his indignation is justly aroused by the spectacle of such inhumanity on the part of one whose professional duty makes him in an important sense a guardian of the public health, should he not be invited to point out if he can in what particular the professional servant of law and justice is of the two under the circumstances supposed the less justly subject to public condemnation and censure? The duties devolving upon the two professions are indeed radically different, but we shall greatly underestimate the importance of the lawyer as an element in the political state if we assume that those resting upon him are in their claims the less imperative.

I have spoken of lynching as an offence against the life or liberty of a citizen, as commonly it is; but I desire to emphasize the fact that the extent to which the lawless invasion of personal liberty may go is less important than the public sentiment which tolerates any invasion whatsoever. Recently a man was hanged in one State as a supposed murderer; in another a State officer was publicly tarred and feathered for action which the persons assaulting him considered inadmissible for one in his position; and in still another a delegate to a political convention was dressed in petticoats and publicly exposed to ridicule because the local community was not pleased with a vote he had cast on a question of suffrage; in the degree of wrong to the individual there was difference in

the three cases, but the lawlessness, the disregard of the obligations of citizenship and the injury to organized society were equally plain in all and equally deserving of unqualified condemnation. It may safely be assumed that in not one of the communities in which these criminal disorders took place are life, liberty or property which our written constitutions undertake to protect, so secure and so jealously guarded as they were before. But the mischiefs though greatest in the localities are by no means restricted to them, but affect in a measure the whole country.

An important feature in the history of the last twelve months to which I shall now call attention will seem still further to emphasize the importance of the lawyer recognizing his true position in the political society as a teacher and leader, and his duty to support the Constitution and the laws by making them known in their true import when the opportunity to do so is distinctly presented and the need obvious, and by impressing upon the minds of unthinking people the vital truth that liberty is born of law and not of license.

During the summer just past the country has witnessed a great and disastrous boycott and strike of railroad workmen. The cause was not any controversy over their own wages, or about their treatment by their employers; it was a sympathetic movement, so-called, and the reason assigned was that laborers for a corporation with which some of the railroad companies had important dealings had gone upon strike rather than accept the wages offered them; it began with a boycott against railroad companies who made use of the cars of the corporation aimed at and who did not discontinue the use, this being followed by a general strike, the avowed purpose of which was, by blocking the wheels of traffic, to coerce the railroad companies into taking such action as would compel the corporation complained of to submit to arbitration the charges of oppression its employes brought against it. The strike was professedly peaceful, and the thought in the minds of the leaders appeared to be that, by the men leaving the

railroad service and enforcing a boycott against such of the railroad companies as continued to have dealings with the offending corporation and against the use of its cars, all the companies would be so completely crippled that they could no longer run their trains, and must of necessity accept the terms dictated to them.

The case was in some particulars without precedent. Its leading peculiarities were the following :

First.—The railroad companies had no means of coercing the offending corporation to submit to arbitration the controversy with its workmen ; they could at most only refuse to carry out certain existing contracts with it, and discriminate against it when called upon to act for it as common carriers ; but either of these courses would be unlawful, and must subject them to damages and to the compulsory process of the courts. The companies struck at were therefore required to put themselves in distinct opposition, not only to certain contract obligations before entered into by them, and perfectly legal when made, but to the law itself, so that by yielding they would naturally expect legal penalties to follow. But refusal to submit must inevitably result in great loss to the companies, for their receipts would be largely reduced, since the commerce of the country, in so far as it was in their charge, would be paralyzed in exact proportion as the strike succeeded in its aims. Meantime the offending corporation would be comparatively unharmed, perhaps not harmed at all.

Second.—But if the strike was intended to be a peaceful one, it was soon seen that the burden of the loss was to fall not even upon the railroad companies, but upon the public who had occasion to make use of their services. This would be, as was soon shown, a necessary result of the stoppage of railroad trains. Great numbers of passengers were soon sidetracked at way stations, at some of which it was with difficulty they procured the means of subsistence ; shippers of property were put to great loss by delays, and immense quantities of perishable freight were soon going to ruin on trains which the

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railroad managers were unable to take to their destination. California was losing tropical fruits by the train-load; dressed meats in similar quantities, even live cattle and horses, all belonging to private parties, were thus given to destruction by the sun and by the hot winds. The suffering of innocent persons as a necessary result of what had been ordered was quite beyond estimate; the victims were found in every part of the country and among all classes of people.

Third.—But though it was meant that the strike should be peaceful, and the strikers in emphatic terms were admonished by their leaders to make it so, its leading characteristic almost immediately came to be violence. This was unavoidable. For the time being it aimed to paralyze transportation and all commerce by rail, and the greater the consequent injury and inconvenience the greater would be the probability of success. Lawless classes who professed to be sympathizers, but cared only for disorder, saw this very plainly, and the situation soon took on some of the features of civil war. A difficulty the leaders hoped would not be encountered it was soon discovered was likely to prove insurmountable. Laborers out of employment were now abundant; they would covet the vacant places, and unless appeals made to them to stand with their fellow-laborers in what was assumed to be the common interest of labor should prove successful, they must by some other means be kept from the railroad service or the strike would fail. But the needs of the unemployed and of their families were too urgent to admit of their listening to solicitations; they came forward in considerable numbers for employment, and violence, of which they were the victims, followed. The ordinary peace authorities proved unable to protect them; the general fact was that the worst elements of society were soon in possession of some towns and especially of some sections of Chicago, and not only were men anxious to perform labor upon the railroads assaulted and beaten, but the torch was applied to railroad equipment and buildings, and great destruction resulted. The leaders who were directing the strike, however anxious they

may have been to avoid breaches of the peace, were powerless to calm the passions that had been aroused, and the civil commotion went on increasing from day to day in magnitude.

Fourth.—One question fairly arising upon the circumstances of this strike and which, so far as I know, has hitherto received slight attention, I think I may properly call to your notice here. It concerns the rights, legal and equitable, of those who were to be affected by the strike, should one be declared, and raises the question whether under principles supposed to prevail wherever free government exists, the strike as against them could be fully justified without careful consideration of its probable effect upon their interests being first had, and, if practicable, an opportunity given them to urge reasons from their own standpoint against its being entered upon. The parties who were to be injuriously affected were, *first*, the railroad companies, who, if they were allowed to be heard through their general managers or any authorized committee on the question whether it would be just or reasonable to declare a strike against them for what was not their own fault, might possibly have convinced the members of the order which was then considering the question that the objections to it from the standpoint of their employers were altogether reasonable; *second*, the government of the United States whose transportation of the mails and control over interstate commerce were to be very seriously interfered with, and perhaps the service of Federal process obstructed; and *third*, the people of the United States, whose legal right to be transported and to have their property carried by rail was to be in part and perhaps wholly taken away while the strike continued, at a cost to them which in all probability must in the end be counted by millions. The public, it would seem, might have been allowed a hearing through business organizations, such as boards of trade, or through bodies like the Farmers' Alliance, and the government had even a still stronger claim to a hearing, for it was the government of the strikers themselves, and the action which was to be interfered with was action

of which they in common with all the people of the United States enjoyed the benefit. And the government might have pointed out that, if the performance of its constitutional functions was hampered now in an attempt for one assigned reason to compel the railroad companies to take particular action, it might possibly on some future occasion, for reasons still less forcible, or in mere wantonness, be rendered impossible. Success in one instance would not only strengthen those who might have in view similar action in the future, but it would indirectly aid them also, by diminishing the courage of resistance. But the government might also have pointed out that the declaration of such a strike would be the exercise of unchecked and arbitrary power, which where liberty prevails is never by law provided for, since a free people would justly pronounce it unendurable tyranny, and the strikers themselves would as citizens never consent to be governed by a law which would admit of it. A free government is expected to submit even the most unimportant question of legal right to the adjudication of some impartial tribunal, to make provision for the hearing of interested parties, and to take precautions that the elements of passion and prejudice shall not be suffered to control the decision.

Here were three parties, all innocent as regards the grievance which was in question, who, if action was to be taken after the manner deemed necessary to prevent injustice in governmental proceedings, would seem to have had a strong equitable and indeed an indefeasible right to have the effect upon themselves first considered. Now, I understand very well that in the case of the ordinary strike or boycott entered upon for the purpose of redressing an existing wrong, or to prevent one which is threatened, the case is to a considerable extent different. Such a case partakes of the nature of self-defense, and incidental injury to third parties, if it is unavoidable, is excused on that ground. But there was nothing in the nature of self-defense here. It was a third

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party who was supposed to have been wronged in this instance, and as innocent parties were to be directly struck at and greatly injured, the very least they could justly be awarded would be a careful consideration, by those proposing the damaging action, of the question whether the necessary consequence, even if they were successful in what they hoped to accomplish, must not be to cause injury to innocent parties greatly in excess of the gains, and if so whether the proposal could in justice be accepted. But this was a question of which no notice was taken. Innocent parties who must necessarily suffer not only had no opportunity to protest, but their losses were not taken into account as reasons against the boycott and strike. On the contrary, they were looked upon as favorable features of the case, since they rendered success more probable. But a sympathetic strike is bad in morals and must be quite as bad in policy, when the probable injury to innocent parties will exceed the probable benefit to the parties it aims to assist.

The facts here stated seem to emphasize the importance of giving some thought to another feature of the case which perhaps is common when the question of a considerable body of men throwing up their employment is brought by their officers before them, but was particularly prominent here. It concerns the manner in which the decision upon the question is reached.

In theory, the order to throw up the service is always supposed to be authorized or adopted by the men called out, and to be based upon substantial reason. In this case the reason assigned was that the obnoxious corporation refused to submit the case made by its laborers to arbitration, which was a wrong the railroad men desired to remedy. But as their own employers could not compel the arbitration, and there were legal difficulties in the way of their taking the steps the men demanded, it would seem that the substantial reason for proceeding in a hostile way against them must in this instance have been wanting. An impression that such was the case must to some extent have existed among the men who were

ordered to strike, for it seemed to be necessary to call meetings and to have them addressed by speakers who would urge what the leaders proposed. The methods whereby at these meetings an affirmative vote is secured are worthy of attention, especially by laborers themselves who by reason of society ties are liable at any time to be drawn into similar controversies. They are most deeply concerned of all, since the vote to be taken may affect their interests for years, perhaps for life.

The orders in which laborers unite are supposed to be self-governing, and the principles which apply to the action of municipal bodies, and which have become established because they conduce to justice, are applicable to them as well. To be wisely or even safely governed their members must proceed deliberately, and the action taken must be the result of their best judgment coolly and dispassionately applied. In the legislative bodies of the country, from lowest to highest, great pains are taken by rules of order and sometimes by statutes and constitutional restrictions, to render hasty and passionate action unlikely. The need of these precautions is so plain that no one raises any question concerning it, and it is not infrequent that action otherwise regular is annulled by the courts because such precautions have been disregarded.

If we may rely upon the reports appearing in the daily papers, the proceedings taken at the meetings called to decide upon this great movement were not deliberate and dispassionate, but the speakers who were the chief actors were expected to and did appeal, not to the reason of their audiences, but to their feelings and their prejudices. Speakers who it was thought could make such appeals most successfully were brought to the meetings for the purpose; they came to excite their hearers to action, not to reason with them. The action taken was therefore had under the influence of excited feelings. Opposition to what was proposed was not expected, and was not patiently listened to. There was little in the proceedings that even resembled those of a deliberative gathering. Not only, therefore, were other interested parties not given a hear-

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ing, but even those who were deciding what should be their own action in a matter vitally affecting the interests of some of their number, if not of all, contented themselves with listening to a passionate appeal and responding by an hurrah. The decision thus reached was conclusive. The general fact was that a deliberative and patient hearing was had by no one. This was the case until it was deemed necessary to appeal to other orders also, and then the proceedings were commonly quite different. The other orders paused to deliberate; but when deliberate action came to be taken, different results followed.

These matters are mentioned because they bear directly upon questions of justice and right that are necessarily involved when such a movement in the industrial world is proposed. With what justice can it be entered upon when innocent parties are of necessity to be sufferers to an enormous extent therefrom without their rights being taken into account, and their probable losses allowed due weight in reaching a decision? And how can men who live by their labor wisely or even safely throw up their employment as a means of coercion before they have carefully considered in all its bearings what is proposed, and what its effects are likely to be upon their own interests, not only in case it shall prove successful, but also if it fails? This is said in all kindness, for plain talk is kind under the circumstances.

Fifth.—In our notice of this great internal commotion, some attention is due to a question of constitutional law which was raised by some of the governors of states. When interstate commerce was interrupted, the transmission of the mails seriously impeded and the service of process issued by the Federal courts rendered difficult or impossible, President Cleveland sent to Chicago, the point of greatest disturbance and disorder, a considerable military force to aid the civil officers and to protect the carriers of the mails and the persons and vehicles employed in interstate transportation while they continued, or made efforts to continue, in the performance of

the customary service. This at once brought out a protest from the governor of Illinois, who insisted that the President was encroaching upon the rights of the state. The foundation for the protest is understood to have been that the duty to maintain public order and enforce the laws was a state duty which Illinois was quite able and willing to perform, and the Federal executive had no right to act in case of domestic disorder until demand was made upon him by the state legislature or state executive. Governors of some other states were understood to concur in this view. When the President replied to the protest that the United States troops were sent into the state only to enforce national laws, to put an end to interruptions of the mails, to protect inter-state commerce, and see that the authority of Federal courts was maintained—in other words to support the national jurisdiction and protect officers and agents in the performance of national duties—the reply was treated as insufficient, the protest was repeated from time to time, and the consequent excitement tended to keep the disorderly elements bold and defiant, so that the demand was even made by some of them that the governor should employ the military power of the state to remove the Federal forces.

The governor was original in the doctrine he presented for our admiration and acceptance in this case. We all remember that the right of a state to nullify an act of Congress was once claimed, and the right of a state to withdraw from the Union at one time had a great many supporters. We all know that from the very first there have been political parties led by able and patriotic statesman who have insisted upon a strict construction of grants of national authority and of the powers to be exercised under them. But in this case nullification was not suggested, secession was not thought of. The grant to Congress of the power to provide for the transportation of the mails and to regulate inter-state commerce was not questioned in the least. Congress had exercised these powers, and it was not claimed that in doing so it had unwarrantably expanded them, or in any way encroached upon state rights. Congress had

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also provided for United States courts in Illinois, which courts were then in session, and it was not pretended that in issuing the customary process they could lawfully be interfered with or the process denied service. We see, then, there were national duties to be performed in Illinois, national officers, agents and courts to whom in part the performance was entrusted, and disorderly parties were interfering and rendering performance difficult, oftentimes impossible. But the position of the governor was that the maintenance of peace and the repression of disorder was a state duty, and the President was guilty of usurpation when he thus without request moved troops into the state for the purpose.

We cannot admit that the position taken is even plausible. It has no warrant whatever in the Federal Constitution, which, on the contrary, is distinctly against it. The President is to take care that the Federal laws be faithfully executed, and his doing so is not made to depend upon the will or consent of any one state. The duty is specially and in the plainest terms imposed upon him, and in the performance of it he is subordinate to no state authority. Yet if the views of the governor were accepted as sound, the mails might be stopped at Chicago, inter-state commerce broken up, and the process of United States courts refused service, unless the governor, when disorder was dominant, saw fit to suppress it or to call upon the President to do so. If the protest was yielded to it was a concession that the governor and not the President was to take care that the laws of the United States were faithfully executed in his state, and if he failed to do so, a mob might at pleasure defy them. It seems needless to discuss this protest; the action taken by the two houses of Congress in approving in emphatic terms what had been done by the President was equivalent to an expression of their opinion that the protest of the governor was not only unwarranted but was revolutionary. The sentiment of the country as expressed in its public journals and otherwise was to the same effect, and the question of constitutional law may be considered practically settled. It is

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fortunate that it is so, for such a protest from the executive of a great state must necessarily tend at any time to still further excite the passions of those who in a mad way are defying the lawful authorities.

Sixth.—I have had something to say of the duties of members of our profession as public teachers, and I shall now add a few words as specially applicable to crises like the one here alluded to. In doing so I may, perhaps, without impropriety so extend what I say that it shall be applicable to all who, in important positions, and especially as members of our national legislature, are in greater or less degree dependent for their prominence as well as for the opportunity to be useful upon the public favor. Very often they have to deal with difficult questions in government, such as those relating to political economy and finance, and we may suppose they have been selected for their high offices because of their peculiar ability and fitness to judge and act wisely. But not unfrequently we feel compelled to question, as we follow in the journals of the day their public life, whether a legislator, thus presumably chosen to act independently and fearlessly upon his own mature and enlightened judgment, does not sometimes, instead of considering with deliberation the question upon which he must act, content himself with gathering as best he may the sentiment of his constituents, and with expressing it in his public action, even when he believes it to be erroneous and possibly dangerous, and when he cannot fail to perceive that the local sentiment is the result of artful teaching by interested parties or by demagogues. It is easy in that way to float with a popular current, and perhaps to make sure of continued popular support. But the question must often be before his mind whether the current might not be altogether otherwise if in an honorable and fearless way he took steps to correct the erroneous views which, while he remains silent, are certain to control, and whether his constituents have not a right to expect of him that, instead of submitting to follow when he knows they blindly lead, he will give his best ability to making his

service as useful as possible, to them and to the country, and to that end will endeavor to instruct his people when they need instruction as well as to lead them.

When the man who is both a statesman and a leader shall bring the results of observation and experience to a consideration of the difficulties which beset the relation of employer and employé, and which year by year seem to grow more troublesome, he may perhaps be expected to give anxious attention to the question whether the benefits of arbitration in that class of difficulties cannot be greatly extended. There is an impression that this is possible, and he will find laws on the statute books of the nation and of some States having for their object to aid in the removal, by means of a tribunal of peace, of the causes of contention which now in so many cases result in disorder, and in great pecuniary loss to one party or the other, commonly to both. He will inquire whether the benefits of such tribunals cannot by legislation be made to embrace all of what are known as labor controversies, and he will find many to urge upon him the view they hold that compulsory arbitration may be made a complete and adequate remedy when disorders prevail in the industrial world. Some attention to this view seems not unimportant.

Arbitration, as the word has come to us, is understood to mean the voluntary submission by the parties to a controversy of the matters on which they differ to the decision of one or more impartial persons whose award thereon shall be final. The most notable characteristic is that the initiation of the proceeding is voluntary; such, at least, has been the understanding hitherto. The tribunals to which the law gives compulsory power over the controversies of individuals are the courts, and even these are to deal only with questions of legal right and legal obligation; they cannot enforce mere moral duties unless the law has made such duties legal also. But the vast majority of labor controversies involve, as between the parties to them, no question whatever of legal right. They involve disputes over wages or hours of labor where no

binding contract exists that fixes them; disputes as to continuance of the relation, when one party or the other desires to terminate it and his moral right to do so is disputed, but not his legal right; disputes as to the employment of non-union men, and the like. If arbitration could embrace only the labor controversies in respect to legal rights, it would be of very slight value. The award on a voluntary submission may in other cases establish a legal right which the courts can enforce, but the limits to compulsory power in this respect must be very narrow. No employer can be compelled to continue his business when for alleged want of capital or of profits or for any other reason he refuses to do so, and laborers cannot be led by the sheriff to their daily task when they refuse to obey the arbitrator's award, that it is their duty to continue at their work. The award may in a sense be binding on the one or the other, but when it is the party obtaining it must in such cases content himself with an action for damages.

If one shall say to us that it is as competent to provide laws for bringing parties unwillingly before a board of arbitrators as before a court, and to make the action of the one tribunal as much as that of the other compulsory, the answer must be that neither to the one nor to the other can powers be given to enforce against the citizen that which the law does not require him to perform. The name of a tribunal does not determine what powers may be given it; but when it is sought to obtain relief which the party summoned before the tribunal has a legal right to refuse, his consent to submit to the jurisdiction of the tribunal is indispensable. The State may even in such cases provide for investigation of the controversy by a tribunal established for the purpose, as Congress has already done, but not for a trial against the consent of the parties and compulsory submission to the decision. This seems unquestionable.

But, passing this question, let us see what would have been the position of the late controversy if at the time it arose there had been a national board of arbitration and a law of

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Congress to compel laborers and their employers to submit to arbitrate their disputes. And suppose we now undertake to apply such a law, and by doing so end the strike which is understood in some quarters to be still in force.

First, we are to bear in mind that the original controversy was between an Illinois manufacturing corporation and its laborers. The corporation gave notice that the laborers must accept wages then specified, or the losses on the business would be such that the works must be closed. The laborers called for arbitration, and the corporation replied there was nothing to arbitrate. A strike followed. We shall dismiss this now with the single remark that, as the contract which had existed in this case was for service to be performed locally, the controversy could not come under any national law of arbitration, and the laborers, if wronged, must look to the state of Illinois for a remedy.

When the manufacturing corporation refused arbitration, a strong union composed of railway employees in various branches of service declared a boycott and went out on a sympathetic strike. It is this strike that has been so damaging to themselves and especially to the country. The immediate settlement of this, by lawful arbitration or by any other just means; would have been a great boon to the country and to the industrial interests involved.

But suppose a national law providing for compulsory arbitration had then existed, and the strikers had demanded the intervention of the arbitration board, what must have been the result? Obviously, after the board had looked into the case it would have been compelled to say that under the law they could give no remedy, for it had no application whatever to the case. The strike was by railroad employees, and they and their employers were the only parties to it. But the cause of complaint which led to the strike was a controversy between other parties altogether; parties who stood indeed in hostile attitude to each other, but were not parties to this strike, and could not be brought in to take part in the arbitration

demanded. The board summoned to consider this would be wholly without jurisdiction to determine or even to look into the merits of the controversy which was the excuse for the one now brought to its attention. If, therefore, the board could take any action whatever it would be merely to report that the present strike was not based upon any complaint made against the railroad companies, that there was no controversy between the parties to it to be investigated and passed upon, and consequently the board had no jurisdiction and must dismiss the case. This would seem unavoidable.

In what is said here it must be understood that no allusion is made to the probable action of a commission such as has recently been appointed by President Cleveland to investigate and report upon the late troubles. The President has made most admirable selections for the purpose ; the country has confidence in the wisdom, the prudence and the integrity of the men chosen, and whether their report shall or shall not fully enlighten us as to the wrongs and rights of what has already taken place, it can scarcely fail to do something towards indicating for the future more satisfactory ways for dealing with labor controversies than by instituting industrial wars. The best wishes of the country will attend the efforts they may make in that direction, and we may be certain that remedies having their approval will be truly peaceful, which a strike on a large scale very seldom is.

But, if it were possible to establish compulsory arbitration in a case where the controversy was not between the parties to the strike, I should venture to ask whether parties injured by the strike, rather than those not injured and whose interests are sympathetic merely, ought not to be at liberty to appeal to the law. Consider for a moment what actually occurred here. A great many thousand persons were by the strike absolutely deprived of legal rights, and injured in the aggregate to an enormous amount. A great many passengers who had paid for being transported across the country, and who had a legal right to proceed without detention, were side-tracked without

their consent, and were put to great inconvenience and pecuniary loss. A great many shippers of goods suffered loss by detention, and whole train loads of perishable goods were in some cases ruined by delays which the strike had caused. In every one of these and the like cases the injury was a direct result of the strike, and in many cases the circumstances were such that there would probably be no legal remedy against the carriers. The strike, therefore, resulted in the destruction of rights of unoffending parties who were powerless to protect their own interests, or to do anything by way of restoring the normal condition of things. Why should not the parties upon whom losses were visited under such circumstances be at liberty, under a law for compulsory arbitration, to appeal immediately to the board for an investigation of the complaints, if any, made by the strikers against the railroad companies, and to insist that the board should take the necessary action to have the strike declared off when it was found that between the parties to it there was no existing controversy, or none over which the board could have jurisdiction? Why, for example, should not one of the great packers of Chicago, whose property in enormous quantities was to be ruined without his fault, and whose legal right to deliver it by rail to his customers was to be taken away, have been at liberty to demand the immediate intervention of the arbitration board, and its prompt determination that his legal rights must be respected? Parties whose interests were put in peril might, perhaps, under such a law, with entire justice, have protection given them even when the parties to the quarrel who had struck for sentimental reasons only did not see fit to invoke its assistance. No class of persons, not even the laborers at Pullman, had a stronger claim to the immediate intervention of a tribunal with peace-making powers than those who were being deprived of their rights in transportation. A woman, for example, travelling from New York to California, with ailing children and barely means enough for the journey, side-tracked and suffering for days at Battle Creek; whose claim to the immediate intervention of a

compulsory board of arbitration could be greater than hers? And she was no outside party, as were the laborers at Pullman, but was directly and immediately concerned.

In what I have here said I have endeavored to point out in few words some of the obstacles in the way of making compulsory arbitration the effectual remedy in labor controversies, which many seem to think it must in time become. The personal liberty of both the employer and the laborer is necessarily to be respected, and every man must be left to determine for himself whether he will observe and perform such moral or sentimental obligations or recognise such claims as the state has never deemed it wise to convert into legal duties or legal rights. Upon these and kindred subjects a true leader may make the inherent difficulties so plain that destructive conflicts will become inexcusable and also uncommon. He can clearly show that boards of arbitration with their orders—and I may add also courts with their injunctions—if they heed the fundamental law of the land, can no more hold men to involuntary servitude, for even a single hour, than can overseers with the whip. But he can also point out that by contract, when the service begins, the peaceful remedies provided by law can be greatly extended; that the sudden termination or damaging change of the relation by either party can be provided against, and that any other stipulation, important for the security of rights or to guard against the consequences of misfortune, may be made part of the terms of employment. The usefulness of such stipulations may be made so plain that they will, as time passes along, be more and more resorted to, and the legislation in furtherance of peaceable settlements, though it must fall far short of adequately providing for all disputes likely to arise between employers and their men, will nevertheless so forcibly express the public sentiment against existing methods that we may reasonably expect such methods will in a little time become far less common than now, if they do not altogether cease to be resorted to. The legal difficulties in the way of a complete

remedy will remain, and will be serious at almost every point, but the very knowledge of their existence will emphasize the need of precautions to prevent a resort to violent measures when arbitration is inadequate, and to give additional force to the public opinion which will look with emphatic disfavor upon any refusal of arbitration when that seems a suitable and sufficient remedy for alleged wrongs. The employer cannot be compelled to continue his business when it has become unprofitable; that is plain; but if the contract of service is for a definite time he must expect to respond in damages if he terminates it before the time has expired, whatever may be his excuse. If the laborer leaves the service before the time of hiring is completed, he too may be liable in damages, and the employer must rely upon this liability for redress, and will be supposed to take into account the possibility that the laborer may prove irresponsible as one of the incidents necessarily affecting the pecuniary results of his business.

But, perhaps, the legislator or the commission who will lead us in this important work may look for the most useful results to flow from his or their efforts in familiarizing the classes to be affected with the thought that if disagreements arise, peaceable measures, founded on a review of all the facts, are to settle them. The looking forward to such a settlement will of itself have a powerful influence in bringing it about, and when it comes to be fully understood that the states and the nation alike are wanting in power to force upon unwilling parties such arbitration as shall be effectual in all cases, we shall, perhaps, be spared the sorrowful spectacle of wholesale destruction of the rights and property of innocent persons which must almost of necessity result from a strike or boycott so extensive, indiscriminating and persistent as was the case with the one above brought under consideration. And our statesman-leader, we may be sure, will never overlook the fact, or fail to give it due prominence, that there is one class of strike that can never be settled by arbitration. That is the sympathetic strike, and the reason is plain: the parties

to the strike are not the parties to the controversy that needs to be settled, and if the sympathizers are held justified, the original quarrel still remains undetermined. A finding made by a given number of arbitrators as to the merits of the original controversy in such a case would be an idle fulmination of opinion, having behind it no force of law, and going no farther to fix a moral obligation upon any party concerned than would a like expression by any other equal number of equally intelligent members of the community.

I have spoken freely on this subject because it seemed possible that at this time and place it might in some degree be of service. I shall venture, in closing, to add the expression of an opinion that the members of the legal profession, whenever it may seem practicable for them to speak or act in the general interest of the laboring classes of the country, will be ready and desirous to do so. They will feel this to be a duty which they owe not to those classes alone, but to their fellow-citizens generally, every one of whom is concerned in the welfare of workingmen. They will endeavor to have all laws which specially affect the interests of laborers just and right, and to see that they are so administered as to secure to all whose daily labor must give to them and their families the means of support, the just rewards for their industry. Especially may they be expected to give attention to the devising of lawful and suitable means for the prevention of the angry and violent contentions in the industrial world, in the nature of destructive civil wars, which are now so frequent, and the institution therefor of such peaceful remedies as will neither disturb existing employment, draw heavily upon the earnings of labor, nor generate feelings of bitter animosity between classes who prosper most when their relations are most amicable. The problem will be found a difficult one, but its consideration in a sympathetic spirit and with the painstaking perseverance which its importance demands may possibly lead to most unexpected results in the removal of existing causes of antagonism and harmful enmity, and to

such signal benefits for the country at large that the recognition of the service will be generous and perhaps more satisfying to those who are its objects than could possibly be such political honors as are conferred merely in recognition of faithful party allegiance and party service.

If the lawyer cannot be of service here, I shall venture to ask whether his importance as a pacificator in society, through the aid he gives in the application of principles of law and equity to troublesome controversies, is not somewhat overrated.

Perhaps some attention may be given to the question whether the administration of discretionary punishments to strikers, as for contempt of court, when the acts punished were but trespasses upon the possession of a receiver, is not being pushed to an extreme that is a little startling. And on the other hand I may put to those who believe in compulsory arbitration the question, When that is secured, to what relation shall the principle be applied next? To landlord and tenant? And then to what next?

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THE ANNUAL ADDRESS
BY
MOORFIELD STOREY,
OF BOSTON, MASSACHUSETTS.
THE AMERICAN LEGISLATURE.

Mr. President and Gentlemen of the American Bar Association :

We Americans, enjoying as we have a material prosperity beyond historic precedent, brought up with an abiding faith in our free institutions and the good sense of our people, and confident that whatever the ills of the present our future at least is secure, have cultivated a philosophic indifference to every political evil, in the firm belief that whenever the situation gets bad enough we can easily apply the remedy. Yet it must occur occasionally to even the most confident American that certain tendencies have shown themselves with increasing frequency in recent years, and that certain changes are gradually taking place in our theories of government which we cannot afford to ignore. Whether due to defects peculiar to our system or to forces operating alike in every civilized country, they deserve the most careful attention, and from none more than from the members of our profession. When we remember the wonderful exhibition at Chicago which crowned the civilization of four hundred years, and contrast the splendid prospect upon which our eyes rested a year ago with the scenes of bloodshed and conflagration in the same city during the conflict whose echoes are even now ringing in our ears, we may well inquire what the change means.

Some years ago our friend Judge Baldwin, standing in my place, recounted to you the marvellous progress of our country during a century of modern government, closing his eloquent address with the aspiration, "God send that in the century to

come the great work of our fathers may be safe in the hands of their children and of ours."

If this hope is to be realized we must recognize the dangers which beset us and consider the possible remedies, remembering with what sacrifices the work of our fathers was accomplished, and that to preserve it we also must stand ready to sacrifice—if not all that they gave, at least some portion of the ease and wealth which we hold so dear. I propose, therefore, to use the opportunity with which you have honored me in considering some tendencies of the time, whither they carry us, and how they should be met.

Every observer of our political history during the last twenty years must have been struck with the change which has taken place in the attitude of our people towards the fundamental principles of our government. Free institutions rest upon confidence in the legislature, respect for the law, obedience to the will of the majority, and the recognition of every man's right to labor and to enjoy the fruits of his labor.

We repeat, as self-evident truths, that "all men are born free and equal and have certain natural, essential and inalienable rights among which may be reckoned the right of enjoying and defending their lives and liberty, that of acquiring, possessing and protecting property, in fine that of seeking and obtaining their safety and happiness." We have interpreted this declaration as meaning that every man may work for any one who chooses to hire him, for any wages which he chooses to take, that he may make any legal contract and any legal use of his own hands and his own property. Yet large bodies of our fellow-citizens insist that because they choose not to work, no one else shall work in their place; that every man who wishes to follow a certain trade shall join an association which they form and submit his liberty to its control, or else abandon his calling; and that if a man refuses to employ them on terms which they dictate, he shall employ no one else.

Upon claims like these are justified the effort to prevent the employment of non-union men by refusing to work with them,

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by boycotting employers who allow them to work, and by murderous attacks upon them when they take the place of strikers. If the destruction of property and the riotous disturbances of the public peace which immediately and inevitably follow any considerable strike are not publicly justified, they certainly are not strongly discountenanced by these great organizations, whose members cannot but anticipate, and yet take no effectual steps to prevent, these deplorable consequences of their action. We cannot close our eyes to the fact that considerable and important sections of our people practically deny the fundamental rights of American citizens.

“To the end that this may be a government of laws and not of men” are the familiar words of John Adams in the Massachusetts Bill of Rights, and such was the end which the founders of our government had in view. Americans have short memories, but even the shortest can carry us back to the revolutionary attempt of Governor Garcelon and his associates to change the result of a popular election in Maine, when constitutional government was for a while suspended and the Major-General of the State militia discharged the duty of “protecting the public property and the institutions of the State” during the interregnum. Since then we have seen the legislature of Connecticut paralyzed for its entire term and unable to pass a single law, while an election was nullified and the term of the retiring Governor and other officers of state was prolonged for two years without the popular assent. Rhode Island has witnessed a similar suspension of its legislature, though for a shorter period. New Jersey has just emerged from the confusion caused by two Senates, while in Kansas we have seen two rival Houses, each with its Speaker, holding simultaneous sessions in the same chamber, until one party barred the other out, and the Commander-in-Chief of the militia when directed by the Governor to expel the party in possession refused to obey the order.

These things have happened not in Mexico or South America, not even in our own new communities, but in “the

land of steady habits," in the oldest states of the Union, and in Kansas, which was largely settled by New England men.

New York at its last election set the seal of its condemnation on the methods by which the control of the previous legislature had been secured, and the country now looks to the voters of Colorado in the hope that the riotous proceedings which have recently disgraced that state may receive an emphatic rebuke.

These examples show that even in the well-organized society of New England the old-time respect for the result of an election is disappearing, and throughout the country political partisans, in the name of the law sometimes, but in gross disregard of its purposes and its principles, resort to any expedient which will enable them to retain or acquire power.

It may, perhaps, be said that both the illegal acts of striking workmen and the illegal acts of desperate politicians are occasional manifestations of lawlessness which are promptly condemned by public opinion. It is undoubtedly true that the character of a community is shown not by the fact that crimes are committed within its limits, but by the manner in which the criminals are regarded and punished. Giving full weight to this consideration, it is still true that great organizations of working-men uphold and applaud the lawless claims and acts of their associates, and that great political parties see nothing to condemn in the frauds or quibbles of their own leaders if partisan success is at stake.

Let me now, however, call your attention to a change in the public attitude towards another great principle of popular government. In the long struggle for free institutions which terminated in this country when Cornwallis surrendered, a popular legislature was believed to be the great safeguard against arbitrary power. In England it was the Parliament, in France the States General and National Assembly, against the King and the nobles. The cry of our fathers was against taxation without representation. The right to be governed by representatives of their own choice was the end for which they

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fought, and their creed is thus stated in the Massachusetts Bill of Rights:

“The legislature ought frequently to assemble for the redress of grievances, for correcting, strengthening and confirming the laws and for making new laws as the common good may require.”

Their descendants do not share their faith. From the most august legislative body in the country, the Senate of the United States, down to the Aldermen of New York, the citizen too often distrusts, fears and is ashamed of his representatives. The business community throughout the country welcomes the adjournment of Congress as the end of a season filled with perplexity and dread. If we applaud Congress, it is rather because bad laws have been repealed or bad propositions have been defeated than because good laws have been passed. We congratulate ourselves upon our narrow escapes, and wonder whether we shall be equally fortunate again. The citizen who seeks reform, whether he sits in Congress or stands without its doors, must be wonderfully persistent if he is not discouraged by the singular incapacity of that body to deal with great public questions upon public grounds. I forbear to state the case as strongly as I could. Rather let me ask you to answer each for himself the questions, What has been the net result to the country of Congressional action during the last twenty years? What balance of good or evil remains on the statute books of the nation? Which of the measures which you find to be good originated in Congress, and which did Congress pass reluctantly in response to a popular demand which it dared not ignore? Is it too much to say that we no longer look to Congress for the leaders of political thought, and that too often we find it obstructing rather than aiding the passage of wise measures which the people desire?

When a State legislature meets, every great corporation within its reach prepares for self-defense, knowing by bitter experience how hospitably attacks upon its property are

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received in committees and on the floor. The private citizen on his part never knows what cherished right may not be endangered by existing monopolies or by schemers in search of valuable franchises. The citizen of New York needs no light from me as to the character of his legislature. In Massachusetts, during each successive session for years, I have heard on every hand, "This is the worst legislature we have ever had;" but I do not believe that Massachusetts is more unfortunate than her sisters in New England, and if the old-time virtue still exists in Pennsylvania, or Maryland, or California, or the great States of the South, the West and the Northwest, I shall hope to learn from their representatives in this body the secret of its preservation.

When we come to municipal legislatures, the same feeling is found. The city councils of our great cities have not retained public respect, and everywhere men seek an escape from their misrule in laws which shall deprive them of power, and concentrate authority in a single magistrate. The tendency here is from representative government to absolute power.

This popular fear of the legislature shows itself in all the more recent American Constitutions. Biennial sessions are the rule, and in many cases the length of the session is limited. Where it is not, protracted sessions are disapproved. The people cannot endure so long or so frequent assemblies of their representatives as they once desired.

Again, the power of the legislature is curtailed by constitutional provisions which indicate very clearly the popular distrust, and the newer the constitution the greater the restriction. The constitution of New Jersey prohibits private or special legislation regulating the internal affairs of towns or counties, appointing local officers or commissions to regulate municipal affairs, or granting to any corporation, association or individual corporate power or any exclusive privilege, immunity or franchise whatever. Throughout the Western States such restrictions are common, and the people do not even trust the legislature to pass an act unless its subject is

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clearly expressed in its title. Some constitutions require a separate act for each subject, others are content with an enumeration of the subjects in the title, but both provisions throw a flood of light on the legislative practices which make such restrictions important.

Nor is this all. The same distrust is reflected in the legislature itself, and nowhere so strongly as in the Federal House of Representatives, which by its rules has so fettered its own action as to have almost revolutionized its character. For the will of the majority has been to a great extent substituted the arbitrary will of the Speaker, who, from being merely the servant of the House, with neither "eyes to see nor ears to hear save what the House bids" him, has become its master. Through his power to appoint committees, he can prevent particular measures from being considered at all by the House, and through his power to recognize or not, as he pleases, a member who seeks the floor, he can prevent even the consideration of a bill which a majority of the House favors. Within a few years we have had in one Congress a candidate supported for the speakership because if chosen he would make up the committees so that a bill for the free coinage of silver would never be reported. In another Congress men have congratulated themselves that, while such a measure would pass the House if brought to a vote, the Speaker would never allow this. I do not now discuss the wisdom of the rules which permit this result. For my present purpose I mention it as evidence that the leading members of the House of Representatives do not trust that body, and frame their rules accordingly.

Whether, then, we look at the constitutions which the people adopt and the rules of the House of Representatives, or listen to the common speech of men, we find that the faith in the representatives of the people on which our government was founded, is gradually weakening. Of our historical representatives we are justly proud. On our possible representatives we still rely, but our actual representatives we fear and distrust.

Loss of faith in the legislature is loss of faith in representative government, loss of faith in the people themselves, and this feeling really lies at the root of the changes in public opinion on fundamental principles which I have noted. At the great meeting held in New York to express sympathy with the strikers in Chicago, Henry George, whom we believe to be an honest man, however we may differ from him in opinion, seemed to justify their action on the ground that the corporations had corrupted the legislatures. More or less distinctly recognized, this idea is dormant in the minds of many, and bribery is made the excuse for anarchy. The danger against which we guard in constitutions and which in conversation we recognize and deplore is the danger that private interests can afford to pay for the privileges which they seek, prices which the ordinary legislator cannot refuse. How far is this popular feeling justified? What are the facts and what are the remedies?

I will not dwell upon our municipal legislatures. Such trials as that of Jacob Sharp and the aldermen whom he purchased bring isolated cases of corruption to the light, but no one believes that such cases are exceptional. In every large city and in many a small town the same methods prevail to a greater or less extent, unless the public is entirely in error.

Let me proceed at once to the State legislatures in which the general mass of our people is most fairly represented. What is their character? In many states certainly there has grown up an irresponsible body between the people and their representatives which undertakes to sell legislation and finds the business extremely profitable. These merchants attempt first to become acquainted with the State and to single out in each representative or senatorial district the men best suited for their purpose. Some time before the nominations are made they approach those who are honored with their confidence, flatter them by sympathizing with their political aspirations and help them by influence or money to secure their nomination and election. The men thus approached are often honest, though not necessarily so; but honest men can

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be flattered, and where one has received pecuniary or other assistance in securing a coveted office he naturally feels kindly towards those who have helped him. Where the candidate is not scrupulous the tie is stronger.

When the legislature meets, each professional lobbyist has a body of members who will listen readily to his advice, and whose votes he can influence to a greater or less extent. Certain large corporations which are likely to be interested in legislation adopt the same methods of selecting representatives, and each has its cohort of disciplined supporters. Again, there are little bodies of persons seeking valuable franchises who have been at work electing their friends in various districts, and who have each their following of mercenaries. The issues upon which these representatives have been chosen have played no part in the campaign, have been discussed in no political meeting, have attracted no public attention. The innocent people have been led to suppose, perhaps, that the tariff was the issue in the state and have voted for the regular nominees of their respective parties accordingly, while the real question that is to divide the legislature which they choose is whether one set of men or another shall acquire the right to control the streets of some great city.

Not many years ago in my own State a body of men seeking a street railroad charter received a very large sum of money from a corporation which desired the same right. The sellers had no franchise, no property, no right of any kind to sell, but no one doubted that the buyers acquired what they considered fully worth the money which they paid. What they bought was an organization which had secured and could control an important body of votes, the result of a campaign in various parts of the state over an issue which the people never heard of, and this had a very distinct market value.

The legislature thus composed is charged with the duty of electing a Speaker. Each candidate for this office wishes votes. Each lobbyist, each corporation, each body of promoters wishes to control the committees, which can make or mar cer-

tain measures. The candidate who is willing to buy votes by promising places on committees has a great advantage in a legislature made up as I have described, and in many cases the bargain is made. In every case there is danger that such a bargain will be made, and the danger is constantly increasing.

After the speaker is chosen, the lobbyist, with his representatives on various committees and his body of friends in the House, is in a position to tell all seekers for legislation that he can help or hurt them. His position has not been obtained without expense, and he cannot afford to have it supposed that he can be neglected. It is his business to create the belief that his support is necessary and that legislation cannot be had for the asking. Let me quote on this point the frank statement of a professional lobbyist made some years ago in a Boston newspaper. The interviewer asked him the question, "Well, is it a fact that a measure which has not secured the lobby to work for it will be opposed by the lobby?"

"Not necessarily. If the measure be one of acknowledged public utility or of justice the lobby would not oppose it. On the contrary, as a matter of fact, there are measures which come up that, if we do not aid, we do not oppose, and there are cases, for example, where invalid or wounded soldiers ask for aid, that we all take hold of and help in having put through without any idea of reward. But when a private interest comes up and tries to obtain legislation for its own particular ends, and does not employ any regular lobby (this is only a suppositious case, for as a matter of fact the promoters of such interest know better than to do such a thing), in such a case the lobby might feel free to discuss its merits in a somewhat critical spirit, and oppose it actively if an opposition interest employed them. It is, I believe, an axiom in law that a man who pleads his own case has a fool for a client. It is somewhat analogous for a corporation to depend solely upon its own officers to plead its case before a legislative com-

mittee. It must have counsel, and the counsel must be enabled to employ the services of the lobby, and pay well for them. Where this programme is carried out, there are usually good results accomplished."

The privileges which the legislature can give are of great value. The sums at stake are often enormous, and into the lobby in various capacities as counsel, as legislative agents, or as humbler instruments in the work of educating and influencing the members are gradually drawn eminent lawyers, ex-governors, ex-attorneys-general, ex-senators and representatives whose political acquaintance and influence, or whose legislative experience make their services valuable until the number of counsel and agents employed to secure favorable action on even the simplest business proposition far exceeds any legitimate requirement, while the sums paid for their services are out of all proportion to the usual professional charge for an equal expenditure of time and thought. When legislators of last year are making large incomes in the lobby, are their late associates in the legislature who have retained their seats likely to desire no share in their good fortune? Are the men whose votes pass or defeat a measure invariably willing that all the profits arising from their action shall be reaped by men who simply talk to them?

When a New York representative first saw Hunt's splendid frescoes in the capitol at Albany, he remarked to a friend, as the story goes, "Well, Jimmy; this will raise their price," and he knew whereof he spoke. Where large sums are spent habitually to secure legislation, the money will no more remain in the lobby than water will run up hill. The influence which turns the vote will reach the hand which casts it.

When a bill is introduced into the legislature which gives to certain private individuals the right to take their neighbors' property without adequate compensation, to tax their fellow-citizens, or to use the public streets for private purposes, the ordinary voter smiles and thinks that so absurd a measure cannot possibly pass "even in our legislature." When, how-

ever, after a period of incubation in committee spent in "educating" the legislature, the measure is reported, the public awakes and certain citizens whose interests are menaced or whose public spirit is exceptional, bestir themselves, only to find a legislature too thoroughly "educated" to be reached by argument and determined to pass the bill which seemed impossible. Happy, indeed, are they if they do not find that a liberal expenditure for the publication of arguments and evidence at advertising rates has closed to their appeals a certain portion at least of the public press, so that the usual avenues to public opinion are barred. Under this system the public, which is disorganized, finds itself at the mercy of organized private interests and betrayed by its representatives. Great corporations secure or defeat legislation at will and dominate the politics of whole states, and their power rests on corruption.

How is it with the Congress of the United States? Are private interests powerless to influence the action of that great legislature? Not certainly if we believe those who are most familiar with its secret springs. Upon one point both parties are in cordial harmony. Democrats are united in believing that the provisions of the McKinley bill were bought by manufacturers with contributions to the Republican campaign fund. Republicans with equal unanimity proclaim that like contributions to the Democratic fund have shaped what may be called, perhaps, the Gorman bill. The country believes them both, while the Senate conducts an investigation for the purpose of finding out whether any of its members have been purchased directly by the capitalists who have conducted a siege outside the doors of the Senate chamber. It would be too much to say that the report of this committee has relieved the doubts of the country, but for my purpose it is absolutely unimportant whether any of these charges are true or false. If not true to-day, they will be to-morrow. While the legislature under our present system can give or take away enormous fortunes by a vote, it is certain sooner or later to demand a share

of the profits, and legislators will become partners with the men whom they enrich.

I would not exaggerate, if indeed it were easy to do so, the extent of the evil to which I would call your attention. Fortunately, the testimony given in New York before a committee of the legislature is still fresh in your memories. It shows a community in which not only legislation, but the administration of the law, have been for sale. Not criminals alone, but men of wealth and standing, for years have paid the officers of the law to neglect or to discharge their duty. Great corporations and prominent citizens have paid large sums to men of political influence in return for legislative favors or for insurance against hostile laws, while humble peddlers have paid for the permission to earn their living. In the greatest and richest city of our land, the government of laws has given place to a government of corruption and blackmail. New York has had virtue enough at least to begin reform, and has learned what honest men never sufficiently realize, how essentially and necessarily weak is any combination of scoundrels. The fate of the Tweed Ring, the most strongly entrenched conspiracy against good government that ever existed in this country, and the ignominious overthrow of McKane and his associates in crime, show what is easily possible. "Thrice is he armed that hath his quarrel just, and he but naked though locked up in steel, whose conscience with injustice is corrupted."

Mr. President and gentlemen, why not believe what we so often quote?

The existence of the system which I have described threatens the permanence of our institutions. If a large body of voters desire a change in our monetary system and think that Congress has been influenced against them by other than public considerations; if they demand relief from taxation and believe that the right to tax them has been sold to private citizens for money, whether paid to individuals or to campaign funds which are used to elect individuals; if they seek greater privileges from transportation companies and find themselves

beaten by large expenditures in the legislature; if they find franchises of great value sold for money which the public does not receive, can they retain confidence in their representative system or rely on it for the redress of grievances? The action of the legislature in each case may have been right, but when a wise law is bought, the injury done the public is far greater than the most foolish law can cause. The people of the United States have been taught an implicit confidence in the power of the government. If times are hard, no matter from what cause, the party in power is held responsible. It is to the legislature that they naturally turn for relief. If ever they believe that this omnipotence is corruptly controlled by money, that their misery at any moment is the result of laws purchased by their employers or creditors, if they have lost their faith in peaceful agitation and relief within the law, they will begin to consider how they can help themselves, law or no law. Populist movements, Coxey armies, Chicago, Homestead and Pittsburgh strikes are symptoms, and symptoms to which we cannot close our eyes. When Sumter was fired upon, Mr. Emerson summed up the cause of the strife in a single sentence, "We have been trying to do without justice." The greatest civil war in history proved that the experiment had failed. Honesty is justice and it is the corner-stone of self-government. Foreign war, pestilence and disaster unite and strengthen a people, but no government can long resist the insidious influence of general corruption. The fall of the apple to the ground is not more sure than is the ruin of the nation which ceases to care whether its rulers are honest.

I am not an alarmist. The most sanguine American of us all has not more faith than I in the virtue, the common sense, the political sagacity of our people, but these qualities must assert themselves. I believe with you all that when things get bad enough, we shall find and apply the remedy; but are they not bad enough now? How much lower must we sink before we begin to rise? For how much more corrupt a Tammany shall we wait? Is there not danger that in our self-con-

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fidence we may let the disease go too far for easy cure? There comes a time when the only remedy is revolution. Can we be sure that our virtues are so remarkable, our situation so peculiar, our strength so great that the fate which has befallen other republics can by no accident be ours? Such are the questions which disturb our repose.

But I shall be told that it is easy to criticise. What can we do to cure the evils which we all recognize? It is not easy within the limits of your patience to discuss adequately the causes of the conditions which now exist or to point out the remedies, but it is clear that there are three possible points of attack—the men who receive the money, the methods by which it is paid, and the men who pay it. You must raise the character of your legislators. You must strip bribery of every comfortable cloak. You must make men realize that they are themselves disgraced when they corrupt their fellows.

Every citizen must do his share of the work. The ultimate force in this, as in all civilized countries, is public opinion. The object of our institutions is to secure its direct and effective expression. The creation of public opinion, which in the last resort is the education of the individual voter, is not within the scope of legislation, except so far as public education helps by increasing intelligence and knowledge. The work of educating, organizing and directing public opinion on the questions of the day is to be accomplished by individual effort through the press, on the platform, and in conversation, and in this work every citizen does his part, whether he will or no. His silence, his indifference or his thoughtless speech are often more effective for ill than he realizes. He must be active for good or he will be counted for evil.

Dealing first with the legislature, it needs no argument to prove that no system of government can succeed unless it is administered by men of ability and integrity. Brains and character are essential in public office, and our present methods are not well calculated to secure them. Our first difficulty arises from our own apathy. We do not select our own

officers. ~~www.Welldownload.com~~ We allow them to select themselves. Instead of casting about the community to find a creditable representative and trying to secure his services, we wash our hands practically of all responsibility in the matter and let the men who see in office an opportunity to distinguish or enrich themselves seek and obtain it by methods which are familiar to all. If you doubt the truth of what I say, look at the representation of the greatest States and the largest cities.

The necessity of seeking office, the methods employed to secure nominations, large contributions to campaign expenses, the sacrifice of independence, hard work, small pay, abundant criticism and slender appreciation of good service, are some among many reasons which make so many able and honorable men prefer private life.

These conditions can be changed only by an awakened public spirit, a patriotism which will feel that a country which is worth dying for in war is worth working for in peace, and perhaps a recognition by the average business man that bad government costs him personally more money than the time and trouble needed to secure an improvement. We are rich enough to afford good government. Can we afford any other? We have all realized lately, as never before, what bad legislation and bad legislators cost. A little organization, a little intelligent attention by each citizen to his individual share of government by the people, a very little time, and we can make our legislatures what they should be. The first step is to resolve that we will, and when this step is taken the work is done. What we need is determined public opinion; a firm resolve that the great experiment of self-government shall not fail through our fault. Our first attack must be upon ourselves.

There are, however, certain abuses behind which the present system is entrenched. Our self-constituted political leaders talk much about the public, but they fear nothing as much as the expression of its real opinion. Hence they resort to every device which can prevent or embarrass it. Premature caucuses

and packed conventions, false returns of votes and stuffed ballot-boxes are familiar expedients, and the last at least have been made more difficult by recent laws. There is, however, one ancient wrong, native, I regret to say, in Massachusetts, but readily adopted elsewhere, which seems to grow with our growth and strengthen with our strength: I refer to the practice known as "Gerrymandering."

In the expression of public opinion, each citizen is entitled to an equal voice, and this result is only attained where voters are divided into equal bodies. If a district of ten thousand voters elects one representative and another containing forty thousand elects one also, one voter in the first equals four in the second. In 1892, every 21,938 Republican voters in Iowa had a representative in Congress and the party sent ten in all, while 201,923 Democrats had only one. This may not have been due to gerrymandering, but it is at such results that politicians aim, and too often with success.

All political parties are guilty of this practice, or, to put it more accurately, certain men in each for personal or party ends perpetrate this wrong, and their associates acquiesce.

Experience shows that under temptation the legislature will abuse its power of apportionment no matter how stringent the provisions of the constitution. Must we then admit that here is a defect in our institutions which cannot be cured? I venture to suggest a remedy.

When several persons are tenants in common of land and wish it divided, the court will appoint commissioners to make partition, and when they report their conclusion to the court, all parties interested are heard on the question whether the division is fair, and only such a division is confirmed by the court.

When the question is how to divide a state into districts of reasonably adjacent territory and nearly equal population, is there any good reason why the same process should not be applied? The question in itself is simple. The division can easily be made by any fair men with the map and the census.

In such a case why should not the Supreme Court of the state, on the motion of the Attorney General, appoint three commissioners, distributed properly among the political parties, to do the work and make report to the court, which should have power, after hearing the Attorney-General and counsel representing each political party, to confirm, alter or recommit the report. This method would insure a fair division. Gerrymandering cannot live in the atmosphere of a court-room, or survive a public argument before a judicial tribunal.

If it is suggested that we must not bring the courts into politics, I might answer that the division of a state into equal districts is not politics ; it is mathematics. It is because politicians improperly yield to partisan temptation in deciding a question of mathematics that the whole trouble arises, and therefore I would give the power to a tribunal where improper considerations cannot weigh.

A further answer is found in the reports of our States. Several times in recent years have the courts set aside an apportionment after it was made because it was so unfair as to violate a constitutional requirement of equality. Surely if courts can be trusted with the question after the legislature has acted, after party feeling is enlisted on both sides and perhaps after an election, when their decision may change the control of the state government, they may safely deal with the question at the outset and prevent the evil, which is proverbially easier than to cure it.

I would not willingly impose upon the courts any strain which will tend, however remotely, to shake public confidence in their absolute impartiality, but I should be ashamed of my profession if I entertained for a moment the suspicion that a court could not superintend the division of a territory into equal districts so that no man could doubt its entire rectitude.

When each vote has been insured its proper influence on the result, the next step in the effort to secure a proper legislature is to see that the voter expresses his opinion unbribed and unintimidated, and that the result is honestly declared. Here

we touch the methods by which corruption does its work, and this is our second point of attack. If we would purify the legislature, we must purify the campaign and especially must we abolish that prolific source of direct bribery, that convenient cover for the indirect purchase of a legislature, known as the campaign fund. The enormous sums which are now collected are so spent as to directly demoralize the voters and to buy legislative and executive office, but this by no means their worst use.

Many a man who would scorn to receive a bribe will accept a contribution to his campaign expenses, apparently paid for the honorable purpose of advancing a political cause, but spent in helping him to gratify his cherished personal ambition by defeating now his rivals in his own party convention and now his political opponent at the polls. He does not recognize the bribe, but he feels the obligation to the contributor, and that gratitude which is defined as a lively sense of favors to come makes him glad to repay the favor if he can before the next campaign makes necessary a fresh call for pecuniary help. A man must be singularly independent if he does not lend a kindly ear to the friend who has helped largely to elect him and upon whose aid he must again rely.

Even worse than this personal relation to a single man is the influence over an entire party secured by contributions to the general fund. When we find a great corporation giving impartially to the funds of both parties, whether in the States where senators and representatives are made or in the national contest for the control of the executive, it is impossible to explain the payments from political sympathy or public spirit. A corporation has no politics. Its managers and stockholders cannot belong to both parties from conviction. If its funds are given indifferently to both, it must be for a business reason, and the only thing that such expenditure can buy is influence with the leaders of each party that takes the money.

Many a man dares not admit his own motives to himself and contributes to the party fund, as he assures himself, to

help his country. When he makes that contribution the basis of a claim for office, when on the strength of it he asks for legislative favors, he perhaps refuses to see the connection between the payment and the equivalent. But while some men deceive themselves, more go directly to their end and know exactly what they pay for. The campaign fund to-day not only furnishes the means for corrupting voters, but supplies a fair seeming cloak for the more dangerous purchase of legislation.

The enormous expenditure which we now tolerate must be stopped, and perhaps no more efficient way can be devised than the English system which forbids any improper payment by a candidate or in his interest, unseats the candidate who violates this law, and in aggravated cases disfranchises the corrupted constituency. The execution of this law has been confided to the English courts with signal success, and they have administered it with great strictness. The same system can be adapted to our own requirements. In this way contested elections can be decided by an impartial tribunal after a public trial in court, not in committee rooms by partisan judges who often consider more the perils of a small majority than the requirements of justice. The manner in which contested elections have been decided in our legislatures is a standing reproach, and there is no remedy except to have these cases tried by judges. While we cannot, without constitutional amendment, take from our legislatures the right to decide ultimately as to the elections and qualifications of their members, we can, by proper legislation, make the judgment of a court the *prima facie* title to a seat as well as the certificate of a returning board, and such a judgment, after public trial, would with difficulty be reversed.

I am tempted in passing to allude, for a moment, to one difficulty in securing the direct and effective expression of public opinion, which the professional politician finds very useful. By having national, state and city elections on the same day and by bringing national politics into each contest, it is made very difficult to discover what a vote means. Town elec-

tions are treated as valuable indications of public opinion on the tariff question. It is hard enough for a man who wishes to vote for sound money, a proper tariff, and the reform of the civil service to say what ballot he shall cast. When, however, he is asked at the same time whether he favors free trade, hard money, Tammany rule, the last apportionment, the prohibition of liquor selling, women suffrage, and a dozen other questions, and is told that as he votes on one he must vote on all, how is his answer to be given? Suppose ten cases between twenty different parties were tried at once to the same jury, a suit on a note, an action of slander, a petition for land damages, a writ of entry, a breach of promise case, a suit to recover for personal injury, or several of each kind, and the jury were instructed that they must return a general verdict for the plaintiffs or the defendants in all, would the ends of justice be accomplished? This is the way in which our political jury is charged. Is it wonderful that its verdicts are not always intelligible? Each juror selects the case which he thinks most important, and gives the same verdict in all. The machine politician clings to this system, but in the interest of good government a division of the questions is important. The separation of State, national and municipal elections is a step in the right direction, and the so-called *referendum* may also become necessary, as our political life becomes more and more complex.

I return now to my line of argument and continue the attack on the methods by which legislatures may be unduly influenced. Having chosen our representatives fairly on issues clearly understood, they must be able to represent us, and there seems to me no power so inconsistent with the theory of our institutions and so likely to promote corruption as the arbitrary power of the Speaker under which, as we have been told, "the House of Representatives has ceased to be a deliberative body." It is said that in the national legislature Speakers have constituted committees in such a way as to prevent measures which they did not favor from being brought before

the House; that they have used the power of appointment to reward those who supported, and punish those who opposed their election; that places on committees are used to purchase votes in the contest for the speakership, and that the power to recognize members has been exerted to influence their votes, which can easily be done when members feel that their chance of re-election depends on their success in securing the passage of some local measure; that strong friends and weak opponents are recognized in debate for party advantage, and that in some cases the power of the Speaker has been employed to favor or defeat legislation from even more questionable motives. It is immaterial whether the charges are true now; it only a question of time when they will be true, and it is clear that the Speaker to-day has undue power. Under the present rules, Charles Sumner in a pro-slavery House could not have delivered the message of Massachusetts. George William Curtis, under a Speaker who favored the spoils system, could never have spoken for civil service reform. We can imagine a party leader in the Speaker's chair against whom even his own party associates might struggle in vain for tariff reform. Opposition can be silenced, criticism stifled, congressional inquiry prevented at will.

In the state legislatures similar charges are made and the power of the Speaker to appoint committees makes the corruption of the legislature easier and increases the influence of the lobby, as I have pointed out.

The Speaker should be a presiding officer as impartial as the lot of humanity will permit, and not a partisan leader. He should not be able practically to disfranchise a district by refusing to give its representative an opportunity to speak, simply because he does not agree with the views which that representative proposes to express. Of what avail is it to elect a reformer in Alabama if a Speaker from Massachusetts can keep him silent? The Speaker should have no power to deprive even a single member of his equal right to take part in the proceedings of the House, far less should he be able as

now to defeat the will of the majority. He should be powerless to keep the real leaders of the majority from their proper positions of influence by appointing to chairmanships inferior men as a reward for support in the speakership contest. I recognize fully the difficulty which exists in every great legislature of reconciling the right of the minority to speak with the right of the majority to act, but the power of the majority is sufficient to make proper rules. The remedy is not to transfer this power to a single man. The present rule illustrates the tendency of mankind to find in tyranny a refuge from the abuses of liberty, and we may well lay this example to heart.

If a legislature is found unreasonable, the people may be trusted at the next election to elect a better successor. Under free institutions we *must* rely on their good sense and virtue. No temporary exigency can justify us in abandoning our principles, and if we cannot trust the national legislature to use its powers wisely—if those powers must be controlled by a single man, we have gone far towards confessing that popular government is a failure. A senator of the United States, formerly an honored leader of the lower house, once said that after the contest with slavery the next battle for freedom must be fought against the rules of the House of Representatives.

We have only to cross the capitol to find a system in successful operation which would prevent the corrupt bargains under which speakers may now be elected and committees appointed to promote or prevent legislation. The committees of the Senate are elected by that body, the places being divided between the parties in proportion to their numbers on the floor, and each party in caucus selecting its own representatives. Under this system the real leaders of each party take their proper places, and private interests cannot control the appointments. The Vice-President is notoriously powerless, but no one complains that this officer has not presided acceptably over the deliberations of the Senate. Why should we not have a similar presiding officer in the House? Adopt the

Senate plan, take from the Speaker the power to appoint committees, and the office will be shorn of its influence. It will no longer attract the party leader and it will be possible then to select a Speaker who will see that the House proceeds in order, and that its members have their equal rights. The present rules can only be justified on the theory that the people cannot be trusted to select proper representatives.

It is well further by reasonable constitutional restriction to provide that the legislature shall deal with all questions affecting franchises and privileges by general laws applicable alike to all. Such provisions destroy the merchandise in which corrupt legislators can deal, and prevent men from buying exclusive privileges. Whether some of the restrictions are not unnecessarily minute is a question which I cannot now discuss.

I have thus far considered the remedies for a corrupt legislature which are found in the choice of better members, in preventing bribery at elections by legislation against improper expenditure in political campaigns, in limiting the power of the Speaker, and in restricting the power of the legislature.

We now come to the third point of attack. The ancient maxim of the law must be invoked, "*Haud sectari rivulos sed petere fontes.*" Public opinion must be brought to recognize the truth that it is not the comparatively poor, weak and often uneducated man who receives the bribe, but the strong, rich and able man who pays, at whose door lies the sin of corruption. The tempter is worse than the man whom he tempts. If we cut off the fountain, the rivulet ceases to flow. It is the pocket from which the money comes at which we must strike if corruption is to be stayed.

Men argue that they are in charge of large properties, that others have trusted them, that the interests in their hands will suffer if they do not defeat adverse legislation or fail to get additional power; that the people choose to send dishonest men to the legislature and the only way of getting what they need is to buy them; and that they would justly be condemned

if they let the property of others be sacrificed because they would not resort to the usual methods of protecting it. They admit that the practices are wrong, but persuade themselves that it is their duty to do for others what they would scorn to do for themselves.

Let these men search their consciences further and ask themselves if it is not rather the *easiest* way that they choose? Whether they do not spend the money of their stockholders, held in trust for no such purpose, rather than spend their own time and energy in a disagreeable battle with corrupt forces in which if their cause is just they will surely win at last? "Corruption wins not more than honesty." Is it not often a fear that their cause will not bear public discussion which makes them yield to corrupt demands? Is it not their own comfort and pleasure rather than the interests of others which they really consider when they take the easy way which they know to be wrong? No law and no principle of morals forces any one to commit a crime in order to discharge a trust.

There are some men who have simply yielded to a system which they did not create, but there are others, active, able and unscrupulous, who have done much to create it. Of the two classes the first is really the most mischievous. That unscrupulous men should attempt to carry their ends by corrupt means is inevitable. They are like other criminals who simply follow the law of their being, and against them the community can defend itself. When, however, the men who should direct the contest against the offenders themselves join the criminals, when they defend criminal acts and justify criminal practices, society is paralyzed by what is in fact the treason of its leaders. When honest men, the men to whom we look for example and guidance, resort to corrupt methods; when, worse than this, they justify their course and excuse themselves by pleading that no other methods are possible, they do their country the gravest injury. They say by their acts that honest legislatures are impossible, that free institutions have failed, that government is a matter of money, that the cause of the poor is hopeless.

These men, while they pay blackmail, see that each year the blackmailers become more numerous and more exacting. If a corporation stands ready to buy the man who introduces a hostile measure, what so easy way of earning money as to introduce it? If one man did it this year, two will do it the next. The law of blackmail is as inexorable as the law of gravitation. The payment of constantly growing tribute cannot continue long. When and how will it end? Do they not realize how humiliating it is that the great interests of our country should nourish a swarm of insects who in one way or another prey upon them? A little courage, a little loss endured in the first instance, a determination to use only honest methods and to follow up and expose every attempt at corruption, would soon end the present system. Is not public opinion strong enough to compel this?

The public must realize the truth that the man who knowingly employs a dishonest agent, gives him money to accomplish an object, and closes his eyes to everything but the result, is just as guilty of every corrupt act which that agent does as if he did it himself. He is no whit more really respectable than the "tool" whom he employs. Macbeth has never been deemed less guilty than those quaint old professional characters the first and second murderers, and it is as idle for the employer who furnishes the money to shield himself by ignorance of his agent's methods as for Macbeth to cry "Thou canst not say I did it." Every dollar spent in corruption not only costs ten in the near future, but it is sure to invite a public condemnation which may come slowly but not the less surely and which will fall, perhaps, upon the innocent more than the guilty. Our great railroad systems in the West, built in defiance often of financial and often of moral laws, were mines of wealth to their projectors. Where are they now? Sooner or later the people woke up to the fact that they were paying tribute in the shape of rates upon money which had never been invested, and they in turn began blindly to strike at the railroads until these corporations are by many regarded as public enemies which buy

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the legislatures and defraud the people. The financial children of the railroad magnates who flourished twenty years ago find their "teeth set on edge" and their property destroyed by unwise legislation which they are powerless to prevent. So will it be with all the edifices that are founded on corruption.

And finally, Mr. President and brethren of the American Bar Association, does not a peculiar responsibility rest upon us? The members of our profession are largely employed in legislative business. It is we who represent great corporations before committees and conduct legislative campaigns. It is our advice upon which the representatives of great interests depend. It is to "Legal Expenses" in corporation ledgers that many a questionable outlay has been charged. The fortune of our client may be made or destroyed by the decision of a court or the verdict of a jury. The establishment of a patent may involve as many millions as can be gained through any action of any legislature. Yet would we on that account take steps to secure a packed jury or try improperly to influence a court? The lawyer who should seek by foul means to win a verdict or secure a decision would be driven from the Bar, if discovered, and be forever disgraced. Is there any reason for regarding a legislature as less sacred than a jury? The power of the first is far greater. The interests in its charge are far more important than are often committed to a jury. The verdict affects the parties to the cause. The law governs the whole community. Should we not on this account be even more careful to guard the legislature from improper approach?

As officers of the court we feel bound to protect its honor. As citizens of the commonwealth are we not equally bound to defend the purity of the legislature which holds its power in sacred trust for us all, and on whose integrity rests the continued existence of the state? We know that if the community loses faith in the absolute purity of its courts, the whole social fabric is imperilled. We remember how in Cincinnati, indignant at the miscarriage of justice in

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court, the mob burned the Court House and did justice according to its own views. We have not forgotten how promptly the community took the law into its own hands when a jury acquitted the Italian murderers in New Orleans. In dealing with the delicate questions between labor and capital, which are pressing upon us, the legislature is the court and jury. When men's passions are as strongly enlisted as they are in these disputes, the most perfect integrity and the greatest wisdom are needed to adjust them. Absolute confidence in the arbiters is essential. Let it once be believed by the laborer that some great legislative contest has been determined against him by money, and how long will it be before we witness a riot which will be perhaps a civil war?

The fees which are paid for very slight legislative services are large. Their size often stigmatizes the employment. The temptation is great, but we who are the interpreters and to a great extent the makers of the law, we whose consciences are educated in courts of justice, we who should lead the community up, and who know that upon respect for the law rests our whole system of government, we certainly cannot escape the gravest condemnation if, through any act, advice or acquiescence of ours, the fountains of the law are polluted. The honor of our profession, the future of our country, are at stake. The law is in our keeping and our hands must never weaken its hold upon the people. Let us remember the stern command of the ancient Roman, "*Tu cole justitiam. Tibi et aliis manet ultor.*"

GREAT DISSENTING OPINIONS.

BY

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As a general rule, dissenting opinions receive slight attention. The active practitioner is chiefly concerned with the law as it is declared by the majority of a court, and pays little heed to a shrill or feeble shriek as to what it might or ought to be. The mere student may, as a matter of temporary interest or curiosity, turn to the opinion of Mr. Justice Yates in *Perrin vs. Blake*, on the Rule in *Shelley's Case*, or to that of Sir William Blackstone in *Scott vs. Sheppard*, on the distinction between Trespass and Trespass on the Case; but, while admiring the subtlety and learning displayed, will prefer, on the whole, to accept the doctrines of the majority.

This is true of the numerous instances to be found in the Reports of the various States, and it matters but little whether the dissenting Judge be as eccentric and interesting as Hugh H. Brackenridge of Pennsylvania, or Peter V. Daniel of Virginia; or as eminent and able as James Kent, Lemuel Shaw, or John Bannister Gibson. Their dissenting opinions, while commanding the respect of a passing glance, do not arrest the fixed gaze of the profession, because they are felt to be of but local significance, out of harmony with the order of existing things, and but futile and idle protests which failed of effect even at the moment of their utterance.

There is a class of dissenting opinions, however, which is well worthy of the closest attention on the part of the American Bar. They are marked, when studied in mass, and in the strict order of time, by certain peculiarities which give them

permanent value. I refer to the dissenting opinions delivered by members of the Supreme Court of the United States upon questions of constitutional law.

In the first place, the occasion of their occurrence has been of national and not local concern, and the opinion of the majority has marked an epoch in the development of our national jurisprudence.

In the second place, the dissent was the result of an independence of view which boldly asserted itself in spite of the pressure of the majority.

In the third place, as the dissenting judge was the leader of a forlorn hope, or the champion of a lost cause, viewing himself as the chosen guardian of a Constitution which, in his judgment, was rudely assailed, he expressed himself with uncommon vigor and the most fervent convictions of right.

In the fourth place, owing to the gradual fluctuations in the views of the judges and the changes wrought in time in the political complexion of the bench, the constitutional views of a hopeless minority become those of the triumphant majority, and the protest thus becomes a proclamation.

In the fifth place, in a series of notable cases, the views of the original minority have become the settled law of the land, by the distinct and formal overruling of previous decisions.

In the sixth place, the sharpness of the conflict calls attention to the opinion of the majority, and serves to fix its leading features in the memory.

Upon all these points, it is to be observed that these dissenting opinions are interesting not because of the fame of the dissenting judge, but because of the importance of the doctrines contended for, and the way in which they have become woven into the warp and woof of our jurisprudence, to become in time of controlling importance in determining the pattern of the texture.

These peculiarities, although noticeable when studying single cases, become remarkable when the opinions are viewed in mass for the last hundred years. These dissenting opin-

ions constitute, in a certain sense, the best exposition to be found in the books of the views of the two contending schools of constitutional interpretation. At all events, they cannot fail to enable us to grasp the living principles underlying the struggle between the expanding empire of National Federalism and the shrinking reservation of State Sovereignty, while they deserve close attention because of the ability and the purity of their utterances. It is of infinite value to the student of history to gaze on the most hotly contested battle-fields, while it is ennobling to know how heroes fought in defence of causes which they held dear. It is quite as exhilarating to students of jurisprudence to note the features of a combat between Wilson and Iredell, or Marshall and Washington, or to observe the great Chief Justice in his old age contending for the first time with the majority of the Court in what has been termed his master effort; or to view Story, fighting over the dead body of his chief, and invoking the shade of that illustrious jurist to combat the doctrines championed by Taney; or to dwell upon the unrivalled judicial eloquence of Woodbury when contending for the common law and trial by jury as against the extension of the admiralty jurisdiction. It is equally inspiring to dwell upon the Roman firmness with which Curtis and McLean, at the wildest moment of the struggle over slavery, withstood the shock of the combined assault of Taney, Nelson and Wayne; or to catch the ring of weapons, clashing over State rights in the celebrated Slaughter House cases, when wielded by such redoubted swordsmen as Miller, Bradley and Field. It is of almost breathless interest to observe how the sceptre passed from the hands of Chase and Field in the Legal Tender Cases to those of Miller, Bradley and Strong.

It is to these and similar features that I invite your attention.

I shall not attempt an exhaustive analysis of cases. They are too numerous, and the limits of this paper too circumscribed. My object is simply to awaken interest in the sub-

ject, and point out the way to those who may wish to pursue it in detail.

It is a matter of curiosity to note in starting that the very first opinion published in the reports of the decisions of the Supreme Court is a *dissenting* opinion. It is that of Mr. Justice Thomas Johnson in the case of *State of Georgia vs. Brailsford, et al* (2 Dallas, 402), a case of but little importance, but it serves to illustrate the fact that at the outset the Court followed the practice, prevailing in England and in most of the original thirteen States, of calling on the judges, beginning with the youngest in commission, to express in turn their individual views of the case decided. This practice was followed without interruption for a period of ten years. During that time nine cases involving constitutional questions arose. In but one of them was a dissenting opinion delivered which may be fairly called "great." It is that of Mr. Justice Iredell in *Chisholm's Executors vs. Georgia*, (2 Dallas, 419). It is, indeed, a great judicial utterance, not so much because of its admirable style and technical learning, but because it is the first formal statement of the doctrines of the Democratic party in relation to the Constitution. It is the quarry from which subsequent statesmen have diligently hewn the most substantial of their arguments. It enunciates, either directly or by implication, all the leading principles of the State Rights school.

The plaintiff, a citizen of South Carolina, had sued the State of Georgia, and obtained service of process upon the Governor and Attorney-General. The Court held that under the language of the Constitution such a suit was authorized; that the service of process was competent; that an action of *assumpsit* could be maintained against a State, but, while declining, from motives of prudence and delicacy, to enforce an appearance by the State, ordered that unless the State appeared, or showed cause to the contrary by the next term, judgment by default should be entered. From these views Iredell alone dissented, and the pith of his argument was to

the effect that an action of assumpsit would not lie against a State, it being clearly shown by numerous illustrations that though in England certain judicial proceedings by way of petition not inconsistent with sovereignty might take place against the Crown, yet an action of assumpsit would not lie. He insisted that if such an action could be maintained, it must be in virtue of the Constitution of the United States, or of some law of Congress conformable thereto. After closely examining the grants of judicial power in the Constitution, and the distribution of jurisdiction as stated in the Judiciary Act, he failed to find any delegation of authority in such a case. The Constitution, in his view, was not self-enforcing. The article relied upon by the majority of the Court could not be made effective without legislative intervention. All the Courts of the United States must receive not merely their organization, but all their authority as to the mode of their proceeding from the Legislature only. There was no part of the Constitution which authorized the Supreme Court to take up any business where Congress had left it, and in order to give full activity to the powers given by the Constitution, supply legislative omissions by making new laws for new cases, or by applying old principles to new cases materially different from those to which they had been previously applied. The States had not surrendered their sovereignties to the Union in this respect, and at the time of the adoption of the Constitution there was not in any State any particular mode authorizing compulsory suit for the recovery of money against a State. No fair construction of the Constitution could show that the States had abdicated their sovereignty in favor of the general government in such a case as this.

The doctrines of this dissent were embodied in the Eleventh Amendment.

With the accession of John Marshall as Chief Justice in 1801, the practice of delivering opinions *seriatim* was largely abandoned. His master mind, asserting an intellectual dictatorship, produced a unity of decision which greatly strength-

ened the court, but which alarmed Jefferson, who bitterly complained to Ritchie in 1820: "An opinion is huddled up in conclave, perhaps by a majority of one, delivered as if unanimous, and with the silent acquiescence of lazy or timid associates, by a crafty Chief Judge, who sophisticates the law to his mind by the turn of his own reasoning."

It is quite evident from the date of this letter, from the date of the decision, and from the fact that the State of Virginia was a party, that the opinion of Marshall which excited the animadversion of Jefferson, was the famous case of *Cohens vs. State of Virginia*. Three years later, Jefferson wrote to Mr. Justice Wm. Johnson: "I rejoice in the example you set of *seriatim* opinions, and I have heard it often noticed and always with high approbation. Some of your brethren will be encouraged to follow it occasionally, and in time it may be felt by all as a duty, and the sound practice of the primitive court be again restored."

I have been irritated by this criticism of Jefferson upon Marshall to examine the reports with care, with a view of ascertaining the justice of his complaint, with the following result: During the time that Marshall was Chief Justice, from 1801 to 1835, there were thirty-six opinions delivered by him upon questions of constitutional law. In twenty-three of these there was no dissent. Of the thirteen dissents, there were eight participated in by Johnson, two by Washington, five by Thompson, one by Story, one by Marshall, two by Duvall, two by Baldwin, and one by McLean. It is evident that Jefferson's animadversion was hasty and unfair. It is noticeable that, although occasionally Mr. Justice Johnson is elaborate and interesting, ingenious and argumentative, and Washington tenacious of his own views, upon the two occasions when he differed from his chief, no great dissenting opinion occurs during the whole range of Marshall's Chief Justiceship save one, and that one delivered by himself. It is noticeable, too, that but one of his great judgments, those which have become the imperishable monuments of his fame, as well as the base

stones of the constitutional jurisprudence of the country, was dissented from. *Marbury vs. Madison*, *Sturges vs. Crowninshield*, *McCulloch vs. Maryland*, *Cohens vs. Virginia*, *Gibbons vs. Ogden*, were all by an undivided court. In *Dartmouth College vs. Woodward*, Mr. Justice Duvall dissented but delivered no opinion. In *Osborn vs. The Bank of the United States*, Johnson dissented, but his views turned upon a narrow point of jurisdiction. In *Brown vs. Maryland*, *Craig vs. Missouri*, *Cherokee Nation vs. Georgia*, and *Worcester vs. Georgia*, there were various dissents, but they are all of the second grade. In *Ogden vs. Saunders* (12 Wh., 332), alone is there a dissent which can fitly be characterized as "great," and it is that of John Marshall himself. It is the first time that he found himself in a minority upon a question of constitutional law. Prior to that time the steadiness of the movement of the Ship of State under the hand of her great helmsman had been without wavering or shadow of turning. The opinion of the Chief Justice has been by some termed his master effort, and it is distinguished by his usual characteristics of clearness, directness and logical vigor. The discussion turned upon the power of a State to pass a bankrupt act. The majority of the court held that the power of Congress to establish uniform laws on the subject of bankruptcy did not exclude the right of the States to legislate on the same subject, except when the power was actually exercised by Congress, and the State laws conflicted with the Act of Congress. The question raised involved another phase of that which was raised in *Sturges vs. Crowninshield*; the majority of the court, including Washington and Johnson, holding that the State law in force when a contract is made is a part of the contract itself, that when such a law provides for the discharge of the debtor upon prescribed conditions, its enforcement upon those conditions does not impair the obligation of the contract of which that law itself was a part. Marshall maintained that, however an existing law may act upon contracts when they come to be enforced, it does not enter into them as a part of the original

agreement, and that an insolvent law which released the debtor upon conditions not in effect agreed to by the parties themselves, whether operating upon past or future contracts, impaired their obligation.

His opinion is an effort of pure reasoning, of simple logical deduction, unsustained by precedent and authority, unaided by analogies, but worked out from the suggestive inferences of his own mind. Applying his favorite rules of construction—in brief, that the intention of the Constitution must prevail, that this intention must be collected from its words, that its words were to be understood in that sense in which they were generally used by those for whom the instrument was intended—the Chief Justice arrived at the conclusion that the constitutional inhibition upon the States from passing laws impairing the obligation of contracts extended to all contracts prospective and retrospective. Had retrospective legislation alone been intended, the proper words would have been used to convey that idea. The general language used was such as to suggest a general intent to prohibit State legislation on the entire subject—the obligation of contracts—not merely from passing retrospective laws.

Such was the power and vigor of this dissent that when another phase of the case arose, and it was ascertained that effect was sought to be given to the State Act of bankruptcy beyond State lines, Marshall plucked Johnson from the side of Washington, and carried him away in thongs, so that it was held, also by a divided Court, that the State law, if a part of the contract, was such only as between citizens of that State, and since the creditor was a citizen of Louisiana he was not bound by the New York insolvent law, and the debtor was not discharged.

With the passing of Marshall, the School of Strict Constructionists marched to power, and the current of decision was turned into new channels running in a new direction. Out of a Court of six members, four had been but recently appointed by Andrew Jackson: McLean, Baldwin, Wayne and Taney.

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Smith Thompson had been appointed by Monroe. Of the old Court, as it had been in the days of Marshall's prime, but one—Joseph Story—remained. There stood upon the docket for re-argument three cases of extreme importance, involving the constitutionality of State laws. All had been argued before Marshall, and a division of opinion ensued, his judgment being against the validity of the laws. The re-argument was had before the Court as presided over by Taney. The first of these was that of *New York vs. Miln* (11 Peters, 102), involving the police powers of the States as attempted to be exercised by the State of New York in a law concerning passengers, by which the master of every vessel arriving in the port of New York from any other port was required, under certain penalties, to report within twenty-four hours of his arrival the names, ages, and last legal settlement of every person on board. Justices Barbour, Thompson and Baldwin delivered their opinions *seriatim* sustaining the validity of the law. Story dissented.

The second case was that of *Briscoe vs. Bank of Kentucky* (11 Peters, 257), involving the meaning of the phrase "bills of credit" as prohibited by the Constitution. The State had established a bank with power to issue notes, which were actually issued in the form of a promise to pay the bearer a sum designated on demand. It was held by McLean, Thompson and Baldwin concurring, that in a constitutional sense a bill of credit as prohibited must be issued by a State, on the faith of a State, and designed to circulate as money upon the credit of the State. Story dissented.

The third case was that of *Charles River Bridge vs. Warren Bridge* (11 Peters, 420), in which the protection of corporate franchises under legislative grant from competing charters was fully considered in an opinion by Chief Justice Taney, which has always been regarded as a happy rescue of the States from the improvidence of general grants and the greed of rapacious monopolists. The Chief Justice based his opinion upon the broad principle that public grants were to be con-

strued strictly, and that nothing passed by implication. Inasmuch as there was no express grant of an exclusive privilege to the Charles River Bridge Company, an implied contract to that effect could not be inferred. Story again dissented.

There is nothing more remarkable in the career of this renowned jurist than these three dissenting opinions. They are in his most characteristic style. They are marked by a wonderful combination of learning and judicial oratory in defence of principles of morality and public integrity which in his judgment affected the welfare of the Union, lighted up by the fire of an ardent devotion to the memory of the mighty dead. He felt that he was summoned to the holy task of vindicating the decisions of the Court for the past twenty years. The doctrines of *Gibbons vs. Ogden*, of *Craig vs. Missouri*, of *Brown vs. Maryland*, and of the Dartmouth College Case were in deadly peril, and he fought with the courage of despair. The notes of his proud and defiant *moriturus saluto* are thrilling and pathetic. Again and again he appealed to the name of Marshall—"a name never to be pronounced without reverence." How deep was the emotion with which he exclaimed, "I have another and strong motive—my profound reverence and affection for the dead. Mr. Chief Justice Marshall is not here to speak for himself. * * * I have felt an earnest desire to vindicate his memory from the imputation of rashness or want of deep reflection. * * * * *'His saltem accumulem donis, et fungar inani munere.'*"

The reviews and letters of the day reveal the extent and character of the popular impression that a revolution had been effected in the views of the Supreme Court. Daniel Webster, writing of the Charles River Bridge case, declared: "The decision of the Court will have completely overturned, in my judgment, one great provision of the Constitution." Chancellor Kent, writing of the same case, said, "It abandons or overthrows a great principle of constitutional morality; it injures the moral sense of the community, and destroys the

sanctity of contracts." He viewed the decision in the Kentucky Bank case with equal alarm and distress, and declared: "I have lost my confidence and hopes in the constitutional guardianship and protection of the Supreme Court." Justice Story, writing to his associate McLean, declared: "There will not, I fear, ever in our day, be any case in which a law of a State or of Congress will be declared unconstitutional, for the old constitutional doctrines are fast fading away." And a writer in the *New York Review* exclaimed: "A gathering gloom is cast over the future. We seem to have sunk suddenly below the horizon, to have lost sight of the sun, and to hold on our way *per incertam lunam sub luce maligna*."

These despairing prophecies were not realized, but it is noticeable that at this time, and for many years afterwards, until general concert of opinion between Taney, Nelson and Campbell gave steadiness to the action of the Court, there was a complete want of cohesion among the judges upon constitutional questions. No more graphic statement of the exact situation can be found than that given by Mr. Justice Baldwin. He wrote: "In the case of the Commonwealth Bank, of Kentucky, I was in the minority; in the Charles River Bridge case, it now appears that I stood alone after the argument in 1831; the Tennessee boundary case hung in doubtful scales, and in the New York case I was one of a bare majority. By changes of judges and of opinion, there is now but one dissent in three of the cases; and though my opinion still differs from that of three of my brothers who sat for the fourth six years ago, it is supported by the three who have been since appointed."

This situation is particularly illustrated by that class of cases which involved a discussion of the power of Congress to regulate commerce between the States. In the so-called License Cases (*Thurlow vs. Massachusetts*, *Fletcher vs. Rhode Island*, *Pierce vs. New Hampshire*, 5 Howard, 504), each judge had his own method of stating his views, and six judges

wrote no less than nine opinions; while in the Passenger cases (Smith *vs.* Turner, Norris *vs.* City of Boston, 7 Howard, 283), where the fight over the principles of Gibbons *vs.* Ogden, and Brown *vs.* Maryland was renewed, there was such a diversity and conflict of views, even among the judges concurring in the prevailing opinion, that the reporter declared in despair that "there was no opinion of the Court as a Court," and the reader is referred to the opinions of the judges for an explanation of the statutes and the points in which they conflicted with the Constitution and laws of the United States. These cases are marked, also, by an extraordinary difference of recollection between Chief Justice Taney and Associate Justice Wayne as to what had taken place in the consultation room ten years before when the case of New York *vs.* Miln was decided. In fact, the consultation room had been turned into a battlefield, and the moment the majority swung away from the principles laid down by Marshall, the result became involved in doubt, and the practice of making the Chief Justice the organ of the Court in delivering its opinion was practically abandoned, and the old custom of opinions *seriatim* resumed.

A still further illustration of the lack of harmony among the Judges is discoverable in those cases relating to the extension of the admiralty jurisdiction upon the waters of the Mississippi above the ebb and flow of the tide, and upon the great lakes upon our Northern boundary, and nothing in the books is more worthy of careful attention than the powerful and elaborate dissenting opinion of Mr. Justice Woodbury in the famous case of Waring *vs.* Clarke (5 Howard, 441), and that of Mr. Justice Daniel in the case of Genessee Chief *vs.* Fitzhugh (12 Howard, 443). These opinions are marked by extraordinary learning and research, close and vigorous logic, and bold, original and comprehensive deductions: Woodbury contending for "the principles dear to freemen of the Saxon race, preferring the trial by jury and the common law, to a single judge in admiralty, and the civil law," in a discussion which must be termed

profound. To this list is to be added the dissent of Woodbury in the case of *Luther vs. Borden* (7 Howard, 1), where he disputed the authority of the State of Rhode Island to declare martial law in the celebrated Dorr rebellion, a dissent which has been termed by an able critic the *reponse sans replique* of juridical argument. He analyzes the nature of judicial power, and pours forth an abundant flood of historical learning in relation to our domestic institutions and those of England.

The dissenting opinions of Mr. Justice Daniel have received separate treatment at the hands of Mr. Justice Brown, and it would be a task of supererogation to touch upon what he has already discussed so exhaustively and with masterly skill. It is noticeable also, that Chief Justice Taney is to be included in the list of dissentients, and special attention should be paid to his opinions in the *Wheeling Bridge* case (9 Howard, 647), and in the discussion of the boundary line between Massachusetts and Rhode Island (12 Peters, 657). In the former he felt himself bound by the principles announced by Marshall in the case of *Blackbird Creek Marsh Company* (2 Peters, 245), and could not perceive "how the mere grant of power to the legislative department to regulate commerce can give to the judicial branch the power to declare what shall and what shall not be regarded as an unlawful obstruction" of a highway of commerce. In the latter he declined to take cognizance of what he regarded as a purely political question lying beyond the reach of judicial authority.

Upon the questions relating to the powers of the States and of Congress over slavery, the Court, while substantially agreeing in the result reached in the famous case of *Prigg vs. Commonwealth of Pennsylvania* (16 Peters, 539), was divided in view. Story seized with avidity upon this the last opportunity in his long judicial career of declaring a State law unconstitutional. *Prigg*, a citizen of Maryland, had been indicted under a law of Pennsylvania for carrying off a fugitive slave by force, in defiance of the provisions intended to give effect to the State Constitution relating to fugitives from labor.

It was held that the Act was unconstitutional, because the Constitution of the United States, in providing that fugitive slaves should be given up, placed the remedy exclusively in Congress, and that it was incompetent for the States to legislate upon the subject.

A most ingenious argument in support of the constitutionality of the Act is to be found in the opinion of Mr. Justice McLean, an opinion which has been regarded by Mr. Justice Brown as the ablest of his efforts, and one which is to be viewed substantially as a dissenting opinion. McLean drew the distinction between the occupation by a State of a fragment of Federal power which had not been exercised, and subject to a notice to quit, and the exercise by a State of its inherent and sovereign power to protect its jurisdiction and the peace of its citizens in any mode which its discretion shall dictate, which shall not conflict with a defined Federal power; and as neither the Constitution of the United States nor the Act of Congress authorized the forcible abduction of a slave, he held that it was competent for the State to act.

We reach next, in the order of time, the immortal dissent of Mr. Justice Curtis, sustained in a separate opinion by Mr. Justice McLean, in the memorable controversy known as the "Dred Scott Case" (*Dred Scott vs. Sanford*, 19 Howard, 393), happily of purely historical interest, but unhappily an instance of an effort on the part of the majority of the court to settle a moral and political question over which they had no technical jurisdiction, having sustained a plea to the jurisdiction filed in the lower court, and thereby ousted themselves from all right to discuss the question upon its merits. The action of the majority was a fatal blunder; the dissent of Curtis is the greenest leaf in the chaplet that crowns his brows.

The twenty-eight years during which Chief Justice Taney presided over the deliberations of the Court present a striking contrast between the ability of Marshall to guide, to mould, and to control the opinions of his tribunal, and the inability of his successor to keep the questions within measurable bounds.

Taney, although unquestionably a lawyer of the very highest talents, and of the most abundant learning, as a man lacked the power and leadership of Marshall. Marshall's strength and vigor supplied warmth, and life, and sunlight to our constitutional system, while Taney was aptly described by Wirt, as "a man of moonlight mind, the moonlight of the Arctics, with all the light of day, without its glare." The phrase is striking and suggestive, and indicates the difference between the intellects of the two men.

I turn now to the period covered by the Chief Justiceship of Salmon P. Chase. The field is inviting, and the temptations to stray are numerous. I pass over the somewhat elaborate dissent of Mr. Justice Nelson, in the Prize Cases (2 Black, 635), and that of Mr. Justice Miller in *Ex parte Garland* and *Cummings vs. State of Missouri* (7 Wallace, 700), with the remark that while they are notable, they do not reach the full measure of greatness. I also pass over that class of cases in which the doctrine of a general commercial jurisprudence was established, in which it was held that the Federal Courts were not bound by the judgments of the courts of the States where the cases arose. (*Gelpcke vs. City of Dubuque*, 1 Wallace, 175; *Meyer vs. City of Muscatine*, Ibid. 384; *Havemeyer vs. Iowa County*, 3 Wallace, 294; *Butz vs. City of Muscatine*, 8 Wallace, 575; *Township of Pine Grove vs. Talcott*, 19 Wallace, 666). The series of dissents by Mr. Justice Miller is remarkable, but inasmuch as they were wholly ineffectual, they produced no permanent impression upon our jurisprudence.

I come directly to the greatest judicial debate of the century, not only because of its intrinsic interest and the fundamental character of the question involved, but because it displays, in the most convincing manner, the talents of the great jurists who participated in it, and vindicates their title to be regarded as among the ablest of the many distinguished men who have illustrated our national jurisprudence. I refer to the Legal Tender decisions.

Prior to 1862, no statesman or jurist had contended that Congress had, under the Constitution, the power of making anything but gold and silver coin a legal tender. The Acts of Congress of the 25th of February, 1862, 11th of February, 1863, and 3d of March, 1863, declared that the notes issued thereunder should be "lawful money and a legal tender in payment of all debts, public and private, within the United States, except duties on imports." Were these Acts constitutional? Some sharp preliminary skirmishing had taken place in the cases of *Bronson vs. Rhodes* (7 Wallace, 229); *Butler vs. Horwitz* (Ibid. 258); *Bronson vs. Kimpton* (8 Wallace, 444); but the main battle was fought in the case of *Hepburn vs. Griswold*, (8 Wallace, 603), in which the further question was discussed, whether the Acts of Congress in relation to Legal Tenders applied to debts contracted before as well as after enactment. The opinion of the Court was delivered by the Chief Justice, concurred in by Justices Nelson, Clifford, Grier and Field, and resulted in the distinct ruling that there was neither an express grant of legislative power to Congress contained in the Constitution to make any description of credit currency a legal tender in payment of debts, nor could this be done in the exercise of an implied power.

The dissenting opinion of Mr. Justice Miller is his masterpiece. Indeed, it ranks among the foremost dissenting opinions of the first century of the Supreme Court. The discussion went to the very roots of the question, and his analysis was searching and complete. He divided the provisions of the Constitution relating to the function of legislation into those which conferred legislative powers on Congress; those which prohibited the exercise of legislative powers by Congress, and those which prohibited the States from exercising certain legislative powers. He subdivided the first into positive and auxiliary powers, or, as more commonly called, the express and implied powers. The implied or auxiliary powers, he contended, were founded largely on the general

provision which closed the enumeration of the powers granted in express terms, by the declaration that Congress should have power also to make all laws that would be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by the Constitution in the government of the United States, or in any department or officer thereof. He pointed out that although the Constitution prohibited any State from coining money, emitting bills of credit, or making anything else than gold and silver coin a tender for payment of debts, yet no such prohibition was placed upon the power of Congress on this subject; while, on the contrary, Congress was expressly authorized to coin money and to regulate the value thereof, and of all foreign coin, and to punish the counterfeiting of such coin, and of the securities of the United States. He insisted that this latter clause, when fairly construed, conferred the power to make the securities of the United States a legal tender in payment of debts. In considering the scope of the words "necessary and proper," he declared that the necessity need not be absolute, nor the adaptation of the means to the end be unquestioned. He then pointed out that the power to declare war, to suppress insurrection, to raise and support armies, provide and maintain a navy, borrow money on the credit of the United States, to pay the debts of the Union, and to provide for the common defence and general welfare, were all express powers, distinctly and specifically granted in separate clauses of the Constitution, and that when Congress was called on to devise some new means of borrowing money on the credit of the United States for the purpose of meeting the peril incident to a state of civil war, the legal tender Acts furnished instantly a means of paying the soldiers in the field and of filling the coffers of the commissary and quartermaster; that they further furnished a medium for the payment of private debts, as well as public, and at a time when gold was being rapidly withdrawn from circulation, and the State bank currency was become worthless; that they furnished the

means to capitalists of buying the bonds of the government; that they stimulated trade; revived the drooping energies of the country and restored confidence to the public mind. He therefore reached the conclusion that not only did the necessity in the constitutional sense of the term exist, but that the means adopted bore to the necessity a proper and constitutional relation. He also held that where there was a choice of means the selection rested with Congress, and not with the Court; and that if the Act to be considered was in any sense essential to the execution of an acknowledged power, the degree of that necessity was for the legislature and not for the Court to determine. He therefore expressed the opinion that Congress had acted within the scope of its authority, and insisted that the law was constitutional, and dissented from the opinion of the majority of the Court. In this conclusion, Justices Swayne and Davis concurred.

The whole question was again opened for the consideration of the Court in *Knox vs. Lee* and *Parker vs. Davis* (12 Wallace, 457). The former decision in *Hepburn vs. Griswold* was distinctly overruled, and it was held that the legal tender Acts were constitutional and valid both as to contracts made before and since their passage, the opinion of the court being delivered by Mr. Justice Strong, and concurred in in a most vigorous opinion read by Mr. Justice Bradley.

Chief Justice Chase pronounced a most elaborate dissent, in which he again traversed the ground covered by his opinion in *Hepburn vs. Griswold*, and insisted that the error of the minority judges in that case was in urging as a justification of legal tenders considerations pertaining to the issue of United States notes. He insisted further that the law violated an express provision of the Constitution, and the spirit, if not the letter, of the whole instrument; that inasmuch as the Fifth Amendment provided that no person should be deprived of life, liberty or property without compensation or due process of law, the Acts, by operating directly upon the relations of debtor and creditor, violated that fundamental principle of all

just legislation that the legislature should not take the property of A and give it to B. He also insisted that the Acts impaired the obligation of contracts.

Justices Clifford and Field also dissented, the opinion of the latter being a most able and exhaustive discussion of the whole financial policy of the government, asserting that it was plain that the policy of maintaining a fixed and uniform standard could not be carried out, and that a fixed and uniform metallic standard of value throughout the United States could not be maintained so long as any other standard was adopted which of itself had no intrinsic value, and was forever fluctuating and uncertain. He admitted that the measure was passed in the midst of a gigantic rebellion, and that the patriotic men who adopted it did so under the conviction that it would increase the ability of the government to obtain funds and supplies, and thus advance the national cause; but he declared that, sitting as a judicial officer, and bound to compare every law enacted by Congress with the greater law enacted by the people, and being unable to reconcile the measure in question with that fundamental law, he could not hesitate to pronounce it, in his judgment, unconstitutional and void.

No one can read the dissenting opinions in these cases without feeling that he has been placed in possession of all that can be urged in support of both sides of the question, and that he has gained immeasurably in a true understanding of the principles which lie at the basis of the doctrines taught by the two contending schools of constitutional interpretation.

Another question of profound and lasting importance, involving the construction of the 13th, 14th and 15th Amendments, arose in the famous Slaughter House cases (16 Wallace, 36). They grew out of an Act of the Legislature of Louisiana, passed after the close of the Civil War, by which regulations for the maintenance of a Slaughter House were fully and completely detailed. The butchers of New Orleans considered this monopoly an invasion of their personal rights. The opinion of the majority of the Court, delivered by Mr.

Justice Miller, put a more limited interpretation upon the Amendments, and particularly the 13th, than had been expected, and it was held that the law in question was a police regulation for the health and comfort of the people, entirely within the power of the State Legislature, and unaffected either by the Constitution or the Amendments.

From this opinion Justices Field and Bradley dissented in the most energetic terms, holding that the Amendments were intended for whites as well as blacks; that they conferred upon all alike, if born in the United States, or naturalized, citizenship of the United States, and that the privileges and immunities of citizens which the States were offering to abridge, were not merely those arising out of the Constitution itself, but all those fundamental rights of person or property usually regarded as secured in all free countries.

The dissenting judges did not question the power of the States over all matters of internal concern, nor did they in any respect attempt to impair, or wish to impair, the full exercise of any authority which the States had ever exercised, or claimed to exercise, over their internal affairs. They did not assert that the Fourteenth Amendment gave any such authority to the United States or to their courts. What they did claim was that in the exercise of the powers of the State there should be no unjust or practical discrimination against any classes or persons, giving to some rights and privileges denied to others in like condition. They insisted that in the exercise of the police powers, the rule of equality should prevail. They admitted that the State of Louisiana had the right to require the slaughtering of cattle to be done outside of the limits of New Orleans, but they considered that that was a very different thing from giving, in connection with the regulation, to seventeen persons, for twenty-five years, the exclusive right of preparing animal food for market within a district of 1,145 square miles, embracing a population of over 200,000 souls.

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The impulse imparted by the Slaughter House cases on the lines of moderation was maintained under the firm yet temperate presidency of Chief Justice Waite—a period of conservative reaction against the extreme views engendered by the Civil War. To the surprise as well as disappointment of many, it was held that the 13th, 14th and 15th Amendments added nothing to existing rights, but simply furnished additional guaranties for such as already existed.

In the *United States vs. Reese* (92 U. S., 215); *United States vs. Cruikshank* (Ibid. 542); *Strouder vs. West Virginia* (100 U. S., 303); *Virginia vs. Rives* (Ibid. 313); *Ex parte Virginia* (Ibid. 339); *Ex parte Siebold* (Ibid. 391); *Neal vs. Delaware* (103 U. S., 370); and the Civil Rights cases (109 U. S., 3), there is the fullest discussion of the scope and meaning of the Post Bellum Amendments, and a most exhaustive examination of the nature of our government and of the relation of the Federal Government to the States. The dissenting opinions of Mr. Justice Field in *Ex parte Virginia*, of the same Judge and of Chief Justice Waite in *Neal vs. Delaware*, and particularly of Mr. Justice Harlan in the Civil Rights cases, are worthy of the closest examination. They are splendid arguments in support of equality of protection under the laws, and protests against narrow and artificial views. The utterances of Mr. Justice Harlan are the most notable that have ever fallen from his lips. He contended that the true meaning and purpose of the 14th Amendment was to secure direct legislation by Congress in favor of the citizens, operating directly upon them, not limited to State action either by legislative act or judicial or executive interference. The Amendment was aimed at class tyranny, and was not limited to the colored race, which was denied by corporations and individuals wielding public authority rights fundamental to their freedom and citizenship. He predicted that at some future time it might be some other race which fell under the ban of race discrimination, and that if the Constitutional Amendments were enforced according to the intent

with which, as he conceived, they were adopted, there could not be in this Republic any class of human beings in subjection to another class with power in the latter to dole out just such privileges as they might chose to grant.

On the other hand, when a new and copious source of Federal power was opened in *Tennessee vs. Davis* (100 U. S., 257), in which it was shown by Mr. Justice Strong that it was no invasion of State sovereignty to withdraw from State Courts into Federal Courts the trial of prosecutions for offences against the criminal laws of a State, whenever the defence presented an offence arising out of an Act of Congress, Justices Clifford and Field dissented, characterizing it as an amazing proposition, involving issues no less grave than the nature, extent and limitation of the judicial powers of the United States, and they contended that the Federal Courts had no criminal jurisdiction except such as was expressly conferred by an Act of Congress in pursuance of a constitutional grant.

In *Juillard vs. Greenman* (110 U. S., 421), establishing the constitutionality of the Legal Tender Acts in time of peace, the capstone was placed by the hand of Mr. Justice Gray upon the majestic column representative of national power, attaining a dizzy height to which even the boldest architect of the Constitution had never raised his eyes. Mr. Justice Field alone dissented, in an opinion replete with learning and marked by vigorous and emphatic reasons. He contended that the decision of the Court would breed many evils, and that hereafter no restraint could be imposed upon unlimited appropriations by the Government for all imaginary schemes of public improvement, if the printing press could furnish the money that was needed for them.

In 1882, the conflagration which had been kindled by Iredell's dissent in *Chisholm's Executors vs. Georgia*, and smothered by the Eleventh Amendment, again broke forth. Could a State be sued? Could repudiation be successfully accomplished? Was there no redress for the injured creditor of a sovereign State? In *Louisiana vs. Jumel* (107 U. S.,

711), and its sister decisions of *New Hampshire vs. Louisiana* and *New York vs. Louisiana* (108 U. S., 76), it was held that the meaning of the Amendment was too clear to admit of evasion. Justices Field and Harlan dissented in words of extraordinary power, and their views afterwards obtained a partial victory in the Virginia Coupon cases (114 U. S., 270).

Some interesting dissents by Justices Strong and Field are to be found in the Granger cases (*Munn vs. Illinois*, 94 U. S., 113) and those which involved the most strenuous and constant discussion of the Commerce clause, indicating the enormous increase and expansion in the business interests of the country. (*Wilton vs. State of Mississippi*, 91 U. S., 275; *Henderson vs. Mayor of New York*, 92 U. S., 259; *Robbins vs. Shelby Co.*, 120 U. S., 409; *Gloucester Ferry Co. vs. Pennsylvania*, 114 U. S., 176; *Western Union Telegraph Co. vs. Massachusetts*, 125 U. S., 530; *Leloup vs. Port of Mobile*, 127 U. S., 640; *et id omne genus*). Of these the most memorable is the celebrated "Original Package case" (*Leisy vs. Hardin*, 135 U. S. 100), in which the judgment of Chief Justice Taney in the *New Hampshire License* case was distinctly overruled. Chief Justice Fuller, after reviewing every decision relating to the Commerce clause from the time of *Gibbons vs. Ogden* to the present day, reached the conclusion that the grant of power to Congress to regulate commerce among the States was exclusive, and that, so far as one system is required, the States cannot exercise that power without the assent of Congress, and, in the absence of legislation, it is left for the Courts to determine when State action does or does not amount to such exercise. When that is determined, controversy is at an end. From this judgment Justices Gray, Harlan and Brewer dissented, the former delivering an elaborate opinion, in which he insisted that the power of regulating or prohibiting the manufacture and sale of intoxicating liquors properly belonged, as a branch of the police power, to the legislatures of the several States, and could be judiciously and effectively exercised by them alone, according to their views of

public policy and local needs; and could not practically, if it could constitutionally, be wielded by Congress as a part of a national and uniform system.

As a further illustration of the true character of the police powers of a State for the protection of health, the prevention of fraud and the preservation of the public morals, unaffected by the Fourteenth Amendment, is the famous Oleomargarine Case of *Powell vs. Pennsylvania* (127 U. S., 678). From the judgment of the Court announced by Mr. Justice Harlan, sustaining the validity of a law intended to protect the public health, to prevent adulteration of dairy products and fraud in the sale thereof, Mr. Justice Field dissented. As an argument in favor of personal "liberty" under the Constitution, and as an eloquent and spirited protest against insidious encroachments upon the sacred territory of inalienable individual rights, this dissent is marked by the loftiest motives and great nobility of expression.

In the case *In re Neagle* (135 U. S., 1), we encounter an extension of the doctrines of *Tennessee vs. Davis*, and the dissenting Judge in that case, narrowly escaping from a murderous assault, became the most interesting figure in the drama. Neagle, a deputy marshal of the United States, while guarding the person of Mr. Justice Field, then traveling in the discharge of judicial duty, shot and killed one Terry while committing a deadly assault upon the Judge. It was insisted that the act was one of State cognizance, but Mr. Justice Miller demonstrated that there was a Peace of the United States which was violated by an assault upon a Federal Judge; that it was the duty of the United States to protect its officers from violence, even to death, in the discharge of the duties which its laws imposed. From this view, Mr. Justice Lamar, unswayed by horror or resentment, dissented, in the most elaborate of his judicial utterances, insisting 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,

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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.

In the case of *O'Neill vs. Vermont* (144 U. S., 323) it was held by the majority of the court that there was no Federal question involved under the Commerce clause of the Constitution of the United States in a case where a citizen of New York had been complained of before a Justice of the Peace in the State of Vermont for selling intoxicating liquors without authority, the sales having been made in New York and the deliveries having been made in Vermont. Mr. Justice Field dissented in an opinion of remarkable power. He contended that the act charged as an offence in the State of Vermont was, in his judgment, a lawful transaction in the State of New York, and that it would strike many men with surprise to learn that an order for the purchase of goods, and their transmission from the State by an express carrier to be paid for on delivery by the buyer in another State, could be turned into a criminal offence of the person filling the order in the State where he was not present, and he could conceive of no more direct and effective interference with the power of Congress over Inter-State commerce than for a State to hold that the act of transmitting an article to it from another State, in completion of a sale by delivery, was an offence against its laws for which the sender could be punished. In this decision, Justices Brewer and Harlan concurred, the latter in a separate opinion.

I close this list of great dissenting opinions with a reference to the Chinese Deportation cases, reported under various titles in 149 U. S., 698, in which the dissenting opinions of Justices Brewer and Field and Chief Justice Fuller are replete with the most interesting historical and political matter, as well as the most incisive questions. "Verily," says Mr. Justice Brewer, "he who dooms a worse doom to the friend-

less and the comer from afar than to his fellow, injures himself.' In view of this enactment of the highest legislative body of the foremost Christian nation, may not the thoughtful Chinese disciple of Confucius fairly ask why do they send missionaries here?"

From this rapid review of the work of one hundred years, I am aware that much has been omitted, and that much remains to be said. I offer it, however, as a modest effort to call attention to some of the most dramatic chapters in our judicial history. The work of building up our constitutional jurisprudence has involved contests of brains, as well as battles of blood. No reader of these judicial debates can rise from their perusal without a quickened sense of his obligations to that great Court which stands, and will forever stand, under the Constitution, the unapproachable Oracle of liberty and law.

INJUNCTION AND ORGANIZED LABOR.

BY

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Since the subject of this paper was selected, and work upon it begun, history has been making with startling rapidity. Events have tripped upon the heels of events. The phases of the law have changed with the variety and celerity of the kaleidoscope, the essential elements remaining the same, and the appearance depending upon the angle of reflection.

It is unnecessary to give a definition of "Organized Labor." Its existence is too patent, its manifestations too evident, to require amplification. The term covers alike the numberless local trades unions of small membership and the vast combinations of wage-earners claiming membership in the hundreds of thousands. The question for consideration is the application of injunction and the rules of equity procedure to these masses of men, under conditions which threaten irreparable injury to private property, and interference with the rights of the public; a question of the most vital importance at the present time, and one which it is impossible to approach without the gravest sense of its momentous consequences.

The whole scope of human law is summed up in the first definition of Justinian's Institutes: *Justitia est constans et perpetua voluntas jus suum cuique tribuendi*.¹ It is not obedience to command, nor the servile fear of disobedience, but the constant and perpetual wish of rendering to every man his right, that makes justice.

Equity, like its Roman prototype, *Aequitas*, has always manifested a tendency to approximate the ideal conception

contained in Justinian's definition. Its appeal to the conscience of the chancellor demonstrates its origin in a moral force, not found in the rigid rules of the common law; and the highest expression of equity jurisprudence is found in its first and foundation maxim, *ubi jus ibi remedium*.

"Equity, then, in its true and genuine meaning," says Blackstone, "is the soul and spirit of all law; *positive law* is construed, and *rational law* is made by it. In this, equity is synonymous to justice; in that, to the true sense and sound interpretation of the rule."² Such a system should command the profound respect of all American lawyers. Its prerogatives should be strenuously maintained, its jurisdiction jealously guarded.

Injunction is "the strong arm of equity." With it the Court of Chancery reaches out to stay irreparable injury, and to draw within its grasp those who disobey its mandate. "A writ of injunction," says Mr. High, "may be defined as a judicial process, operating *in personam*, and requiring the person to whom it is directed to do or refrain from doing a particular thing. In its broadest sense, the process is restorative as well as preventive, and it may be used both in the enforcement of rights, and in the prevention of wrongs. In general, however, it is used to prevent future injury rather than to afford redress for wrongs already committed, and it is therefore to be regarded more as a preventive than as a remedial process. If the injury be already committed, the writ can have no operation to correct it, and equity will not interfere for purposes of punishment, or to compel persons to do right, but only to prevent them from doing wrong."³

The application of injunction and equity procedure to aggregations of workmen involves the solution of intricate and perplexing problems. Jurisdiction in such cases is based, first, upon criminal conspiracy; and second, upon injury to property resulting from such conspiracy.

A criminal conspiracy has been defined to be: "Any combination between two or more persons to accomplish an

unlawful purpose, or a lawful purpose by unlawful means." The books from the earliest days are full of reiterations of this definition.⁴ Hawkins, in his *Pleas of the Crown* (Book 1, c. 27, s. 2), lays it down that, "there can be no doubt but that all confederacies whatsoever, wrongfully to prejudice a third person, are highly criminal at common law; as where divers persons confederate together by indirect means to impoverish a third person."

In an anonymous case in 12 Modern (248, case 427, 1698), leave was given to file an information against several plate button makers for combining by covenants not to sell under a set rate, and Chief Justice Holt said: "It is fit that all confederacies, by those of a trade to raise their rates, should be suppressed." In Bolton's *Justice* (vol. 2, p. 16), it is declared that any such conspiracy is an offense at common law. So in 1 Keble, (650, report of *Rex vs. Sterling*), Chief Justice Hyde says that the very conspiracy, without an overt act, to raise the price of pepper, or other merchandise, is punishable.

It will be noticed that these cases relate to those engaged in trade; yet they are cited as leading authorities in support of prosecutions against laborers for combinations to raise wages, as our own "Anti-Trust" law is first invoked against strikers.

But the most notable illustration of the biblical assertion that "there is no new thing under the sun" is found in the *Liber Assissarum*, 27 Edw. III. (pp. 138, 139), five years after the first of the "Statutes of Labourers," where, among other conspiracies directed to be investigated by the inquests of office, is that "of merchants, who by covin and alliance among themselves, in any year put a certain price on wools, which are to be sold in the country, so that none of them will buy, or otherwise pass in the purchase of wools beyond the certain price which they themselves have ordained, to the great impoverishment of the people."

More than five hundred years ago our English ancestors were faced with the problem of "Trusts," and legislated

against them. Whether the inquest of office was more successful in 1354 than in 1894, history is silent.⁵

But the leading case on common law conspiracy is *The King vs. The Journeymen Tailors of Cambridge* (8 Mod. 11), whose authenticity has been so much disputed; where the rule is declared that, "a conspiracy of any kind is illegal, although the matter about which they conspired might have been lawful for them, or any of them to do, if they had not conspired to do it."⁶ This case, in turn, cites as its authority the mythical case of *The Tub-Women vs. The Brewers of London*, whose identity has puzzled the wits of advocates, judges and text-writers, but which is commonly believed to be the case of *The King vs. Sterling* (1 Keble, 650), in which certain brewers were indicted for conspiring to cease making small beer, and thus incite a riot and deprive the King of his excise.

The King vs. Journeymen Tailors of Cambridge was decided in 1721, and has been frequently followed in English cases,⁷ and the doctrine it laid down was the early rule in this country as applied to combinations of laborers.⁸ The authenticity, and therefore the authority, of this ancient case raises an extremely perplexing question, namely: whether a combination among laborers to raise wages was a criminal conspiracy at common law. It is also an extremely important question, since, if it was the common law, it is still the law in such States as have not adopted special statutes; and it is important for the further reason that even where other circumstances exist to establish a conspiracy, nevertheless, the effort to raise wages is usually the foundation of the whole matter.

In the case of the Boot and Shoemakers of Philadelphia, tried in 1806,⁹ and that of the Journeymen Cordwainers of the City of New York, in 1809,¹⁰ and the Pittsburgh Cordwainers, in 1815,¹¹ the doctrine of the Journeymen Tailors of Cambridge case was sustained, though its authenticity was strenuously denied by counsel, especially in the New York case, with a degree of forensic learning, logic and wit rarely equaled.¹²

But in *Commonwealth vs. Carlisle*, in 1821, Judge Gibson, of the Supreme Court of Pennsylvania, announced a different rule.¹³ That case was *habeas corpus*, brought by certain master shoemakers who had been convicted of a conspiracy not to employ journeymen except at a certain reduced rate, which, however, was the rate paid before the defendants had been compelled by a combination of journeymen to advance it.

Judge Gibson declared that it had never been decided in England that it was unlawful for journeymen to agree that they would not work, except for certain wages, or for master workmen to agree that they would not employ any journeymen except at certain rates. He further says: "The unsettled state of the law of conspiracy has arisen, as was justly remarked in the argument, from a gradual extension of the limits of the offense; each case having been decided on its own peculiar circumstances, without reference to any pre-established principle."

Judge Daly, in *The Master Stevedores' Association vs. Walsh*, decided in 1867,¹⁴ approves the views of Judge Gibson, and criticises at length the correctness of the Cambridge Tailors' case as an authority. Other judges of high standing have done the same.¹⁵

So far as the English cases are concerned, it cannot be doubted that the shadow of the Statutes of Labourers hung over them all; statutes which, from 1350 to 1825, in ever-varying form but never-varying severity, placed the laborer under compulsions and restrictions which permitted him little of the semblance of a free agent. Great doubt surrounds the whole subject of common law conspiracy, and that point of view is well expressed by Mr. Justice Stephen in his work on the Criminal Law of England,¹⁶ where he says:

"1. No case has ever been cited in which any person was, for having combined with others for the raising of wages, convicted of a conspiracy in restraint of trade at common law before the year 1825. There is, indeed, one case, that of the journeymen tailors of Cambridge, which may perhaps be an authority the other way, but this appears doubtful.

"2. There are some dicta to the effect that such combinations would be unlawful. The most important of these is the dictum of Grose, J., in

R. vs. Mawbey: 'In many cases an agreement to do a certain thing has been considered as the subject of an indictment for a conspiracy, though the same act, if done separately by each individual without any agreement among themselves, would not have been illegal. As in the case of journeymen conspiring to raise their wages; each may insist on raising his wages if he can, but if several meet for the same purpose it is illegal, and the parties may be indicted for a conspiracy.' This dictum is an illustration not necessary to the decision of R. vs. Mawbey and founded as it seems to me upon the case of the Cambridge tailors. I must add that I am quite unable to understand why, if all combinations to raise wages were at common law indictable conspiracies, it should have been considered necessary to pass the long series of acts already referred to. These acts are not in their form declaratory, nor do they even assume that contracts between workmen for the purpose of raising their wages are illegal in the sense of being void, and so incapable of being enforced by law. On the contrary, they enact that they shall be void. Sir W. Erle observes that whilst the ancient statutes 'were in force they tended to prevent a resort to the common law remedy for conspiracy.' The inference from the existence of the statutes appears to me to be that until they were passed the conduct which they punish was not criminal.

"On the other hand the cases and dicta to which I have referred explain the undoubted fact that in the year 1825 an impression prevailed that a combination to raise wages would constitute an indictable conspiracy at common law."

Again he says (p. 219):

"The views of Crompton, J., and Lord Campbell, C. J., on the subject of conspiracy in restraint of trade, are thus expressed. Crompton, J., (In *Hilton vs. Eckersly*, 6 E. & B. 53, 1856,) said: 'I think that combinations like those disclosed in the pleadings in this case were illegal and indictable at common law, as tending directly to impede and interfere with the free course of trade and manufacture.' His chief authority for this proposition was the dictum of Grose, J., in *R. vs. Mawbey*, referred to above. Lord Campbell, on the other hand, after referring to this dictum, and stating that 'other loose expressions may be found in the books, to the same effect,' says 'I cannot bring myself to believe without authority much more cogent, that if two workmen who sincerely believe their wages to be inadequate should meet and agree that they would not work unless their wages were raised, without designing or contemplating violence or any illegal means for gaining their object, they would be guilty of a misdemeanor, and liable to be punished by fine and imprisonment.' The result is that the three judges of the Court of Queen's Bench each took a different view of the law on this subject, and that the six judges of the Court of Exchequer Chamber took a fourth view, which excused them from pronouncing an opinion on the question whether such conduct as Lord Campbell described was at common law an indictable conspiracy or not."

Mr. Wright, in his work on Criminal Conspiracy (pp. 36 to 52), and Mr. Carson, in his appendix to that work (p. 178), express similar views, though Mr. Carson does not seem to adopt the broad conclusions of Mr. Wright against the existence of conspiracy at the common law.

Unquestionably, the long and almost unbroken line of judicial declarations in America since the case of Commonwealth against Carlisle in 1821 supports the doctrine that it is not unlawful for workingmen to agree that they will not work, except for certain wages; that they are free to work for whom they please, or not to work if they so prefer, and that it is not criminal for them to agree together to exercise this right.¹⁷

Nevertheless, the common law rule of conspiracy is usually quoted with approval, in the cases on this subject.¹⁸ The difficulty is not so much with the rule as with its application.

The opinions in support of the right of combination to raise wages are often only *dicta* of the judges, in actions for damages, bills for injunctions, or indictments for conspiracy, where conspiracy is found to exist because of the intimidation, violence or boycotts which are the common accompaniments of strikes in the concrete.

In the midst of the uncertainty about the application of the common law rule, one proposition is plain, viz: that where the confederacy is established, either at common law or under statutes, the gist of the offence is the conspiracy itself, and not the acts committed under it. Or to differentiate the rule: Where the conspiracy is to effect an unlawful purpose, the purpose only is required to be pleaded and proved; where the conspiracy is to effect a lawful purpose by unlawful means, it is necessary to plead and prove the means employed.¹⁹ This is in compliance with the well-established rule that whatever constitutes the crime must be clearly charged.

The advent of fraud, force or intimidation into the conditions of a combination marks the vanishing point of doubt. Every man has the legal right to pursue his vocation without

molestation, free from violence, intimidation or threats of injury to his person or his property. This right is an essential element of liberty under a free government, and it is a paramount obligation of government to protect him in that right.

The employer still has the right in law to employ whom he pleases, and the laborer to work for whom he pleases. To interfere with either by violence or threats is a crime, and a combination for such a purpose is a criminal conspiracy.²⁰

Mr. Carson sums up the decisions thus: "The result of all the cases, ignoring matters of detail or special circumstances, appears to be as follows: Workmen may combine lawfully for their own protection and common benefit; for the advancement of their own interests, for the development of skill in their trade, or to prevent overcrowding therein, or to encourage those belonging to their trade to enter their guild; for the purpose of raising their wages, or to secure a benefit which they can claim by law. The moment, however, that they proceed by threats, intimidation, violence, obstruction or molestation, in order to secure their ends; or where their object be to impoverish third persons, or to extort money from their employers, or to ruin their business, or to encourage strikes or breaches of contract among others, or to restrict the freedom of others for the purpose of compelling employers to conform to their views, or to attempt to enforce rules upon those not members of their association, they render themselves liable to indictment."²¹

Boycotts are peculiarly within the pale of prohibition. Judge Slagle, of Pennsylvania, thus describes a boycott: "The use of the word 'boycott' is in itself a threat. In popular acceptance it is an organized effort to exclude a person from business relations with others by persuasion, intimidation and other acts which tend to violence, and thereby coerce him through fear of resulting injury, to submit to dictation in the management of his affairs."²²

As frequently applied, it is one of the most heartless and brutal manifestations of private revenge recorded in history, and is calculated to call forth the abhorrence and just reprehension of all men who respect law and love liberty.

There may be an ideal boycott, as there is said to be an ideal anarchy, but the boycott of which the law takes cognizance is synonymous with conspiracy; for boycott is conspiracy.²³

Wherever these elements of intimidation and violence enter into a combination, the law of conspiracy applies. It may be safely asserted that no adjudicated case holds the contrary. And the conspiracy being established, the acts of each in furtherance of its purposes, bind all.²⁴ Statutes have been adopted in a number of States, which greatly soften the rigor of the common law rule of conspiracy, and extend the privileges of organized labor in many ways;²⁵ but as their provisions vary, and their effect is local, lack of time prevents any consideration of them.

On the other hand, several states have adopted statutes against boycotts; and the tone of public sentiment as expressed through legislation, generally, is clearly opposed to acts of violence or intimidation.²⁶

The use of the writ of injunction as a preventive of unlawful aggressions by organized labor is of very modern application. The first case in point seems to have been *Springhead Spinning Co. vs. Riley* (Law Reports, 6 Eq. 551), decided in 1868, in which the defendants, officers of a trades union, gave notice to workmen, by placards and advertisements, that they were not to hire themselves to the plaintiff; and, as the bill alleged, this intimidated workmen, and seriously injured the value of the plaintiff's property. On demurrer, it was held, that the acts of the defendants, as alleged by the bill, amounted to crime, and that the Court would interfere by injunction to restrain such acts, inasmuch as they also tended to the destruction of property.

The Court, through Vice Chancellor Malins, reaffirms the well-established doctrine that a Court of Chancery will not enjoin the commission of crimes, and that the function of equity is to protect the civil right of property. He refers to the opinions of Lord Campbell and Lords Justices Bruce and Turner in the famous case of the Emperor of Austria *vs.* Day and Kossuth (3 De Gex, Fisher & Jones, pp. 232, 239, 253), and quotes from Lord Eldon in the celebrated case of *Macauley vs. Shackell* (1 Bligh—N. R. 96, 127), where he says: "A Court of Equity has no criminal jurisdiction, but it lends its assistance to a man who has, in view of the law, a right of property, and who makes out that an action at law will not be a sufficient remedy and protection against intruding upon his publication." The conclusion reached by Vice Chancellor Malins was, that "the jurisdiction of this court is to protect property, and it will interfere by injunction to stay any proceedings, whether connected with crime or not, which go to the immediate or tend to the ultimate destruction of property, or make it less valuable or comfortable for use or occupation."

No clearer or more satisfactory definition of equity jurisdiction in this class of cases has been, or can be, made. It recognizes the essential idea of equity jurisprudence that private rights of suitors, litigants in its forum, are to be protected. It will be noticed that there is no suggestion of the preservation of public rights, or the punishment of public wrongs. Even in the case of the Emperor of Austria *vs.* Day and Kossuth (*supra*), there was no recognition of a jurisdiction to enforce political prerogatives or powers, and the Court expressly declined to admit the existence of any such jurisdiction in equity. Said Lord Campbell in that case (p. 240): "I consider that this Court has jurisdiction to protect property from an act threatened which, if completed, would give a right of action. I by no means say that in every such case an injunction may be demanded as of right, but if the party applying is free from blame, and promptly applies for relief, and shows that by the threatened wrong his property would be

so injured that an action for damages would be no adequate redress, the injunction will be granted."

This basis for jurisdiction is an important one to bear in mind in following the history of injunction under later conditions.

The Springhead Spinning Co. case did not lead to any development of the law in England as applied to labor problems. In 1885, Lord Coleridge, in *Mogul Steamship Co. vs. McGregor* (L. R. 15 Q. B. D. 476), recognized the right of injunction, on the ground that a conspiracy on the part of ship-owners to monopolize the China trade was an indictable offence, and therefore actionable, if private and particular damage could be shown; another illustration that the function of equity is the protection of private rights. "I must confess," says Lord Coleridge, "I do not see why, if it is made out to the satisfaction of the Court, that irreparable injury is likely to accrue to the plaintiffs, injunction should not issue before trial. Why should not the plaintiffs be saved from ruin?

* * * * * It was an application of the plaintiffs for an injunction to restrain the defendants from doing that which was called throughout the case—and which I really see no reason for hesitating to call also—boycotting the plaintiffs.

* * * * * It is admitted that this is a novel application; and although, certainly, that would not be by any means an insuperable objection, provided we saw that justice required us to exercise the power that is invoked, still it is a matter that is not to be disregarded." And, on the facts of that case the injunction was denied.

It remained for the courts of this country to effect the evolution—is it too much to say the revolution?—of equity jurisdiction. In 1888, the cases of *Sherry vs. Perkins* (147 Mass., 212) and *Brace Bros. vs. Evans* (3 R'y & Corp. L. Journal, 561, Court of Common Pleas of Allegheny Co., Pa.) were decided. In 1891, *Casey vs. the Cincinnati Typographical Union No. 3* (45 Fed. Rep., 135), came before the United States Circuit Court, in Ohio. These were all cases of boy-

cott, by solicitation, threats, parading with banners, issuing circulars and by other familiar boycotting devices, and in all three cases injunction was granted on the grounds of conspiracy and irreparable damage to property. These decisions seem to have been solely on the grounds laid down by the English judges, and in the Typographical Union case, Judge Sage said: "No case has been cited where, upon a proper showing of facts, an unsuccessful appeal has been made to a court of chancery to restrain a boycott. The authorities are all the other way."²⁷

In 1892, in *Cœur d'Alene Consolidated and Mining Co. vs. Miners' Union of Wardner* (51 Fed. Rep. 260), Judge Beatty, in the United States Circuit Court for the District of Idaho, granted an injunction against trespass by entering upon complainant's mines and by force, threats and intimidation preventing employés from working.

In his opinion, Judge Beatty says, "A wrong exists; rights have been infringed; unoffending citizens have been maltreated; the law has been overridden. May the courts be successfully invoked for restraining relief?" After discussing the logical results of permitting laborers to dictate to their employers in the management of their business, and recognizing the American doctrine of the right of men to work or not as they please, and at such wages as they please; to combine for lawful purposes and adopt all lawful means to advance their interests, he expresses his views as follows: "Unfortunately, combinations of labor are met by associations of employers, each trying to baffle what it deems the aggressions of the other. It is to be regretted these opposing forces have in late years gone so far in their efforts for supremacy that they now operate upon the principle that their interests are antagonistic. *It is when these contests become so heated that violations of the law, the peace of the community, and the destruction of life and property are threatened, that the courts are compelled to intervene.*"

By this he means, of course, that courts of equity are compelled to intervene. Here is the entering wedge of the "public rights" idea as a function of equitable jurisdiction. From this time progress is rapid.

Blindell vs. Hagan (54 Fed. Rep., 40), in the United States Circuit Court for the Eastern District of Louisiana, was a suit for injunction against a combination of persons who were preventing shipowners from shipping a crew. This seems to have been the first attempt to invoke the "Anti-Trust" law (Act 1890, 26 St., p. 209). Judge Billings, however, in an opinion filed February 9, 1893, held that only the government could bring injunction suits under the act, and refused a writ upon statutory authority; but the court took jurisdiction under the general power of equity to prevent a multiplicity of suits, and granted the injunction. He reaffirmed the time-honored rule, that "there can be equity jurisdiction only when the case in question belongs to one of the recognized classes of cases over which equity has jurisdiction." On appeal the decision was affirmed by the Circuit Court of Appeals, the court adopting the opinion of Judge Billings, *totidem verbis*.²⁸

On April 3, 1893, Judge Taft rendered his decision in the celebrated Ann Arbor case.²⁹ He applied the powers of equity to compel the defendant railroad companies to fulfill their duties under the Interstate Commerce Act to furnish equal facilities to connecting companies. The injunction was held by him to extend to the agents and servants of the defendants, under the rule in equity that agents and servants were bound by the injunction on the ground that their acts were the acts of their employer. Mr. P. M. Arthur, Chief of the Brotherhood of Locomotive Engineers, being subsequently made a party, was enjoined from ordering a strike, and by mandatory injunction was required to rescind his order already given, calling into force a rule of the Brotherhood, which produced a boycott by all of its members, against the road on which the strike existed. This rule Judge Taft declared, when

called into use, effected a conspiracy to commit a crime under the statutes of the United States, accompanied by irreparable damage to the complainant railroad company.

The opinion displays great legal acumen, learning and almost irresistible logic. Yet it is noteworthy that in this case a mandatory injunction, which by the rules of equity, as Judge Taft himself states, is of unusual application, was issued on preliminary motion *ex parte*, under a special statute passed for the regulation of railroads in the interest of the public, against one not originally a party to the proceedings, who is not a common carrier subject to the provisions of the act, nor the agent or servant of any such common carrier. To this may be added the question, whether the statute, in expressly providing various remedies, legal and equitable, for persons affected by its violations, including injunctions under conditions not existing in the Ann Arbor case, does not preclude the remedy in that case, under the rule, *expressio unius, exclusio alterius*.

Underlying the whole case is the idea of an invasion of public rights. The statute imposes on the railroad company a public duty; the omission to perform that duty is a crime; Mr. Arthur, though not under any affirmative obligation to perform the public duty, conspires to prevent its performance; Mr. Arthur is guilty of a crime; irreparable damage results to the public as well as to the complainant; therefore Mr. Arthur is enjoined. This is the logical analysis of the Ann Arbor case.

After all, the gravamen of the case is the crime, which is an offense against the public, of conspiring to injure the public. In the light of Judge Jenkins's injunction in the Northern Pacific case, it is interesting to note, in passing, the views of Judge Taft concerning the right of employes to quit their service. "They may avoid obedience to the injunction," he says, "by actually ceasing to be employes of the company; otherwise the injunction would be in effect an order to them to remain in the service of the company, and no such order was

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ever, so far as the authorities show, issued by a court of equity. It is true that if they quit the service of the company in execution of Rule 12, in order to procure or compel defendant companies to injure the complainant company, they are doing an unlawful act, rendering themselves liable in damages to the complainant if any injury is thereby inflicted, and that they may be incurring a criminal penalty as already explained, but, no matter how inadequate the remedy at law, the arm of a court of equity cannot be extended by mandatory injunction to compel the enforcement of personal service as against either the employer or the employed."³⁰

Throughout his opinion, Judge Taft nowhere in terms refers to the invasion of public right as a *ratio decidendi*. But Judge Jenkins, in the now famous Northern Pacific case, takes his stand squarely on that platform.³¹

There the injunction was not granted on original bill by complainants, but on petition of the receivers, in aid of the receivership; in itself a remedy not usual in practice, because the appointment of the receiver is supposed to draw with it all necessary power to protect the property in the custody of the court, without the application of injunction, which is a separate form of remedy.

On motion to modify the decree, Judge Jenkins says:³² "The railway is a great public highway. Its primary duty is to the public. In the interest of the public it must be kept a going concern, although it prove unremunerative to the shareholders. Bondholders and shareholders invest their money in view of the public nature of the enterprise. Their rights and interests are subordinated to the public duty charged upon the road. And so, also, employes, in entering the service, assume obligations coextensive in kind with that of the corporation. They may, indeed, sever their relation in a proper and decent manner, but they may not legally resort to obstructive methods to compass their demands. Their rights—as the rights of bondholder and shareholder—are subordinate to the rights of the public, and must yield to the public welfare."

Here is the culmination of the "Public Rights" conception; the speedy fruition of the seed. And that, without any necessary reference to statutory authority. But the progress of events is not yet complete.

By the act of 1890, commonly known as the "Anti-Trust" law,³¹ it is provided that, "every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal."

The second section prohibits monopolizing any part of trade or commerce among the States or with foreign nations. Penalties are imposed for the violation of any of the provisions of the act.

By the fourth section, the attorney-general is authorized to institute proceedings in equity to prevent and restrain violations of the act.

The statute was first enforced in the case of the United States *vs.* The Workingmen's Amalgamated Council of New Orleans (54 Fed. Rep., 994), where Judge Billings, in an opinion filed March 26, 1893, held that injunction would lie, under the provisions of this act, against the draymen of New Orleans, through whose strike the whole business of New Orleans was paralyzed, and the transit of goods from State to State and to foreign countries was entirely interrupted. This view is supported by a dictum of Judge Speer, of Georgia, in a receivership case (*Waterhouse vs. Comer*, 55 Fed. Rep. 149, April 8, 1893). About the same time, Judge Putnam, of Boston, in a case before him (*U. S. vs. Patterson*, 55 Fed. Rep. 605, February 28, 1893), of merchants charged with a violation of the act, said: "It is not to be presumed that Congress intended thus to extend (*i. e.* to strikes and boycotts), the jurisdiction of the courts of the United States without very clear language. Such language I do not find in the statute."

Thus stood the adjudicated law when the preparation of this paper was undertaken. Since then what changes have been

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wrought. The great "Pullman boycott" and "sympathy strike" of the American Railway Union have come and gone. The strike has passed into history, but what an intricate mass of juridical problems it has left behind it to be solved. Of these, none are more vital or more far-reaching in their consequences than those which envelop the court of equity.

The Attorney General of the United States, acting for the United States in the exercise of its sovereignty as a nation, has sued out injunctions in nearly every large city west of the Allegheny Mountains.

Injunction writs have covered the sides of cars, deputy marshals and Federal soldiers have patrolled the yards of railway *termini*, and chancery process has been executed by bullets and bayonets. Equity jurisdiction has passed from the theory of "public rights" to the domain of political prerogative. In 1888, the basis of jurisdiction was the protection of the private right of civil property; in 1893, it was the preservation of public rights; in 1894, it has become the enforcement of political powers. Even if the foregoing conclusions seem too broadly stated, it must, nevertheless, be plain to every equity practitioner that, between the Springhead Spinning Company case and the Chicago "omnibus bill" there has been an immense change in the application of injunction to large bodies of men, as well as in the grounds upon which the courts assume jurisdiction.

The Springhead Spinning Co. case applied to comparatively few individuals, all of whom were probably known to the complainants in the bill, and enjoined their interference with the property of a single proprietor.

The Chicago "omnibus bill" was filed to prevent interference with twenty-three great railroad systems, and the injunction issued against several members of the American Railway Union, by name, as well as many thousand unnamed; and, to prevent a possible confusion of identity in the defendants, it was further directed to "all other persons whomsoever."

Whatever may be thought of the explanation given for this great change, it is surely within the bounds of safety to assert that the history of equity jurisprudence furnishes no precedent in which the chancellor has called out the military in aid of an injunction writ.

It would be indelicate, as well as presumptuous, to enter upon a discussion of the application of the "Anti-Trust" law to strikes and boycotts, at a time when the whole matter is pending in the courts under most sensitive conditions. It may not, however, be improper to question the wisdom of the executive department of the government in calling into effect, at a time of great public stress and excitement, a statute which had never been interpreted by the Supreme Court, and which had received constructions directly in conflict from courts of coördinate jurisdiction.^{33a}

What is the purpose of issuing injunctions against great masses of men? What object is to be attained by making two hundred or even five hundred strikers parties to a suit, out of a total number of many thousands? Personal service on more than a few, in time to make the writ effective, is impracticable. Is it intended that the mere issuing of the writ should act *in terrorem* over the entire body of men engaged in the strike? Or is it expected, by posting copies in public places, to establish a novel method of service by publication? Is the decree to serve the purpose of a mere executive proclamation, warning evil-doers against a continuance of their misconduct, and without force or validity, except as a basis for invoking the military power? Surely not. Such a construction would be a degradation of judicial process. Then what conclusion remains, unless it be that the real purpose is to use the injunction for calling forth the power of the court to punish for contempt; to make of a court of equity in practical effect a criminal court? This is a phase of the question that calls for the serious consideration of bench and bar. It is well known to all lawyers that courts of equity have not now, and have not had for five centuries, any jurisdiction over crimes.

Once only, for a brief period, and under temporary conditions, Chancery assumed a limited jurisdiction in criminal cases. In the dark days of the fourteenth century, under Richard II, when lawlessness was rampant, and the courts of law were overawed by force and violence, the court of chancery exercised a species of criminal jurisdiction for the protection of the poor and helpless against the rich and powerful.³⁴ If equity is now to punish crimes at the instance of the government, under conditions which result in benefit to the railroads, will some one be heard to say that it is only an instance of history repeating itself?

Perhaps in retrospect, in the cold light of history, the incidents of this summer may bear a different aspect; but in the glow of the present, the inevitable logic of events tends to prove that the most powerful, if not the primary reason, for invoking the remedy by injunction was the summary power to punish for contempt which lies behind it.

Undoubtedly this is the common opinion of the bar as well as the public.

The press reports Judge Woods as saying, immediately after he had issued the "omnibus" injunction at Chicago, that the marshal would be expected to enforce it, and if he was unable to do so, the troops of the United States could be called out. "It is not necessary," adds Judge Woods, "to issue an injunction to prevent interference with the mails, as such interference is in itself a crime for which the guilty party can be arrested and indicted. It is more necessary to issue a restraining order to prevent interference with interstate commerce. *The only reason for issuing an order at all is that it is a means of meeting the present emergency, for the process of arrest and indictment is slow.*"³⁵

Twenty-four hours later the press despatches carried to the world the information that one of the Federal judges had united with the District Attorney and the special counsel for the government in a call on the Attorney General for troops.³⁶

These reports may be inaccurate. Judge Woods may not have said what he is reported to have said, and may have said nothing at all on the subject. The truth or falsity of the newspaper statements is immaterial. The fact remains a matter of public notoriety that the troops were called out to aid in the enforcement of equity process.

Punishment for contempt of court is the most summary and arbitrary exercise of authority under the English and American judicature. It is the reserve power inherent in every court of general jurisdiction to punish by fine or imprisonment, in order to maintain its dignity, and enforce its commands;³⁷ a power which is absolutely essential to the proper conduct of courts of justice.

"The exercise of the power lies solely in the discretion of the judge before whom the contempt is committed, and will not be examined or re-examined by any other court, except when the proceedings are so grossly defective as to be void. The only other remedy, according to the English and more generally received American doctrine, for any error, injustice, abuse of discretion, oppressive or corrupt conduct on the part of the judge of a court of the superior order, is by resort to an impeachment before the legislature."³⁸ The deprivation of this authority would render the courts impotent; its misuse would make them tyrants. It is therefore, equally important to preserve the power, and to prevent its abuse.

The person charged with contempt is entitled to be heard, but he must appear in person and not by attorney. He has no right to be heard by counsel, nor to trial by jury.³⁹ And the trial of facts for contempt not committed *in facie curiae* is usually on affidavits.⁴⁰ While in contempt of an injunction, he cannot move to dissolve, nor can he attack the jurisdiction of the court under the original bill, nor file any sort of dilatory pleading whatever, till he has purged himself of the contempt.⁴¹ In short, a party to a suit may go to jail for contempt of a preliminary injunction, issued *ex parte*, without notice to defendant, which is subsequently—and after the

defendant has served his term of imprisonment—held to be without equity,—that is, void. There is a tremendous power to place in the hands of one man; for from his judgment there is no appeal.

Extend this idea further. It is a general rule, as old as equity jurisprudence, that persons not parties to the bill are not bound by the decree.⁴² This is also the law of procedure in the United States courts by statute,⁴³ and by rules of court.⁴⁴ It is a practice in equity of long standing to make injunction writs run against defendants, their agents and servants, and the agents and servants are bound by the injunction, after they have notice of it, and are liable as for a contempt for a violation of its commands. This is solely upon the ground, according to the authorities, including Judge Taft in the Ann Arbor case, that the acts of the agents are the acts of the principals, the defendants.⁴⁵ It would be difficult, if not impossible, to find any respectable authority, more than one year old, which holds the contrary, or substantially varies the rule as given. There is some authority for holding “aiders and abettors,” under certain circumstances, where the proof is clear of a purpose to violate general process, such as subpœna, or summons to jurors, or to interfere with an officer of court;⁴⁶ but this stands upon peculiar grounds, *quasi*-criminal; and it may be doubted whether the rule has ever been applied to injunction, which is a specific civil writ, directed *in personam*.

Furthermore, there is a common rule, that there must be service of the writ on those to be affected by it, which is usually held to mean personal service.⁴⁷ Posting of printed copies of the injunction on freight cars, in railway stations, or other conspicuous places, is not a method of service prescribed by statute, by rules of court, or by general equity practice. The most that can be claimed for this method is, that it is a means of making notorious the issuance of the writ, and thus of aiding in proving notice in cases where notice is a factor in proof for specific cases. It is interesting to apply these propo-

sitions to the injunctions under discussion. So far as a careful investigation has disclosed, the writ issued by Judge Jenkins in the Northern Pacific case was the first of its kind. It is a striking innovation, and marks the point of departure from what is understood to be the accepted equity practice. On this account it is deemed best to let it speak for itself. It was directed to thirty-two persons, by name, members of certain Brotherhood Committees, and to various others by classes. Omitting certain introductory and concluding parts, the body of the writ is as follows:⁴³

"Now, therefore, in consideration thereof, and of the matters in said petition set forth, you, the above named, and the officers, agents, and employes of Thomas F. Oakes, Henry C. Payne, and Henry C. Rouse, as receivers of the Northern Pacific Railroad Company, and the engineers, firemen, trainmen, train dispatchers, telegraphers, conductors, switchmen, and all other employes of said Thomas F. Oakes, Henry C. Payne, and Henry C. Rouse, as receivers of the Northern Pacific Railroad Company, and each and every one of you, and all persons, associations, and combinations, voluntary or otherwise, whether employes of said receivers or not, and all persons generally, and each and every one of you, in the penalty which may ensue, are hereby strictly charged and commanded that you, and each and every of you, do absolutely desist and refrain from disabling or rendering in any wise unfit for convenient and immediate use any engines, cars, or other property of Thomas F. Oakes, Henry C. Payne, and Henry C. Rouse, as receivers for the Northern Pacific Railroad Company, and from interfering in any manner with the possession of locomotives, cars, or property of the said receivers or in their custody, and from interfering in any manner, by force, threats, or otherwise, with men who desire to continue in the service of the said receivers, and from interfering in any manner, by force, threats, or otherwise, with men employed by the said receivers to take the place of those who quit the service of said receivers, or from interfering with or obstructing in anywise the operation of the railroad or any portion thereof, or the running of engines and trains thereon and thereover as usual, and from any interference with the telegraph lines of said receivers or along the lines of railways operated by said receivers, or the operation thereof, and from combining and conspiring to quit, with or without notice, the service of said receivers, with the object and intent of crippling the property in their custody, or embarrassing the operation of said railroad, and from so quitting the service of the said receivers, with or without notice, as to cripple the property or to prevent or hinder the operation of said railroad, and generally from interfering with the officers and agents of said receivers or their employes, in any manner, by actual violence, or by intimidation, threats or otherwise, in the full and complete possession and management

of the said railroad, and of all the property thereunto pertaining, and from interfering with any and all property in the custody of the said receivers, whether belonging to the receivers or shippers, or other owners and from interfering, intimidating, or otherwise injuring or inconveniencing or delaying the passengers being transported, or about to be transported, over the railway of said receivers, or any portion thereof, by said receivers, or by interfering in any manner, by actual violence or threats, or otherwise preventing or endeavoring to prevent the shipment of freight or the transportation of the mails of the United States over the road operated by said receivers and from combining or conspiring together, or with others, either jointly or severally, or as committees, or as officers of any so-called labor organization, *with the design or purpose of causing a strike upon the lines of railroad operated by said receivers, and from ordering, recommending, approving or advising others to quit the service of the receivers of the Northern Pacific Railroad Company on January 1, 1894, or at any other time, and from ordering, recommending, advising, or approving, by communication or instruction, or otherwise, the employes of said receivers, or any of them, or of said Northern Pacific Railroad Company, to join in a strike on said January 1, 1894, or at any other time, and from ordering, recommending, or advising any committee or committees, or class or classes of employes of said receivers, to strike or join in a strike, on January 1, 1894, or at any other time until the further order of this court*"

If it be said that the Northern Pacific decree was issued in furtherance of the general powers attaching in receivership proceedings, it must be remembered that it is not in form an order in course, but an injunction, and as such it must be interpreted. Otherwise it would be only a sort of open order of warning against violating the process of the court, a construction not consistent with its form or substance.

In the case of the *United States vs. Debs*,⁴⁹ known as the "Chicago Omnibus Bill," the injunction was issued July 2, 1894, and was directed against eighteen defendants by name, "and all persons combining and conspiring with them, *and all other persons whomsoever.*" After lengthy recitals of acts which are enjoined, consisting of interference with United States mails and inter-state commerce, the decree concludes:

"And it is further ordered that the aforesaid injunction and writ of injunction shall be in force and binding upon such of said defendants as are named in said bill, from and after the service upon them severally of said writ by delivering to them

severally a copy of said writ or by reading the same to them, and the service upon them respectively of the writ of subpœna herein, and shall be binding upon said defendants, *whose names are alleged to be unknown*, from and after the service of such writ upon them respectively, by the reading of the same to them, *or by the publication thereof by posting or printing*, and after service of subpœna upon any of said defendants named herein, shall be binding upon said defendants, *and upon all other persons whatsoever who are not named herein from and after the time when they shall severally have knowledge of such order and the existence of said injunction.*"

The decree bears the signatures of the distinguished Judges, William A. Woods and P. S. Grosscup.

It is interesting to note, in comparison with this, the decree issued by Judge Thayer of the United States Court at St. Louis, in the case of the *United States vs. Elliott*.⁵⁰ The bill was filed against one hundred and thirty-two persons named, which number was afterwards increased by the addition of about two hundred and fifty more names. The decree, which was entered on the 6th of July, 1894, enjoined the defendants, "and all persons *acting in concert under their direction and control*," from the various acts recited, which were, with a few changes, the same as those mentioned in the Chicago decree. In conclusion, after specifying that the decree shall be binding on the defendants named, after personal service of the injunction and subpœna, it provides that the injunction "shall be binding upon said defendants whose names *are not stated but who are within the terms of this order*, from and after the service of such writ upon them respectively by the reading of the same to them or by the delivery of a copy thereof to them."

It would, again, be manifestly indelicate to prejudge or discuss the merits of cases against specific defendants now pending for judicial decision. Their determination must be left to the wisdom, learning and high sense of public duty which has always characterized the Federal judiciary. The forms are given as a necessary part of the history of this

subject. They must bear their own construction to those who read them. It may not, however, be improper to ask the questions: Who are parties to these decrees? And are all persons whosoever liable for contempt?

Viewing the history of this subject, it is important to stop and take a reckoning. Where do we stand?

That the industrial forces of the country are in a state of fermentation no one can doubt. That there is a prevailing sentiment among the great mass of wage-earners that there are defects in the laws and their administration, is most apparent. The late "sympathy strike" is convincing evidence of this. Such a strike, in itself, seems incredible. It is incredible, except upon the theory of a wide-spread discontent. The tendency to concentration of labor forces increases constantly. Speaking from a sociological point of view, the organization of labor against the organization of capital is entirely natural. Power breeds tyranny, which in turn brings rebellion and opposition, then counter-forces produce a new tyranny. Prophets are not wanting in these days to tell of pending economic changes, and the High Priests of reform preach their panaceas. Whether the changes are to come through socialism, communism, anarchism or the single tax or whether they are to come at, all is not pertinent to the subject of this paper.

Nor has the American Bar Association any proper concern with sociology. But this Association has an interest—the deepest interest—in jurisprudence and remedial procedure. From that standpoint it is one of its chief functions to meet and face the questions of the day.

One point concerning organized labor is plain. Under the existing system of jurisprudence, the laboring men have no right to expect recognition in the law for their organizations until they assume a responsibility commensurate with the privileges they claim. If organized labor is to contest with organized capital, it must have a legal status in some sort analogous to organized capital. If it is to make—and break—contracts; fix terms and conditions of employment;

have a voice in the management of business, and dictate the classes of persons who are to be employed, it must have a legal entity which shall be able to respond in damages for its breaches of contract or its torts, and be subject to the restraining process of the courts on well-defined juridical lines.

After all, what does it mean, this sudden development of equity jurisdiction? Whither are we tending? An injunction sued out by the United States against ten thousand strikers and all the world besides. Did the injunction stop the strike? Troops were called out to aid the process. Did they aid it? Some scores of rioters were killed, but where was the injunction meanwhile?

Was a single result achieved by the military which could not have been as lawfully and effectually accomplished without an injunction? The criminal laws are ample and severe, and the power of government to enforce them is limited only by the allegiance of its citizens. Every person who interfered with the United States mail, or conspired to violate the Interstate Commerce Law, or destroyed property, or joined in riotous gatherings such as assembled at Chicago, was guilty of crime, and was subject to arrest and punishment. When the marshals were unable to enforce the criminal laws, there was just as much power to call out the military in aid of criminal process as there was in aid of injunction. Why, then, invoke the extraordinary jurisdiction of a civil court, never designed for, and in no way adapted to, such cases? The incident itself is a sad commentary on existing conditions. It points to the conclusion that the people are becoming afraid of their own institutions; afraid of trial by jury; afraid of the cherished guaranties of civil liberty derived through *Magna Charta* and enshrined in their constitutions, State and National.

The idea seems prevalent that there is nothing at issue except the question of domination between labor and capital. Men struggle and contest, and violate the laws for what they call "organized labor;" as if the term covered privileges of a higher order than the inherent rights of the individuals

included in it, and of all citizens. In aid of strikes and boycotts, they invoke the rule of law and morals that a man may place his labor where he pleases, at such wages as he pleases; but deny the same right to the men who take the places thus voluntarily made vacant. The principle upon which our national autonomy was founded, that all men are created equal, and are entitled by inalienable right to life, liberty and the pursuit of happiness, seems to be limited by recent interpretation to all men who belong to labor organizations.

Organized capital, in turn, by its violations of law, cultivates this class feeling. The efforts by large corporations to make use of injunction, with its punishment for contempt, tends to nullify the provisions of the Bill of Rights that "in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, * * * * and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense." The question at issue is deeper than any mere conflict of classes. The fundamental constitutional right of civil liberty is at stake, and every American is affected by any violation of that right. Upon the bench and bar, as the interpreters of the law, devolves the serious responsibility of applying those constitutional principles to the intricate warp and woof of social and political conditions.

In the discharge of this solemn obligation, gentlemen of the American Bar Association, it is for those who follow the noble profession of the law to determine, whether violations of the criminal law shall be prevented and punished through criminal or civil process, and whether the court of equity shall be so used as shall tend to make its decree of injunction on the one hand an instrument of tyranny, or, on the other hand, a mere *brutum fulmen*.

NOTES TO INJUNCTION AND ORGANIZED LABOR.

¹Inst. Justin., Lib. 1, T. 1 (Ed. Sandars, p. 85).

²3 Black. Comm. *429.

³High on Injunctions, pp. 2, 3, § 1.

⁴Poulterer's Case, 9 Co. Rep. 55 b; Timberley vs. Childe, 1 Siderfin, 68 (1683); Regina vs. Best, 1 Salkeld, 174, 2 Lord Raymond, 1167 (1705); Rex vs. Kinnersley & Moore, 1 Strange, 193 (1716); Rex vs. Cope, 1 Stra. 144; Rex vs. Mawbey, 6 T. R., 636 (1796); The People vs. Trequier, 1 Wheel. Crim. Cas., 142 (1823); and nearly all the cases on conspiracy contain substantially the same definition.

⁵Anti-monopoly laws are of ancient origin. By the *Lex Julia de annonæ*, the Romans prohibited, under penalties, any interference with transportation, or preventing the free carriage of grain. By the statute of Zeno the man who ran a "corner" in staples was subject to banishment and confiscation of goods. 2 Wharton Crim. Law (9th Ed.) § 1849. Monopolies were prohibited at common law; and combinations in restraint of trade are held to be conspiracies. See *Morris Run Coal Co. vs. Barclay Coal Co.*, 68 Pa. St. 173 (1871); *Hooker vs. Vandewater*, 4 Denio, 349, and cases cited. For distinction between monopoly and rivalry, see *Mogul S. S. Co. vs. McGregor*, L. R. 23 Q. B. D. 593 (1889), on appeal of S. C., 21 Q. B. D. 544; Also, *U. S. vs. Patterson*, 55 Fed. Rep. 605; *Stanton vs. Allen*, 5 Denio, 434; *Salt Co. vs. Guthrie*, 35 Ohio St. 666; *Craft vs. McConoughy*, 79 Ill. 346; *Richardson vs. Buhl*, 77 Mich. 632, 43 N. W. R. 1102; *Handy vs. Railroad Co.*, 31 Fed. Rep. 689; *Western Union Tel. Co. vs. Burlington & S. W. R. Co.*, 11 Fed. Rep. 1; *Dolph vs. Machinery Co.*, 28 Fed. Rep. 553; *People vs. Chicago Gas Trust Co.*, 130 Ill. 268, 22 N. E. R. 798; *Manfg Co. vs. Klotz*, 44 Fed. Rep. 721; *More vs. Bennett* (Ill. Sup.), 29 N. E. Rep. 888.

⁶See also *King vs. Edwards*, 8 Mod. 320, 321; *Rex vs. Eccles*, 3 Doug. 337 (1783).

⁷The doctrine was discussed in *Rex vs. Hammond & Webb*, 2 Esp. 719; *Rex vs. Salter*, 5 Esp. 125; *Rex vs. Bykerdike*, 1 Moody & Robinson, 179 (1832); *King vs. Eccles*, 3 Doug. 337; *Rex vs. Ferguson*, 2 Starkie, 431; *Reg. vs. Bunn*, 12 Cox C. C. 316; *Reg. vs. Druitt*, 10 Cox C. C. 592; *Rex vs. Mawbey*, 6 Term R. 619. See Cogley on Strikes and Lockouts (1894).

⁸The Boot and Shoe makers of Philadelphia (1806), pamphlet printed at Philadelphia; *People vs. Melvin*, 2 Wheel. Crim. Cas. (N. Y.) 262, or The Case of the Journeymen Cordwainers of the City of New York, Yates' Select Cases, 111 (1809); Journeymen Cordwainers of Pittsburgh

(1815), pamphlet; *Com. vs. Carlisle*, Brightly's Rep. (Pa.) 36 (1821); *State vs. Buchanan*, 5 Harris & Johnson (Md.) 317, (1821), where the subject is fully discussed, with numerous citations; *People vs. Trequier*, 1 Wheel. Crim. Cas. (N. Y.), 142 (1823); *The Journeyman Tailors of Philadelphia*, pamphlet (1827); *People vs. Fisher*, 14 Wend., 1 (N. Y.), 1835; see Cogley on Strikes and Lock-outs, p. 8.

⁹Pamphlet printed at Philadelphia in 1806.

¹⁰2 Wheel Crim. Cas. (N. Y.), 262; S. C., Yates' Select Cases, 111.

¹¹Pamphlet.

¹²See arguments of Sampson and Colden for defendants, in the *Journeyman Cordwainers' Case*, Yates' Select Cases, *120, *et seq.*

¹³*Commonwealth vs. Carlisle* (1821), Brightly's Rep. 36.

¹⁴2 Daly (N. Y. Com Pleas), 1.

¹⁵See opinions: Chief Justice Shaw in *Com. vs. Hunt*, 4 Metc. 111 (Mass.); Recorder Reed, in *Journeyman Tailors of Philadelphia*, pamphlet, 1827; Chief Justice Williams, in *Hartford Carpet Weavers' Case* Sup. Court of Conn., printed in Hartford, 1836; Judge Taft of the Superior Court, Cincinnati, in *Moores & Co. vs. Bricklayers' Union No. 1*, 23 Weekly Law Bulletin, 48 (1890); and others.

¹⁶3 Stephen's Hist. of Crim. Law of Eng. p. 209, *et seq.*

¹⁷*Journeyman Tailors of Philadelphia*, pamphlet, 1827; *Hartford Carpet Weavers*, Connecticut, pamphlet, 1836; *Com. vs. Hunt*, 4 Metc. 111 (1842); *Boston Glass Manufactory vs. Binney*, 4 Pick. 425; *Bowen vs. Matheson*, 14 Allen, 499; *Master Sevedore's Ass'n vs. Walsh*, 2 Daly, 1 (1867); *Carew vs. Rutherford*, 106 Mass. 1 (1870); *U. S. vs. Kane*, 23 Fed. Rep. 743 (1835); *State vs. Stewart*, 59 Vt. 273 (1887); *Moores & Co. vs. Bricklayers' Union No. 1*, 23 Weekly Law Bulletin, 48 (1890). This idea is usually assumed, *arguendo*, by judges in the later cases. See, especially, cases in U. S. Courts, cited *infra*. The marked change of sentiment and law on this subject can be noted in Mr. Wharton's treatment of it. Compare Whart. Crim. Law, 6th Ed., p. 78, Sec. 2322 (1868), and 9th Ed., p. 215, Sec. 1366 (1885).

¹⁸On the subject generally, of conspiracy, see English cases: *Poulterer's Case*, 9 Co Rep 55 b.; *Regina vs. Best*, 1 Salk., 174, S. C. 2 L'd Raymond, 1167 (1705); *Timberley vs. Childe*, 1 Sid., 68 (1683); *Rex vs. Kinnelsley*, 1 Strange, 193 (1716); *Rex vs. Cope*, 1 Stra. 144; *Rex vs. Mawbey*, 6 T. R. 636, (1796); *Rex vs. Lord Grey*, 3 Hargrave's St. Trials, 519, S. C. 9 Howel's St. Tr. 127 (1682); *Rex vs. Sir Francis Delaval*, 3 Burr. 1434; *Clifford vs. Brandon*, 2 Camp. 358 (1809); *Gregory vs. Brunswick*, 6 Man. and Gr. 205; *The King vs. Eccles*, 3 Doug. 337 (1783); *The King vs. Gill*, 2 Barn. and Ald. 204 (1818); *Mogul Steamship Co. vs. McGregor*, L. R. 15 Q. B. D. 476, L. R. 23 Q. B. D. 598 (1889). As to English cases under statutes since 1825, see: *Reg. vs. Hewitt*, 5 Cox C. C. 162; *Reg. vs. Duffield*, 5 Cox C. C. 404; *Reg. vs. Rowlands*, 5 Cox C. C. 436, 466; 17 Q. B. 671, *Reg. vs. Selsby*, 5 Cox C. C. 495 (Note to *Reg. vs. Rowlands*);

Rex vs. Bykerdike, 1 *Moody & Robinson*, 179; *In re William Perham*, 5 *Hurl. & Nor. (Ex.)* 30; *Wood vs. Bowron*, 2 *L. R. Q. B.* 21; *O'Neill vs. Longman*, 4 *Best & Smith*, 376; *O'Neill vs. Kruger*, 4 *Best & Smith* 389; *Walsby vs. Anley*, 7 *Jur. N. C.* 465; *Reg. vs. Druitt*, 10 *Cox C. C.* 592 (1867); *Shelbourne vs. Oliver*, 13 *Law Times Rep. (N. S.)* 630. (1866); *Skinner vs. Kitch*, 10 *Cox C. C.* 493 (1867); *Reg. vs. Shepherd*, 11 *Cox C. C.* 325 (1869); *Reg. vs. Hibbert*, 13 *Cox C. C.* 82 (1875); *Reg. vs. Bauld*, 13 *Cox C. C.* 282 (1876); *Reg. vs. Bunn*, 12 *Cox C. C.* 316 (1872); *Hilton vs. Eckersley*, 6 *El. & Bl.* 47.

Among the American cases are the following: *Boot and Shoemakers of Philadelphia*, pamphlet. 1806; *People vs. Melvin*, 2 *Wheel. Crim. Cas., (N. Y.)*, 262; *S. C., The Journeymen Cordwainers of N. Y., Yates' Select Cases*, 111 (1809); *The Journeymen Cordwainers of Pittsburgh*, pamphlet, (1815); *Com. vs. Carlisle*, *Brightly's Rep. (Pa.)*, 36 (1821); *Sate vs. Buchanan (Md.)*, 5 *Har. & John*. 317 (1821); *Com. vs. Judd*, 2 *Mass.* 329; *The Journeyman Tailors of Phil'a*, pamphlet (1827); *People vs. Trequier*, 1 *Wheel. Crim. Cas.*, 142 (1823); *Lambert vs. The People*, 9 *Cowen*, 578; *People vs. Fisher*, 14 *Wend.* 9; *S. C.* 23 *Am. Dec.* 501 (1835); *Com. vs. Hunt*, 4 *Metc.* 111 (1842); *State vs. Norton*, 3 *Zib. (23 N. J. L.)* 33, (1850); *State vs. Pulte*, 12 *Minn.*, 164 (1866); *State vs. Donaldson*, 32 *N. J. L. (3 Vr.)* 151 (1867); *Carew vs. Rutherford*, 106 *Mass.* 1; *S. C.* 8 *Amer. Rep.* 287 (1870); *Master Stevedores' Ass'n vs. Walsh*, 2 *Daly*, 1 (*N. Y. Com. Pleas*, 1867); *Mapstrick vs. Ramge*, 9 *Neb.* 390, *S. C.* 31 *Am. Rep.* 415 (1879); *People vs. Wilzig*, 4 *N. Y. Crim. Rep.* 40; (1886); *People vs. Kostka*, 4 *N. Y. Crim. Rep.* 429 (1886); *Old Dominion S. S. Co. vs. McKenna*, 30 *Fed. Rep.* 48 (1887); *State vs. Stewart*, 59 *Vt.* 273 (1887); *State vs. Glidden*, 55 *Conn.*, 46 (1887); *Com. vs. Shelton*, 11 *Va. Law J.* 321 (1887); *Crump vs. Commonwealth*, 84 *Va.* 927 (1888); *Moore & Co. vs. Bricklayers' Union No. 1*, 23 *Weekly Law Bulletin*, 48 (1890); *Pettibone vs. U. S.*, 148 *U. S.* 197 (1893); And other cases cited, *infra*, under *Boycotts and Injunctions*. But compare the peculiar case of *Cote vs. Murphy (Pa.)*, 23 *Atl. Rep.* 190 (1894), where a combination of employers to reduce wages raised by the "artificial" means of labor organizations, was held not to be an unlawful conspiracy.

¹⁹*Com. vs. Hunt*, 4 *Metc.* 111 (1842); *State vs. Stewart*, 59 *Vt.* 273 (1887), and cases there cited, p. 287, *et seq.*; *Pettibone vs. U. S.*, 148 *U. S.* 197 (March 6, 1893); *U. S. vs. Hirsch*, 100 *U. S.* 33; and see, generally, cases cited in next preceding note.

²⁰See cases *English and American*, cited *supra*.

²¹*Wright on Criminal Conspiracies (Carson's Appendix to American Ed. 1887)* p. 178.

²²*Brace Bros. vs. Evans (Pa.)*, 3 *R. & Corp. L. J.* 561 (1888).

²³*Ray's Contractual Limitations*, 410, 411; *Cogley on Strikes and Lock-outs*, 251; *Mogul S. S. Co. vs. McGregor*, *L. R.* 15 *Q. B. D.* 476 (1885); *People vs. Wilzig*, 4 *N. Y. Crim. R.* 403 (1883); *People vs. Kostka*, 4

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N. Y. Crim. R. 429 (1886); *State vs. Glidden*, 55 Conn. 46 (1887); *Baughman vs. Asken*, 11 Va. Law J. 196 (1887); *Com. vs. Shelton*, 11 Va. Law J., 324 (1887); *Old Dominion S. S. Co. vs. McKenna*, 30 Fed. Rep. 48 (1887); *Crump vs. Commonwealth*, 84 Va. 927 (1888); *Brace Bros. vs. Evans* (Pa.), 3 R'y & Corp. L. Journal, 561 (1888); *Sherry vs. Perkins*, 147 Mass. 212 (1888); *Moore & Co. vs. Bricklayers' Union No. 1*, 23 Weekly Law Bulletin, 48 (1890); *Casey vs. Cincinnati Typographical Union No. 3*, 45 Fed. Rep. 135 (1891). *King vs. Sterling* (1 Keb 650) was a case of boycott. The earliest recorded case was that of the Bailiffs of Shrewsbury, in 1221, noted under the title, *Boycott*, in Vol. 1, Publications of the Selden Society, p. 115, pleas of the crown.

²⁴*U. S. vs. Kane*, 23 Fed. Rep. 743 (1885). See cases on conspiracy, generally.

²⁵*New York*: Penal Code, §§ 168, 170, 171; *Pennsylvania*: 2 Brightly's Purdon's Dig. p. 1172, Laws of Pa., 1891, p. 300; *New Jersey*: Supp. Revision p. 774, 830; *Minnesota*: 2 Stat. Minn. 1891, §§ 6092, 6093, 6094; *Missouri*: Rev. Stat. Mo. 1839, Sec. 3780, 3781, Laws of Mo., 1891, p. 122, Laws of Mo., 1893, p. 187. Other States have passed acts modifying the common law in various ways. See also the act to Legalize the Incorporations of National Trades Unions (1886), 24 U. S. Stat. at Large, p. 86, chap. 567; Statute on Arbitration (1888), 25 U. S. Stat. p. 561, chap. 1063.

²⁶*Colorado*: Mills Ann. Stat. of Col. p. 923, § 1295 (act passed in 1889); *North and South Dakota*: 2 Rev. Code of Dakota Ter. (1883), §§ 733, 734, of Penal Code; *Illinois*: Hurd's Rev. Stat. of Ill. (1891), p. 471, sec. 46 (act passed in 1887); see also Annotated Stat. Ill. 1885, chap. 38, par. 206, 207, 203; *Missouri*: Rev. Stat. Mo., 1889, Sec. 3783; *New Hampshire*: Public Stat. N. H. (1891), chap. 266, § 12, p. 716 (act passed in 1887); *New York*: Rev. Stat. N. Y. Penal. Code, § 163, chap. VIII, p. 34; *Oregon*: 1 Hill's Ann. Laws of Oregon, § 1893, p. 958; *Rhode Island*: Public Stat. R. I., chap. 241, § 8, also chap. 242, § 40; *Texas*: Wilson's Tex. Crim. Stat., Penal Code, § 834, Art. 495 b. (act passed in 1887); *Vermont*: Rev. Laws of Vt. 1880, chap. 196, §§ 4226, 4227 (act passed in 1867); *Wisconsin*: 2 San. & Ber. Ann. Stat. p. 2255, § 4466a and 4466 b (act passed in 1887).

²⁷*Casey vs. Cincinnati Typo. Union No. 3*, 45 Fed. Rep. 135 (1891); *citing*, on conspiracy, *People vs. Wilzig*, 4 N. Y. Crim. R. 403; *People vs. Kostka*, Id. 429; *Com. vs. Shelton*, 11 Va. Law J. 324; *State vs. Glidden*, 8 Atl. Rep. 890 (S. C. 55 Conn. 46); *Reg. vs. Barrett*, 18 Law J. 430.

²⁸*Blindell vs. Hagan*, 6 C. C. A. 86, S. C. 56 Fed. Rep. 696 (affirmed May 29, 1893, U. S. Cir. Court of Appeals, Fifth Circuit).

²⁹*Toledo, A. A. & N. M. R'y Co. vs. Pennsylvania Co.*, 54 Fed. Rep. 730 (Circuit Court, N. D. Ohio, W. D., April 3d, 1893).

³⁰*Toledo, A. A. & N. M. R'y Co. vs. Pennsylvania Co.*, 54 Fed. Rep. 730, at page 743; *citing*: *Stocker vs. Brockenbank*, 3 MacN. & G. 250; *Johnson vs. Shrewsbury R. Co.* 3 De Gex, M. & G. 914; *Pickering vs. Bishop of Ely*, 2 Y. & C. Ch. 249; *Lumley vs. Wagner*, 1 De Gex, M. & G. 604.

⁸¹*Farmers' Loan & Trust Co. vs. Northern Pac. R. Co.*, 60 Fed. Rep. 803 (Circuit Court E. D. Wisconsin April 6, 1894).

⁸²Page 813. The power to punish for contempt for interference with property in the hands of receivers has been repeatedly exercised. See *U. S. vs. Kane*, 23 Fed. Rep. 748 (1885); *In re Doolittle*, 23 Fed. Rep. 544 (1885); *In re Wabash R. Co.*, 24 Fed. Rep. 217 (1885); *In re Higgins*, 27 Fed. Rep. 443 (1886).

⁸³26 U. S. Stat. at Large, chap. 647, p. 209 (approved July 2, 1890).

⁸⁴*And see* *Workmen's Amalgamated Council of New Orleans vs. U. S.*, 57 Fed. Rep., 85 (U. S. Circuit Court of Appeals, 5th Circuit, June 13, 1893), where the Court of Appeals, while refusing to reverse the interlocutory order granting the injunction, says: "On this appeal from an interlocutory order, which we affirm, we deem it unnecessary to anticipate the further progress and final hearing of this case by an expression of our views as to the full scope and sound construction of this recent and important statute."

⁸⁵1 *Spence's Equitable Jurisdiction*, * 242, *et seq.*

⁸⁶*St. Louis Globe-Democrat*, July 3, 1894.

⁸⁷*St. Louis Globe-Democrat*, July 4, 1894.

⁸⁸3 *Amer. & Eng. Encyclopædia of Law*, pp. 795, 799, and cases there cited. See *Rev. Stat. U. S.*, Sec. 725, p. 137.

⁸⁹3 *Amer. & Eng. Enc. of Law*, p. 799. See *In re Higgins*, 27 Fed. Rep. 443 (1886), opinion by Judge Parlee, p. 446.

⁹⁰3 *Amer. & Eng. Enc. of Law*, p. 793, and cases cited.

⁹¹3 *Amer. & Eng. Enc. of Law*, p. 790, and cases cited; 2 *High on Inj.*, Sec. 1452, p. 1122.

⁹²10 *Amer. & Eng. Enc. of Law*, p. 777 *et seq.*, and cases cited

⁹³2 *Spelling on Extraordinary Relief*, § 1126; *Barthe vs. Larquie*, 42 La. An. 131; *Johnson vs. Von Kettler*, 66 Ill. 63; *Boyd vs. State*, 19 Neb. 123, and cases cited, p. 134; *People vs. Compton*, 1 Duer (N. Y.), 512.

⁹⁴*Rev. Stat. U. S.* (1878), p. 139 Sec. 737.

⁹⁵See 3 *Daniell's Chan. Pl. & Pr.*, p. 2336, *Rules of U. S. Courts*, Nos. XLVII, XLVIII; or *Rules* as published in pamphlet.

⁹⁶*Toledo, A. A. & N. M. Ry Co. vs. Penn. Co.*, 54 Fed. Rep. 730; *Mexican Ore Co. vs. Mexican Guadalupe Mining Co.*, 47 Fed. Rep. 351 (U. S. Cir. Court, D. New Jersey, Sept. 3, 1894), where it was held that a director was not bound by the decree after resignation; *Lord Wellesley vs. Earl of Mornington*, 11 Beav. 180; *People vs. Compton*, 1 Duer (N. Y.), 512 (1853); *Boyd vs. State*, 19 Neb. 123 (1886).

⁹⁷Even a criminal indictment for impeding process must show notice. *Pettibone vs. U. S.*, 148 U. S. 197 (1893). For distinction between criminal contempt of general process and contempt of special process, see opinion of Judge Thayer, in *Secor vs. Singleton*, 35 Fed. Rep. 376 (378); *citing: Hawley vs. Bennett*, 4 Paige, 169; *Rap. Contempt*, § 127; 2 *High on Inj.* (2d Ed.) § 1419. Plaintiff in injunction proceeding may waive right to

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have acts judged contempt. *Mills vs. Cobby*, 1 Mer. 3; *Barfield vs. Nicholson*, 2 Law J. Ch. 90; *Hull vs. Harris*, 45 Conn., 544; 2 High on Inj. (2d Ed.), § 1450.

⁴⁷2 High Inj., Sec. 1452, p. 1123; 2 Daniell's Chan. Pl. & Pr. * 1684; and where the question of service is doubtful, a motion for attachment will be denied. *Squire Whipple vs. Hutchinson*, 4 Blatchf. 190 (1858); See 3 Amer. & Eng. Enc. of Law, p. 790.

⁴⁸See Report No. 1049, House of Representatives, 53d Congress, 2d Session; being report from the Committee on Judiciary, June 8, 1894. This order was subsequently modified by Judge Jenkins by striking out the clause, "and from ordering, recommending, approving or advising others to quit the service of the receivers of the Northern Pacific Railroad Company on January 1, 1894, or at any other time." *Farmers' Loan & T. Co. vs. Northern Pac. R. Co.*, 60 Fed. Rep., 803.

[Since this paper was read before the American Bar Association, the Northern Pacific case has been decided on appeal by the U. S. Circuit Court of Appeals at Chicago, Mr. Justice Harlan delivering the opinion. The decree was further modified by striking out the clause, "and from so quitting the service of the said receivers, with or without notice, as to cripple the property or prevent or hinder the operation of said railroad." The Court also declared that a strike was not necessarily illegal, and reaffirmed the doctrine that equity will not compel the continuance of personal service. See *P. M. Arthur et al., Intervenor, vs. Oakes et al., Receivers, etc.*, 27 Chicago Legal News, 41, Oct. 6, 1894.]

⁴⁹U. S. Circuit Court, N. D. of Ill. (not yet reported).

⁵⁰U. S. Circuit Court, E. D. of Mo., E. Div. (not yet reported).

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REPORT

OF THE

COMMITTEE ON JURISPRUDENCE AND LAW REFORM.

The Committee on Jurisprudence and Law Reform respectfully report that the following subjects were referred to them at the last meeting of the Association and have received their consideration, viz:

Resolution as to Torrens System of Registration of Titles.

Report of the Special Committee on Indian Legislation.

"Limitation on the Power of Transmitting Property," and
"The Imposition of a Graduated Inheritance Tax."

"Abolition of Capital Punishment."

The Paper on "The Evolution of Jurisprudence."

The terms of the resolution under which the first of these subjects was submitted to your Committee directed them to inquire into the practical working of the Torrens System of certifying titles to land, and whether it is desirable or practicable to adopt it in the American States.

Your Committee has not yet obtained sufficiently full information concerning the practical working of the System in those jurisdictions in which it is in force to enable it to make an adequate presentation thereof to the Association. The subject is one which has been or now is under the consideration of commissions in several States, and legislative action in the near future is to be expected. Under these circumstances, the Committee does not deem any present action of the Association expedient.

In regard to the Report of the Special Committee on Indian Legislation, your Committee recommend the passage of the resolutions reported by that Committee which are as follows:

Resolved, That the American Bar Association recommend that exclusive jurisdiction be forthwith vested by Congress in

the circuit courts of the United States and supreme courts of the Territories to hear and determine all cases at law and in equity that may arise, and to try all offenses that may be committed on Indian reservations situated in any judicial district or Territory, and to administer all estates of the inhabitants thereof in accordance with the laws of the respective States and Territories in which the reservations may be respectively located.

Resolved, That the American Bar Association recommend that such jurisdiction extend to all cases arising between any band or tribe of Indians and the United States or between such band or tribe and any officer of the United States, and that the amount of fees to be paid in any case to an attorney for Indians be determined in all cases by the court.

Resolved, That the secretary of this Association transmit a copy of this report to the President of the United States, the Hon. Secretary of the Interior, the Hon. Commissioner of Indian Affairs and to each member of Congress, accompanied by a copy of the proposed act of Congress herewith reported.

In reference to the other subjects mentioned above, the Committee deem it inexpedient that any action should be taken by the Association.

Respectfully submitted,

GEO. TUCKER BISPHAM,
SAMUEL F. HUNT,
E. B. SHERMAN,
J. W. SYMONDS.

ST. PAUL, MINN., July 31st, 1894.

HON. GEORGE TUCKER BISPHAM :

Dear Sir :—Prof. J. B. Thayer, of Harvard College, has requested me to address you a note respecting the report of our Committee on Indian Legislation made to the American

Bar Association, at its meeting last year, and referred to the Committee of which you are Chairman, of Jurisprudence and Law Reform.

You, no doubt, appreciate as fully as the members of the Special Committee who made the report the importance of the subject to which it pertains. The existence in our midst of two or three hundred thousand people who have no fixed civil or criminal code, and no probate code, and no courts for the administration of any laws, is an evil of great magnitude to all the citizens of the United States, and a rank injustice to the Indians. The report signed by me as chairman made to the Association last year embodies quite fully the views of the three members of the special committee, Mr. Hornblower, Mr. Thayer and myself, and, we think, deserves the candid and careful consideration of your Committee and final action thereon by the Association at its coming meeting. Mr. Hornblower may have some suggestions in regard to the form of the act of Congress that should be passed vesting jurisdiction in the Federal Courts. He intimated to me that he was not in full accord with my views as embodied in the act attached to the report which we recommended Congress to pass. I have no pride of opinion regarding the report or the act attached to it, and shall be fully satisfied with any reasonable action that your Committee may recommend the Association to take; but we all have an earnest desire that action should be had, and that one of the foulest stains upon our escutcheon as a nation should from henceforth be obliterated, and that those rights secured to our own race by such sacrifice of blood and treasure in the past may be cheerfully accorded by us to the Indian race.

With great respect,

Your obedient servant,

JOHN B. SANBORN,
Chairman Special Committee Indian Legislation.

REPORT

OF

COMMITTEE ON JUDICIAL ADMINISTRATION AND
REMEDIAL PROCEDURE.

At the last meeting of the Association, in the confusion of its closing hours, "a member," whose name is not given in the report, offered, and the Association adopted, the following resolution :

Resolved, That the Committee on Judicial Administration and Remedial Procedure be instructed to inquire what changes, if any, are desirable in the Federal Judiciary subordinate to the Supreme Court and in the District and Circuit Courts of the United States and in the Circuit Courts of Appeal.

The mover added, "I offer this resolution of inquiry at the suggestion of one or more of the Federal Judiciary, who think a much better system could be adopted than the one we now have."

It is regretted that the name of the gentleman offering this resolution has not come to the knowledge of this Committee, and that it has not been possible to ascertain by correspondence or otherwise the particulars in respect to which he would advise a change. The resolution indicates that he had in mind a somewhat drastic treatment of the subject, yet it will be observed that its terms are quite general and vague—"what changes, if any, are desirable in the Federal Judiciary," etc. Hence, in view of the largeness of the subject, it has not been practicable to prepare a report in the usual way, by correspondence, as may sometimes be done when a distinct proposition is referred and may be submitted by letter to the several members. A meeting of the Committee was called at the

present session in accordance with the by-laws, but only the undersigned members have been in attendance.

It will be remembered that this Association took an active, and we have cause to believe an influential, part in the agitation which led to the adoption by Congress of the Act creating Circuit Courts of Appeal. The last step taken by the representatives of this Association, in bringing the matter to the attention of Congress, was on February 13th, 1890, at Washington, when the sub-committees of the Judiciary Committees of the House and Senate, to whom had been referred all bills on this subject, gave an audience in joint session, Senator Evarts presiding, to the Special Committee of this Association of which David Dudley Field was chairman, the acting Chairman in Mr. Field's absence being Mr. Hitchcock, then President of the Association. At that meeting the Committee laid before the sub-committees of the House and the Senate the draft of a bill which embodied the characteristic feature of the legislation adopted, viz., the provision retaining in the appellate jurisdiction of the Supreme Court constitutional and all Federal questions and diverting to the new appellate court those cases which for the most part involve municipal law and which principally are brought into the courts of the United States by the mere fact of citizenship of the parties. All previously proposed bills had provided that cases of both sorts, irrespective of the ground of Federal jurisdiction, should go from the lower courts in the first instance to the proposed appellate court, whence they might be taken to the Supreme Court; and the only device suggested for relieving the pressure which would thus be made upon the Supreme Court by these second appeals was that of cutting them off by a very high pecuniary limit; whereas, the bill above referred to provided for but a single appeal or writ of error, and gave it in all cases irrespective of amount, and sent one class of cases direct from the lower court to its appropriate reviewing tribunal, and the other class of cases direct from the lower courts to the reviewing tribunals provided for them. This bill was introduced in the Senate by

Mr. Hoar, by request, and was referred to the Judiciary Committee and to the sub-committee of which Mr. Evarts was chairman. Subsequently, a bill embodying identically all the jurisdictional clauses of that bill and embodying the characteristic features above described was reported to the Senate by Mr. Evarts, was adopted in the Senate with a few amendments, was adopted in the House upon the report of a conference committee, and signed by the President.

In the main and almost entirely, this measure has accomplished the objects desired. The relief of the Supreme Court from an annual overflow of cases greater than the court could dispose of has been effectually secured. This is apparent from the diminished return of cases to the docket. Although the number of cases actually adjudicated in the Supreme Court annually averages only 295, yet the number returned to the October term, 1887, was 482; the number returned to the October term, 1888, was 550; and the number returned to the October term, 1890, was 623, while the number returned to the October term, 1892, was 290, almost precisely the number which represents the working capacity of the court. It is true that the court has not yet caught up with its docket, but the reason is that it has been engaged in working off the congestion of the docket resulting from an accumulation of cases in years previous to the act of 1891—an accumulation so great as to leave 1079 cases in arrears at the beginning of the October term, 1892. Not a few of these cases are mere shells—unmeritorious appeals invited by the long delay which an appeal formerly secured, or cases in which the same cause has coerced or will coerce one of the parties into compromise, and which will be dismissed when called. This accumulation can probably be worked off in two years; and the court will be up with its docket—dealing with records that contain the issues of living controversies and not, as heretofore, delving, for the most part, among the remains of dead and buried transactions.

The following table, taken from the report of the Attorney-General for 1893, also shows not only how great is the relief

secured by the Supreme Court, but how admirably the Circuit Courts of Appeals are securing another prime object of their organization, to-wit, providing for a review in cases for which no provision had theretofore been made :

Statement of cases docketed, disposed of, and pending in the United States Circuit Courts of Appeal, during the fiscal year ending June 30, 1892.

Circuit.	Docketed.			Disposed of			Pending.			Cases marked pending argued and awaiting decision.	Cases marked docketed or appealed to the United States Supreme Court.
	Civil.	Criminal.	Total.	Civil.	Criminal.	Total.	Civil.	Criminal.	Total.		
First.....	67	1	68	19	.....	19	48	1	49	24	.....
Second.....	114	2	116	102	2	104	86	1	87	21	3
Third.....	26	.....	26	17	.....	17	9	.....	9	8	.....
Fourth.....	10	.....	30	35	.....	5	9	.....	9	7	.....
Fifth.....	106	.....	106	93	.....	93	28	.....	28	.....	5
Sixth.....	61	.....	64	57	.....	57	48	.....	48	48	1
Seventh.....	64	.....	64	44	.....	44	63	.....	61	16	2
Eighth.....	163	.....	163	115	.....	145	99	.....	99	30	17
Ninth.....	66	1	67	28	.....	28	38	1	39	15	1
Total.....	700	4	704	540	2	542	428	3	431	171	29

A careful inquiry instituted prior to 1889, developed the remarkable fact that under the then existing system, eight-ninths of all the cases decided in the lower Federal Courts were determined by a single Judge (no associate presiding in the disposition of such cases), and that in more than nine-tenths of these cases he was the final arbiter of the rights of the parties. Under that system, the District Judge or Circuit Judge, exercising the jurisdiction of Circuit and District Court, was the anachronism of the century—the anomaly of jurisprudence. He was the depository of more arbitrary one-man power than any other official known to American public life. That the power was seldom abused did not make the system less vicious. The few Judges who did abuse it are now under the wholesome restraint of appellate tribunals—whose revisory power they relish little, but respect much. The right of a review has been secured to a numerous class of suitors in civil cases and defendants in circuit cases to whom it was formally denied.

But, granting the great benefits that have resulted from the Act of March 3d, 1891, are there not changes in the Act still to be desired? We think there are—not radical changes, not changes affecting the fundamental discrimination made between Federal and non-Federal questions; but changes which may nevertheless be called important. Indeed, nothing that affects in any considerable degree the Federal Judicial System can be unimportant. The process of the United States Courts was used recently to suppress an industrial strife amounting almost to civil war. Upon these courts has developed the work of blazing out the path through the wholly new problems which the present social and industrial order has developed. Although the Judiciary Committee of the South Carolina Legislature, in a memorial to Congress, has denied *in toto* the jurisdiction of a Federal Court to appoint a receiver of a railroad, yet according to the "Financial Chronicle," 152 railroads with over 45,000 miles of line and capitalized at \$2,500,000,000—being 25 per cent. of all the railroads in the country in mileage and capitalization—are in the hands of Receivers of the Federal Courts; a striking difference, if the South Carolina contention be true, between the situation *de jure* and the situation *de facto*. When we remember such significant facts, we get a new conception of the tremendous importance of the Federal judicial power and its functions.

We have instituted a careful comparison between the Bill already mentioned, which was referred to the Senate Judiciary Committee, and the Bill as it was reported to the Senate by Mr. Evarts, the chairman of the committee to whom it was referred, and as it passed the House, after a report of the conference committee, and was signed by the President. This comparison satisfies us that in the four main points in which the bills differ the original bill was distinctly preferable, and the changes now to be desired are those which will conform the present statute to the bill as originally proposed.

First.—The original bill provided for a writ of error from the lower court to the Supreme Court in only one class of

criminal cases, viz., capital cases, and this was the form in which the bill was reported to the Senate by Mr. Evarts (all the jurisdictional clauses being, in fact, identically the same); but upon the motion of Senator Gray, the words "or otherwise infamous crime" were added. When it is remembered that the object of the bill so far as it related to the Supreme Court was to cut off the supply of cases, and when it is remembered how many offenses come within the definition of "infamous crime," it is astonishing that this unfortunate excrescence should have been fastened upon the bill. The Attorney General makes a strong argument in his report (page xxv, Report, 1893) for the removal of this blemish. With that argument we heartily concur. He says: "The sentiment that in cases involving the death penalty the accused should have the right to have the legal merits of his case examined by the highest appellate court may perhaps be worth regarding. But there is no reason why the same right should be accorded in cases punishable by fine and imprisonment only. All the demands of justice would be reasonably satisfied if in cases of that class a review of the proceedings of the trial court were limited to the circuit courts of appeals. As the speedy disposition of such cases would be thereby facilitated and the crowded docket of the Supreme Court be somewhat relieved, the propriety of legislation to that end would seem to be unquestionable."

Second.—The original bill gave the right of exception to an interlocutory decree granting an injunction, and also to an interlocutory decree appointing a receiver. The bill enacted retains the former, but strangely omits the latter. Congress did not believe that the greater includes the less. The appeal from a final decree where there has been a previous interlocutory decree appointing a receiver, with intermediate orders for the sale of the *res* or receivers' certificates or, in any event, with the entire expenses of the receivership saddled upon the estate, is like the justice that grants a new trial to the beheaded criminal.

It is not surprising to find that this anomaly has suggested remedial legislation. Mr. Turner, of Georgia, introduced in the House of Representatives at the present session of Congress a bill to remedy this omission. It promptly passed the House, but at last accounts had not passed the Senate.

Third.—The bill referred to transferred all the circuit court jurisdiction to the district courts, making the circuit courts appellate courts only—relieving the Supreme Court Judges of their circuit duties—thus introducing some harmony into the relations of the judges and courts constituting the Federal Judiciary. In the feature above mentioned—the transfer of jurisdiction to the Circuit Court—the bill copied the provisions of the bill which, it is believed, was first proposed by Justice Howell E. Jackson when a member of the Senate. The orbits in which the Federal Judges move with reference to each other—District Judges with power to hold Circuit Courts—Circuit Judges and Circuit Justices—need more accurate definition in the present system. In a letter to one of your committee, a distinguished Federal judge uses strong but not unwarranted language, emphasizing this need. The district judges already perform circuit duty, and it is hardly proper to treat them as inferior to the circuit judges in rank or power. The spectacle of the circuit justice summarily “turning down” the district or circuit judge, or the circuit judge “turning down” the district judge, as has sometimes happened, is not edifying; neither is the spectacle of two judges sitting together and the judgment being entered in accordance with the opinion of the ranking judge.

A bill which has been introduced by Senator Walsh at the present session of the Senate bears on this subject and speaks for itself. It provides:

“That section 719 of the Revised Statutes be, and the same is hereby, amended by adding thereto the words following: “Nor shall any associate justice or circuit judge or judge of the Circuit Court, except when sitting as a member of an Appellate Court created by law, set aside, annul, or modify

any decree, judgment, or order made by any other associate justice, circuit judge, or judge of the Circuit Court, and all applications for rehearing or setting aside or modifying the order, decree or judgment, shall be made to the judge or justice presiding when the same was made or granted, except when he is disqualified, and all applications for judicial orders in the Circuit Court shall be made and heard in the circuit where the cause is pending, unless the circuit judges of the circuit and the district judge of the district are both disqualified."

It is possible this needs some qualification, but the general idea which it would enforce is worthy of consideration. The present conditions tend to the degradation of the district judgeship and the impairment of public respect for the incumbents of the office. They permit, if they do not create, unseemly conflicts and raise unpleasant issues as to judicial rank and precedence. They permit legal controversies, upon the application of a dissatisfied party, to be withdrawn from the court which metes out justice at the doors of the litigants and carried to Washington or to some point remote from the situs of the litigation. But the arguments for the amendment seem to us even stronger arguments for the scheme of transferring all the original jurisdiction of the Circuit Courts to the District Courts, and leaving to the members of the Court of Appeals and Supreme Court appellate functions only.

Fourth.—In one other particular there is a variance between the Bill mentioned and the Evarts Bill (meaning by the latter designated the Bill as enacted). The former provided that the Circuit Court of Appeals should be composed of three circuit judges, two to be appointed in addition to the judge already in commission, assigning to these judges duties in the appellate court only; while the Evarts Bill provided for only one additional judge, eking out the court with a designated district judge, and leaving to the circuit judges duties as trial judges in the Circuit Courts. The attention of your committee has been specially called to the evils of this arrangement in a

valued letter received from Mr. Bates, of Delaware. He says :
"The vice of the system is that the judges sit upon each other."

The tendency of courts so constituted gives a new and sinister meaning to the phrase "judicial comity." We think, too, that Congress should provide for the litigants whose rights are finally determined in the Circuit Court of Appeals, such a tribunal as will deserve and command the acquiescence of the parties and the respect of the profession and the public. Such a court should not depend for one of its members upon a *talesman* called in for the occasion. We think there should be at least three, and would prefer to see five, judges composing the appellate court.

In this connection, we note that under the statute as it now stands, on account of the proviso in the second clause of the third section of that Act disqualifying a justice or judge before whom a cause or question may have been tried or heard, from sitting on the trial or hearing of such cause or question in the Circuit Court of Appeals, there should be a better provision. In most of the circuits thus far, at least two and usually three judges have been found who have not been disqualified by this proviso; but a broad or popular definition of the word "question" might hereafter disqualify most of the judges, and make it necessary to have a cause stand over indefinitely, unless certified to the Supreme Court or removed thereto by that court itself. Perhaps it may be said that the word "question" should be taken in a more restricted or limited sense, and yet, as it is used in this proviso, there may be inconvenience unless some remedy be provided.

A suggestion that a division or branch of the Circuit Court of Appeals, in which as many as five judges shall preside, be organized with reference to the final determination of patent and admiralty causes, seems to be worthy of consideration. Such a branch of the court could hear many cases, also, which might otherwise be certified to the Supreme Court. It might serve to avoid conflict in decisions in the various circuits, or conflict which is possible under the present system, for a patent

may now be operative or considered valid in one circuit, but under a different construction of law or facts, invalid in another. Some uncertainty in this regard is said to have arisen; and the instances are liable to multiply. The vastness of the litigation in patent and admiralty matters would, perhaps, justify the organization of such a distinct division or branch of the Circuit Court of Appeals.

When the Act of 1891 was passed it was believed by some, who had given much consideration to the subject, that amendments would soon be found to be desirable. Accordingly, a number of bills, covering in a more or less general manner some of the foregoing suggestions, have been introduced into Congress. These bills cannot well be brought under examination in this report, which is submitted with the assurance that the matter is receiving a fair degree of consideration. It is also believed that its discussion here, at this meeting or in the future, will elucidate what is valuable in an agitation, if there be such, for change.

Among the bills which have been introduced into the Senate, deserving a more special mention or commendation, are those designed to promote and secure the speedy examination and determination of questions of jurisdiction, whether arising in cases removed from state courts or otherwise; to authorize the retirement in contingencies not heretofore provided for of judges, and to regulate the removal of causes by Federal corporations. These matters may not, however, come so strictly within the scope of the resolution referred to the Committee. It is enough to add that they seem likely to receive early attention when legislation on the general subject shall receive much consideration.

WALTER B. HILL,
THOMAS DENT.

REPORT
OF THE
COMMITTEE ON LEGAL EDUCATION.

The Committee on Legal Education have thought that they would not be justified in presenting a formal printed report at the present meeting.

The lamented death of their former chairman, the late William G. Hammond, suspended the labors of the Committee and prevented the preparation of the intended report which he had undertaken to sketch.

Moreover this Association at a recent Annual Meeting adopted a new by-law (XIV) under which the Section of Legal Education has been organized; and that by-law contemplates that the discussion of methods of Legal Education in the Section will result in its recommendations to the Association and their reference to this Committee.

Your Committee have prepared to go forward with a systematic survey of all the topics included in the field of Legal Education and as the Executive Committee of the newly-formed Section have made full arrangements for papers and discussions at the present session upon a number of such topics, which will occupy considerable of your time, it has seemed to us more judicious to allow them to take the initiative in this way, and to await the results of the present conference before making a formal printed report.

AUSTIN ABBOTT,
Chairman,
GEORGE M. SHARP,
HENRY WADE ROGERS.

SARATOGA, August 21, 1894.

At a meeting of the Section of the American Bar Association on Legal Education, the 22d of August, 1894, the following resolution was passed:

Resolved, That we recommend to the American Bar Association that sub-Section 5 of By-Law XIV be amended to read as follows:

5. The Section shall be organized by the appointment of a Chairman and Secretary at its first meeting; and a Chairman and Secretary shall thereafter be elected annually by the Section.

GEORGE M. SHARP,
Secretary of the Section.

August 23, 1894.

By the Committee on Legal Education and Admission to the Bar it was resolved that we approve the foregoing resolution and submit it to the consideration of the Association.

AUSTIN ABBOTT,
Chairman.
GEORGE M. SHARP,
Secretary.

REPORT

OF THE

COMMITTEE ON INTERNATIONAL LAW.

To the American Bar Association :

On behalf of the Committee on International Law, and at the request of its Chairman, I respectfully report :

That the Committee have considered the subject of an International Court of Arbitration referred to them by the Association at its meeting in 1893.

That we have grave doubts whether, under the first article of the Constitution, the subject is one on which this Association can take action. In any case, there is another Association which has been expressly formed to promote the establishment of such a Court. Under these circumstances it seems to us undesirable that this Association should act further in the premises.

We therefore respectfully ask to be discharged from the further consideration of the subject.

All of which is respectfully submitted,

EVERETT P. WHEELER,

For the Committee.

August 24, 1894.

REPORT

OF THE

SPECIAL COMMITTEE ON UNIFORM STATE LAWS.

To the American Bar Association :

Your Committee on Uniform State Laws has to report that during the last year Commissions on Uniformity of Legislation have been appointed in the States of Iowa, Virginia and South Carolina. Twenty-two States have now appointed Commissions. But few of the State Legislatures held sessions last winter. It is more than probable that at least ten additional States will create Commissions during the coming year with proper effort on the part of the Bar. It is evidently essential to the success of the movement towards Uniformity of Legislation that all the States should, so far as it is possible, be represented in the Conventions of Commissioners. To bring about that result we recommend the continued co-operation of the American Bar Association, and the continuance of the present Special Committee. It is important that there should be no limitation of time in the tenure of the Commissions. No Commission should be appointed without provision for its necessary expenses. Although few legislative sessions were held during the past year, several recommendations of the convention of Commissioners have been adopted, notably, the abolition of days of grace on commercial paper by the State of New York.

All of which is respectfully submitted,

L. D. BREWSTER,
Chairman.

August 23, 1894.

REPORT

OF

SPECIAL COMMITTEE ON FEDERAL CODE OF CRIMINAL
PROCEDURE.

Your Committee respectfully report that, owing to the pressure of other matters pending before the session of Congress, they have not yet been able to arrange for and to secure a hearing before the two Judiciary Committees. Your Committee were advised that it was not a favorable time to present the matter and that it would be wise to postpone the presentation of it. If the Committee shall be continued, they will endeavor to bring the matter to a conclusion by the next meeting of the Association.

JOHN F. DILLON,
GEO. P. WANTY,
WALTER B. HILL,
CHAS. CLAFLIN ALLEN,
HORACE W. FULLER.

August 24th, 1894.

PROCEEDINGS
OF THE
SECTION OF LEGAL EDUCATION.

August 22, 1894.

The Section of Legal Education convened at 3 o'clock P. M. Henry Wade Rogers, of Illinois, Chairman of the Section, called the meeting to order.

The Chairman :

The hour has arrived for convening the Section of Legal Education. There are some items of business which should be disposed of before we proceed to the regular order. The action taken by the American Bar Association in organizing this Section contains this provision :

"The Section shall be organized by the appointment of a President and a Secretary of the Section at its first meeting, and thereafter annually."

I suggest, therefore, the appointment of a Committee to recommend to the Section officers for the next year.

Austin Abbott, of New York :

I nominate for members of that committee James H. Colby, of New Hampshire ; John H. Wigmore, of Illinois, and John D. Lawson, of Missouri.

The motion was adopted.

Austin Abbott, of New York :

Sub-section 5 of the by-laws of the Association, under which this Section is organized, is a little informal in its phraseology and perhaps may lead to embarrassment on that account. It reads, if I recollect right, that the Section shall be organized by the appointment of a "president" and a secretary at its first meeting, and thereafter annually. I would, therefore, move that we recommend to the American Bar Association that

sub-section 5 of by-law 14 be amended to read that this Section shall be organized by the election annually of a "chairman" and secretary, etc., as the word chairman would seem more proper to use.

Henry Hitchcock, of Missouri:

I second the motion.

The motion was adopted.

President Henry Wade Rogers, the President of the Section, then read his annual address.

(See the paper at the end of these Minutes.)

The Chairman:

I now have the honor, as well as the pleasure, of introducing to the members of the Section, John F. Dillon, of New York, who will read a paper on "The True Professional Ideal."

John F. Dillon then read his paper.

(See the paper at the end of these Minutes.)

The Chairman:

The next paper on the programme is by Professor John D. Lawson, of the University of Missouri, on "The Standards of Legal Education in the West." It affords me great pleasure to introduce to the Section Prof. Lawson.

John D. Lawson then read his paper.

(See the paper at the end of these Minutes.)

The Chairman:

I would like to say, in answer to the suggestion made by the last speaker, that the Committee on Legal Education, in the report which was submitted to the American Bar Association three years, ago I think, made a suggestion along the line of that offered by Prof. Lawson, that the power to admit to the Bar should be taken away from inferior courts and lodged in the court of last resort. That recommendation was adopted by the American Bar Association.

I would also state, by way of justification for some of the law schools, that the statement which is found in some of the catalogues to the effect that members of the bar will be

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admitted to the senior class does not mean in all the law schools of the country that a person so admitted is to be excused from passing the examination in the junior year. I have personal knowledge that in two or three of the law schools, that of the Michigan University among others, the statement in the catalogue is to the effect that a person who has been admitted to the bar will be admitted to the senior class, but persons so admitted are not graduated from the law schools until they pass all of the examinations required for graduation. It may be that there are some law schools which do not pursue that plan, but I simply say that by way of justification for some of the law schools which do require that examination.

These papers are now open to general discussion.

W. W. Howe, of Louisiana :

I was very much impressed with the very eloquent remarks made by Judge Dillon upon the subject of the necessity of some broad culture for lawyers. It is very much the habit of some of us who practice law in New Orleans whenever we get a chance to say something on behalf of the civil law to do so, and when Judge Dillon so eloquently urged the necessity of a broader culture of comparative jurisprudence it struck me that there could not be any better method adopted in the law schools of this country, outside of Louisiana, than the establishment of classes for the study of the civil law in which there should be a study of comparative jurisprudence. I do not want to detain you by any discourse upon that subject, but if I had time I think I could surprise some of our friends here by showing the wonderful analogies there are between the civil law and the common law in many points. For instance, it is well known that the writ of *habeas corpus* is fully described and was practiced under the writ in the Pandects of Justinian. It also a fact that when you come to take up almost any leading doctrine of law in America and trace it back you will find that somewhere it has been passed upon, either in the law of Rome, the law of Spain, the law of France or the law of Belgium. I remember noticing a very curious example of that not long

ago. Perhaps you will recollect it. It is a case somewhere along about the 20th of Howard's reports. In almost the same year the same doctrine was laid down by the Court of Cassation of France, reported in the Tribunal of Paris, and in the same year a similar decision, independently of any authority, was made in Brussels. I simply suggest that one of the best methods that I could imagine to carry out the very cogent and pertinent suggestions of Judge Dillon, would be some way of having a chair of civil law in a law school which should be devoted to the comparison of the two systems and showing how the one sprang up independently from the other and how they have grown up side by side. About two years ago I had a young friend who was studying law in the University of Virginia. We were corresponding constantly upon the subject of legal studies. I was supposed to be in charge of his legal education. It occurred to me one day to go down to the office of the Clerk of the United States Circuit Court of Appeals in New Orleans and ask the clerk to give me some transcripts and briefs, and I would take only those cases which had not yet been decided. I did so, and I made a selection of several leading cases and sent them to my young friend. I told him to read the briefs and then decide the cases and let me know what his decision was. Then when the court decided them I would tell him how near he came to the court's decision. I am happy to say that in four cases out of five he agreed with the court. I remember one case was the somewhat celebrated one where the United States had filed a bill in chancery against a workingman's association, and the case had gone up on appeal under the new regime by which you can appeal from an interlocutory order. Another was a suit at law which was brought in Texas, and then taken by writ of error to the United States Circuit Court of Appeals. Another was a very interesting case of collision in admiralty, which gave the young man the entire admiralty practice in a case of that kind from beginning to end. Another was a very interesting salvage case growing out of the saving of a vessel. I do not know

that there is anything original about my idea, but it worked very nicely in the case of this student, and I mention it for what it is worth.

George Gluyas Mercer, of Pennsylvania :

Mr. Chairman : I think it ought to be stated that not only in Louisiana but in several other States of the Union, the civil law is studied. In Yale University, wherein Judge Dillon has lately delivered those fascinating lectures on the jurisprudence of England and America, the civil law has been studied for a great many years. In the Yale Law School there is a graduate course of two years, where the students read Gaius and the Institutes and Digest of Justinian, sometimes under the instruction of Prof. Wheeler, but generally under the instruction of Prof. (now Judge) Baldwin, who has long held that chair in Yale College. That fact ought not to be lost sight of in this discussion.

Jerome C. Knowlton, of Michigan :

I wish to say one word in reference to the paper read by Prof. Lawson. I sympathize with what he said that the greatest embarrassment towards raising the admission standard is with the profession. It is the lawyers that are to blame. The law schools are anxious to have a three-years' course and have a high standard for admission to the junior class. In my judgment, no student should be admitted who is not qualified for admission to the academical department. Some have gone so far as to say that a student ought to have a Bachelor of Arts degree or a Bachelor of Letters degree. Of course, we are not prepared to admit that, but a higher standard of education and a three-years' course are what is desired. Still, we never can have it until the bar do something towards closing the doors of admission to practice to all, irrespective of education either professional or academic. Your Chairman stated in his address that the University of Michigan had promised to extend its course to three years. I can speak somewhat knowingly when I say it is not a promise—it has been done. It applies to all students who come up for admission after the first

of October, 1895. Of course, that was undertaken not without some misgivings, knowing that being a western institution we labored under the embarrassments that Prof. Lawson has alluded to. There is, however, some encouragement in the undertaking, and I say this to those who are here representing western law schools; there is some encouragement in undertaking only a two years' course. In the University of Michigan, for instance, we have to contend against competition. In Indiana the constitution provides that any man can practice law who is a voter; it is not necessary that he should be able to read or write, simply that he shall be a voter. If I am wrong, let some Indiana gentleman correct me.

John H. Wigmore, of Illinois:

You have forgotten one requisite. He must have a good moral character also.

Jerome C. Knowlton:

Oh, yes; I forgot that. Now, it is said that this liberal admission to the bar is an embarrassment against raising the standard. I say it is not. It is an embarrassment, but it should not retard men from doing their duty. From the State of Indiana, where a babe can be admitted to the bar, we have forty students studying law under a two years' course. There will come the three years' course when the profession indicates to the student that a three years' course is desirable and is one which only can equip a man for his life work in the profession.

Amasa M. Eaton, of Rhode Island:

Reference has been made to the teaching of the civil law in at least one of the universities, Yale. I desire to say that it is equally true at Harvard. There is a course in civil law there. When I was in the law school I did not take part in the course in civil law in the university proper and I cannot speak with positive knowledge, but still I apprehend that there is this trouble about the teaching of the civil law, that unless it is taught in the law school as other studies are taught, it is a very different kind of education from that which a lawyer

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should have. The civil law should be taught as a part of the regular law school studies. I speak out of my own ignorance, which is common, of course, among all common law lawyers. We know so little about it that we do not know how little we do know. We are surprised when we find that there is so much civil law in common with the common law. But after all when we find in different States the growth of statutes which favor the interposition of equity defenses in common law action, we are taught to think more about the study of the civil law. What are such changes in the law except indications of the great influence of the spirit of the civil law? Therefore, we should know more about it. I hope the time will come when the civil law, as well as constitutional law and general jurisprudence, will be taught in every law school in this country.

Austin Abbott, of New York :

I should like to add one suggestion to this very interesting question. Some of these studies that we wish to give students the benefit of, and which they are somewhat reluctant to take advantage of, will have to come in either by being made compulsory or by our showing them that they want them, or, better still, perhaps, by both of those means. It is useful, not alone as affording precedents which can properly be cited in our courts, but it is useful in the mastery which it gives a man of the principles he is dealing with and the distinctions it enables him to perceive and the force with which he can illustrate them, and, quite as important, the confidence with which he can place himself upon a principle that has a broad recognition. Our students ought to understand that they are not only to be taught precedents which they can cite, but they are taught about precedents that it would not do to cite in an inferior court; that it might possibly do to cite in the Supreme Court of the United States, but which it is worth while for a man to know though he thinks it good policy never to say a word about them. The great thing we want from the civil law is the development of the legal mind of the lawyer through a broader training and discussion and a mastery of general

principles, and if we confine ourselves to studying it so far as precedents would be useful, we should fail in a very large measure of advancing the subject.

A. J. McCrary, of Iowa :

Mr. Chairman : The three papers read this afternoon and the remarks of all the gentlemen who have spoken are in the same general direction, namely, for a higher order of legal education. The medical profession of this country has had the same question before it for many years, and it organized a society something akin to the American Bar Association, and they have their annual meetings. They found that the various States of the country were turning out physicians by the thousands who were poorly qualified and dangerous to the community. Now, I say that so long as this door to which Prof. Lawson has referred remains wide open, just so long will we have thousands of so-called lawyers turned loose upon the community who have not the proper qualifications to enable them to practice the profession. In the West, in the State from which I come, they tell us that law schools may be of some use, and they may not, and they refer to great lawyers of fifty years ago and less, and they say, "What law school did he graduate from?" So I say that it seems to me that if the American Bar Association and this Section does that which the National Medical Association did, namely, appoint a committee on legislation, and have that committee use its influence with the various legislatures of the country and endeavor to close this wide open door and disseminate knowledge as to what the proper standard of legal education should be, then we will make ourselves felt as a power for great good.

J. Newton Fiero, of New York :

Mr. Chairman : The paper by Professor Lawson and remarks during the discussion, more particularly those of the last speaker, seem to indicate that a brief statement of the requirements and method of examination for admission to the bar in New York would be of interest to the members of the Section, as throwing some light on the question under consideration.

When the present Supreme Court was established under the Constitution of 1848, the general terms in the respective judicial departments, being the appellate branch, were given entire control of the matter and up to 1880 no fixed standard existed as to preliminary education, while the examinations in some of the districts were conducted in an extremely lax and unsatisfactory manner. In that year the Court of Appeals took the matter in hand and formulated rules requiring that students at law should, within a brief period after entering upon a clerkship or term of study at a law school, in case they are not graduates of a college or university, pass an examination in certain prescribed preliminary studies and file a certificate of such fact with the Clerk of the Court of Appeals. A three years' term of law study, except in case of college graduates, when the term is two years, is required as a requisite for examination, and a certificate of the commencement of the clerkship must be filed with the clerk of the court. This examination was, by these rules, still left entirely with the Supreme Court and carried on by a committee appointed in each department to serve for one year without compensation. Under this system a very marked improvement has been noted in the character of the applicants and their qualifications for admission, so that a much higher standard of education and acquirement has been attained.

The examination, however, by committees appointed to serve for a single year has not been entirely satisfactory owing to different standards required by different members of the various committees in the several judicial departments. The New York State Bar Association, at its annual meeting in 1893, took measures through the appointment of a committee to remedy this difficulty and at the annual meeting in 1894 the subject was discussed in several papers by prominent legal educators. The committee was continued and the result of its labors is to be found in chapter 760 of Laws, 1894, by which the Court of Appeals is authorized and directed to appoint three commissioners whose duty it shall be to hold a stated

number of examinations annually which shall be uniform in their requirements, and the examiners shall certify the result of their examination to the Supreme Court which shall admit only upon their recommendation. The students are to pay a fee not exceeding \$15 each to defray the expense of the examination and compensation of the examiners.

In the passage of this law we have been actively aided by the courts, and the bar of the State has co-operated most heartily with the law schools, and the students themselves in several instances have actively interested themselves in the matter.

This seems to indicate that the movement for higher legal education has the sympathy and good-will alike of the students, lawyers and judges, and, apart from the actual results attained, indicates the early adoption of a higher standard of learning and ability as a requisite for admission to the bar.

The Chairman :

The gentleman who has just taken his seat is the President of the New York State Bar Association, and it is largely through his efforts that the legislation he has referred to has been accomplished.

A. J. McCrary, of Iowa :

There is one matter of education that I have listened patiently to hear about, hoping to hear it touched upon, and I do not know whether it is appropriate at this time and in this discussion to speak of it or not, but it has fallen to my lot to have had some experience with the matter of admissions to the bar in my own State. Our State has advanced to the position alluded to by Professor Lawson, whereby the examinations for admission to the bar are all held before the court of last resort which is our Supreme Court. I live in the First Judicial District, and cases from the First Judicial District are assigned for the first day of the sitting of the Supreme Court. Consequently, those of us residing in the First Judicial District are always present at the opening of court when the committee on examinations is appointed, and I have served a number of times

on that committee. The Attorney-General of the State is *ex-officio* Chairman of that Committee. I speak from knowledge when I say that it is a very thorough examination, and no one passes that examination without being competent, in a legal sense, for admission to the bar; but it has often put me in a quandary to determine whether or not even a correct legal answer to a question ought to be given full weight when it is not put into ordinary English. A great many times it has seemed to me that the applicant coming up for examination had tried to find words that were outside of Webster or Worcester and had sought for phraseology unknown to any work on rhetoric or elocution. I have seen the most absolute ignorance displayed of the rules of orthography, and several men have been able to pass a good legal examination who yet were utterly unable to write a single sentence in good English. Now, there is no way that I know of to rule out an applicant of that kind in our State, but it has seemed to me that a reasonable standard of English education ought to be required of all applicants for admission to the bar.

Emlin McClain, of Iowa:

Mr. Chairman: I am afraid that lawyers do not appreciate the difficulty that the law schools have along the line that Mr. McCrary has just suggested. The question is constantly asked, "Why do not the law schools raise the standard for admission and exclude men who are incompetent by reason of a defective education from ever becoming lawyers?" Mr. McCrary has answered that question, I think, by saying that the courts have not done so. Now, this is the problem before the law schools. Here is a man applying for admission. He may read law in a law office and be admitted to the bar, or he may read law in a law school and be admitted to the bar that way. The law school men believe, Mr. Chairman, with the very weighty statements in your opening address, that more can be done for that young man in fitting him to practice law in a law school than can be done for him in an office. They therefore feel that it is their duty, if that man is to practice law in

their State, to open their doors to him and to give him the best possible facilities in preparing himself for the practice of the law. Therefore, they do not feel justified in putting a bar at the entrance to that school which will exclude men who can be admitted to practice law in that State in other respects. With other schools it is different. They may, and justly too, establish an entirely higher and different standard. So that, with regard to admissions to the schools, I am afraid the schools are not in a position to correspond to what really is reasonably asked of them, for the reason that the courts are not yet ready to sustain them in that position.

Augustus H. Fenn, of Connecticut :

We have adopted in our State a system which perhaps answers some of the requirements which have been suggested. Five years ago it was felt that our system was too lax, and as a result a movement of the bar was inaugurated which resulted in the appointment of a committee chosen by the judges of the highest courts, two representing the court itself, and two members representing the Yale Law School and two representing the bar in different counties of the State, and all examinations for admission to the bar for the entire State are now made by this Board. No one can be admitted unless he has received the recommendation of that Board, nor unless he is either a graduate of some college or some high school, or has been admitted to some school and has passed what is called an entrance examination. This system has worked very well in Connecticut and has given entire satisfaction.

John M. Smedes, of Ohio :

In Ohio for nearly twenty years all students have had to be examined before the Supreme Court, and until the present year they had to produce evidence that they had been studying as students for at least two years. Now that has been increased to three years. The Supreme Court appoints a commission, and all students have to go to Columbus and be examined before those Commissioners. After a student has passed the examination before those Commissioners, the Supreme Court

can require a further oral examination if it desires, and if, upon the report of those Commissioners, a student is found to have passed a satisfactory examination, then he is sworn in and enrolled as a member of the bar.

M. J. Wade, of Iowa :

I think we are all united in the sentiment that there should be a higher degree of culture in the legal profession, but the reform must come from the lawyers themselves ; first, in formulating and inculcating a sentiment in that direction on the part of the members of the bar in the different States, and second, in carrying out that sentiment, because, as was suggested by Judge Dillon, the legislation of the country is largely done by the lawyers. This sentiment will not come until the bar of the respective States are united in the work, and if the work is properly distributed all over the country we shall get the needed legislation. There should not be a State in the Union that does not have its accredited delegates here from a State Bar Association. The State Bar Association of New York, and also that of Illinois, have shown what can be done through the efforts of a strong organization. I am sorry to say that in our State we have not a Bar Association, and in a number of Western States there are none. I am convinced that this is the only way by which a step forward in this direction can ever be accomplished.

The Chairman :

The meeting to-morrow afternoon will be held in the large hall, as the attendance this afternoon has demonstrated that this room is not large enough to accommodate all who wish to attend.

The Section adjourned until Thursday, August 23, 1894, at 3 o'clock P. M.

August 23, 1894.

The Section of Legal Education was called to order at 3 o'clock P. M.

The Chairman :

The first paper to be presented this afternoon is by Judge Simeon E. Baldwin, of New Haven, Connecticut, on " Law

School Libraries and How to Use Them." It affords me great pleasure to introduce Judge Baldwin to you.

Simeon E. Baldwin then read his paper.

(See the paper at the end of these Minutes).

The Chairman :

We will now listen to a paper by Professor Woodrow Wilson, of Princeton, New Jersey, on "Legal Training for Undergraduates."

Woodrow Wilson then read his paper.

(See the paper at the end of these Minutes).

The Chairman :

The next paper to be presented is that of Professor John Henry Wigmore, of Evanston, Illinois, on "Orthodox Legal Training."

John H. Wigmore then read his paper.

(See the paper at the end of these Minutes).

The Chairman :

Gentlemen, it has been a great pleasure to all of us to listen to the very able papers which have been read. The papers are now open for discussion, and the chair will be very glad to hear from any gentleman present.

Frank C. Smith, of New York :

Mr. Chairman : No more important and no more opportune action was ever taken by the American Bar Association than that which a year ago culminated in the organization of this Section. It at once gave substantial promise of relief from the inundation of incompetency, to use no harsher term, which has in recent years deluged our profession and brought it as the appointed agency for the attainment of justice into common disrepute. Those of us who are earnest and honest in our wish to see the practice of law resume its exalted position as one of the learned professions can well afford to admit, without evasion, the unpleasant truths in connection with the present deplorable state of legal attainment among the members of the bar in general. In no other way can we accurately discern the evil and be equipped to relentlessly apply the apt

remedy. We know that our courts are clogged with a mass of cases, a considerable proportion of which, as shown by the results, are without legal merit, but a still larger share of which are so involved in the intricacies of legal procedure, that not only are they detained and ruinously retarded in their progress through the courts, but very often the question at issue, involving as it does the actual merits of the controversy, is wholly lost to sight, and for long periods of time, if indeed not ultimately, is beyond the reach of judicial action. This condition of affairs exists either because the practitioners of law are inefficient, because they are of such base calibre that they willingly degrade the profession by a wilful obstruction or perversion of justice, or because of a combination of these two causes. In this judgment I am not overlooking the fruitful cause of delay in judicial tribunals furnished by our cumbersome and inadequate systems of procedure. Certain facts which I shall presently present will demonstrate that within the lines of the question under discussion the just objections to such systems have no measurable influence. Whatever is the cause of the condition against which this Section is a living protest, all intelligent lawyers, yea, and an intelligent public, know what is the result thereof. Litigation is now popularly considered an evil. Men with rights to maintain or with wrongs to redress hesitate and often refuse to submit to the uncertainties, the tedious delays and the wasting expense inevitable in the ordinary court processes of the day. The people are losing faith in the ability of their courts to arbitrate the differences of litigants accurately, speedily and inexpensively. And the worst feature of this condition of affairs is that this waning faith is justified by the facts.

The considerations which I have thus hastily presented and the ominous data which I hold in my hand, make imperative the necessity for a swift return to the true professional ideal, so grandly upheld to our view yesterday, in his superb paper under that title, by that type of the ideal practitioner, Judge Dillon. What is needed to-day is a bar that is soundly

grounded in a thorough knowledge of the law and its practice, and which will scorn, except to bring into clearer view the true merits of the controversy, to invoke the purely technical rules of procedure. We need a bar that recognizes its duty to principle as paramount to its duty to its clients, and which will never, in behalf of client or of self, abandon principle. In addition, it is essential that the bar shall know how to employ the rules of legal procedure so as to most completely and surely serve principle. But so far has the profession fallen from this ideal that, judged by the results of its service in actual litigation, it is to-day a monstrous charlatan. What would be said of a trade or a craft against which it could be proven that in an average of nearly fifty per cent. of the attempts it made to serve its patrons, it failed to secure just results, because its craftsmen did not understand how to use its machinery, or, understanding this, failed to so employ it as to attain the end promised when it was entrusted to do the service? Such a trade could not retain public respect and confidence an hour after its inefficiency was known. No more can one of the learned professions. Yet this is the exact condition of the practice of law in this country to-day.

I am aware of the surprising nature of this statement; but I assure you, Mr. Chairman, that no one in this presence can be more startled at the facts too amply sustaining it than was I when I discovered them. Anxious to learn what the decisions of our appellate tribunals would show as to the character of the questions submitted to and passed upon by them, I have, within the past year, examined the cases reported by the West systems of Reporters, for the period covered by the last general digest, and I find the following facts:

Total number of cases decided in the United States and Canada, as reported in the General Digest for 1893, 18,784. From these in order to bring the computation fairly within the range of the general practitioner, I deducted the criminal (3,104), patent (1,482) and other cases (268) to the total number of 4,854, leaving 13,930 cases dealing with the various questions arising in the usual course of civil practice.

I found that, as digested, these 18,784 cases decided 39,178 points, from which I deducted those bearing upon criminal (5,942), patent and other matters (3,294) to the total of 9,236, leaving 29,942 points properly within the scope of the enquiry I have indicated. Of these 29,942 points I ascertained that 14,447, or 48 per cent., nearly 49 per cent., were upon points of procedure, or other matters not involving the merits of the controversies.*

*In order that it may be known just what was included in this computation of points of practice and procedure, I append the following list showing the several items :

Action, ...	572	Justice of Peace, ...	132
Appeal and Error, ...	3,106	Landlord and Tenant, ...	57
Arbitration, ...	61	Levy and Seizure, ...	154
Arrest (civil), ...	28	Liens, ...	179
Assistance, ...	4	Limitations of Actions, ...	227
Attachment, ...	193	Lis Pendens, ...	7
Assumpsit, ...	92	Mandamus, ...	148
Bail (civil), ...	39	Mortgage, ...	111
Case, ...	6	Motions and Orders, ...	57
Case Certified, ...	11	New Trial, ...	493
Certiorari, ...	112	Partition, ...	64
Continuance and Adj., ...	117	Partnership, ...	9
Coram Nobis, ...	5	Pleading, ...	1,312
Courts, ...	192	Prohibition, ...	21
Creditor's Bill, ...	56	Publication, ...	14
Depositions, ...	91	Quo Warranto, ...	32
Discovery, ...	32	Receivers, ...	142
Ejectment, ...	124	Reference, ...	73
Evidence, ...	2,787	Removal of Causes, ...	69
Execution, ...	94	Replevin, ...	217
Garnishment, ...	36	Review, ...	63
Habeas Corpus (civil cases), ...	8	Statutes, ...	87
Highways, ...	12	Trial, ...	1,384
Incompetent Persons, ...	10	Trover, ...	81
Injunction, ...	264	Trusts, ...	24
Interpleader, ...	29	Witnesses, ...	317
Intervention, ...	14	Writ and Process, ...	219
Judgment, ...	479		
Judicial Sale, ...	149		
Jury, ...	31	Total, ...	14,447

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In other words, nearly one-half of the questions carried to and decided by the courts of appellate jurisdiction in this country were questions arising out of disputes as to the proper method of bringing before the courts the merits involved in the original differences. Substantially one-half of the points of law which occupied the attention of our highest tribunals were points in no way decisive of the substantive rights of the parties in litigation. They were merely issues raised upon the pleadings, questions as to the form or forum of the action, the proper joinder of parties, the course of the trial involving the introduction of testimony and the examination of witnesses, the form and scope of the judgment and its enforcement, the proper processes of appeal and review, and kindred matters which well-trained practitioners should have at ready command and be able, with but a small percentage of misjudgment—by no means approaching that which the figures show was the case—to accurately apply for the purpose for which alone they are, at least theoretically, designed, namely, the speedy attainment of justice. This state of affairs is a reproach to the practice of law. We are told that it is history which teaches us what the law is, but that it is science which teaches us how to use it. Law, therefore, is a science only in its application, and if one is to judge of the merits of the science of applied law by the results wrought by its practitioners, it makes a very sorry, and I may also say, a very unscientific showing. So surprising was the result of the enquiry into the litigation of the country at large, that I determined to ascertain the facts as to each State for the period named. While I do not claim infallibility for the table I have prepared, yet the work was so carefully done that I feel I can assure the correctness of the results shown within the fraction of a per cent. The table is as follows :

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STATES.	Total Cases.	Total Points.	Points on Substan- tive Law	Points on Practice, etc.	Percent- age of Practice Points.
Alabama, ...	401	1,172	483	689	58+
Arizona, ...	17	31	20	11	55
Arkansas, ...	139	303	180	123	41—
California, ...	581	1,085	572	513	48—
Colorado, ...	207	372	226	146	39+
Connecticut, ...	60	175	98	77	44
Dist of Columbia, ...	63	110	62	48	43+
Florida, ...	79	236	104	132	56—
Georgia, ...	405	833	341	492	59+
Illinois, ...	483	1,351	717	634	47
Indiana, ...	527	1,190	482	708	59+
Iowa, ...	391	999	503	491	49+
Kansas, ...	248	455	238	217	48—
Kentucky, ...	351	391	252	139	35+
Louisiana, ...	211	341	224	117	34+
Maine, ...	97	281	175	106	38+
Mary and, ...	98	270	179	91	34—
Massachusetts, ...	312	623	378	245	39+
Michigan, ...	427	903	456	447	49+
Minnesota, ...	398	875	411	464	53+
Mississippi, ...	247	486	276	210	43+
Missouri, ...	711	1,921	907	1,014	53—
Montana, ...	41	117	57	60	51+
Nebraska, ...	285	621	287	337	54+
Nevada, ...	46	58	39	19	33
New Hampshire, ...	6	15	11	4	27—
New Jersey, ...	249	491	325	166	33+
New Mexico, ...	24	69	36	33	47+
New York, ...	2,211	4,084	2,330	1,754	43
North Carolina, ...	279	469	210	259	55+
North Dakota, ...	35	103	57	46	46
Ohio, ...	182	401	243	158	38+
Oklahoma, ...	13	64	41	23	36
Oregon, ...	199	218	117	101	55+
Pennsylvania, ...	968	1,741	1,022	719	41+
Rhode Island, ...	63	121	86	35	29
South Carolina, ...	214	492	213	279	57—
South Dakota, ...	78	193	88	105	59—
Tennessee, ...	75	188	116	72	38+
Texas, ...	573	1,754	731	1,023	58+
Utah, ...	61	105	53	52	50+
Vermont, ...	101	248	131	117	47+
Virginia, ...	108	260	123	137	52+
Washington, ...	357	716	341	375	52+
Wisconsin, ...	281	571	311	260	56+
West Virginia, ...	96	243	106	137	46—
Wyoming, ...	19	77	39	38	50—
United States, ...	913	2,117	1,083	1,024	48+
Total, ...	13,930	29,942	15,495	14,447	
Canada, ...	362	854	424	430	50+

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I should have been glad to have added columns showing the number of affirmances and of reversals and their relative percentage, but time did not permit of this being done in season for this meeting. The average percentage is 46+. In order to see how the practice in Canadian courts compared with that in the courts of our own country, I examined 362 cases decided by the courts of Canada, with the results that I found that a little over 50 per cent. of the points therein decided were upon matters not connected with the merits of the question in dispute. Our professional cousins across the border cannot, it seems, credit themselves with any higher standard of professional ability than that which is our meagre portion. Indeed, the figures, which are given in an added line to the table, show that the advantage is slightly in our favor.

Another curious fact found by this compilation is the relative merit of the common law and the code practice as agencies in securing rights. Leaving out Louisiana, which is under the civil law, we find that the code states of Arizona, Arkansas, California, Colorado, Connecticut, Georgia, Indiana, Iowa, Kansas, Kentucky, Minnesota, Missouri, Montana, Nebraska, Nevada, New York, North Carolina, Ohio, Oklahoma, Oregon, South Carolina, South Dakota, Utah, Washington, Wisconsin and Wyoming show an average of $48\frac{1}{2}$ per cent. of practice points; while the common law states, including the Federal tribunals, show an average of only $43\frac{1}{2}$ per cent. Whatever of argument against a change from the common law to a code system, the opponents of the latter may find in these figures is fully offset, I take it by the fact that, as stated, the Canadian courts, where the common law practice is more entirely preserved than is general in our so-called common law states, the ratio of practice points is over 50 per cent. The fact is, Mr. Chairman, that while our systems of legal practice require stringent and prompt reform in the direction of greater simplicity, there is no system, however admirable in principle or in detail, there can survive in the hands of incompetent or insincere practitioners.

In all that has been here presented, and all that is thereby indicated, we see the solemn obligation resting upon us to clarify, in mind and in heart, the noble profession to which we are unselfishly devoted. No graver duty lies before us. I am strong in the faith that we shall triumph in our present efforts to fulfil that duty.

J. Newton Fiero, of New York :

Mr. Chairman : The facts presented by Mr. Frank C. Smith suggest another consideration not entirely foreign to this discussion, but first let me express what I know must be in the minds of all of us—that is surprise, almost amazement, at the results of the examination as to the percentage of points of practice decided by our appellate courts. If it were not quite certain from my acquaintance with the gentleman who prepared the tables of the painstaking care with which the work has been performed, I should be sceptical as to the correctness of the figures. I am unable to doubt either the figures or the deduction therefrom, that substantially 50 per cent. of the points decided in our Courts of Appeal are upon matters of procedure.

I desire, however, to enforce a view different from that for which the statistics are presented. They show not alone that the young lawyer needs to be educated and the old lawyer instructed in the intricacies and difficulties relating to matters of practice, but the argument presented in favor of a simpler, cheaper and more expeditious method of procedure is so cogent that I cannot forbear enforcing it.

Even in those States which have adopted a code of procedure and are most progressive, we are twenty-five years behind the age in which we live. I do not care to discuss the question of the relative advantages of code practice and common law procedure. We in the code States believe that system to be the simpler and better. But in New York, by reason of amendments and careless revision, it has become so complicated that the embarrassments are nearly as great as those it was intended to obviate.

✓ The great need of the time in the way of law reform is that methods of legal procedure should be made so plain and simple as no longer to remain mere pitfalls for the practitioner and sources of unnecessary expense to the client; so plain and simple that it will be impossible to delay the trial of an action upon the merits by technical objections or to obstruct justice by appeals upon questions having no relation to the actual rights of the parties; that we should have throughout the length and breadth of the land a system of remedial procedure which would enable a lawyer to conduct his business with relatively as little unnecessary friction and delay as the client conducts his affairs.

The business interests of the community demand that lawyers shall reach results in litigations which shall be conclusive, if not beneficial and permanent, if not always useful in the most expeditious manner, without waste of time or money, and this is in the interest of the attorney as well as the client. We should no longer be subject to the just criticism arising from the law's delays, but devise and put in execution a practice and procedure adapted to the demands of modern business interests.

James F. Colby, of New Hampshire :

Mr. Chairman, the Committee on Nomination of Officers for the ensuing year would respectfully report recommending for Chairman, Professor James B. Thayer, of Cambridge, Massachusetts, and for Secretary, George M. Sharp, of Baltimore, Maryland.

Simeon E. Baldwin :

I move that the report be accepted and the gentlemen nominated be elected.

The motion was adopted.

On motion, the Section adjourned until Friday, August 24th, at 3 o'clock P. M.

August 24th, 1894.

The Section of Legal Education was called to order at 3 o'clock P. M.

The Chairman :

The first paper on the programme this afternoon is by Mr. Edmund Wetmore, of New York, on "Some of the Limitations and Requirements of Legal Education in the United States." It affords me very great pleasure to introduce Mr. Wetmore to the Section.

Edmund Wetmore then read his paper.

(See the paper at the end of these Minutes).

The Chairman :

The second paper of the afternoon is by Professor William A. Keener, of Columbia College, New York, on "The Inductive Method in Legal Education." Professor Keener is not able to be with us to-day, but his paper will be read by Professor Kircheway, of Columbia College, whom I now introduce to the Section.

The paper was then read by Professor Kircheway.

(See the paper at the end of these Minutes).

The Chairman :

The papers are now open for discussion.

Henry Budd, of Pennsylvania :

May I ask Mr. Wetmore to state in brief what are the requirements of a Regent's examination in the State of New York ?

Edmund Wetmore :

As I understand it, under an old statute in New York, there was established a University of the State, which comprised all the higher institutions of learning in the State and was under the general direction of the Board of Regents. In the course of the development of that system there was established some years ago by the rules of our Court of Appeals, as a pre-requisite for admission to the bar, a course of examination open to all, which was known as the Regents' examination. Before a

student can be admitted to the bar or pass the professional examination required by the Court of Appeals, he has to hold either a degree from a college or a certificate that he has passed the Regents' examination. For the purpose of showing what those examinations were, I wrote to the Board of Regents for a copy of the papers, but they addressed them to my office in New York instead of here, and so I have not got them. They would speak best for themselves. The questions are, however, well adapted to illustrate the student's knowledge, and it is required that he shall answer a certain proportion of them. I have in my office a young man who supports himself by stenography, and I keep him busy most of the time. But he prepared himself to pass the Regents' examination, which was held in New York in June. There were over four hundred students present. He passed that examination and answered twenty-five per cent. over the required number of questions. Now, in order that a student shall pass that examination he must have had a good public school education or its equivalent.

The Chairman :

I would suggest to Mr. Wetmore that when he receives those papers from the Board of Regents he transmit them to the Secretary of this Section so that they may be published in connection with his remarks.

Edmund Wetmore :

Very well ; I will do that.

James H. Raymond, of Illinois :

For a few years I have been a trustee of the University of which our Chairman is President, and I have been much interested in our law school. I most earnestly deprecate any discussion of what may be called the "case" system as against the text-book or lecture system. It is the result of my observation that one or the other of these systems predominates in law schools according to the aptitude of the professors to teach one or the other system. Then there is another comment which fits right in here. I think I see a very clear distinction between

the students of one eastern law school and another, and the complexion of their minds, and the law school at the Northwestern University. The method of instruction and the management of the school in one place will not fit in the other place. We have not any students in the Northwestern University who are there simply because their fathers do not know what else to do with them. Each one is getting something out of the lectures and out of the case system, although I admit that in our school to-day the latter is being pushed because of the special ability of our professors in that direction. But I do not believe in it as a basis for legal education. The power of every man's mind is the power of original thought, induction and deduction. I was very glad to hear so frank a confession in the paper about it. You cannot educate a lawyer without educating him to think for himself, and, by so much as you put into him the power of original thought, which must be by inductive methods, in my opinion, by just so much do you make of him a lawyer instead of a machine. There is another point that I wish to call attention to. What shall be the organization of our law schools? The question of the organization of a law school, in my opinion, is of as great importance as the question of the methods to be employed, because, in my opinion, the question of the method to be employed will in the end settle itself.

Simeon E. Baldwin, of Connecticut:

Mr. Chairman: I think there can be no question that the "case" system must always be an important part of legal education. But what case system? Is there any system which can lay special claim to that denomination? Is there any law school which to-day does not make large and systematic use of cases in instruction? I venture to say there is none, and I think we almost might say that from the beginning of legal education in this country, one hundred and ten years ago, in the Litchfield Law School, cases were used, though sparingly, for the purpose of instruction as well as of illustration. There seems to be a certain sort of evolution which has gone on

during the last few years in regard to the systematic use of cases in law school teaching. When I studied law—for a time at Yale and for a time at Harvard—cases were freely referred to by the instructor, by no means simply by way of illustration, but as a basis of exploration on the part of the student—as monuments in judicial history. *Marbury vs. Madison*: What man who was at the Harvard Law School, thirty years ago, who does not remember the insistence with which that case was commended to the attention of the student? Within the last ten years there has grown up a system of using cases by binding them in a book which was, at first, destitute of head-notes or of any arrangement discernible without great pains by any one except the man who made the compilation, and destitute of a table of contents or of a list of cases. By degrees that system has been changed and is being changed into a system of combining case and text-books in the schools where it is most used. Take as an illustration the excellent work by Professor Thayer, of Cambridge:—His “Cases on Evidence,” or his “Cases on Constitutional Law,” now in press. Are they cases or are they text-books?

John F. Dillon, of New York :

Are there head notes to them ?

Simeon E. Baldwin :

There are no connecting chapters, so to speak, or connecting illustrations. If I recollect rightly, there are no head-notes. But the original matter contributed by him is more valuable to most of us than the cases which he has compiled. But, following the process a little further, take Bigelow's “Cases on Bills and Notes,” published by another educator well known to us all. We have the familiar features of the old-fashioned case largely reproduced in this system. In other schools another system has arisen of printing cases from the reports, selecting occasionally important parts only of an opinion, giving, perhaps, the majority opinion and not the dissenting opinion, with head-notes, either those of the compiler or shorter ones prepared by the teacher, and with running headings to indicate in

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a word the main subjects of consideration, and those cases are printed in suitable form for use by the students individually. That is the system that has been pursued in the school with which I am most familiar ever since it became so large that the students could not be conveniently referred to the shelves of the library for the study of the same case. We find that to work very well, though we should be sorry to make it the great base of instruction. We should regard it as wiser to make the lecture the main thing and the cases the additional thing, rather than to make the cases the main thing and the lecture the additional thing. If we are examining a certain subject in the line of question and answer between professor and student, we should think it better to give them a chapter of the author and cases and examine them upon both, rather than to give them either alone. I mean particularly the advanced student, for I confess I cannot bring myself to believe that the best way to teach a young man just beginning law is to plunge him at once into even Ames' Cases. When I began the study of Euclid, they made me learn some axioms and propositions, and I am very thankful they did. When I began to go to school, they made me learn a certain thing called the multiplication table. It was not explained to me in a very philosophical way, but they made me learn it. There are certain things that we must make these young men learn and remember, and then go on to build, to induce and to deduce. But there must be a foundation, it seems to me, and the best place to go for that foundation is where the rules and doctrines and principles are most clearly laid down. I should be very sorry to see text-books disappear from a legitimate place in law school instruction. As has been said here, the main object to be accomplished is to communicate whatever the teacher has got to the pupil and in the way that is most effective for that man. The system that is good for one man and one school, however, may be the worst or the best for another school. The great thing is the man. But at the same time there are virtues in both systems. I am a thorough believer in a case system,

but whether any of these experiments arrive at the position where they can be claimed to be *the* case system, I hesitate to say.

Amasa M. Eaton, of Rhode Island :

It seems to me, Mr. Chairman, that perhaps the term "Case System" is in itself rather unfortunate. Would it not be better to distinguish it as a Socratic method? for that seems to be the distinguishing mark—I had almost said the distinguishing excellence—of that system of teaching law. I have studied under both systems. Let me explain what I understand by the Socratic system. Certain cases are given out the day beforehand, and the students have time to look them over. They come in with a certain amount of study upon those cases. Mr. A. is called upon: "Will you state the case of *Brown vs. Jones*?" He states it. That teaches him how to group and state accurately facts, which in itself is a very important element in a lawyer's career. He is then asked, perhaps, "Mr. A., do you agree with the case? If so, state why." Mr. A. then states that he either does or does not agree with it, and states the ground for his belief. The professor then calls upon some one who is of the opposite mind, and some other student states his reasons for his dissent. In that way the class room is immediately divided, and it is like the trial of a case in court. When both sides have finished, the teacher sums up, and then, perhaps, announces his opinion. The result is, as it seems to me, that the principles which have been illustrated, which have been brought out of the minds of the students, will forever remain fixed in their memories. It is not because they have read them in some books, but it is because they have been brought out of themselves. That seems to me to be the highest form of education. I would not advocate the exclusive use of this system. There are certain principles of law which cannot be so well studied in this way. There are certain cases which must be studied. Take, for instance, the rule in *Shelley's Case*. There is an absolute principle of law, and we must all learn it. Combined with this, some teachers give

definitions so that the terms which are to be used a few days afterwards in the study of certain cases are understood before reaching the cases. It certainly seems to me, looking at it in this point of view, that this method has advantages over all others. I agree that a great deal depends upon the personality of the teacher, and a method which will work well in the hands of one man will not work well in the hands of another; but, all things considered, it seems to me that this method possesses peculiar excellence and is in itself scientific.

Moorfield Storey, of Massachusetts:

Mr. Chairman: I want to make a single suggestion. I have had no experience in teaching law, but in the point of view of a lawyer who has had some occasion to meet the products of the various law schools, so far as I can judge, the schools do not teach modesty. My experience goes a little further. I should say that the gentlemen who are the products of the case system, so-called, brought into the office some more of intellect, somewhat greater confidence in their opinion, somewhat greater imperviousness to advice and suggestion than the products of the old system. I find students coming to me and laying down with confidence doctrines of the law for which I find no authority in cases, and which are wholly unknown to some of the leaders of our bar. When I try to reach these graduates of the law schools with the attitude of one of the greatest men I ever knew, Mr. Emerson, who, at the very last years of his life, always met any man in conversation in the attitude of a learner—"What have you got to tell me?"—I cannot help feeling that whatever the method, there is still something to be desired in the manner in which law is taught.

A. J. McCrary, of Iowa:

Mr. Chairman: That there should be a difference of opinion as to the best methods of imparting legal learning is not strange, in my judgment. I have had no experience in that line, but I have been somewhat of an observer of the products of different schools. It has been suggested by one of the papers that one teacher might make a success of teaching the case

system, while his brother in the same school might fail. Out in our law school in Iowa, of which we feel very proud, although it is somewhat removed from the seat of civilization, we have a two years' course somewhat rigid in its requirements. I have observed the graduates of that school especially as compared with the graduates of Yale and Harvard. Now and then you will find a man who has a classical education. In fact, it is a very common thing to find a man who has taken the so-called three or four years' course in law and who goes into the active practice of life, especially in the western part of the country, who is a failure. It is not always the man who has received the classical education and the best training in law that achieves the greatest success. I think that out of every one hundred men who enter a law school not more than fifteen or twenty will make competent lawyers, no matter what their education has been. Now, our school men have offered no remedy for this. The Chancellor of our department, Mr. McClain, has said to me in private, "That young man will never make a lawyer, although he is a graduate of one of the eastern universities, for he has not the elements of a lawyer in him; he has not a legal mind." On the other hand, here is a graduate of a western high school, perhaps, who has taken a two years' course in our law school, and the chancellor says: "That young man is sure to make a success in the law."

Austin Abbott, of New York:

I have been greatly interested and instructed by this discussion. I believe there are elements of great utility in both of the methods that have been put before you with so much clearness. I have not seen anywhere before a better presentation of the two methods than we have had here this afternoon, and I feel personally indebted to the gentlemen who have given us these clear and careful presentations from experience and observation. I believe the first thing for us to do as a "Section of Legal Education" is not try to promote a solution of the question, by a decision in favor of the one or the other, but to endeavor to promote the improvement of legal

education by pointing out to those who have never used the case system how they can wisely and judiciously, if they wish, begin to try it, and see how it works with their own method of instruction and with their students, and to gain from those who are using the case system also, some suggestions of how text-book and lecture instruction may supplement, enlarge and fill out the gaps and hiatus of case instruction. I take it that our aim as a Section is gradually and steadily to raise the standard and appreciation of legal education throughout the country. There are some five hundred gentlemen engaged in legal instruction in this country. Probably but a small majority have ever used some of these new methods of instruction; many of them because they hardly know how to begin with the work; there are many who have relied on the text-book system and never used the lecture system, and there are many who have never systematically improved the text-book system. I think we want to make common stock of the knowledge and ability which has been experienced and developed in the best schools on these subjects, and I believe that will result in a larger use of the case system in many places. I am, myself, a learner on the subject. I cannot doubt that if I wanted myself to learn the best statement of the law, it would be incomplete for me to read Chancellor Kent's Judgments in Court without looking into his Commentaries, to see how he co-ordinated that case with all the other cases on the subject. A case runs one line and another case runs another line of decisions, and a third case another principle. I apprehend we shall find that the true solution of this question will be in giving some case instruction and in filling in the broad hiatus between the cases with that co-ordination of principles which is to be aided best by the recent discussion of jurists, considering the law in the light of the broad interests of society, and not confined to the narrow compass of one statement of facts; and therein I think we shall find (there are text-books and text-books) the indispensable value of text-books with cases, as giving not merely a single line of thought with an instructor's opinion on the

subject, but giving them that same great jurist's view of the co-ordination of that with all its fellow cases, too numerous for us to look up. But upon this subject, I am, as I suppose most of the Section are, an inquirer. Let me say one word about this very important subject, the incompetents. I believe that an instructor should at the end of the junior year take the written examinations of the lowest part of the class and go through them carefully and mark them with red ink, and then call in the students who have fallen below the standard and tell them plainly that they are losing their time and spending their money for that which will never be an advantage to them. I believe such a course would tend to elevate the standard of legal education, because an army cannot march faster than its rear, and it is the part of a good general either to bring up the rear or cut loose from it.

John F. Dillon, of New York :

Mr. Chairman : I have no idea that I can contribute anything of value to this discussion. I do not speak as an expert in teaching, for I am not one. I came here to learn. I have heard so much said concerning these methods of teaching that I felt anxious to learn about them. I did not fairly understand the substantial difference between them, for I believe it was Dr. Jonson who said to Boswell, "Sir, the hardest thing to get at in this world is a fact." What is the real distinction between these competing methods of instruction? I believe we all feel indebted to the very competent gentlemen for the light which they have thrown upon this subject. Now, if I apprehend the difference between these systems it is largely a difference in degree; for the very careful and able paper of Professor Keener says, disclaiming the idea that it is intended by the case system, so labeled, to teach law exclusively by cases, that in Columbia College oral instruction and text-book instruction are combined with it. Professor Baldwin, representing a school which would not be distinctly named as within the category of a school where the case system is taught, says they make a liberal use of the reported cases in the system of

instruction in that famous university. The result then, is that it is in reality largely a difference in degree. From the exposition which has been made here of the two methods—from the statement made by Mr. Eaton, as well as from the quality of the men who have been in my office from Harvard, I know they make good lawyers; I don't know what the method is, and the objections that my friend, Mr. Storey, makes, that there is a want of modesty, is perhaps a very strong testimonial that they come out of that school feeling that they are masters of the situation. Now, it is my judgment that Harvard has taught the law schools of the country a great lesson in emphasizing the extreme importance of cases as an element of teaching. It makes a vast difference, certainly, whether the teacher states a principle of law in the form of a lecture and propounds it to the student whose mind is new, or whether he refers the student to some case which has actually arisen, selected with judgment, in order to illustrate the point, and which is thus made, as it were, an object lesson so that he sees the principle in connection with its application. If a student is given forty pages of some text-book as his lesson, and that is not unusual, I believe, and he is required to come into the lecture room the next morning prepared to recite them, although the teacher has given out that they will find this principle illustrated in such and such a case, if it is optional with the student to read that case and you have a class of one hundred or two hundred students, I ask you how many will actually read the case?

Austin Abbott :

I should say a very uncertain quantity.

John F. Dillon :

I should say that the first want of these law schools would be a compilation of cases so multiplied that the students can have access to them, or each one can be supplied with them. Having giving this much testimony in favor of the case system—and I think it has been underrated—when it is sought to erect that as the only method of instruction, and I have learned that it is not, then that would be equivalent to saying

that there is no such thing as elementary conceptions of law. When there runs throughout the jurisprudence of Europe and America the broad distinction between the law of realty and the law of personalty, do you have to refer a student to some case or line of cases to teach him that there is in English and American law this wide distinction, and require him to arrive at it by some process of induction? I think not. That would be wasting his time. There are elementary truths and conceptions and definitions in law that are adapted to be taught as such. Therefore, to make it obligatory to the student to try to get at them by a process of original thought is time wasted. If the law is not a science and if it does not consist of a comparatively few principles capable of expression, then we ought to abolish the law schools. I, therefore, think when the subject is considered in all its aspects that we ought not to pronounce any judgment upon it. It will result finally that it is easy to emphasize the methods and it is a mistake to put them forth as hostile and antagonistic. My notion would be, if I had a class of students before me, to assume that they knew nothing about the subject and came to me to learn. Suppose the subject is contracts. My idea would be that with a competent teacher to introduce the discussion, by saying that it is fundamental in English and American law that there should be a consideration for every contract, that that doctrine would not be made any plainer by reading it out of a text-book. I do not know anything about the case method; but when Prof. Baldwin says that in the later evolution the cases are printed with head-notes and comments, that seems to me logically inconsistent with the idea that it is injurious to the student that in the exposition of a case comments should precede his study. When I have read one of Chancellor Kent's judgments in the Court of Appeals in this State; when I have read one of Marshall's decisions on constitutional law, is it not some satisfaction to turn to Chancellor Kent's commentaries and see what in the period of his maturity, after he had left the bench, at sixty years of age, he said concerning it, and to turn to Judge Cooley's commenta-

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ries on constitutional law, where, you may say, a constitutional expert devotes five or ten years to the preparation of a work on constitutional law, is there nothing to be gained by seeing what he deduces from the cases. Therefore, if there is—as I assume not to be the case—any leaning in what is called the case system against text-book instruction, I think it will turn out that that is carrying this reform to an extreme. Therefore, it comes back that you cannot assert that the lecture system is the best, or the text-book system is the best, or the case system. The man makes the teacher, and whether he uses primarily the one or the other that is the essential thing, the object of teaching being to train the intellect.

A. C. Hargrove, of Alabama :

Mr. Chairman: Until I came here I was not able to understand the blessings that may result from the discussions annually had by the members of this Association. I shall go home stimulated by what I have heard here. I have been concerned in the instruction of law students in the University of Alabama. I think the subject of legal ethics is something which ought to be studied by every student in the law schools. My observation among students and with lawyers with whom I have been associated leads me to say that a large number of the failures among lawyers arises from their inattention to the ethical duties of the profession. There is too little attention paid to matters of morality and uprightness in the profession. I have not heard a word said here upon that subject, which I believe is one of the most important subjects to which a student's attention can be called, and I think if the Bar Associations of the different States would take high ground as to the moral conduct of the members of the bar in their dealings with each other and with the courts and with clients the legal profession would occupy a much higher place in the esteem of the American people than it does to-day.

The Chairman :

The Chair would state that much importance was attached to this subject in a paper read by Judge Dillon day before

yesterday, and the same suggestion was also contained in Mr. Wetmore's paper.

M. J. Wade, of Iowa :

I think that it is immaterial what system a professor teaches by, whether by the lecture or the case or the text-book system, or all three combined. I dare say that no man of experience in teaching law will undertake to teach law so dependent upon cases, whether he follows the text-book system for his basis or not, and not only depend upon them, but insist that students shall read them. There is no question, in my mind, that the point is where the student embraces a knowledge of what the general principle is, that then, in the application of those principles to the various states of facts that are presented, the case is the best medium to impart that knowledge. It is immaterial which system a man may adopt. An ordinary law library with the reported cases of all the States and the English common law reports is not adequate to the needs of an ordinary law student. With 225 students in the University of Iowa, it is impossible for them to get the books they want. I think there should be a collection made of the leading cases and published in convenient volumes so that each student may have one, and thus save him the necessity of waiting his turn in the library to get a book that he may want. There is one matter that I think may be of interest to members of this Section. The Secretary has a very interesting statement of an experiment which has been carried on in the University of Pennsylvania, which is called a Legal Dispensary, and I would ask Mr. Sharp to explain it.

The Secretary :

The students of the Law School of the University of Pennsylvania have organized a Law Dispensary, which appears to have been suggested by, and modeled after, medical dispensaries. Mr. Emlen Hare Miller, a former student of the school and now a member of the Philadelphia Bar, was the active spirit in the organization. The Dispensary has no official connection with the University, but was organized by the Miller Club, an

organization of law students named after the late E. Spencer Miller, of Philadelphia. Mr. Emlen Miller has given us some account of the operations of the Dispensary which I will now read.

(See the letter at the end of these Minutes.)

The Chairman :

It seems to me that in large cities where there are University settlements, this idea of a University Dispensary is an excellent one.

Gentlemen, if there is no further business to come before the Section, the Chairman will now declare it adjourned *sine die*.

GEORGE M. SHARP, *Secretary*.

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ADDRESS OF
HENRY WADE ROGERS, LL. D.,

OF EVANSTON, ILLINOIS,
AS CHAIRMAN OF THE SECTION OF LEGAL EDUCATION.

[DELIVERED BEFORE THE SECTION OF LEGAL EDUCATION.]

Gentlemen.:—The American Bar Association is to be congratulated on the organization of a Section of Legal Education. For the Association, as declared in its constitution, seeks, among other objects, “to advance the science of jurisprudence * * * and uphold the honor of the profession of the law among the members of the American Bar.” There is no way by which these ends can so certainly be attained as by a thorough training in the science of jurisprudence of those who are to become members of the profession, and by inculcating in their minds high ideals of the honor and the ethics of the profession. It is the exalted privilege of those who are engaged in legal education to perform that noble duty. It is, therefore, most fitting that the very first Section which the American Bar Association establishes should be this Section on Legal Education.

When the Section was perfected a year ago, it was understood that the Chairman of the Section should each year open the proceedings of the Section with an address, following the analogy of the rule which imposes such a duty on the President of the Association at each annual meeting. You failed, however, to follow the example of the Association by giving instructions as to what should constitute the subject of the Chairman’s address. It seems to be fitting that these proceedings should be opened with a review of the state of legal education as we find it to-day in the law schools of the United States. To this, therefore, your attention is invited.

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Before proceeding to that subject, allow me to make reference to an event which deeply concerns us all.

The death of William G. Hammond, LL. D., one of the founders of this Section, and at the time of his death and for a number of years prior thereto Chairman of the Association's Committee on Legal Education, has occurred during this year, and is much to be deplored. He was one of the most distinguished legal educators in the United States. For thirteen years he was Chancellor of the Law School of the University of Iowa, and for the like number of years Dean of the St. Louis Law School, which position he adorned at the time of his death. He has been a law lecturer in the Law Schools of Boston, Michigan and Northwestern Universities. His editions of Justinian's Institutes, Lieber's Hermeneutics and Blackstone's Commentaries are valuable contributions to legal literature. He probably had devoted more attention to the history of the law than any other member of the profession in this country, and it will be a matter for profound regret if the results of his study in this department have not been left in such form as will admit of their publication. He was a man of learning, of critical scholarship and of varied accomplishments. The reports on legal education submitted to the Association during the time he was Chairman of that important Committee, while not exclusively the work of his hand, yet were shaped very largely by him and entitle him to be held in grateful remembrance, not only by the members of this Section and of the American Bar Association, but by the profession generally throughout the country. No one was more deeply interested than he in the subject of legal education; no one labored more sedulously to create a sound public opinion in regard to the matter, and no one could be more missed from the meetings of this Section. If alive and in health he certainly would have been among us here to-day. He graduated at Amherst College, and afterwards studied civil law and jurisprudence at Heidelberg. The degree of Doctor of Laws he received from Amherst. Sir Henry Maine, in "Early Law and Custom,"

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 has praised his work. His prominence as a legal educator, his position as Chairman of the Association's Committee on Legal Education, and the interest he manifested in creating the Section of Legal Education justify this somewhat extended reference to one whose removal from among the living we all feel to be a great loss.

The report of the United States Commissioner of Education for 1890-91 gives the total number of law schools in this country as fifty-six. The number of law schools in operation for the year 1893-94 was seventy-two. The difference in the figures shows that probably the Commissioner failed to receive reports from all the schools at the time he submitted his report. It hardly seems possible that so large an increase should have occurred within three years as the figures above given seem to indicate. As no complete list of the schools has been published heretofore, one is inserted in this connection.

The Albany Law School (Albany, N. Y.); Allen University Law School (Columbia, S. C.); Atlanta Law School (Atlanta, Ga.); Arkansas Industrial University Law School (Little Rock, Ark.); American Temperance University (Harriman, Tenn.); Alabama University (University P. O., Ala.); Baltimore University Law School (Baltimore, Md.); Buffalo Law School (Buffalo, N. Y.); Boston University Law School (Boston, Mass.); Cincinnati Law School (Cincinnati, Ohio); Columbian University (Washington, D. C.); Cornell Law School (Ithaca, N. Y.); Central Law College (Lincoln, Neb.); Columbia College Law School (New York City); Central Tennessee College (Nashville, Tenn.); Chicago College of Law (Chicago, Ill.); Cumberland University Law School (Lebanon, Tenn.); Chaddock College Law School (Quincy, Ill.); Colorado University Law School (Boulder, Col.); Denver University Law School (Denver, Col.); De Pauw University Law School (Greencastle, Ind.); Detroit Law School (Detroit, Mich.); Dickinson College Law School (Carlisle, Pa.); Emory College Law School (Oxford, Ga.); Garfield University Law School (Kansas); Georgia University Law School (Athens,

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Ga.); Georgetown University School of Law (Washington, D. C.); Harvard Law School (Cambridge, Mass.); Hastings College of Law (San Francisco, Cal.); Howard University Law School (Washington, D. C.); Iowa University Law Department (Iowa City, Iowa); Iowa College of Law (Des Moines, Iowa); Indiana University Law School (Bloomington, Ind.); Illinois Wesleyan University Law School (Bloomington, Ill.); Indiana Central Normal College (Danville, Ind.); Kansas University Law School (Lawrence, Kan.); Kent Law School (Chicago, Ill.); Louisville University Law School (Louisville, Ky.); University of Maryland Law Department (Baltimore, Md.); University of Michigan Law Department (Ann Arbor, Mich.); University of Minnesota Department of Law (Minneapolis, Minn.); University of Mississippi Law School (University P. O., Miss.); University of Missouri Law Department (Columbia, Mo.); McKendree College Department of Law (Lebanon, Ill.); Metropolis Law School (New York City); National University Law School (Washington, D. C.); Northwestern University Law School (Chicago, Ill.); Northern Indiana Law School (Valparaiso, Ind.); New York Law School (New York City); University of North Carolina Law School (Chapel Hill, N. C.); Notre Dame University Law School (Notre Dame, Ind.); National Normal University Law School (Lebanon, Ohio); Ohio State University School of Law (Columbus, Ohio); Oregon University School of Law (Portland, Oregon); University of Pennsylvania Law Department (Philadelphia, Pa.); Richmond College Law Department (Richmond, Va.); Shaw University Law Department (Raleigh, N. C.); St. Louis Law School (St. Louis, Mo.); South Carolina University Law School (Columbia, S. C.); University of the South (Sewanee, Tenn.); University of Tennessee Law Department (Knoxville, Tenn.); University of Texas Law Department (Austin, Texas); Tulane University Law School (New Orleans, La.); Vanderbilt University Law School (Nashville, Tenn.); University Law School (New York City); University of Virginia Law School (Charlottesville, Va.);

Washington and Lee School of Law (Lexington, Va.); Western Reserve University Law School (Cleveland, Ohio); West Virginia Department of Law (Morgantown, W. Va.); Willamette University Law Department (Salem, Oregon); Wisconsin University Law School (Madison, Wis.); Yale University Law School (New Haven, Conn.)

Of the seventy-two Law Schools above enumerated, all but seven are associated with Universities.

The Law Department of the American Temperance University was established during the present year, opening its doors January 22, 1894. Action is reported to have been taken during the year which will result in the opening of three new schools in the Fall: One in connection with the State University of Washington; one in connection with Syracuse University, in the State of New York, and one at Indianapolis, Indiana.

If any other Law School has been established during the year 1893-94, information of the fact has not reached the chairman. During the year 1892-93, the Western Reserve University opened a Law School at Cleveland, and with high standards. Its course is one of three years for the degree of LL. B., and it announces that it expects to possess a library of at least ten thousand volumes within two years. The number of students enrolled during the year was thirty-four. One school has been discontinued. De Pauw University, at Greencastle, Indiana, preferring to concentrate its resources on other departments, will not open its Law School next year. The number of students in attendance the past year was thirty-seven. It had a two years' course.

The great centres of legal education in this country to-day are New York City, Chicago, Washington and Ann Arbor, Michigan—and this in the order named. The number of students enrolled in New York during the year 1893-94 was 1,180; in Chicago, 781; in Washington, 739, and in Ann Arbor, 607. New York and Washington have four Law Schools, Chicago three, and Ann Arbor one. The Michigan

University Law School had the largest enrollment of any one school. The New York Law School came second, with an enrollment of 503.

An examination of the catalogues of the various schools shows that the total number of students enrolled in the Law Schools of the United States, for the year ending June, 1894, amounted to more than 7,600. In 1870, the number is reported to have been 1,611. In 1886, it was given as 3,054. In 1891, according to the report of the Commission of Education, it was 6,106. Again it must be said that the previous statistics probably fell short of the actual facts, and that the apparent increase is not in reality quite as great as it appears to be.

But, however that may be, it is clear that within recent years there has been a remarkable increase in the number of students enrolled in the Law Schools of the United States. The increase is in some measure due to the improved methods of the schools, and in part to the changed sentiment of the profession towards the schools. The Law Schools have grown immensely in the favor of the profession, and the best informed and ablest members of the profession are arrayed on their side. So that we are no longer obliged to debate the question whether a Law School is a better place than a law office in which to study law. In the early history of the country there were no law schools, and a law student was obliged either to study alone or in an office. When the Law Schools finally came to be established it was not unnatural that a generation of lawyers whose legal knowledge was solely acquired in the offices should have been inclined to depreciate the methods of the schools, and to doubt whether the new way was as good as the old. More than a generation ago Mr. David Dudley Field, a distinguished member of the American Bar Association, whose death during the year has inflicted another great loss on the profession, declared that there was as much need of schools for the law as for any other science; nay more, "for the greater the science the greater the need."

He said: "Above all others, this science, so vast, so comprehensive, so complicated and varied in its details, needs to be studied with all the aid which universities, professors and libraries can furnish." That this is the sentiment of the profession to-day no well-informed person will call in question. The usefulness of the schools has been demonstrated. The necessity for their existence is conceded.

For many years the Law School in the United States made its way very slowly to professional favor. The medical profession were the first in this country among the learned professions to establish their professional schools. As early as 1765 they had established a Medical School in Philadelphia, and before the year 1800 they had founded five other schools. Then came the Theological Schools, the first of these being established in 1804, and as early as 1812 the leading denominations had their distinctive schools, with the exception of the Methodists, who, for a long time seemed to have a strong prejudice against them.

Prior to 1817, when the Harvard Law School was established, there had been two Law Schools established in the United States, one at Litchfield, Connecticut, in 1784, and one at Northampton, Massachusetts, in 1823. The first of these, the Litchfield School, existed for fifty years, and attained a national reputation. In 1813 it had 50 students, and during the half century of its existence its membership exceeded one thousand. It was founded by Judge Reeves, the author of the work on Domestic Relations, and afterwards Chief-Justice of Connecticut. Judge Gould, the author of the work on Pleading, subsequently became interested in the school. The Northampton School cannot be said to have met with success. It was discontinued in 1829, after an existence of six short years. Its average attendance numbered hardly more than ten. It was founded by Judge Samuel Howe and Mr. E. H. Mills, the latter a lawyer of extensive practice and a Senator of the United States from Massachusetts.

Harvard is consequently the oldest of existing Law Schools in this country. It has made its way slowly. Founded, as before stated in 1817, the largest number of students it had before 1829 was eighteen, and its average attendance at that time had been eight. The Yale Law School was established in 1824, and that of the University of Virginia in 1825. The Cincinnati Law School was established in 1833 by lawyers who had been educated at the Litchfield School. It was the first law school established west of the Alleghany Mountains. About the year 1836, a law school was established at Carlisle, Pennsylvania, by Hon. John Reed, then President Judge of the Courts of Cumberland County in that State. This school, while under his immediate supervision, was regarded as the Law Department of Dickinson College, and so continued until his death in 1882, when it went out of existence, being re-organized in 1890. The Law School of the University of Pennsylvania dates from 1850, that at Albany from 1851, that of Columbia College from 1858, and the Law Schools of Michigan and Northwestern Universities from 1859. At the opening of the latter school in Chicago, Judge Drummond presided and David Dudley Field delivered the oration prophesying that "whatever light is here kindled will shine through township and village from the Allegheny to the Rocky Mountains." The school was known for many years as the Union College of Law, being the Law School of the University of Chicago and of Northwestern University. When the University of Chicago closed its doors at the end of the college year 1885-86, the school passed under the control of Northwestern University, and since 1891 it has been called Northwestern University Law School. But time does not permit farther to trace the history of the establishment of the schools. They have sprung up in all sections of our country, North, South, East and West.

A very small proportion of the students enrolled in the law schools have received an academic degree prior to entering on their law studies. The same thing is true of those who enter

the theological and medical schools. In this matter the theologians probably have a slight advantage over us, but the medical profession is far behind either of the other two. Harvard and Columbia lead the Eastern schools in having the largest percentage of students with academic degrees, and the University of California and Northwestern University lead the Western schools in the same particular. In this connection the following table may prove of interest:

Harvard, ...	76	per cent. have academic degrees.				
California, ...	42	"	"	"	"	"
Columbia, ...	41	"	"	"	"	"
Northwestern, ...	39	"	"	"	"	"
New York Law School, ...	37	"	"	"	"	"
Yale, ...	31	"	"	"	"	"
Maryland, ...	27	"	"	"	"	"
Pennsylvania, ...	26	"	"	"	"	"
Boston, ...	25	"	"	"	"	"
St. Louis, ...	24	"	"	"	"	"
Iowa, ...	22	"	"	"	"	"
Cornell, ...	21	"	"	"	"	"
University of New York, ...	18	"	"	"	"	"
Georgetown, ...	18	"	"	"	"	"
Michigan, ...	17	"	"	"	"	"
Columbian, ...	17	"	"	"	"	"

It is evident from the foregoing figures that a very small proportion of the men entering the legal profession in the United States have had the benefit of a liberal education. In this respect the profession in this country is to be contrasted to its great disadvantage with the profession in European countries. In Continental Europe a collegiate education is made a *conditio sine qua non* of professional study. In Germany and Austria, for example, the student cannot enter upon a study of the law until he has acquired a knowledge of the German, French, Latin and Greek languages, as well as of history, botany, zoölogy, physics, chemistry, plain and solid geometry, and plain trigonometry. We must all deplore, I think, that in this country men are permitted to enter on the study of law with so little previous training and with so limited

an amount of even elementary education. Bad as is the condition of things in the United States in this respect, we are at least permitted to congratulate ourselves that it is not as bad as formerly. A number of the schools are taking more advanced ground respecting the qualifications of students applying for admission. Prior to 1875, even the Harvard Law School prescribed no qualifications and submitted the applicant to no examination. Since that time no person has been admitted to that school without having to pass a written examination in Latin or French, and in Blackstone's Commentaries. And now that institution announces that after the academic year 1895-96 no person will be admitted as a candidate for the degree of Bachelor of Laws unless he has an academic degree from certain specified colleges. Persons who have academic degrees from other colleges than those specified, graduates of Law Schools having a two years' course, and persons passing examinations in Latin, French and Blackstone may be admitted as special students. Special students who reside three years at the school and pass all examinations may obtain the degree of LL. B. if they attain a mark within five per cent. of that required for the honor degree. In taking this position, Harvard is in advance of all the other Law Schools of the United States, and it has rendered a great service to the cause of legal education in this country.

The Columbia College Law School has also established a high standard of admission, although it falls considerably behind the position taken by Harvard. Candidates for admission to the Law School of Columbia must be graduates of a college or have received the academic diploma or fifty count certificate of the Regents of the State of New York, or else pass the examination required for admission to the Freshman class of the School of Arts of Columbia College.

It is gratifying to observe that almost all of the schools now require applicants for admission to be possessed at least of a good elementary English education, and to have a knowledge of the history of England and the United States. The Law

School of the University of Georgia, of the University of Tennessee, of the Vanderbilt University, of the Howard University, at Washington, and the Law School of the Georgetown University, at the same place, specifically announce in their catalogues that no entrance examination is required. The Atlanta, Albany and Columbian University Law Schools, as well as the Law School of the University of Maryland and that of Washington and Lee University at Lexington, Virginia, say nothing in their catalogues as to any entrance examinations, and it is fair to assume that none is required. Most of the schools require the applicant to be at least eighteen years of age at the time of admission, and to be possessed of a good moral character.

In the schools conferring the degree of Master of Laws at the end of a third year of study, the requirements for admission to the Graduate Course are not uniform. Some of the schools require the candidate for admission to the Graduate Course to have the Bachelor's degree. This is so at Michigan, Cornell, Missouri and a few other Universities. Other schools, like the University Law School at New York, and the Law Department of the National University at Washington, admit members of the Bar, as well as Bachelors of Law, to such courses, and, for aught that appears in their catalogues, confer the degree of Master of Laws on all who complete the course, whether they have or have not previously obtained the Bachelor's degree. Yale admits to its Graduate Course as candidates for the Master's degree those who have the Bachelor's degree, and "any attorney-at-law who presents a certificate of a Judge of the highest court in his State that he has been in active practice during the previous five years and has a creditable standing at the Bar."

The courses of instruction as prescribed in the various schools are found to differ in marked degree both as to the length of time the student is required to study prior to his graduation, and as to the order in which the studies are pursued.

1. The Albany Law School, the Law School of Washington and Lee University, at Lexington, Virginia, and the Law School of the University of Georgia graduate their students on the completion of a one year's course of study, conferring on them the degree of Bachelor of Laws. The Cumberland University Law School at Lebanon, Tennessee, graduates its students in ten months, two terms of five months each. The diploma of the Georgia Law School admits to the Bar of that State. The diploma of the Albany School does not, as the Court of Appeals of New York has declined for years to accept a law school diploma as evidence of fitness to practice law. In the Washington and Lee Law School the catalogue makes the following statement: "The course is so arranged as to render possible its completion in one session of nine months. This enables diligent and earnest young men, whose means or time is limited, to prepare themselves for the Bar by a single year's unremitting study. Students are advised, however, to devote two years to the course in law." The catalogue of the Law School of Richmond College (Richmond, Va.), states the matter this way: "The course is designed for two sessions, and the student is advised to devote that time to it. But he may receive the degree of Bachelor of Law in one session if he attain a competent knowledge of all the subjects taught in the school, tested by the regular examinations."

2. The large majority of the schools prescribe a two-years' course for the Bachelor's degree. This is so at Yale, Cornell, Northwestern University, the Law Schools at Washington, the New York Law School, the University Law School in New York, and the Law Schools of most of the State Universities. In most of these cases the school year includes a period of nine months, although in a few instances it is slightly less.

3. A small but gradually increasing number of the schools have established a three years' course as a qualification for the Bachelor's degree. The schools which have adopted the three years' course are Harvard, Columbia, the Metropolis Law School of New York City, Boston, the University of Pennsylvania,

the Hastings College of Law at San Francisco, the Western Reserve University, at Cleveland, and the Law Department of Shaw University, at Raleigh, N. C.

Boston University claims to have led in this reform by establishing a three years' course for the Bachelor's Degree in 1876. While a number of the Eastern Schools have adopted the plan, the Western Schools have not, with two or three exceptions, been able as yet to do so. In States where a three years' course of study is prescribed by statute or by rule of court as an essential qualification for admission to the bar the Law Schools can readily establish and insist on the same period as a qualification for the Bachelor's degree. But when this is not the case the problem becomes more difficult, and the difficulty is enhanced when, in addition to the embarrassment already alluded to, there happen to be in close proximity other schools conducted according to commercial rather than scholastic standards, and seeking for patronage by shorter terms and lower fees. The three years' course has not yet been so generally adopted that a school can be said by an adherence to the two years' course to forfeit its claim to respectability. But now that so many of the leading schools have made the change, it is well to note that it will only require similar action on the part of a few more schools to make it incumbent on every school desiring to have good scholastic standing to abandon the two years' course. During the present year, the University of Michigan and the University of Wisconsin have announced their intention of requiring a third year.

Two of the schools having the two years' course are prescribing as much required work as schools having a third year. Cornell and the Northwestern University Law Schools have each required fifteen hours of class-room work a week throughout the course, while Harvard prescribes but ten.

In the above enumeration, schools have not been included when it is plainly evident that the third year is more nominal than real. For example, the University of Maryland and the University of Notre Dame have a three years' course. The

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catalogue of the former, however, declares that "when students can afford it, they should spend three years in the study of law. But in order to meet the case of those who cannot afford this, students are permitted to enter and take the examinations of more than one class during the same term," their fitness to graduate in two years being made dependent on their ability to pass the examinations. The catalogue of the latter informs students that those who "diligently apply themselves to the discharge of the duties devolving upon them may finish in two years." There seems to be considerable elasticity in the system prevailing at Notre Dame, as their catalogue announces that it is possible to carry the law studies along with the academic, so as to finish both courses contemporaneously, in four years.

A number of the schools which confer the Bachelor's degree on the completion of a two years' course have established an additional course of one year, on the completion of which the degree of Master of Laws is conferred. This plan is pursued at Cornell, Yale, the four schools at Washington, the University Law School at New York City, at the Michigan and Missouri State Universities, at Dickinson College and at the American Temperance University. While the New York Law School gives the Bachelor's degree at the end of two years, it requires four years for the Master's degree. A few schools having the two years' course have likewise added a third year, but give no additional degree.

This seems to be the case at the Law School of the University of Texas. The St. Louis school has established an "Advanced Course" which, for the year 1893-94 was confined to the study of the Law of Evidence. It announces that "it is expected that this course will be continued and enlarged in subsequent years until it can be merged in a third year of the regular course to be required of all candidates for a degree."

The Wisconsin University Law School has added a third year for graduate work, and the course consists of law studies "confined with elective studies in economics, political and social

science and advanced literary branches." Graduates of colleges taking this third year are entitled to the academic Master's degree. The master's degree in law does not appear to be conferred by that University.

The Yale University Law School has a four years' course leading up to the degree of D. C. L.

As respects the order in which the studies are pursued, there is practical unanimity in placing Torts, Criminal Law, Personal Property and Contracts in the Junior year, and Constitutional Law, Corporations and Equity in the Senior year. The majority of the schools put the subject of Partnership in the senior year, although some of them, as Michigan, Cornell and the New York Law School, put it in the Senior year. A few schools, as the St. Louis Law School, place Evidence in the Senior year, while, in the majority of cases, it is postponed until later in the course. Boston, the New York Law School, the St. Louis Law School, the Law School of the University of California, and the University Law School of New York City postpone Common Law Pleading to the last year of the course, while Harvard, Yale, Columbia, Northwestern, Michigan, Cornell and others put it in the first year. The subject of Commercial Paper is placed in the first year by the New York Law School, the University Law School of New York, the St. Louis Law School, the Law Schools of the University of Iowa and Michigan; while Columbia, Cornell, Yale, Harvard, Northwestern and Boston postpone it until later in the course. Harvard, Columbia, Cornell, Northwestern, Wisconsin and the New York Law School begin Real Property in the first year, while Yale, Cornell, Boston, St. Louis and Iowa put it in the second year.

The increased attention paid to practice is a noteworthy feature, and one to be highly commended. In the Metropolis Law School of New York City, a course on Practice and Pleading is given which runs through the three years, two hours per week being assigned to it. Many of the schools which have a third year Graduate Course devote a considerable

portion of it to Practice. The University Law School of New York City has what it terms an Optional course, in which instruction is given as to Legal Instruments in Common Use, and as to Searching Titles and the Instruments Affecting Real Estate. That school also has a course on Practical Pleading, and one on Surrogate's Court Practice, and one on the Drafting of Wills.

Law journals are maintained in connection with a few of the more important Law Schools of the country, viz.: Harvard, Columbia, Yale, the University Law School in New York, Northwestern University, Cornell, Michigan and the University of Iowa. This policy was first entered on in 1887, when Harvard and Columbia began the publication of their journals. The latest of these publications is the one at Cornell, the initial number of which appeared in June of the present year. These journals are in some cases edited by members of the Faculty, and in others by the students themselves. They are alike creditable in literary matter and mechanical execution. They serve to promote an *esprit de corps* among the students, and are helpful in other directions.

The great question which interests legal educators to-day is as to methods of instruction. The first method used was that of lectures. Mr. Justice Wilson lectured in the University of Pennsylvania as did Chancellor Kent at Columbia. Story and Greenleaf and Parsons lectured at Harvard. The lecture system was in the early days a matter of necessity as there were no books suitable for the student to use. The text-book system of instruction came next, and last of all the case system. The lecture system is to-day the prevailing method of instruction at the University of Michigan and at the University of Pennsylvania, and is used in a limited degree in almost all of the schools. Of the three systems it is, perhaps, the least in favor, and in the large majority of the schools is only resorted to in special subjects. The text-book system seems to be the one most generally employed. It was used by Theodore W. Dwight at Columbia from the opening of that

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 school until the termination of his work as a law instructor. It has been the method favored at Yale, Boston, St. Louis and the New York Law School. The case system was introduced at Harvard by Professor Langdell in 1870. Until recently it has not been favored by other schools. The schools attaching the most importance to the system and making the most use of it at present are Harvard, Columbia, the Metropolis Law School in New York, Cornell University, Northwestern University and the Law School of the Western Reserve University at Cleveland. No one of these three methods can be pronounced the best for all subjects and under all circumstances. The answer to the question which is best must depend on the character of the teacher and the taught, as well as on the branch taught. Very many of the schools adopt no one method, but make use of all three.

An examination of the catalogues of the various schools does not disclose the number of volumes in the libraries of the several schools.

The Law Schools of Harvard, Columbia and Cornell possess large and valuable libraries of their own :

Harvard, ...	33,000 vols.
Columbia, ...	25,000 vols.
Cornell, ...	23,000 vols.

Since 1890, Harvard has been spending about \$6000 annually in increasing and improving its library.

The famous library of the late Nathaniel C. Moak, of Albany, New York, which was reputed the finest private law library in the United States, was purchased and presented to the Cornell Law School by the widow of the Honorable Douglass Boardman, the former Dean of that school and a Justice of the Supreme Court of New York.

The students of the Chicago Law Schools are allowed, without additional charge, the use of the library of the Law Institute, which includes some 25,000 volumes. And the students in the Law Schools at Washington are allowed to use the library of the Department of Justice, comprising over 22,000

volumes, and the law library at the Capitol, which contains over 50,000 volumes. This latter collection is open for seven hours daily, and may be freely used. The students of the Albany Law School use the State Law Library, and those of the Buffalo Law School have the free use of the law library of the Eighth Judicial District of the State, comprising some eight or ten thousand volumes.

There are other schools which possess excellent law libraries of their own, viz. :

University of Michigan, ...	11,000
University of Pennsylvania, ...	9,000
Yale, ...	9,000

Very many of the Law Schools are content to make no statement of the number of volumes in their libraries. The statement put forth by some of them reads something like this: "The school has a fine and steadily-increasing library of the best of law books. This is expected to be soon greatly enlarged." This saves the labor of an exact inventory, and seems to answer the inquisitiveness of the average student not yet accustomed to cross-examine.

The great need of the Law Schools of the United States is endowment. Money is given freely in this country to endow schools of theology and of technology, but very little for schools of law and medicine. There are two, or perhaps more, theological schools whose endowments amount to a million dollars each. It is doubtful whether there is a Law School in the United States with a productive endowment of one hundred thousand dollars. President Quincy, in 1832, at the dedication of the Dane Law College of Harvard, commended to men of wealth the endowment of Law Schools. "What interest of society," he asked, "can more justly claim a liberal and enlightened support than that which enlarges the means and multiplies the inducements of men destined for the profession of the law to be learned, moral and elevated in all their opinions and conduct? What profession more deeply influences the condition of society, either for evil or for

good?" The experience of most of those who have to do with the administration of University affairs will justify the statement that while governing boards do not expect tuition fees to maintain colleges of liberal arts and are ready to supply out of the University treasury the funds for such a deficit, University funds are furnished much less cheerfully to meet deficits in law and medical schools. The Faculties of liberal arts, too, are oftentimes inclined to feel that they have a sort of prior lien on the University treasury, and that money diverted to schools of law and medicine is a sort of breach of trust. Of course, this is, from our point of view, all wrong, but it is a fact with which we are confronted, and which we must do what we can to overcome.

A degree in law conferred by a German or an Austrian University means something, but, unfortunately, in the United States a degree from a Law School has no definite meaning, unless the name of the institution conferring it is known. Under existing conditions in this country the degree of Bachelor of Laws may mean a study of the law for either one, two or three years. A degree acquired by studying law for one year is cheaply obtained, and the practice of thus conferring it deserves censure. It is certainly bad enough to confer it at the end of two years, now that so many of the schools have adopted the third year.

Again, we need to bear in mind that the scholastic year is itself a variable quantity. At Harvard, Cornell, Michigan, Yale, Northwestern, Iowa, Missouri, Wisconsin, Washington and Lee, and Western Reserve Universities the year is one of nine months. While at St. Louis, Boston, Cincinnati, the University Law School in New York, the New York Law School, the Metropolis Law School in New York and the Law Schools in Washington it is eight months. At the University of Pennsylvania it is seven and a half months, and at the Louisville and Baltimore Law Schools it is but seven months. In the Chicago College of Law the term is ten months.

But the length of a scholastic year is no evidence of the amount of required work. The amount of work prescribed is as variable a quantity as the length of the scholastic year. At Cornell and Northwestern Universities the amount of prescribed class-room work, as already stated, is fifteen hours per week. At Columbia it averages thirteen hours. At Harvard every candidate for the ordinary degree is required to take ten hours for the first and second years, and eight hours the third year. At the Western Reserve University it is ten hours a week. Some schools do not prescribe more than six hours per week.

In conclusion, allow me to express my conviction that the cause of legal education in the United States will be much promoted and advanced by the creation of this Section. The leading law schools of this country are represented here. The papers that are read and the discussions which take place will, we trust, promote in large degree the welfare of the schools and of the profession.

PAPER

READ BY

JOHN F. DILLON.

OF NEW YORK, NEW YORK.

[BEFORE THE SECTION OF LEGAL EDUCATION.]

THE TRUE PROFESSIONAL IDEAL.

I have been honored with an invitation to read before the Section of Legal Education a paper on "The True Professional Ideal," with the implication, I presume, that it should have some relation to the subject of legal education in one or more of its many aspects.

The time limit of thirty minutes will not enable me to do more than to glance hurriedly at one or two of the more important questions that might fitly be considered under the general title of "The True Professional Ideal." It can never I think, be entirely out of place—certainly, in my opinion, it is not out of place at the present time—to impress upon the bar and society the essential dignity, worth, nobility and usefulness of the lawyer's calling. The true conception—ideal, if you please—of the lawyer is that of one who worthily magnifies the nature and duties of his office, who scorns every form of meanness or disreputable practice, who by unwearied industry masters the vast and complex technical learning and details of his profession, but who, not satisfied with this, studies the eternal principles of justice as developed and illustrated in the history of the law and in the jurisprudence of other times and nations so earnestly that he falls in love with them, and is thenceforward not content unless he is endeavoring by every means in his power to be not only an ornament but a help unto the laws and jurisprudence of his State or nation. In his

conception, every place where a judge sits, although the arena be a contentious one where debate runs high and warm, is yet over all a temple where faith, truth, honor and justice abide, and he one of its ministers. With what majestic port may not the lawyer approach that temple when he reflects that he enters there not by grace but of right, craving neither mercy nor favor, but demanding justice, to which demand the appointed judicial organs of the State must give heed under all circumstances and at all times.

There is, I fear, some decadence in the lofty ideals that have characterized the profession in former times. There is in our modern life a tendency—I have thought at times very strongly marked—to assimilate the practice of the law to the conduct of commercial business. In great law firms with their separate departments and heads and subordinate bureaus and clerks with their staff of assistants, there is much resemblance to the business methods of the great mercantile and business establishments situate close by. The true lawyer—not to say the ideal lawyer—is one who begrudges no time and toil, however great, needful to the thorough mastery of his case in its facts and legal principals; who takes the time and gives the labor necessary to go to its very bottom, and who will not cease his study until every detail stands distinct and luminous in the intellectual light with which he has surrounded it. The temptations and exigencies of a large practice make this very difficult, and the result too generally is that the case gets only the attention that is convenient instead of that which it truly requires. The head of a great firm in a metropolitan city, a learned and able man, was associated with another in a case of much complexity and moment. He expressed warm admiration of the printed argument of his associate counsel, which had cost the latter two months of laborious work, adding, however, that he could not have given *that* much time to it because, commercially regarded, it would not have paid him to do so.

It is unquestionably the duty of the profession to preserve the traditions of the past—to maintain its lofty ideals—and to

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 this end to guard against what I may perhaps truly describe by calling it the "commercializing" spirit of the age. The utterance of Him who spake with an authority greater than that of any lawyer or judge, "Man lives not by bread alone," should never be forgotten or unheeded by the lawyer, and will not be by any who comes within the category of what may be termed the "Ideal Lawyer."

Mr. J. H. Benton, Jr., of the Boston bar, under the conviction that few persons even of the profession realized the full extent in which the bar has participated in the government of this country and given direction to its policies and public affairs, read before the Southern New Hampshire Bar Association, in February of the present year, a most instructive paper on the "Influence of the Bar in our State and Federal Government."

A few of the facts which he has laboriously ascertained and stated may be here briefly mentioned as bearing upon the subject of the present paper. Of the 56 signers of the Declaration of Independence, 25 were lawyers, and so were 30 out of 55 members of the convention which framed the Federal Constitution. Of the 3,122 Senators of the United States since 1787, 2,068 have been lawyers; of the 11,889 Representatives, 5,832 have been lawyers. "The average membership of lawyers in both branches of Congress from the beginning has been 53 per cent." In the present Constitutional Convention of the State of New York, 133 out of the 175 members are members of the bar. Lawyers constitute, as nearly as can be ascertained, one in every four hundred of the male population of the United States at the present time. The statistics show that in the Legislatures of all the States, with one exception, the legal profession has, and always has had, a membership much greater, in proportion, than its number in the population of the State.

Not less marked is the influence of the bar in the executive departments of the Federal and State Governments. Of the 24 Presidents, 19 have been lawyers, and Mr. Benton states

that "of the 1,157 Governors of all the States, 578 of the 978 whose occupations I have been able to ascertain have been lawyers."

It is scarcely necessary to mention the fact that the entire body of the other co-ordinate department of the National and State Governments—the Judiciary—have been members of the profession. And in our polity the Judiciary have a power, and are clothed with a duty unique in the history of the Governments, viz.: the power and duty to declare legislative enactments and executive acts which are in conflict with our written constitutions to be for that reason void and of no effect. In this, America has taught the world the greatest lesson in government and law it has ever learned, namely, that law is not binding alone upon the subject, and that the conception of law never reaches its full development until it attains complete supremacy in the form of written constitutions, which are the supreme law of the land, since their provisions are obligatory both upon the State and upon those subjected to its rule and equally enforceable against both, and therefore *law* in the strictest sense of the term.

Two forces in society are in constant operation and are necessary to its welfare, if not to its very existence: the conservative force, to preserve what is worth preserving; the progressive, without which we would have stagnation and death. The character and state of the law as well as the social condition of any people are the result of the conflict between these healthful although antagonistic forces. As the ocean keeps itself pure by the constant movement and freedom of its waters, so the like movement and freedom are necessary to preserve what is good in existing conditions, and to remedy what is either bad or inadequate.

Changes in the law of any living and progressive society are, therefore, absolutely necessary in order to make the law answer the current state and necessities of the social organism. So far as law is expressed in written form, whether in constitution or statutes, it is crystalized and almost, although

perhaps never quite, stationary. Owing to the doctrine of judicial precedent as it exists in our system, this theoretically makes what is adjudged to be law almost, although in practice not quite, as stationary as law in written form. True wisdom requires that the law shall from time to time and with all convenient speed be made to harmonize with existing social needs. This makes law amendment or reform a constant, continuing and ever-existing necessity.

It is pertinent here to observe that nothing is more difficult than the work of law improvement. It requires a knowledge of the law both theoretical and practical; theoretical, so as to know the relation of each department of the law to every other department; practical, so as to appreciate existing defects and the needed remedy. Doctrinaires, jurists and legal scholars may see, indeed are often the first to see or to suggest and urge, the required changes, but they are, generally speaking, incapable of wisely effecting them. With the notable exception of the changes wrought in the law of evidence, Bentham's vast labors bore almost no direct fruit. Austin filled for many years a large space in the field of jurisprudence. My own judgment is that his legal theories have proved to have little intrinsic or permanent value. Though feeling constrained to say this, I must also add that, in my opinion, the world is much indebted to these eminent men for their bold and free criticisms of our laws and for arousing the attention of the bar to the need of amending them, and especially for making some portion at least of the profession in England and this country feel the need of a more scientific jurisprudence. Brougham, Mackintosh, Romilly and Langdale were in a way the disciples of Bentham and Austin, and labored faithfully in the cause of law reform in England. But they went about it in the conservative and timid manner so characteristic of the English mind. Their efforts were confined to single, sporadic, specific ameliorations of certain felt grievances, but their labors proceeded upon no scientific plan to effect comprehensive reforms of either substantive law or of the law of procedure.

Such, roughly sketched, was the general condition of law reform when the late David Dudley Field entered upon the work of law amendment in this country. It seems to me that the career of Mr. Field illustrates several phases of the subject under discussion. For this reason as well as because it is proper that some notice should be taken in this body of the labors of this eminent man, at one time the President of this Association, I shall refer for a few moments to the main work of his life, and endeavor to draw from it the lessons it teaches. In my judgment, no mere doctrinaire or closet student of our technical system of law is capable of wise and well-directed efforts to amend it. This must be the work of practical lawyers. Mr. Field had this needed qualification, for he was throughout his long career at the bar a busy and active practitioner.

When Mr. Field commenced his work of law improvement, the gap between the law as it existed and what the welfare of the country required, especially in the law of procedure, was very wide. The system of pleading and procedure had grown to be so technical as to defeat in many cases the cause of justice. This was eminently true of the common law system of pleading and procedure, and even the system of equity was equally open to the reproach of undue technicality and of intolerable delays. The need for a cheaper, simpler and more expeditious procedure at law and in equity had become a crying want. Mr. Field, if he did not originate the idea, clearly put himself at the head of the movement to remedy the evil. This he did at an early stage in his professional life, and to this as well as to the codification looking to improvement in criminal law and procedure as well as in substantive law, he gave without ceasing, being instant in season and out of season more than fifty years of his active career. He advocated the principle of codification everywhere. He was a man of strong feelings and convictions. Every man of real force is so, almost necessarily. He, therefore, fought for codification; and he fought with dauntless courage everybody who opposed

him. We may think that he unduly estimated the scope, the value and the beneficence of codification. He may have done so. Effective and true reformers are apt to go too far. But this detracts not the least from the estimation in which he is justly entitled to be held by the bar and public. I do not wish to surround him with a haze of golden panegyric. He does not need it. Look at his public labors in municipal and international law, extending from 1839 to 1894, and what lawyer in this country, dead or living, has ever dedicated half as many years as he to conscientious and unselfish efforts to improve our laws and jurisprudence? In this view he stands without a peer. Consider the success which has crowned his work in this country, in England and in the English colonies, and his career is strikingly distinctive. It dominates our legal landscape. True, some of his schemes of law amendment failed of adoption, those more especially relating to the codification of the common law, but he seized upon one principle which he made eminently successful, and which in turn made him famous and justly so, namely, the simplification of the law of procedure. The New York Code of 1848, in substance or principle, Mr. Field lived to see adopted in a large majority of the States and Territories of the Union, and in the Judicature Act of 1873 of the British Parliament.

Mr. Field had lofty professional ideals of the lawyer's duty towards the law. Love of the pecuniary gains of his calling, though he was not insensible to them, was yet ever subordinate in his regard to those public labors which he felt that he owed to his profession and the law. Although in active practice in a great metropolitan centre for over sixty years, he accumulated no more than some contemporary men at the English bar and perhaps some in the same city have done in less than a tenth of the same period. But it may be said that he was ambitious, that his ambition was boundless, and that this was his incentive. Be it so. So, doubtless, it was. Exercised for worthy ends, this, so far from being the last infirmity, is the highest quality of noble minds. Nor had official place, either for the conspicu-

ousness which attracted and was flattered by the public gaze, or for the power which men of lower aims, who live only in the present, love to wield, any controlling charms for him. His eye was lifted higher and was fixed chiefly on the generations who should come after him. Of the present, he regarded himself, if I may so phrase it, as a tenant for life, but with a reversion in fee in the limitless future. Cheerful in the prolonged autumn of his days, he had for nearly a generation before his death seen the "leaves fall over the roots of the tree of life;" but this, as he looked above and beyond, only gave to his vision a freer and more unobstructed view. With great felicity of expression, Sir Walter Scott makes Kemble, on finally leaving the Edinburgh stage, say he hoped to enjoy—

"Some space between the theatre and the grave;
That, like the Roman in the Capitol,
I may adjust my mantle ere I fall."

Such, too, was Mr. Field's hope, doomed, however, to disappointment. On his return from Europe, only three or four days before he passed beyond the range of our mortal vision, he is reported to have said, in answer to the question what he intended to do, that he expected to spend the coming summer in the Berkshires at work on his autobiography, and that his one great ambition was to have his codes adopted all over the English-speaking world. All old men live largely in the past, and to this Mr. Field, who had crossed the Delectable Mountains and was already in the country of Beulah, was no exception. It was natural that he should love to survey, in the serene evening of his days, the toils and labors which had marked his active life and the success with which these had been rewarded. But only men of the higher type can turn, as turn he did, to the future, see it spread itself out before their enraptured gaze, feel themselves fanned by its intoxicating breezes, behold its sunlit heights glorified and beautiful, and proudly feel that it, too, is their inheritance.

With this, let us contrast the life and professional career of an eminent English contemporary of Mr. Field's earlier life—

I refer to Sir William Follett, who in his day was as distinctly the leader of the bar as was Lord Erskine in his. The picture has been drawn by Sir William's own friend, the accomplished Talfourd, who in his "Vacation Rambles" tells us that there was brought to him in 1846, when on his journey through Italy, the usual register of visitors, and that, turning over its pages, he was startled by the name of Sir William Follett written in tremulous characters just before his death, which had occurred but a short time before Talfourd saw his signature. After reviewing Follett's professional career, usually pronounced so brilliant, Talfourd mournfully inquired: "What remains?" And he answered: "A name dear to the affections of a few friends; a waning image of a modest and earnest speaker, though decidedly the head of the common law bar, and the splendid example of a success embodied in a fortune of £200,000, acquired in ten years, the labors of which hastened the extinction of his life. These," he added, "these are all the world possesses of Sir William Follett. To mankind, to his country, to his profession he left nothing; not a measure conceived, not a danger averted, not a principle vindicated, not a speech intrinsically worth preservation, not a striking image nor an affecting sentiment; in his death the power of mortality is supreme. How strange—how sadly strange—that a course so splendid should end in darkness so obscure."

Follett did not discharge the debt he owed to the profession, and therefore did not answer to the completest professional ideal of the lawyer. Mr. Field not only paid the debt due to his profession but overpaid it, and thus became its creditor; and in this answered more fully than lawyers like Follett the highest professional ideal.

In the report on legal education to which I shall refer, it appears that there are over fifty law schools in the United States, having a membership of more than six thousand students; the committee not having the means of ascertaining the number of students who were pursuing their studies in private offices

outside of the law schools. I fully concur in the following observations of the committee. Their soundness will not be questioned, I think, by any one who hears me :

“The mind of the lawyer is the essential part of the machinery of justice ; no progress or reforms can be made until the lawyers are ready. Their influence at the bar, on the bench and in legislation is practically omnipotent.”

The following observation seems to me to be specially weighty and important :

“The progress of the law means the progress of the lawyer, not of a few talented men who are on the outposts of legal thought, but the great army of the commonplace who contribute the majority of every occupation. What the lawyers do not understand or what they pronounce visionary or impracticable will not be accepted by the legislatures or courts of the country.”

It is no part of my purpose to offer any views upon the methods of law instruction, much less upon the different or competing methods. Doubtless the method of teaching law or how it can best be taught is an important subject, but it is not all-important. It is wise to discuss and consider it, but it would not be wise to let it engross our whole or even our chief attention. What Pope said of forms of government may, I think, be said with much more justness of methods of teaching—“that which is best administered is best.” The man whom nature designed to be a teacher of law will, despite all theories, teach it after his own manner. He will impress his own personality upon his work. It is the man, not the method, that tells. The crucial test is whether the teacher can inspire a living interest in the student and get from him the best work that in him lies, for after all the student must himself do the work and the thinking which shall accomplish him in the learning and mystery of his profession. Vastly more important, therefore, than the methods of teaching is the course of instruction or the branches to be taught. This

general subject is very fully and, I need not say, ably discussed in the report of the Committee on Legal Education of this Association, submitted in 1892. After reviewing the course of instruction in the law schools of this country (and it is substantially the same in all of them) the committee says:

"It is evident that the course of study, with a very few exceptions, is confined to the branches of practical private law which a student finds of use in the first years of his practice. It is a technical or philosophic view of the law which is taught. * * * It may be said of all our law schools that the instruction is too technical. It is not elementary enough. The view of the law presented to the student is technical, rather than scientific or philosophical."

What is meant by the course of instruction being confined to private law which the student will find of use in the earlier years of his practice, may be illustrated by the course of instruction in what is justly regarded as one of the very foremost law schools of this country, that of Harvard University. I select it for illustration because of the deserved eminence of the school and because it covers all of the studies embraced in a three-years' term.

The following synopsis I assume to be correct, being taken from the above-mentioned report of the Committee on Legal Education:

"Law School of Harvard University, Cambridge, Mass., nine instructors, 363 students, 44 graduates, 36 weeks in school year.

"Course of Study, First year.—Contracts, 108 hours; criminal law and procedure, 72 hours; property, 72 hours; torts, 72 hours; civil procedure at common law, 36 hours. Books used, Langdell's Cases on Contracts, Chapin's Cases on Criminal Law, Gray's Cases on Property, Vols. 1 and 2; Ames' Cases on Torts, Ames' Cases on Pleading.

"Second year.—Agency, 72 hours; bills of exchange and promissory notes, 72 hours; law of carriers, 72 hours; contracts, 72 hours; evidence, 72 hours; jurisdiction and proced-

ure in equity, 72 hours; property, 72 hours; sales of personal property, 72 hours; trusts, 72 hours. Books used: Ames' Cases on Bills and Notes, Keener's Cases on Quasi Contracts, Langdell's Cases in Equity Pleading, Gray's Cases in Property, Vols. 3 and 4, Langdell's Cases on Sales, Ames' Cases on Trusts.

"Third year.—Constitutional law, 72 hours; corporations, 72 hours; jurisdiction and procedure in equity, 72 hours; partnership, 72 hours; property, 72 hours; surety and mortgage, 72 hours. Books used: Ames' Cases on Partnership, Gray's Cases on Property, Vols. 5 and 6."

"Extra courses.—Patent law, 10 lectures; peculiarities of Massachusetts law and practice, 2 hours a week."

"Admission and methods of instruction.—Applicants for admission not graduates of a college are examined in Latin, (Cæsar, Cicero), Blackstone's Commentaries. Every student who has been in the school one year or more has an opportunity each year of arguing in a case before one of the professors in a moot court."

The subjects taught and the books used show more clearly than any general description the intensely technical and practical character of the course of instruction. This may stand, I think, as the general model or even highest type of legal instruction in this country.

I agree in the main with the spirit of the committee's criticisms which I have above quoted, but I would phrase my own views in somewhat different language. I insist, for I believe it to be true, that the stereotyped course of legal instruction in this country is defective, not so much for what it contains as for what it omits. It is defective in that no adequate provision is made for specific instruction in historical and comparative jurisprudence, and in the literature, science and philosophy of the law—in what may, perhaps, be compendiously expressed as general jurisprudence. If this is what the committee means by the expression that the course of instruction is too technical,

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I agree to it. But it is to be remembered that it is of the essence of our legal systems that they are in their historical development and nature technical, and so far as they are so, instruction, to be adequate and thorough, must itself be technical, and in an important sense it is not predicable of it that it is too technical. Having in view the circumstances which surround the subject of legal education in this country, I approve the wisdom of the general course of instruction in our law schools, so far as it gives chief attention to the usual and enumerated branches of practical private law. But I still insist that it is defective in the want of adequate provision for instruction in the history and the literature of the law, and in what I call for short "general jurisprudence." Great lawyers like Coke and Blackstone and Eldon, may be made by the current methods; but the growth of greater lawyers like Hale, Bacon and Mansfield, who in their day wisely amended and improved the law, and who represent the higher professional ideals, is not adequately promoted or encouraged by the existing course or methods of instruction in the law schools in this country.

I fully realize that to set up an impracticable standard, defeats the object sought. Nevertheless, I insist that it is entirely practicable for our law schools to enlarge and liberalize the scope of their instruction by requiring at least one hundred hours of the course to be given specifically to the subjects which I have above ventured to indicate as essential to any well-ordered course of instruction that makes any just claim to being adequate or complete.

And this view it is the sole practical point of this paper to urge and enforce, to the end that the generations of lawyers who shall come after us may be adorned more abundantly than else had been with examples of the highest and truest professional ideals.

And to this end, moreover, I should be glad to see the members of the Section of Legal Education take the initiative

by recommending the American Bar Association to adopt a resolution, in substance, that in its judgment adequate instruction in historical, comparative and general jurisprudence is an essential part of a thorough course of legal education, and accordingly that it recommends to all of the law schools of the the country that such instruction should be made a distinct and specific branch of the course of required study therein. ,

PAPER

READ BY

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[BEFORE THE SECTION OF LEGAL EDUCATION.]

SOME STANDARDS OF LEGAL EDUCATION IN THE WEST.

In the West, in the East probably, too, in the Southwest certainly, for it is there as a lawyer, legal journalist and law teacher I have much observed, there are three tests for admission to the Bar, and in the application of these tests there are three different standards of legal learning.

First.—There is the law school standard, which is good.

Second.—There is the Supreme Court standard, which is fair.

Third.—There is the Circuit Court standard, which is bad.

The statutes of all the western States give, I think, jurisdiction to the Supreme Court or the highest appellate court, by whichever name called, to admit to the bar. In my own State, Missouri—and I may very well select Missouri as a type of all the other southwestern states, because she is the greatest in population, and because on account of her geographical and commercial position she may be said to influence, more than any other one of this group, all the others—in Missouri, not only the Supreme Court, but the Circuit Courts of the State, have this jurisdiction given by statute, and the law also provides that graduates of the two law schools of the State, that of St. Louis and of the University of Missouri at Columbia, shall be admitted to the bar upon presentation of the diploma of such schools without further examination.

Of the three doors, then through one of which the candidate must pass, let me speak first of the law school door. And here

I may claim, I think, a good standard exists. We have not yet been able to demand as much as we would wish to demand in the way of academic qualifications. We cannot yet do what Harvard is doing; we are hardly old enough for that; and while the other two doors exist, the one not hard to pass, the other wide open, we must necessarily remain as we are. But so far as the technical course is concerned, it will, I think, compare favorably with that of any law school in the east. If there are schools who deem a two years' course too long, they are not in our section of the country. We feel, therefore, that we are fairly abreast of the times and that good work is being done. As a result, a degree from a law school is becoming an essential certificate of legal training, and it is in our States becoming felt and felt strongly that without the cabalistic letters "LL. B." the words, "Attorney-at-Law" are hardly a passport to professional recognition. This is shown of late years in the number of licensed attorneys who, after one or more years of practice under court admission, enter the law schools for the purpose of receiving systematic instruction in law, the want of which they have discovered and the diploma of the school which certifies to that instruction.

The Supreme Court in admitting candidates through its door generally demands that they shall show a fair knowledge of the principles of the law, of local practice and of the statutes of the State. Of the manner in which that knowledge has been obtained they, of course, know and can know nothing. No term of service or of study is required. The examination usually takes place in the presence of the Court, and is conducted by a committee of lawyers. It is obvious that a man may make showing enough to pass this ordeal without knowing very much—without even having read very much—and yet I have no complaint to make; and the law teachers of the Southwest are not disturbed in regard to the methods obtaining in gaining admission to the bar of our appellate courts, For it is the third door—that which I have characterized as

the wide open door—of which we as teachers of law complain, and which, as workers in the cause of a high standard of legal education and of professional learning, we lament. In my own State and some others the power to admit to practice is given, as I have said, not only to the Supreme Court, but to all the circuit courts. A score and more of Judges of inferior courts have the right to admit any citizen of the State, whether a resident of the county or not, to practice in any court in the State. And there follows a score or more of standards. A few of the Judges follow the practice and requirements of the appellate courts—they refer the matter to a committee of the local bar who examine the candidates in open court. In other circuits the application is referred to some single examiner—some friend of the Judge—on whose certificate of an examination held *in camera* the candidate is enrolled. Let me relate a personal experience of this method. Removing to a Western State almost twenty years ago, just after being admitted to the bar of Canada after a long course of study, I was informed that a foreign certificate of admission to the bar would not be received, and that I would be required to pass the regular examination like any other applicant. After a considerable number of weeks spent in the study of the local law and statutes, I called on the examiner in his office and stated my wish to be examined, at the same time remarking that I was from Canada. I awaited with uneasiness the first question. “What,” said the examiner, “is the name of the reporter of the Chancery Court of Upper Canada?” I gave the name, and was informed that that would do and I could call again the next day. The correctness of my answer had been verified, I suppose, in the interim, for the next morning I found a certificate awaiting me that I had been duly examined in the laws and statutes of the State and had been found to possess the proper qualifications to practice the profession of the law in all its courts.

But in many cases the Judge does the examining himself, whereupon his power to turn out practicing lawyers is regarded

by the public as a piece of patronage which has its value especially just before election day. The political worker, you may be sure, is not slow to avail himself of the opportunity to make attorneys of himself and his friends, and the Judge cannot always resist the demands. In the records of the Appellate Courts of Missouri you may read a story which tells better than any example I might cite from my own experience what may be the result of such a system. About ten years ago there was an old negro preacher in St. Louis named Bradley, who conceived the idea that if he were only able to hold himself out as a lawyer as well as a preacher he would do a flourishing trade among his flock. He applied for admission in St. Louis, and he was examined in open court. He had spelled his way through a few hundred pages of Blackstone, of some obsolete law dictionary and the statutes of the State. Without an idea of any single sentence he had read, his examination was, of course, a comedy of errors, but though rejected he was not dismayed. In a few weeks he turned up again, the happy possessor of a certificate of admission to the Circuit Court in one of the interior counties, and thus entitled to be enrolled in any and every other court in the State. The first client he obtained was a poor negro charged with murder. Though the prisoner was afterwards found to have acted under circumstances of justifiable self-defense, Bradley's management of the case resulted in a verdict of murder in the first degree and sentence of death. Then the poor prisoner became frightened and retained a lawyer. It was a rather difficult case to appeal; there were no points reserved; there were no errors which could be taken advantage of, and the only possible chance was to ask for a new trial on the ground of the ignorance, imbecility and incompetency of the negro attorney. The Court of Appeals was of opinion that as the law of the State had provided means whereby only persons qualified by learning, intellectual capacity and good moral character may be permitted to defend in a court of justice the reputation,

property or life of a fellow-citizen, the presumption necessarily followed that one who has by such statutory means become possessed of the proper credentials has the learning, the judgment and the capacity to decide as to what are the best methods for securing his client's rights, and that the client in selecting a counsel had elected to abide by the results of his acts. Courts have with great unanimity, it said, compelled persons to stand by and be responsible for the omissions and blunders of their attorneys in legal proceedings. But the Court thought that there was a limit to this principle; that a client, for example, would not be bound by the acts of an attorney who should become insane during the progress of a trial. And the acts of this particular attorney seemed to be those of a lunatic or an idiot. He had urged on the trial that no act of Congress had ever given the city of St. Louis jurisdiction to punish crime; that the State could not prove the killing without first proving that the deceased was alive and did not kill himself, and that a confession made in Illinois could not be proved in Missouri, because the "United States have made no law" to authorize it. And though the prisoner had implored him to allow him to take the stand to tell the story of the killing, he had refused, "because a prisoner charged with murder could not testify in his own defense." These are a few absurdities with which the record abounded. The State constitution, said the Court, requires that in all criminal prosecutions the accused shall have the right to appear and defend in person and by counsel. The prisoner did not have "counsel" within this provision, and a new trial was therefore granted. (*State vs. Jones*, 12 Mo. (App.) 93). And yet the State had, by its proper officers, declared that this man was qualified to practice the profession of the law. It could not even claim to have been defrauded, for the simple old negro was incapable of that. It was but the natural result of a bad system.

Strangely enough, one or two law schools—and they are not in the Southwest, either—are adding much to the power of the

supporters of this system, encouraging it, and have actually gone into partnership with it, for they announce in their catalogues that students who have been admitted to the bar of any State will be admitted to the Senior class without passing through the Junior class. We hail from west of the Mississippi, and from us is not expected so high a standard of qualification for professional study, and yet we could not be induced to make any such offer even though the numbers of our students should be largely increased. For while we know a certificate of admission to the bar may mean that the holder of it has read some law, it may mean nothing of the kind. With us the candidate for admission to the Senior class must pass an examination in all the subjects of the Junior year, whether he be a licensed attorney or not. Why? Because in every case I am able to remember in which a student in our law school has been rejected in the Junior year, he has at once been admitted to the bar of some circuit court. He has miserably failed; he could not go any further in our law school without another year of Junior work, and yet, armed with the certificate of admission to the bar, he is entitled to enter the Senior class of at least two eastern law schools. Out of this offer there is growing up, I am informed on good authority, what I might call a conditional admission or rather a license granted upon a condition subsequent. A man wants to be admitted to the bar and a degree from a law school, and, like many people in this day, he wants them as quickly as possible. He has never opened a law book. He goes to some judge and says: I want to be admitted to the bar. The judge asks him how much he has read. He has not read anything, but if the judge will give him a license to practice he will take the next train and go to a law school whose announcement he has in his hand, and study law for a year. The judge may not at once see what he is driving at, so he continues: "Suppose I had a degree from a law school or had studied at one for one year, you would give me a license to practice, I suppose?" "Certainly." "Well, this is the

same thing, if you will take my word for it. Your license will enable me to get through in one year, and I promise not to practice until I have studied a year at the law school." This is a very fair proposition and the judge accepts it, and in a few days some law school has a member of the bar entered in its Senior class—a member of the bar who has never read a page of law. The offer to members of the bar to become Senior students has, I am sure, been made by these schools in good faith and unconscious of the results, and I trust what I have said may lead to its modification.

We who are most interested in legal education are at present petitioning the legislature to restrict to the appellate courts the power of admission to the bar. A great advance in the standard of admission would, we are assured, follow this change in the law. At present the greatest competitors and rivals of the law schools are the circuit courts. Many who choose the legal profession for their calling look upon it as a waste of time to spend even two years at a law school when the end they have in view—a license to practice—may be obtained without any expenditure of time, and very little expenditure of money. This door to the bar with its dubious standards once closed, we should see a large increase in the number of students in the law departments of our colleges and universities. The candidate for admission to the bar as between the appellate court examination and the stricter law school final examination would prefer to take the latter preceded as it is by a systematic course of instruction, where the former only follows the student's own reading in his own way with such help as he may receive from some friendly lawyer. My purpose in this paper is to avail myself of the opportunity presented to me to-day of calling attention to this unfortunate phase of the requirements for admission to the bar in my own and other States, and to ask that the voice of this Association (especially of those engaged in teaching the law) be enlisted in the endeavor which we are making at this time to raise the standard of legal education in the West by calling for the abolition of this power now vested

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in the inferior courts—a power which I believe to be the greatest hindrance to any advance in the requirements for admission to the bar which exists to-day. I cannot but feel that it must be the conviction of all the members of this Section of the Association, and likewise of the practicing lawyers assembled here this week, that the jurisdiction to admit to the bar of any State should reside in the highest court of that State, where a right standard may be expected to obtain, and where the qualifications required may be uniform and known; and shall not be allowed to remain in the inferior courts whose methods cannot be always known, whose standards must and do vary, and whose execution of this important trust has been found to be wanting.

PAPER

READ BY

SIMEON E. BALDWIN.

OF NEW HAVEN, CONNECTICUT.

[BEFORE THE SECTION OF LEGAL EDUCATION.]

LAW SCHOOL LIBRARIES, AND HOW TO USE THEM.

Law may be learned, as a profession, with no other library than a few text-books, or with no library at all.

There has been no better way yet invented to teach philosophy than the Socratic one, and it would be an ideal training in the science of jurisprudence for a willing learner to get all he knew from a willing teacher, able and ready to make himself a speaking book.

But under our American system of reliance on judicial precedents, while the profession might be taught by word of mouth, it cannot be practiced to advantage, in any large way, without the power and the opportunity to consult books, and many books. In the larger States, and in the Courts of the United States, a careful study of digests, and generally of reported cases, is indispensable before any case of difficulty can properly be brought to the attention of the Court.

One great aim of legal education for America, then, must be to teach how best to handle such books, so as to get the most out of them, and to be able to present it in the most effective way. The scholar must learn to search out what he wants intelligently, quickly, accurately. He must learn where to go and when to go; what to look for, and how to read it. A book may be so read as to be worse than unread.

The way to do anything easily is to do it often. The way to know how to handle a book is to handle a great many.

The ideal law library, then, in this point of view—is the library where there is the freest access to the shelves. How much more can any man of literary taste make of his own library, small though it be, than of the largest public collection! He knows the faces, or the backs, of every volume. He knows their tone, their aim, their merits and their shortcomings with that sort of familiarity which comes only from close personal acquaintance. The very page on which this or that weighty sentence is to be found is fresh in his memory.

So far as the Law School library can be assimilated to one's own private library, in these respects, so much the better for every student. This is one of the main benefits to be derived from training in a lawyer's office. What books he has are fully at the command of his clerks and students.

Such was the ancient practice also at our Universities.

The happy inability to provide a sufficient force of librarians and librarians' assistants, on account of the expense it would involve, left students generally free to rummage the shelves for themselves, each pursuing his reading by an alcove table, heaped, if he cared for them, with twenty books, to be exchanged in ten minutes, perhaps, by his own hand, for twenty others.

The President of a great University, where growth of numbers had driven the authorities to the adoption of the stack system, and the doling out of books, one by one, through a hole in the wall, said to me not long since that, free as he was to go behind the railing, and read where he would, and as he would, the whole atmosphere and spirit of the place were so changed for him that he made much less use of the library than ever before, and it had lost for him a great part of its attraction and utility.

The member of a Law School Faculty who has access to shelves from which the students are debarred feels that he has almost an unfair advantage over them, and is in danger of expecting more from them than he will find.

The best part of education, Herbert Spencer has well said, is what we get without knowing it. The best hold of a legal

doctrine is often secured by a casual glance at some passage, met by accident while looking for something else, and which would never have been seen, had the student's search for what he was in pursuit of been directed and limited by the aid of a librarian.

The cardinal rule in library administration, then, I should say, is to give every student as free access to the shelves as is reasonably possible.

In law schools with less than a hundred students, I believe it is entirely practicable to give them such access without restriction. Such a school will naturally be divided into two or three classes, not over fifty of whom ordinarily can be studying the same subject at the same time. And of this possible fifty, half will make only occasional use of the library, and but eight or ten will be constant readers there.

Over numbers so small a single librarian can readily keep sufficient watch to see that the privileges they receive are not abused; nor will the same volume often be wanted by several, at the same moment.

Of certain books, several copies must, of course, be kept. Duplicates have an important place in every library of a public nature, but in none more so than in the law library. Our profession is not only explained, like other sciences, in books. For the American and the Englishman it is made by books. It is made up of or from the opinions of Judges in reported cases. Every such report fills to us the place of the specimen to the naturalist. But he may often meet a hundred specimens, in a summer's walk, each like the other in all important characteristics. We can turn to but one case for the introduction of this or that rule or doctrine into our law, or for its best statement or clearest application.

Hence, if we are teaching a class, we necessarily refer every one of them, at the same time, and in the same connection, to the same case or line of cases. We may do it directly, or, by the use of a text-book, citing certain authorities, indirectly.

In either mode, the result for the willing and resolute student is the same. He takes the first convenient opportunity to look at the volume of reports to which his attention has been directed. If some one has been before him, and the only copy is in another's hand, he feels discouraged; if, on the other hand, he is the first on the ground, and bears it off to his reading table, he feels pressed and hurried by the thought that somebody else is watching his movements, and impatiently waiting his turn.

There is but one adequate remedy, the possession of duplicates. The Harvard library, the best, I believe, owned by any American law school, has three sets of all the leading American and English reports. Those of most of our schools have heretofore been generally supplied only with duplicates of the sets most commonly used; as those of the State in which the school is situated, and of the Supreme Court of the United States.

During the last ten years, however, the necessity of buying duplicates has been largely removed by the rapid extension of the "case system" of instruction, and the simultaneous multiplication of our reports by different compilations of the same decisions.

An instructor, by taking a little pains, or having some bright student take it for him, can now readily cite an authority by reference to two or three separate sets of reports, in each of which it will be given fairly well. The American Decisions, American State Reports, and the different series of Reporters, issued by the West Publishing Company, not to mention other publications of more limited range, have been, in this way, great aids in Law School work.

There are also, now, few of our schools in which cases are not given out for study, which have been printed and arranged especially for use in instruction. In many, these are bound up in text-book form; in some, each is printed and paged separately; but in all they render resort to the library, for the particular case under examination, unusual, if not unnecessary.

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Different editions of the leading text-books are, of course, still desirable, and in the case of a few, such as Kent's Commentaries, Cooley's Constitutional Limitations, or Benjamin on Sales, several copies of the last editions.

I have said that in schools with less than a hundred students the library may be safely opened to all as freely as to the librarian or to the Professors; but I believe that, under modern conditions, similar liberty can be given even to a much greater number. These conditions are not simply the various publications of the same cases, differently combined or arranged, with which the press now teems, but also the better knowledge we have come to have of the uses of a reading room near but separate from the main collections of the library. Here should be the reports of the Supreme Court of the United States and of the State in which the school is situated, with the leading digests and most-thumbed text-books.

The consulting room of a large Law School will have, thus arranged, at the hand of the student, a library perhaps superior to the entire collection of many a younger or weaker institution; and by giving each a desk or drawer of his own, under lock and key, will make him feel almost as much at home as if he were by his study table in his own room.

The school with which I am most familiar has an attendance of not far from two hundred, and we have never found it necessary to exclude our men from free access to all the books we own, with the exception of a few rare volumes or editions, which are seldom consulted, like Chipman's Vermont Reports, or some ancient Elzevir.

Occasionally, a book has been stolen; often one is carelessly used or misplaced; not a few are thumbed to pieces and worn out. But what are books for? The Romans distinguished between *use* and *usufruct*. *Usus* was the use of a thing; *usufructus* its use and enjoyment. I would concede to our students the usufruct of our books, even if they sometimes transgress the line which separates it from *dominium*, and abuse the gift.

Whether the book is taken from the shelves by the librarian or by the student himself, it is taken that it may be handled and read. Many of our students have seen few books before they come to us. They are unaccustomed to their use. They do not know how easily a strong binding may be cracked, or a white page soiled by a dirty finger. They have had no home library to range through at will since the days of early childhood. They have just begun to understand what Zeno was taught by the oracle, when he asked how he should live, and was told to inquire of the dead. They know that our law is the growth and the wisdom of many generations, and are curious to see for themselves, when they please and as they please, the story of its development. Every railing and gate between them and the main bookshelves inevitably discourages such investigations. They are not great obstacles, but obstacles they are.

I am glad to see a book worn out by honest use. I wish, in these days of *multa, non multum*, that more were.

It is our custom at Yale to look over the library carefully, at the beginning of each Summer vacation, for volumes with loose pages, cracked binding or "started" covers and send them to the binders, and during the last ten years our average annual expense for such repairs has not exceeded a hundred dollars. We have, however, but about 9,000 volumes. At Harvard, where the number of students has been considerably larger and there is a library of 33,000 volumes, the annual expense has averaged nearly \$600 during the last twenty-five years, although for the greater part of this time most of the books were not directly accessible to the students upon the shelves.

There is no library which it is so easy to select and maintain as the American law library. All the books will be upon one subject. There will be no schools among the authors, or almost none. There will be no apparatus to be illustrated by prints or photographs. The cataloguing may be of the simplest; the most obvious mode of arranging the books is the best.

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If I were to commence the collection of a Law School library with, as is ordinarily the case, but a few thousand or a few hundred dollars to expend, I would begin first with the statutes, reports and digests of the State in which the School is, and to which, therefore, a large portion of the students will always belong. Next should come those of the United States, beginning with the purchase of the Supreme Court reports.

The English Common Law reports should follow, and then those of the State, whatever it may be, whose laws and institutions are most like those of the State to which the school belongs. Not until these sets, with the appropriate digests, have been procured would I buy a single text-book.

When the library includes all the American reports in the official editions with the latest revision of the statutes of each State; all the English reports with the British statutes at large and State trials; the latest digests of these various reports; and about five hundred volumes of the best text-books, new and old, it will have cost perhaps \$40,000, and will contain everything the ordinary student will need to consult. The Irish, Scotch and Canadian reports can be added later, and works on English and American constitutional history and Roman law. General and comparative jurisprudence should receive attention in due time; and this may mean as little or as much as the state of the treasury and the bent of the teachers may justify or require.

The expense of keeping up all the sets of reports which I have mentioned, with their attendant digests, and the new revisions of general statutes, will be not far from a thousand dollars a year. The purchase of duplicates, which will become necessary as the library and, with it, the number of students increases, will involve a continually greater and greater outlay. To maintain a really great library, one, say, of thirty thousand volumes or more, where purchases are freely made of institutional works illustrating all the great systems of administrative law, and the general history and principles of jurisprudence, from five to ten thousand dollars a year may easily and wisely

be spent; but three-quarters of this would be really laid out for the benefit of the instructors, or of scholars engaged in the examination of special topics but remotely connected with the subject of legal education.

I have said nothing specifically as to the purchase of legal periodicals. They have a function in assisting and marking the development of legal doctrine; but my own conviction is that they are often dangerous and misleading reading for the ordinary law student. His business is to learn what the law is, rather than what it is going to be; to learn it from the voice of authority and of time, rather than that of the anonymous reviewer, or the passing comment of the month; to study the great works and the great cases, rather than the newest ones, or than what somebody says of them.

Let me add two more brief suggestions. 1. As to shelf arrangement. In arranging the reports upon the shelves, the librarian should be careful to leave space for the new volumes likely to appear during the succeeding five or six years, and to close up each file by something that will prevent the last volume from falling over on its side, and also keep its covers from warping. For this purpose I believe the best thing is a solid block of hard wood, cut in the form of a very thick octavo volume, of law book size.

2. As to library hours. Library hours, in a school of any considerable size, ought, I think, to be extended into the evening. Books are the plant of our business, and a working plant pays best when it is in most constant use. Between the men who are supporting themselves by some outside occupation, the athletes who spend half their afternoons at the ball-field, and the hard workers who are making the most of their opportunities every evening will find some in the library. The adoption of this plan will ordinarily require the employment of an assistant librarian, but it will always be easy to select from the students a competent man for such duty, who will be glad to perform it as an equivalent for his tuition.

PAPER

READ BY

WOODROW WILSON,

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[BEFORE THE SECTION OF LEGAL EDUCATION.]

LEGAL EDUCATION OF UNDERGRADUATES.

At no time, it must seem to every thoughtful man, has the study of the law in a broad and enlightened spirit been of more vital importance to society than it is at present. For society and its established principles of conduct and authority are being subjected nowadays to a peculiarly sharp and disturbing scrutiny. Men of every calibre and all dispositions have assumed the rôle of critics. Society does not suit one because it has loitered too long on the way to perfection. It displeases another because it has been all too energetic in its mistaken zeal for change. Some censure it because it is not altruistic; others, because it has not noted and acted upon radical practical changes in modern life. On one hand it is condemned for its lack of heart and humane feeling; on another, for its lack of practical sagacity. It is bidden, in some quarters, to make the individual freer, in others to take him more thoroughly in hand for his discipline and guidance. Some want the State to regulate monopolies, others wish it to assume the entire management of them out of hand. Every one knows that the relations—even the legal relations—now existing between capitalists and laborers are seriously amiss, and every one has his own remedy for the evil. None of the critics of society stop short with censure; each has his reform to propose; each comes with the draft of a new law in his hand. There is an accumulating clamor for legislation, for changes in the law—an

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almost pathetic faith that new machinery for the voter and new rules for the courts will surely bring regeneration and progress. The lawyer, meanwhile, is everywhere sadly discredited. The world is in search of prophets, not barristers. It wants change, not a judgment. The lawyer will stickle for form and regularity, will demand exactness of phrase and certitude of provision, workable laws and rules susceptible of being consistently and equitably administered. He has puzzling points in his head, too, about the practicability of getting at certain vague rights upon which philanthropists insist. And so reformers shun him and deem his counsel disheartening. It must be granted, moreover, that they are not without striking instances, drawn out of authentic history, of lawyers having acted as very stubborn and very stupid obstructionists, and having refused to take any part in necessary, nay inevitable, changes in the law which they might have moderated and shaped to temperate uses had they not resisted them and so rendered them the more inapt and extreme. The prophets, therefore, go without their counsel and lend countenance to the improving of statutes by any hopeful man, with or without experience in such critical matters, who is of their creed and vision.

No doubt much of this new ardor for reform is sound and just, an earnest of quick health in the social body, and a signal of hope. No man among us is so blind as not to see that the law limps sadly at many points; that it has not at all kept pace with the swift and radical changes that have transformed industrial society beyond recognition almost within a single generation. I do not doubt that the law of contract and association and taxation and tenure needs amendment and remodeling. But I deprecate the haste, the ignorance, the intemperance, the fatuity of many of those who are seeking our suffrages as reformers. I believe that we shall run upon irreparable disaster unless we ponder very seriously the proper means and practicable measures of reform. I feel sure, therefore, that nothing will steady us like a body of citizens instructed in the essential nature and

processes of law and a school of lawyers deeply versed in the methods by which the law has grown, the vital principles by which, under every system, it has been pervaded, its means of serving society and its means of guiding it. We need laymen who understand the necessity for law, and the right uses of it, too well to be unduly impatient of its restraints; and lawyers who understand the necessity for reform and the safe means of affecting it, too well to be unreasonably shy of assisting it. The worst enemy to the law is the man who knows only its technical details and neglects its generative principles, and the worst enemy of the lawyer is the man who does not comprehend why it is that there need be any technical details at all. There is critical danger that the law may cease or fail to be a liberal profession and lose its guiding place in society accordingly; and I know of no measure so well calculated to deliver us from that danger as the proper establishment of law studies as a university discipline, no more to be confined to technical and professional schools than the study of science. Law is a branch of political science, and in this day especially we need to insist in very plain terms upon its study as such. In the presence of many new and strange questions, our courts are puzzled and disconcerted. Called upon to find principles of law or procedure for the amazing developments of an industrial society which seems constantly to shift and change under their very eyes, they either strain old analogies and wrest old precedents to strange uses or else cut the knot with some sharp remedy which seems to damage as many rights as it preserves. We need lawyers now, if ever, who have drunk deeper at the fountains of the law, much deeper, than the merely technical lawyer, who is only an expert in an intricate and formal business; lawyers who have explored the sources as well as tapped the streams of the law, and who can stand in court as advisers as well as pleaders, able to suggest the missing principles and assist at the adaptation of remedies. Such men we shall get when we recognize law as a university study. You must begin

to make your lawyer, in short, on the other side of the law school. There are other reasons, to be sure, for teaching undergraduates to understand law. Every business man must wish such a training, for his business runs everywhere amidst the intricacies of the law. Every minister should know as intimately as possible the function that law performs in society, for our ministers are nowadays our reformers, and they make but a silly exhibition of themselves when they talk as if law could be recast to-morrow upon the lines of the nearest text. Every citizen should know what law is, how it came into existence, what relation its form bears to its substance, and how it gives to society its fibre and strength and poise of frame. But our concern is with the lawyer, and it is certainly he more than any other who needs to be versed in the philosophy and the history of law. In the Law School he cannot get this view of his great subject. Time does not serve. Details, niceties, special statutes, entangled decisions crowd into the foreground. He is too near the mass of the law and too much engaged with a critical scrutiny and nice discrimination of its multifarious parts to take his distance, observe whence it came and whither it is tending, what its greater proportions are and its commanding principles. He must see all this first, and then the details will not confuse or mislead him. What the instruction given him in college should be, how arranged, how imparted, how emphasized, is the important and difficult question. One thing is plain: it must be put in its right place among his other studies. It must be made evident from its position, its method, its outlook, that it is an integral portion of political science. In law the principles of social relationship—elsewhere in solution, in philanthropy, in social intercourse, in political economy—are brought to a sharp crystalization. It is that portion of the established social habit which has gained distinct and formal recognition in the shape of uniform rules, backed by the authority and the power of government, and all the influences that move and mould society serve to explain and animate and prophesy for law. The lawyer should

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know what these influences are, how they are to be recognized and their force reckoned, how they are to be dealt with and directed. The man who teaches law to undergraduates should be a political scientist and—what nowadays we recognize as a different thing—a sociologist; and I do not hesitate to add that the teacher of sociology and political science should have a thorough acquaintance with the principles which govern the life of law. The statical forces of law which hold society steadfast, and the dynamical forces of politics and morals and industrial motive, which subject it to almost constant change, are not to be separated as if they had no causal connections. Austin has done us the great disservice of putting his analysis of law into such terms as to create the very general impression among lawyers who do not think, but swallow formulas, that law is somehow made independently of the bulk of the community, and that it is their business to accept and apply it as it is without troubling themselves to look beyond the statute or decision in which it is embodied. I do not see how any one can possibly understand the law or know anything of it, except *memoriter*, without getting a clear idea of how it is in fact generated in society and adapted from age to age to its immediate needs and uses.

For my own part, I have a very clear notion of the field which ought to be covered in the undergraduate instruction of young men who expect to become lawyers. They ought, in the first place, to be taught very carefully the differences between the two great bodies of law which we call public and private. Public law is a thing of polity; private law, a product of the essential relationship existing between man and man in any society, no matter what its political constitution. The student, as well as every other citizen, ought to know the nature and organization of the government he lives under and the principles, whether of liberty or authority, which regulate the relations of individuals to the State. But the student of the law should go further than the citizen, and scrutinize those conceptions of jurial relationship which are in a sense independent

of polity. He should be very carefully grounded in the principles of general jurisprudence before he undertakes to master any particular system of law. For the time, the explicit provisions of particular systems should serve his thought simply as illustrations, concrete examples and verifications. It is possible—and I need not say how desirable—that he should be made familiar with a sketch, general, of course, and yet not too general, of the history of law; its genesis and form in the childhood of States, its development in classical instances in antique States, its passage through the strange crucible of the middle ages, and the circumstances of its development in the societies of modern Europe. But that is not enough. He should not be left with nothing but this sketch, which can hardly do more than provoke his curiosity upon a hundred and one points left undeveloped. He must be given, besides, two bodies of law for his more particular examination, in respect of their individual character and the way they came about; one a system aged and completed, the other a system of our own time and as yet unfinished. The former can be none other than the splendid system of Rome, which no lawyer can contemplate without emotion or examine without instruction; the other, if one had the knowledge and the foreign taste, might be the law of France or the law of Prussia, but I should think it ought to be the common law of England. We know much less about how the common law was begotten and bred and brought to maturity than French and German scholars know of the derivation and growth of their own systems, to our shame be it said; but there is the more reason that we should bestir ourselves to put together what we do know, extend it and complete it; and nothing is quite so stimulating or so instructive to the young student as to be present at such a process of investigation and take part in it where he can. That is the lesson of modern educational methods.

I need not say, after this survey of the field, that the method of instruction should at every step be both historical and comparative. No other method has the slightest claim to be called

philosophical. For by the philosophy of law I do not mean its metaphysics; I mean its rational explanation; and no explanation of law can be rational which does not make it clear why and how law came into existence, what are the essential and what the accidental contrasts and divergencies between particular systems, and what the principles are which everywhere prevail and under whatever circumstances, as if by a sort of radical necessity. And here let me pay my compliments in passing to the question whether the law, when taught as a profession, should be taught by the inductive use of cases or by the deductive use of principles already extracted from the cases and formulated in texts. The teaching of law as a profession should no more be irrational than the teaching of it as part of a liberal education or as a preparation for law studies. The case method, therefore, falls short and is slavish if it stops in each instance with the first case in a series. Where did the court get their principle from in the first case, if there was, indeed, neither statute nor precedent; and, if there was a statute, what guided them to its interior meaning? Such are the questions which reveal to the student, when successfully answered, the real genesis and significance of law. In like manner, the text-book method is neither philosophical nor really instructive unless the principles made use of are challenged, cross-questioned, and made to give a rational account of themselves. It is only when principle is thus realized as a living and necessary thing, with as clear a pedigree and explanation as a horse or a king, that it can become really a part of the lawyer's thought and judgment and professional equipment. The first case, of course, came to the judges out of a special set of circumstances in the community around them, and they were able to decide it because they understood the conditions out of which it had arisen and knew what those conditions demanded. They pluck out the heart of a statute in the same way, by understanding what gave rise to its enactment and what it is that it is intended to accomplish. The judge, after all, if he be of the sort we quote and make a veritable

authority of, is a seer and a man who might have been a statesman or a professor of political science! The "common" law we believe to have arisen out of *custom*, out of the life of the people; and have not all our writers upon the common law, from astute Sir Matthew Hale down to formal Mr. Broom, assumed that statutes are made but in supplement to it or amendment of it, as if it were complete and they exceptional? This is plainly the assumption of the celebrated maxims with regard to the interpretation of statutes: "What was the common law before the making of the act?" "What was the mischief and defect against which the common law did not provide?" "What remedy has the legislature devised and applied?" "The true reason of the remedy?" And have you not noted the result of this process of interpretation, the new law held up to the standard of the old and treated as if it were meant, of course, to be fitted into it? Old statutes disappear, as it were by digestion, into the general body of principles; or, rather, for the process is deliberate, they are kneaded into the mass by much pressing and handling in the courts, until writers are sorely puzzled to distinguish common from statute law. New statutes, too, immediately begin to feel and yield to the same process. In time they, too, will be so knitted into the body of the law by the careful stitches of successive generations of judges as to have become fairly indistinguishable from the material with which they have been combined. Through the courts they are being played upon and weather-beaten by the practical conditions of the economic and moral life of the community, and so are being steadily moulded by forces which the student must afterwards re-examine if he would comprehend and veritably master the law which is their product.

To take a definite example, in order to make my meaning clearer, it is a favorite idea of mine that commercial law should be taught along with *the history of commerce*, which will make it plain what gave rise to the relations of business with which the law deals, how the forms of commercial negotiation and of

commercial paper came into existence, and how statutes and all the imperative regulations of the law have come after the fact, fixing obligations already habitually recognized, or at any rate ready to be put into form, and so simply serving merchants, not inventing transactions for them. One portion of our law we already study in this way—the law of real property. It has retained forms and phrases which we cannot understand without turning back to examine the feudal system and the social conditions of the middle ages; and so we are happily obliged to give heed to its genesis. We ought to do the same for every portion of the law.

I shall not need to argue, after what I have said, that the studies I have outlined properly find a place in the curriculum of a college. They are liberal studies, not technical. I am careful, in my own lecturing, to treat such subjects as strictly as possible as a part of political science—to exhibit law as an instrument of society, and not as the subject-matter of a technical profession. I am punctilious to give out as little as may be of such law as could be used in court to win a case with. If you say that such studies, though no doubt very interesting, and even stimulating and enlightening, are only for the man who has the time for them; that they are a luxury, and are but so much the more added to what the lawyer will in any case be obliged to learn, I reply that you are mistaken; that such studies, besides being in themselves a liberal education, really save time. It saves time to become more than a lawyer and be a jurist. You have just so much the readier and more various means of ascertaining and enforcing the methods and the arguments by which to win cases, if that is all you want; and you will the sooner get the best sort of practice. Mr. James Bryce was for twenty-three years professor of the civil law at the University of Oxford, taking up the office in 1870, and laying it down last year; and during all of that time, I believe, he continued in the active practice of his profession as a barrister. He says very frankly, in his interesting valedictory lecture, that his knowledge of Roman law has seldom, if ever,

been of ~~direct and immediate~~ service to him in his practical law business; and he doubts whether any of his pupils has ever found occasion to use it in court. But he confidently expresses the opinion that a student who, out of three years devoted to law study, has given one year to Roman law and two to English, will, at the end of the period, know as much English law as the man who has given all three of the years to studying nothing else; and he intimates that the student of Roman law will know English law more discriminatingly and with an easier mastery. That is what I mean by saving time; *saving subsequent time*. The more various the apparatus of study, the easier the study. And so I believe that, by teaching law to undergraduates thus historically and comparatively, and as a part of general political science, as if it were stuff of society, with a wealth of instructive experience wrapped up in it, a material and vehicle of life, I am making, so far as I succeed, not only enlightened men, but also successful lawyers.

I do not hesitate to say, moreover, that in general view and method professional instruction in law should be of the same kind. Just in proportion as you give, along with every principle, its history and its rational explanation, just in that proportion do you increase the ease and rapidity with which the pupil will master it, and the certainty that he will retain and be able to make accurate use of it. Of course, professional instruction in law must be very different in detail. It must deal with the law as a practical science and must expound with not a little minuteness the ways in which it is to be applied to business and to the changing and infinitely various circumstances of all the formal dealings of society. It is inevitable, as I have already said, that it should be technical, and that its technicalities should even crowd the foreground of every exposition. But what of the background? what of the light in which all these details are to be exhibited, the setting and the reasonable order in which they are to be placed? What of the accompanying comments and the accompanying outlines of development? It is absolutely necessary that these countless

technical niceties should be given *their significance*, their connection with the principles whose servants and attendants they are, and to which they should always be obedient. To do this saves time, I urge again, as well as makes better, more masterful and sure-footed lawyers. A technicality is difficult only so long as it is unexplained and has to be kept sticking to the memory by external and artificial pressure. So soon as you explain it you bring out its adhesive quality and it will not leave you so long as you continue to understand it. There's no glue like comprehension! I have observed that the young American very keenly relishes a technicality and makes no difficulty of it at all, if you will but show him how it points a principle or sums up an experience. He likes the intellectual art of navigating a subtlety amidst practical difficulties.

We do not in this country recognize, at any rate in any formal manner, the distinction drawn in the old country between attorneys and barristers. Our barristers are their own attorneys, and are in fact very much more engaged in most instances in attorney work than in the conduct of actual litigation. It is for this reason, no doubt, that our law schools have come to confine themselves so exclusively to a very technical course of training. It is not clearly enough realized, I venture to think, however, that this is the case; that we devote our instruction to the preparation of attorneys, who direct the *business* of the law and must be technical experts, and neglect to provide ourselves, in any systematic way, with barristers, who handle the *principles* of the law in argument, and who must possess a knowledge of legal reasoning at once comprehensive and flexible. We must not forget, either, that we need judges—under our system of government a great many—and that we get so many illiberal judgments from our courts because we have so many mere attorneys on the bench. A barrister, let it be said very frankly, has a much higher function than the attorney—as the judge has, by common consent, a higher function than either. Any exact and painstaking man may make a fairly good attorney; but a man who would plead cases

must, if he would master his part, be a man capable of making law for the court—making it, I mean, as courts make it, by systematic interpretation. Systematic interpretation is the reading together, as the premises for a conclusion, of different parts of a body of law. It is driving precedents into court, not tandem, but abreast, to beat a new road and pick the court up to take them into a fresh country. It is bringing the thought of a system of law to a new focus, and so effecting a new illumination. A few men we always have who can do this. They are always men who have somehow gotten a wide outlook upon men and books; who have given themselves a large equipment and diligently multiplied their resources. They have not in all cases gotten these things from a class-room or the guidance of any teacher. Sometimes they have conquered their territory for themselves, unassisted, because they had the instinct of mastery, and the courage, and the initiative. But systematic study under the right sort of stimulation and suggestion must be credited with most such master practitioners, I believe. It is worth while considering whether we could not deliberately produce them in somewhat greater numbers by a partial change in the method and point of view of our instruction in the law schools. Many a young fellow, not yet awakened or stimulated by a liberal course of preparation for professional studies would discover the life and power of the law for himself if you would but once make the necessary suggestions to his mind, if you would but enable him to see the law as a thing full of life and growth, quick with questions waiting to be answered out of accessible books and by means of study sure to yield tremendous increase of forensic power.

But the best hope is from the colleges. We must invite undergraduates to become jurists, and systematically show them how it can be done. It is the proper function of universities, certainly, to train citizens; and while training citizens you can provoke jurists. It is in this sense that our young men must be made to become lawyers before entering law schools. Our Committee on Legal Education, in their admirable report,

insist, with irresistible show of reason, that we must give over devoting our attention so exclusively to the detail of highly specialized portions of the law and return to the earlier and better method of giving the student, first of all, at any rate, and as a foundation for everything that is to follow, a unified and comprehensive view of the law as a whole, displayed and connected as a system, its parts shown in their due proportions and relations, and its entire body erected for a single view. In my opinion, only the coöperation of the colleges can make this possible. We all remember that Blackstone's Commentaries were first of all what we should call a course of college lectures. To view the law as a whole, in its philosophical and historical relationships and for the purpose of discovering its whole significance is the function, not of the professional expert, but of the political scientist. The means and the spirit for such study must be supplied by the universities; the law schools must welcome and carry forward their employment. When we have universities investigating and teaching law as a science, we may ask the law schools to adopt the spirit of the universities, and to transmit the results of such study while carrying forward their own proper function of imparting law as an art. The undergraduate must determine what the law student is to be.

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PAPER

READ BY

JOHN H. WIGMORE,

OF CHICAGO, ILLINOIS,

[BEFORE THE SECTION OF LEGAL EDUCATION.]

A PRINCIPLE OF ORTHODOX LEGAL EDUCATION.

I am concerned to-day to emphasize before this meeting a principle which is as yet honored more in the breach than in the observance, but should nevertheless be fundamental in modern legal education. I mean the principle that when a student enters upon his professional preparation in a law school, he must give to it his whole working time, and that no other and competing occupation is compatible with an adequate training.

I look about among the other professional occupations—I mean those which involve (as commercial and industrial life ordinarily does not) the application to a livelihood of a mass of principles contained in a scientific system which must previously be mastered—I look about among all these, and I find this truth everywhere accepted and nowhere disputed. For the young man who looks forward to becoming a civil engineer, a physician, a minister, there is no other thought. When he has selected his school, and enters upon the study of engineering science, or medical science, or theology, he gives himself wholly, for the two or three or four years, to the mastery of the science he has chosen. It never occurs to him that he can adequately accomplish his purpose by any other method. More than this, and behind it all, he is supported in and compelled to this course by professional and public sentiment. The standards of his profession and his opportunities of future success assume and are based upon the requirement of such a mode of preparation. (I speak, of course, of the orthodox

and standard practice, not of casual instances of that low-grade training which can always be found if it is wanted, but is regarded distinctly as a deviation from the accepted course). Of all the popular and recognized institutions offering a training for engineering, medicine, or theology, I suppose there is not one whose catalogue holds out any different expectation or fails to assume this fundamental truth. It is of the law alone that this cannot be said. In the catalogues of law schools purporting to give entire and adequate training for a profession no whit different in its conditions and demands from these others, we find no such assumption and no such expectation. Institutions making every claim for the orthodoxy and propriety of their methods give it to be understood that the devotion of the substantial part of the student's time to outside activities is quite compatible with the pursuance of their work and therefore with adequate preparation for the profession. Usually this outside activity is supposed to be found in the work of a law office, but, so far as appears, it is permitted to be, and in many cases in fact is any occupation whatever—a real estate office, a broker's office, a bank, an insurance agency. I have myself talked with a young man who hoped to fit as a lawyer while keeping a position as a head clerk in a wholesale tobacco firm, and with one who had pursued a law-school course while actively employed in the United States Express Company; plumbers, drug clerks, and hard-working and perhaps well-paid followers of many other mercantile and industrial employments are to-day to be found in the law schools of each metropolis.

It is not difficult to understand how this has come about. In the first place, we are scarcely twenty-five years away from the time when a law-school training was a rarity. Systematic legal education, by that gradual process which is essential to the healthy development of every institution, from involving merely a course of lectures by some eminent lawyer has grown to mean a detailed treatment of the whole field of law by a group of professional instructors,—has grown, that is, from an

accessory, a luxury, a merely useful help, to be a fundamental, a necessity, an essential preliminary to the practice of the profession. But it has not yet quite lost its accessory character, especially in the eyes of the rural bar. While it now covers in detail all the main legal topics, it is still not regarded by the whole profession as anything more than a useful but non-essential help. In this view, of course, it is not material that the student should be expected to give all his time to study. In the next place, there is in our largest cities of late years a class of young men who are attracted by the ease with which admission to the bar may ordinarily be had, and who fancy that it would be a pleasant thing to have the privileges of the bar and to do their own law business or perhaps to pick up an additional income from odd commissions. This class is constantly exercising a strong pressure upon schools aiming to give a strictly professional preparation, and also is encouraging the opening of schools by those who are willing to make a livelihood by giving these young men the little that they demand. These seem to be the main causes of the present regrettable condition of things.

We need not quarrel with those who are willing to supply this demand. But if we believe that the interests of thorough training are threatened, we cannot be blamed if we set ourselves to seek the means of improvement and of maintaining the standard of orthodox and strictly professional training. The thought I wish to lay before this meeting is that something must be done to distinguish the orthodox and legitimate training from that which is not.

But first a word as to that attitude which claims for thorough legal education at a school that it is quite compatible with one thing at least, with work by the student in a law-office. This is, no doubt, a moot question, and I suppose that most of us are destined either by constitution or by training to hold fixed and irremovable opinions on one side or the other. I can hardly hope by any argument of mine to affect the existing opinion of another, and I shall merely state my own conviction.

That conviction is that the participation by a law school student in the work of a lawyer's office during the school-year is an *unmitigated disadvantage to him*. The course of reasoning is simple. An intending lawyer has to reach technical acquirements of two sorts: first and foremost, the law itself; second, familiarity with the mechanical appurtenances of its application. The first element is found in the books, and only there. This he gets in the law school, and only there; for it is to-day conceded that the study of the law can be properly pursued only in a school, and furthermore, few lawyers to-day pretend to teach law to their clerks. The second element, on the other hand, the young man gets chiefly in the office and the courts. Each element is indispensable to him. The fallacy is to believe that the two objects can be pursued at the same time. The truth is that the distracting, time-occupying activity in the miscellaneous errands of the lawyer's office is fatal to thorough work in the school at the same time. Every instructor has felt this. If the second element, the familiarity with the mechanical appurtenances of law, could not be obtained at any other time, the case would be harder. But it can be obtained just as well after leaving the school, and within a short period. I estimate six months in a busy office as the time in which an industrious young graduate can find out all that he would have found out in two years when he attended both office and school together. Of course at the end of a year or more after graduation, he has a greater practical skill than after six months; but the additional knowledge represents experience in matters with which he would never have been trusted at the office while a tyro in the law school; so that this is no argument for office work. On the other hand, the law school may, and does, to some extent, help him by moot courts, by exercises in drafting of pleadings and deeds, and otherwise, in just the ways in which an office is supposed to help him. Since, then, by working in an office he sacrifices irretrievably the thoroughness of his training in legal principles, and gains instead only a brief start in his profession, have we a right to advise

him that the gain is worth the sacrifice? He gains six months, but ultimately he finds that he has been set back for years, if not permanently crippled.

If, then, we believe in the truth that no other occupation shall be allowed to compete with the process of legal training, I shall assume that we mean to exclude office work of any and every kind. The incompatibility is less, perhaps, in law-office work, but it is still a fact.

My suggestions for to-day, then, are the answers to this question: What are the outward signs in law school work that we are enforcing this fundamental principle that legal training, like other scientific training, demands the student's whole working time and is incompatible with regular outside occupation?

1. Daylight lectures or recitations. Where the regular schedule of lectures or recitations is assigned to evening hours, the natural result is to permit and encourage the attendance of those who are already giving the best of their time to other activities and cannot do worthy work for the school. This is not suggesting that the hours should be so chosen as to exclude the possibility of outside work; probably no school attempts to do this. It is merely that the hours should not be selected with the express idea of accommodating and inviting those who make the law school a side issue, an accessory occupation. It seems impossible to expect that those whose day is spent in other affairs can give any satisfactory time to legal study, or even bring active and ready minds to the lectures or recitations. The practical result is that the two or three hours—in some schools one hour—of daily presence with the instructors constitute the sum of time devoted to the school work. But you will probably ask, What is to become of those worthy young men who are forced to earn a livelihood during the day, and whose only possible time for attendance is found in the evening hours? Are they to be shut out entirely from the opportunity of legal education? This is an inevitable question, but I do not see how there can be any doubt as to the answer. Of course they are. It is only the anomalous

development of legal education that could make the question possible. No one ever thought of giving a college degree or an engineering degree for one-quarter the regular work merely because there are those whose means do not permit them to do the required work. There are to-day, and always will be, hundreds and perhaps thousands of worthy young men who are shut out from a collegiate or a technical training simply because they must be earning money and have not the time to give to study. But we do not see the colleges and technical schools throughout the country lowering their standards to accommodate these worthy young men. We do see them constantly adding to their free scholarships in order to satisfy such legitimate and praiseworthy ambitions. But we do not, except in law schools, find them ready to give a superficial and inadequate training to all comers because a certain few cannot fulfil the demands of a worthy standard of training. It is time that we got free of this curious attitude of complaisance and temporizing, and recognized that there is only one right attitude equally for legal education and for other technical education. In all other things there is one price which all must pay for a standard training; that price is, sufficient time and labor. But in law the young man who cannot bring this price is allowed to think that he can get this standard education for a trifle, because he has only a trifle to give, this trifle being, to take one instance, one hour a day in the evening. But the laws of mental growth and equipment are inexorable; they may be ignored, but they cannot be evaded. You can get only so much as you pay for; and for a trifle, you can get—no more than a trifle.

2. The arrangement and conduct of the courses of instruction should be such as will fairly occupy the working time of the student. This is only saying that the student should be made to do as much work as is essential to a fair preparation for his business. What is a man's whole time, for two or for three years in working on such a field as the law? In the old-fashioned books on the subject of law study, the student is

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advised to give his time for three or four years; and surely as much time is needed to-day as was needed in the days of Washburn and Kent. It is often easy for an instructor to gain popularity with students by doing all the work himself, and by entertaining them, like a Sunday-school class, with a simplified exposition, smoothed of all its difficulties and reduced to its lowest terms. But the question is whether this is fair to the student. Is it fair to let him think that the law is simple and easily applied, when we know that it is not and never will be—even in the millennial days of a code? Is it not fairer to let him appreciate its difficulties, to give him thorough exercitation in them before he goes to grapple with his elders in the profession, to send him out callous and wiry instead of tender and flabby? For the student, his own individual hard work is just as important a part of law school experience as the time with the instructor. As an iceberg's projecting summit is balanced by several times as great a mass submerged beneath the water, so the two or three hours daily with the instructor should be complemented by a much larger amount of outside work.

3. In our catalogues and our daily answers to inquiring students, let us emphasize the necessity of this whole-souled devotion to their work. The student depends largely upon the instructor's standards, and a word here and there will be invaluable. If we do our duty in this respect by the profession and by the students, we may expect that the effects will soon appear. The next generation, at least, will accept it for truth that the standards of orthodox legal education in this respect are not to fall below the standards of technical education in general.

In carrying out the principle I have described, each school, no doubt, must be its own judge of what it is able to do to-day, and under all its working conditions. What I seek is to emphasize before you the importance of this principle, this ambition, and to ask you to unite in expressing your approval of this standard, so that the profession at large may be brought to understand our ideals and to support us in our efforts to realize them.

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PAPER

READ BY

EDMUND WETMORE,
OF THE CITY OF NEW YORK.

[BEFORE THE SECTION OF LEGAL EDUCATION.]

SOME OF THE LIMITATIONS AND REQUIREMENTS OF
LEGAL EDUCATION IN THE UNITED STATES.

More is required of the lawyer in this country than is required of the same profession anywhere else in the world. It is true that in this, as in other professions, the natural law of development tends in a constantly-increasing degree to create specialists; but the great majority of those who enter it become and remain general practitioners, ready to render their services in almost any case or matter in which legal skill or knowledge is needed. The rigid distinctions between attorney and counsel, common law practitioner and chancery solicitor, so established and familiar in England, have no counterpart here. The counsel who tries the cause in court has with us, in most instances, alone or with assistance, conferred with the client, drawn the pleadings, talked with the witnesses, looked up the authorities and prepared the case for trial. If he is in fairly extensive practice, he is called upon, not only to conduct litigated causes, some of which may involve questions of the highest public importance, or to draw contracts or wills, or give counsel as to doubtful questions of legal rights or duties, but to act as confidential adviser in family or business affairs of deep moment, and where the value of his counsel and direction depends not so much upon his technical knowledge as upon his discretion, integrity and wisdom.

So long as the lawyer's possible sphere of duties is so extensive, should his training be correspondingly long and thorough.

Were it possible, every candidate for the bar should, to begin with, have the advantage of a college education, or its nearest equivalent.

Especially do I believe in the efficacy of the study of the classics as part of the foundation of a legal training. I know no better means for acquiring that clearness of style and facile use of the English language, which are so potent and essential in the actual practice of the profession, as the study and translation of the masterpieces of classical literature. They are to the lawyer what the Parthenon is to the architect, models that have never been surpassed. Their study has as practical a bearing as the reading of the reports. He who, by aid of the dictionary, can correctly and clearly translate the whole of the orations for the prosecution and defense in the great trial of Ctesiphon for proposing that Demosthenes should receive a crown, has a most excellent warrant that he will be able to express his thoughts with clearness, propriety and effect, whether it be his duty to discuss a question at law on appeal to the Supreme Court of the United States, or to argue a question of fact before a jury in an action of negligence against a corporation.

Having the broad foundation which is laid in a truly liberal education before entering upon the direct study of his profession, I think few will dissent from the proposition that the candidate for the bar should have pursued that study either in a law school or private office, for at least three years before his admission.

But, however desirable such a course of preliminary education and training may be, it is manifest that with the majority of those who become lawyers it is, as yet, impracticable to pursue one which is so extensive or so long. Most of those who adopt the law as a profession adopt it as a means of gaining a livelihood. Compelled to support themselves as soon as possible, they cannot afford a four years' course in college and a subsequent three years' professional course, and often cannot go to college at all, or even attend a law school. The majority

of lawyers receive their preliminary education at the public schools, and then study in private offices or the law schools, one or both, until they can pass the examination that will admit them to the bar. Of those who attend the law schools, it has been computed that not more than one-fifth have a collegiate education.

Furthermore, any attempt to raise the standard of admission to the profession by requiring a certain amount of general as well as strictly professional education as a condition of such admission, is liable to encounter, in some degree, an opposition bred of the prevailing spirit of socialism, which regards the possession of advantages that can only be gained by superior ability, patience, industry and self-denial as class privileges, the perpetuation of which is an infringement upon the rights of the great army of the incompetent. If so long a period of study, preparatory and professional, is required for admission to the bar, only rich men's sons, it is asserted, can become lawyers. The notion that any one by longer study or a superior education should start better prepared than another who has been obliged to hasten into the profession with the scantiest possible previous training, is resented as an injustice. It would not be difficult to find those, in some parts of our country, who insist that it is an impairment of natural right to impose any requirement in the way of previous education upon any one who desires to practice law, and the logical outcome of this belief was illustrated in a Western State a few years since by the election to the bench of a candidate who had never either studied or practiced law at all.

Absurd and pernicious as such delusions may appear to us, they are the symptoms of a spirit that actually exists; and, although usually less extravagant in its manifestations, it is nevertheless a factor to be considered in any attempt to improve and make more rigid the requirements for admission to the bar, especially where the success of such attempts depends upon legislative action. It is the duty of the profession, in season

and out of season, and in every possible way, to impress upon the public mind the need of the highest possible standard of legal education, and to aid in forming a public opinion that will appreciate and uphold all legitimate efforts to raise that standard; but, in the meantime, the practical question is always before us, "What is the best way of employing and improving the means at present available?"

So far as the education preceding the strictly professional course is concerned, I believe, with Professor Waumbaugh, of Harvard, that the best discipline and training for those intending to enter the law is to be found in our well-conducted public schools and academies, and for those who have not the means or the time for a collegiate course, by taking advantage of some of the lately-devised schemes of university extension, so called, a student who is unable to entirely give up the occupations by which he earns a support may, nevertheless, by dint of earnest effort, obtain, in some degree, the benefits of a collegiate education.

Further aid is rendered in this direction in the State of New York by the admirable system of preliminary examinations, conducted by the Regents of the University, and required of those who are not college graduates before entering upon their legal studies. This system, and the work of the Regents in carrying it out, is worthy of the highest commendation, and is doing much to raise the general standard of acquirement on the part of those studying for the law in that State, and I earnestly hope to see a similar system—or its equivalent—universally adopted, so as to make the possession of a certain degree of general education required on the part of every one who undertakes to pursue the study of the law.

So far as law schools are concerned, they have so multiplied throughout the United States that it has become far easier than formerly for students of moderate means to attend them. The report on legal education, prepared by the aid of a committee of this association, and published in 1893, gives fifty-six as the number of law schools in the country in 1891. There

are still, however, fifteen States in which no law schools were reported at that date, and it would be well if the number of good schools could be increased. It is to be remembered that a law school does not require a costly foundation as in the case of a college. Suitable class rooms and accessibility to a good law library comprise all that is actually essential for its equipment, and moderate fees from students have proved sufficient to procure the services of competent instructors. Indeed, the abler the instructors, the larger the number of students who will be attracted to the school, and the larger the resources of the institution.

But, while it will be generally conceded that the law school has become the best place to pursue purely professional studies, it is to be remembered, on behalf of those who are unable to attend the schools, that a course of reading in the office of a competent practitioner has advantages of its own, and, rightly directed and conscientiously followed, is all-sufficient. It is the time-honored method by which a former generation of lawyers received their training, and the method pursued by nearly or quite half of those who enter the profession to-day.

There are no insurmountable obstacles, therefore, in the way of any earnest student, however limited his means, who wishes to obtain a good legal education. Difficulty is not only the handmaid to success, but a certain amount of difficulty is essential to success. Those who have risen the highest have been obliged to support themselves while studying their profession; while it is easier for the camel to go through the needle's eye than for the rich man's son to become a good lawyer. All the more honor, be it said in passing, to those who obtain a high position at the Bar, notwithstanding the disadvantage of inherited wealth.

In dealing with the legal education furnished by the law schools it must be considered in regard to the limitation of time. The faculties of most of the schools feel impelled to require no more than a two years' course in order to obtain a

degree, even where a three years' course is optional. This is in deference to the opinion held by many—that two years at a law school and one year in an office is the best distribution of study preliminary to entering the Bar, and, furthermore, by far the larger number of students would not remain over two years at the law school, however long the course required for its degree, and therefore it is—for the present, at least—necessary to furnish a two years' course for students who cannot afford a longer time for law-school study, as they would otherwise be deprived of the benefit of any law-school training at all. We are not surprised, therefore, to learn from the report already referred to that out of the fifty-six law schools then existing in the United States the course of study required for a degree in at least forty-seven of them was two years, and in some instances even less, the regular term in each year lasting on the average about thirty-six weeks. The question presented, then, is: What can be done in seventy-two weeks towards making a young man of fair ability a lawyer fit to practice?

A controversy conducted with great earnestness has been carried on of late years between the advocates of the so-called "text-book" and "case" systems as methods of legal education. In such a controversy it becomes any lawyer who lacks experience in actual teaching to speak with diffidence, but some things relating to the matter are within the range of ordinary observation and reasoning.

The difference between the two methods of legal instruction consists, as I understand it, essentially in this: By the text-book system, the study of a standard text-book, enforced by recitation and accompanied by lectures and comment, is made the foundation for the introduction of the student to the study of the law. The chief aim is the direct study of principles and definitions—their meaning, their reason, their history. Cases are used, at first, mainly for illustration. As the student advances, the practice of examining the authorities becomes more frequent, and he acquires experience in ascertaining the

precise point decided in any given case, and in deducing the rules to be devised by the collation and comparison of the cases relating to particular topics.

In the case system, as it is explained by those who teach it, the reported cases are the basis of instruction and the classification and exposition of the principles to be derived from the cases is given wholly by oral discussion or exposition incidental to the examination of the cases, or by occasional reference to the text-books. Of course, there is no hard and fast line of demarcation between these two methods, and the extent to which relative resort may be profitably had to the text-book or the cases as the basis of instruction will largely depend upon the experience and particular methods of each individual instructor; but there is, nevertheless, a plain distinction between the two systems. The difference in this respect in the course of instruction pursued in different law schools, all of high standing, is marked, and both systems, in the hands of competent instructors, prove highly successful in their results.

Notwithstanding this last fact, however, if I understand what for convenience may be called the case system, it seems to me that it is not strictly philosophical and is, consequently, liable to defects in practice.

This may appear, at first sight, just the reverse of the truth, for as principles are derived from cases and the cases are the record of the application of those principles, and to learn how to apply principles to facts is the business of the practicing lawyer, one would say that the study of cases was the direct path to learning the theory and practice of the law at the same time. But this view overlooks the natural operation of the mind in apprehending and mastering, for the first time, an applied science. The best way to teach a student to draw principles from cases may not be to set him at once to drawing conclusions as best he can, leaving it to the teacher to point out his mistakes. In teaching any science there is a certain amount of preliminary work to be done before the student

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begins to learn the art of applying its principles. I believe the most efficient method of giving this necessary preliminary instruction is to give it directly in a systematic form, rather than to confine the instruction to commentary upon instances of its application. A cadet may learn navigation wholly on shipboard by taking his turn at the wheel, and gradually picking up the principles of the science by daily familiarity with their application and by oral instructions from older officers: but he not only would have learned the art more easily, but his practical knowledge would always retain a more scientific basis, if he had had a preliminary course in the theory of navigation derived from the best text-books under a competent instructor, even if he went through such a course before he ever set foot on the deck of a vessel. It was noticeable that, almost without exception, the men who rose to the highest commands and accomplished the greatest results, on both sides, during our civil war, were not those who rose from the ranks, or those whose sole training had been from actual experience in the field, but those who had been grounded in the theory of the art of war on land and sea by the systematic course of study pursued in the class rooms at Annapolis and West Point. The same rule holds true in natural sciences, in medicine, in chemistry, in botany. Some knowledge—some elementary, carefully-inculcated and methodically-arranged knowledge of principles and laws—should precede, and, where those sciences are taught, almost invariably does precede, the study of those principles and laws in their application, except so far as their application is studied by way of illustration of the text.

This will not, perhaps, be disputed as a general proposition but, as applied to the study of law, the advocates of the case system hold, as I understand it, that the student at the very beginning of his course should be given a number of selected cases to read in order to find out as well as he can what they decide, and the necessary elementary knowledge as to principles intended to be applied in those cases is furnished by oral instruction and colloquy in the class room.

It seems to me that this mode of inculcating fundamental principles lacks the method and precision of statement which belong to a carefully-prepared treatise or written lecture ; and yet a methodical arrangement and division of the topics and sub-topics is surely the most efficient means of apprehending those topics in the first instance, and implanting them in the mind of the student without confusion, while precision of statement as to fundamental definitions and rules of law is not only necessary for accuracy, but one who has thoroughly learned the rules thus exactly expressed has a foundation of the greatest value throughout his practice, just as the fundamental rules of grammar, or the fundamental rules and definitions of mathematics which were learned at school, serve the professional linguist or the civil engineer in the subsequent practical application of the sciences to which they respectively relate. I find it hard to believe, for example, that a student, of average ability and industry, knowing nothing of the law, and who in the year 1765 had set himself the task of acquiring a knowledge of the laws of England, could, by two or even three years' study of the reports as they then stood, under competent instruction, have acquired as thorough an understanding or as comprehensive and philosophical a view of those laws as he would have done if, under equally competent instruction, the basis of his studies had been the masterly commentaries of Sir William Blackstone. Further, as it seems to me, the process of drawing principles from cases is necessarily too slow to cover a sufficiently extensive field to meet the requirements of a proper course of study, especially if that course be limited to two years. The primary object of legal instruction is to teach the student what the law is upon a sufficiently large number of topics to give him a general knowledge of all its most important branches. Secondly, he should be taught the art of finding out what the law is by searching the authorities, but the first is the most important for his student days, because his practice will constantly teach him the latter, and the more that practice

grows the less time it will leave him for any professional studies outside his own cases.

If it be said that knowledge thus acquired is superficial, and that this applies to the knowledge which attempts to cover a wide field of law, and is based on text-book reading and case-illustration, the answer, as it seems to me, is that knowledge thus acquired is not, or at least ought not to be, superficial, but merely elementary. And elementary law and elementary principles are all that a law course can profitably undertake to cover. The most it can accomplish is not to turn out a completed lawyer, but one who is fitted to become a lawyer. If it supplies him with the requisite elementary knowledge and starts him right it is all that the law school can do.

And in starting him right too great pains cannot be taken to impress upon his mind the true character of the fundamental principles which underlie our law, and to teach him to regard it in its proper light as a science resting fundamentally, not upon the exposition of the judge, as the Roman law depended upon the rescripts of an absolute Emperor, but upon the enlightened conscience of the people by whom the law is ultimately formed. The reports are not the only source from which these principles are to be learned. The Court, in giving its decision, and the reasons therefor, always proceeds upon the theory of the existence of a higher authority than itself, and, in tracing the principles which the Courts are called upon to apply to their deepest ascertainable source, by collating and classifying them, by asking, "How did they arise?" "Upon what reasons do they rest?" the student is making that higher authority the direct object of his researches, and learning to appreciate that, rightly understood, the law is indeed the perfection of human reason. Whatever the method by which this end is sought, no one will question that it is the end to which all methods should be directed. He best argues his cases who considers not how he can match his facts with precedents, as he might match from his hand in a game of dominoes, but how

he can best rest the judgment that he seeks upon the right and reason of the law.

Closely allied to the study of the principles upon which the law rests is the question of legal ethics. The influences that make not only a capable but an honest and honorable lawyer are derived primarily from individual disposition and character, from home training, from the standard of right and wrong that prevails in the bar and the community in which he lives; but of such paramount importance is it, not only to lawyers themselves, but to the State and to society, that a high standard of professional conduct and character should be maintained, that I believe that every law course would be improved that should include a brief series of lectures from those whose own lives and character entitle them to speak with authority, the object of which should be to impress upon the young men entering the profession that the highest requirement of a legal education is to make a practitioner whose word is as sacred as an oath, and who would no more seek to impose upon a Court, to bring a questionable suit, or to seek success by resort to other influences than evidence and argument, than he would enter the court room to ply the trade of a pickpocket. If in every college there is a chair of moral philosophy, I can see no reason why there should not in every law school be a chair of legal ethics.

To conclude, it seems to me that while the ideal requirements of a legal education particularly adapted to the American lawyer cannot all be attained at once, and are to be reached tentatively and as the result of experience, observation and constant effort, there are some things which are within reach, and which, if accomplished, would prove a distinct advance.

First.—I would have each State prescribe by law that a three years' course of study should be required for admission to its bar except so far as the rule might be modified to admit on motion, in proper cases, those already admitted to practice elsewhere.

Second.—I would like to see adopted in every State a system of examinations like the system already alluded to so admirably conducted by the Regents of the University of the State of New York as preliminary to entering upon the study of the law, which would insure the possession of a certain degree of general education on the part of all candidates for the bar.

Third.—I would encourage the multiplication of law schools, especially in those States where there are now few or none, so as to bring the advantages of law-school instruction within the reach of the largest number possible.

Fourth.—I would include a brief course upon legal ethics in the law-school curriculum ; and,

Fifth.—I would compel all candidates for the bar, whether law-school graduates or otherwise, to pass an examination for their degree, partly written and partly oral, which should be extensive and thorough and so framed as to be a fair test of the candidate's knowledge and of his ability to assume the responsibilities of the profession.

As to the best mode of imparting the instruction which is to fit the candidate for such an examination, skilled teachers may differ, but they cannot differ as to the end to be attained, nor will any lawyer dissent from the peculiar application to legal education of Aristotle's remark as to education in general—that every system of discipline is to be esteemed mean “except that which fits a freeman for the habit and practice of virtue.”

PAPER

READ BY

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OF NEW YORK, NEW YORK.

[BEFORE THE SECTION OF LEGAL EDUCATION.]

THE INDUCTIVE METHOD IN LEGAL EDUCATION.

It is a curious contradiction that at a time when it is universally recognized that the teaching of law is one of the functions to be discharged by a university, opposition should be raised to the adoption of a method of teaching law that is applied in nearly all departments of university work.

In view of the well-known conservatism of lawyers, I cannot help feeling that this opposition is explained in part by ignorance of the fact that the teaching of law by the study of cases is but the application to the study of law of a method that has been almost universally accepted in other departments of education. I must confess to surprise on ascertaining the extent to which it has been applied in all departments of education, not only in colleges and universities, but even in the secondary schools. Because of this ignorance on my part I was somewhat surprised when I was informed recently by a distinguished educator whom I told of the preparation of this paper that the theory of the inductive method was accepted so universally to-day in educational circles that an assumption that argument was necessary to support it would create merri-ment in a large gathering of teachers which was then about to convene.

An examination of the report of the committee of ten on secondary school studies appointed by the National Educational Association at a meeting held at this place last year, and

published by the United States Bureau of Education,¹ shows how strongly the method is recommended for the use of secondary schools. Of its recognition to-day by colleges and universities of which we are accustomed to expect the best methods, there can be no question. Indeed, ten years ago (and the strides in educational methods during the last ten years have been great), we find the principle fully recognized in the teaching of natural science,² and, even prior to that time the method had been applied in the teaching of history, and is now regarded by the best educators as the proper method of historical study. It is of this method that Professor Herbert B. Adams, of Johns Hopkins University,³ says "The main principle of historical training at the Johns Hopkins University is to encourage independent thought and research. Little heed is given to text-books, or the mere phraseology of history, but all stress is laid upon clear and original statements of fact and opinion, whether the student's own or the opinion of a consulted author. The comparative method of reading and study is followed by means of assigning to individual members of the class separate topics, with references to various standard works. These topics are duly reported upon by the appointees, either *ex-tempore*, with the aid of a few notes or in formal papers which are discussed at length by the class. The oral method has been found to afford a better opportunity than essays for question and discussion, and it is in itself a good means of individual training, for the student thereby learns to think more of substance than of form."

A higher authority than Prof. Adams cannot be quoted, and a nearer approach to the case method of instruction cannot be found than the method described by him. It seems to be no longer true that the student of history is given a text-book from which to recite, as one would recite from the pages of a Latin grammar, but is referred to the accessible authorities,

¹ See whole No 205 of its publications.

² See *Methods of Teaching and Studying History*, 193, 194.

³ *Methods of Teaching and Studying History*, 149.

which he is required to examine with a view to forming conclusions and expressing opinion. Indeed, not only is the student of history to-day required to study in this way, but he is often, when the material is available, especially if he is studying as a professional student in history, required to go to the original sources and make investigations.

If law is a science—and if it is not a science it has no place in the curriculum of a university—all will agree that the most scientific method should be adopted in teaching law. Why, then, has not the inductive method, which has been so universally accepted, been more generally applied to the teaching of law? It cannot be for the reason that the object of a legal education differs from that of education in general. The object of education generally is stated as follows in the report of the committee of ten, to which I have before referred (see page 168): “The principal end of all education is training. * * * * The mind is chiefly developed in three ways: by cultivating the powers of discriminating observation; by strengthening the logical faculty of following an argument from point to point; and by improving the process of comparison, that is, the judgment.” Can any one question that the power of discriminating observation, that the possession of the logical faculty of following an argument from point to point, and the ability to judge accurately, are among the most indispensable qualities of a lawyer? If they are, why is not the method which will enable the student to acquire these faculties, while at the same time possessing himself of a fund of information, the one best adapted to the study of law? It is, for the reason that it does best enable one to think vividly, analyze accurately, to reason and express himself clearly, and in the case of applied sciences to apply effectually the knowledge that he has gained, that the inductive method has obtained such a hold to-day. I shall endeavor to show hereafter that this method is well adapted to the imparting of information.

Assuming the method to have been properly adopted in other departments of education, why should it not be adopted

in the study of law? Must it be rejected for the want of material? When one remembers that sufficient material has been found accessible for the teaching of history by the inductive method, this question answers itself, for, in no other department of education is there found material so rich, so abundant and so accessible, as in that of law. Since the advocates of the inductive system believe that, in law as in other sciences, the student, where it is possible, should be referred to the original sources as the basis of instruction, and not allowed to consult simply the deductions that may have been drawn by writers from sources equally accessible to the student, the material to which I refer is, of course, the adjudicated cases found in the reports of the decisions of the courts in this country, in England and in other countries where our system of law prevails.

For the purposes of the inductive method, it is quite immaterial, as has been pointed out by the committee of the American Bar Association on legal education,¹ whether the cases are to be regarded as the original sources, in the sense that they make the law as a statute makes law, or simply as evidence of the law, and but an application of principles to particular facts. "That the decided cases" says the committee, "are the sources from which all must learn what the law is, no intelligent, common law lawyer will dispute. Our very treatises and text-books derive from the cases they quote all the authority they have." If the authority of treatises and text-books is derived from the cases, then the treatises and text-books must be derivative, while the cases are the original sources; and he who consults the text-book, as a substitute for the cases, gets his information at second-hand. It was to emphasize this fact, I take it, and not to belittle the value of treatises, or to speak disparagingly of the authors thereof, that the leader of the New York bar, Mr. James C. Carter, in his advocacy of the case system, spoke of students studying thereunder obtaining their

¹ Reports of American Bar Association, Vol. 15, p. 324.

knowledge from the original sources while he, as a student, studying under the text-book system, was compelled to get his knowledge at second-hand. It has been suggested, in opposition to the case system, that a student in natural science would not be expected to study simply by examining a specimen without any further explanation, the inference being that a case is no more significant to a student of law than a specimen would be to a beginner in science. It is submitted that the illustration is not in point. To make the illustration apposite, one must suppose that the student in natural science has a choice of studying in one of two ways, either by taking the specimen, which is regarded as establishing some great truth in natural science, and taking with it the memoir of the discoverer of the fact or principle, and studying the specimen in the light of the memoir, or, on the other hand, discarding the memoir and specimen and taking instead the deduction that some writer has drawn from an examination of the specimen, and the study of the memoir. Under the approved methods of to-day, the student would be referred to the specimen and to the memoir, if accessible, and not to the opinion that some writer has expressed about them. In other words, he uses both a laboratory and a library. Now the case is, to the student of law, both a laboratory and a library. The facts of the case correspond to the specimen, and the opinion of the court announcing the principles of law to be applied to the facts correspond to the memoir of the discoverer of a great scientific truth, and constitute the library. If I may borrow a simile and change its application, the facts of the case correspond to the apple which suggested to Sir Isaac Newton the law of gravitation; the opinion is his Organon. For the suggested analogy of putting a specimen into the hands of the student of natural science, to be applicable to the case system, one must suppose the student to be given the bare facts of the case, without the opinion of the court. The bare facts of cases are given to the student at the end of a course to test his knowledge of the subject. The facts of a case, together with the

opinion of the court, are given to the student during his course to enable him to prepare himself in advance for the exercise of the lecture-room, and to acquire by the study and discussion thereof, together with the aids hereinafter suggested, a scientific and practical working knowledge of the fundamental principles of law.

It has been suggested that the study of cases as the basis of instruction in law is founded on the idea that we have no jurists. Such, however, is not the case, the system of teaching law by cases being based solely on the idea that in law, as in other sciences, when the sources from which writers have drawn their conclusions are equally accessible to the student as to the writer, it is better to have the student study in the original sources, under proper direction and assistance, than to study in the first instance conclusions which are merely derivative. Furthermore, it must be remembered that in a system of law where a judge renders not simply a judgment for the plaintiff or the defendant, but delivers an opinion stating the reasons for the conclusions reached, judges are not simply magistrates, but jurists.¹ But it may be asked if each case contains such an elaborate explanation of the principles of law applicable to the facts of the case, what advantage has the study of cases over the study of a treatise dealing with the same subject?

The objection to the use of the treatise is that the student who takes up a text-book immediately finds the results of another's labor, and receives that other's conclusions without participating with him in the process which has enabled him to produce the result. The book may be a book consisting of general principles simply, or a statement of principles illustrated by the author's own statement of the cases on which he bases his conclusions. If it is a book containing a statement of principles simply, a student labors under the disadvantage of having put before him a body of rules pertaining to an

¹ 22 Am. Law Rev. 756; Reports of the American Bar Association, Vol. 15, p. 348.

applied science, and he not only labors under the disadvantage of being simply a recipient of results without going through the processes by which they were reached, but the rules are almost meaningless to him for the reason that they are nothing more than abstractions. If the book contains not only a statement of the principles, but also a statement of cases by way of illustration, it is still open to the objection that he is merely receiving results, and the illustration serves simply to corroborate the statements and explain the meaning of the writer, and does not enable the student to apply the principle to cases involving the same principle of law, but differing in their facts for the reason that the author, having summed up the law, and stated in advance the conclusion reached as a matter of law, no opportunity is given the student to exercise his judgment as to the result that should be reached on the facts placed before him. The mind of the student who studies under the text-book system has been compared to a sponge. My own opinion, formed after much observation of students who have studied under the text-book method, is, if one is to judge of their knowledge from their ability or inability to apply the rules to the cases that may be suggested to them, that the mind of such a student is much more sieve-like than sponge-like. And does not this statement appeal to the experience of men in all the affairs of life? How is it possible for a man to work out a difficult problem of any kind whose only preparation for the work consists in having had certain results stated to him, and certain illustrations of the meaning thereof given him? Is it not our experience, all through life, beginning with childhood, that we understand most thoroughly and remember longest that which we have acquired as a result of labor on our own part? How many students will do independent thinking and critical reading while preparing twenty pages of Parsons on Contracts for a lecture? But suppose you take the same subject matter, and instead of giving him Parsons' treatment thereof, you put into the student's hands a few cases involving the principles, but contradicting each other in many particulars, and perhaps

reaching opposite results. Can a student, capable of thought, fail to think, and, having thought, whatever his conclusions may be, will not the lecture that he attends, where he will have his conclusions either confirmed or questioned, mean more to him and produce a more lasting impression? Can anyone imagine any subject, dependent upon and involving human reason, where the consideration and discussion of a question, in advance of the announcement of certain results, would not lead to a better understanding and more lasting impression of the subject under consideration? To quote from an address of Mr. Justice Holmes, of the Massachusetts Supreme Court, an earnest advocate of the system, though not trained under it as a student: "Does not a man remember a concrete instance more vividly than a general principle? And is not a principle more exactly and intimately grasped as the unexpressed major premise of the half dozen examples which mark its extent and its limits, than it can be in any abstract form of words? Expressed or unexpressed, is it not better known when you have studied its embryology and the lines of its growth than when you merely see it lying dead before you on the printed page."

The advocates of the case system believe, to quote from the same authority, that "to make a general principle worth anything you must give it a body; you must show in what way and how far it would be applied actually in an actual system; you must show how it has emerged as the felt reconciliation of concrete instances, no one of which established it in terms. Finally, you must show its historic relations to other principles, often of very different date and origin, and then set it in the perspective without which its proportions will never be truly judged;" and that students should not be sent forth "with nothing but a rag-bag full of general principles, a throng of glittering generalities like a swarm of little bodiless cherubs fluttering at the top of one of Correggio's pictures."

How does the practicing lawyer of to-day, investigating a question with a view to preparing an opinion or writing a brief,

inform himself? Is it by reading a text-book and seeking to understand the author's point of view in the light of the illustration which an author may use, or does he use the treatise, much as he does a digest, for the purpose of finding the original sources, the examination of which, when found, constitutes his real work, and enables him to deal with the subject under consideration? No one will question that the latter is the method by which the successful lawyer of to-day accomplishes results. And if this is the way in which the lawyer needs to inform himself, why should not the same method be used by the student? No one would condemn more severely than the believers in the case system the indiscriminate reading by students of a mass of unclassified decisions. Under the case system, however, the student is not referred to a mass of cases, nor to an unclassified list of cases. He is, in fact, referred to a *few classified* cases, selected with a view to developing the cardinal principles of the topic under consideration. In other words, under the case system, the student is given the material to which both lawyers and judges resort, but his investigations are made under the direction and with the assistance of his instructor.

If the student were given only cases which, from the instructor's point of view, were correctly decided, the study of cases would be more like the use of a text-book, containing illustrations of principles; but even then the case system would offer this distinct advantage, that the student would be required to express in his own language the material facts in the case, and the exact principle which the court considered necessary to the decision thereof, whereas in the text-book system, if the author has been successful in his work, the student finds it done for him. In truth, however, the attempt is made, in selecting cases for the use of the student, to present the same principle from many points of view, as involved in the same or different facts, and as considered by different minds, and the decision may be good or bad in principle, and may or may not be recognized as law. The student is thereby forced

not only to analyze cases, but to compare them, to discriminate and choose between them. The incentive for sound thinking, in advance of the exercise of the lecture-room, is the fact that his opinions are subject to review in the class-room, and will be made the subject of criticism by both the students and the instructor. The exercise in the class-room consists in a statement and discussion by the students of the cases studied by them in advance. This discussion is under the direction of the instructor who makes such suggestions and expresses such opinions as seem necessary. The student is required to analyze each case, to discriminate between the relevant and the irrelevant, between the actual and possible grounds of decision, and having thus considered the case, he is prepared and required to deal with it in its relation to other cases. In other words, the student is practically doing, under the guidance of the instructor, what he will be required to do, without guidance, as a lawyer. While the student's reasoning powers are being thus constantly developed, and while he is gaining the power of analysis and synthesis, he is also gaining the other object of legal education, namely, a knowledge of what the law actually is.

I spoke at the beginning of this paper of the conservatism of the bar explaining in part the opposition that has been raised to the teaching of law by the study of cases. I think, however, an examination of the objections that have been raised to this method will establish that the opposition is almost entirely due to a misunderstanding as to the use made of the cases, and the object sought to be attained by their use. We are told, for example, by the opponents of the system, that the teaching of law by cases may make men academically learned in the law as a science, but will not make lawyers. Again we are told that the case system is vicious for the reason that it makes simply case lawyers. Now, it is an impossibility for a man to be academically learned in the law as a science, and at the same time to be nothing but a case lawyer. The truth is that one of the great arguments in favor of the case system is

that it deals with both the scientific and the practical side of law. In so far as it deals with the scientific side of law, compelling the student to search for and apply the great and fundamental principles of law to the actual affairs of life, it prevents his becoming a mere case lawyer—a case lawyer being one who has a great memory for cases and their facts, but little apprehension of the principles governing the decisions. While the study of principles, which is the essential feature of the case system, is inconsistent with the production of a case lawyer, the fact that the student in studying a principle is required to study it in its growth and development as found in its application to the actual affairs of life furnishes a complete check upon any tendency to become speculative and visionary, or academically learned, as distinguished from a scientific lawyer capable of applying the principles of law as they exist, and suggesting improvements therein.

In the opinion of those who believe in the case system, it is the study of principles in the abstract, and not in the concrete, that produces the man simply academically learned, and it is the use of cases by the students not as sources of the law, but as illustrative merely that produces the case lawyer. When the cases are studied, not by way of illustration, but as the sources of law, the danger to guard against is not that the student may become a case lawyer, but that he may not have a sufficient regard for cases which, in his opinion, are not well founded in principle.

The statement that the system tends to make a case lawyer is founded on the radically erroneous idea that the object of putting cases in the hands of the students is to have them *memorize* the cases, as distinguished from *analyzing* them. A student is only required to charge his memory so far as is necessary to enable him to deal intelligently with the case in the discussion and consideration thereof in the class-room, and he is advised, certainly, by many teachers under the system, to reduce the strain on his memory to a minimum by making his own head-notes with which to refresh his memory for the

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 exercises of the class-room. In other words, the case is simply material from which a principle is to be extracted.

It is not to produce a man academically learned that the study of law by cases is urged, but because it is believed, to use the language of Mr. Dicey, that "to master the rules of English law you must study these rules as applied to the affairs of life;" that "the lawyer or student who really enters into the results of a line of leading cases, learns more than a few verbal maxims which may be committed to memory;" that "he sees what is the true meaning of legal doctrines when applied to facts;" that he "becomes," as Mr. Finch well expresses it, "familiar with the tone of thought, the attitude of mind which prevails in our courts;" * * * * that he "learns, in short, by the only method by which it can be learned, the notion of justice which the lawyers and judges of England have developed by labors extending over centuries and have impressed upon the minds of English people." What Mr. Dicey says of English lawyers and judges, is of course equally true of American lawyers and judges.

The objection that the student, under this system, is taught to regard law as a mere aggregation of cases, is simply another way of stating that the system produces case lawyers, and is disposed of by what I have just said.

As the cases are selected to develop a particular branch of law, nothing is more erroneous than to suppose that the system consists of the study of isolated propositions. To say that the study of cases is only the study of isolated propositions, is to deny that the law has been developed through the cases.

No sane man would hesitate to denounce a teacher who should refer a student to a law library and expect him to find for himself cases developing the law of a given subject and to deduce the principles therefrom unaided. Yet the objection, so often raised, that it is absurd to plunge a beginner into a chaos of undigested and unclassified matter, and to expect him to arrange and classify the cases and to deduce the principles therefrom by himself, would lead one to believe that the case

system involved this absurdity. The objection, however, is born of ignorance. The most casual examination of the collection of cases used in teaching law by this method will show that the winnowing process is done for the student, his material being selected for him and classified with reference to topics by chapter, and by section and sub-section, when necessary.

The objection to the case system that it requires of a tyro work which can be done only by a qualified critic or writer, would have some force if the material were not made the subject matter of discussion and conference with the teacher in charge of the subject. The objection proceeds on the false assumption that the student, instead of having the benefit of an interchange of opinion and the advice and suggestion of the instructor, is required to deduce, unaided, the principles and conclusions which he is to use as a practicing lawyer. As to the actual ability of the student to deal with the material in the manner in which he is required to deal with it, the testimony of a man who has administered the system and has had, therefore, an opportunity of observing the working thereof in this particular, should have great weight. Fortunately, we are able to produce as a witness on this point a man who, though at the time he gave his testimony was on the bench of the Massachusetts Supreme Court, had, prior to that time, qualified himself to speak of this system in its working operation by administering the same as a teacher. In the address to which I have before referred, Mr. Justice Holmes says: "With some misgivings, I plunged a class of beginners straight into Mr. Ames' collection of cases. * * * * The result was better than I even hoped it would be. After a week or two, when the first confusing novelty was over, I found that my class examined the questions proposed with an accuracy of view which they never could have learned from text-books, and which often exceeded that to be found in the text-books. * * * * My experience as a Judge has confirmed the belief I formed as a Professor." The testimony of this dis-

interested witness, so well known both to the American and English Bar as a distinguished writer and Judge, should certainly outweigh merely theoretical objections.

It seems hardly necessary to notice at the present day, when discipline is regarded as a part of legal education, and when, therefore, a student is supposed to be better prepared to grapple with problems because of previous study, the objection that, as a student is a beginner as to every new topic, the case system should not be used by him at any time during his course, but that the work involved therein should be done by him after he has become a lawyer.

It has been objected to the case system that it proceeds on the theory that the law is an exact science, and those urging this objection assert strenuously that such is not the case. With the assertion that law is not an exact science I think all will agree, but that there is any dependence in teaching law by cases and its being an exact science, I fail to see. That law is a science is claimed by the advocates of the case system, and I trust, not denied by its opponents. But it is an applied science depending for its exactness upon human reasoning, and is not, therefore, one of the exact sciences. Yet I trust, for all that, not the less worthy of scientific study.

The objection that the case system proceeds upon the study of old cases to the exclusion of modern cases is based on a delusion which can be cleared up by a casual examination of the various selections of cases used by the student. That the student is required to consult old as well as modern authorities, is true. He is required to do so in order that he may know something of the growth and the development of the law, and thereby the more thoroughly prepare himself to deal with the problems arising from our present complex civilization.

The objection has been raised to the case system that only the unsettled points of law are treated thereunder. This, of course, is simply a statement of fact, and, as in the case of the delusion I have just referred to, can be readily removed by an

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examination of the material which is placed in the hands of the student. Another objection which has been raised to the system is that it requires more time than the text-book system in which to cover the field of law. If this statement is to be taken as meaning that more topics can be touched upon in a given length of time under the text-book system than are considered in the same time under the case system, the statement is true. But if the statement is to be taken as meaning that in the same length of time more law can be mastered under the text-book system than under the case system, the assumption begs the entire question, and is most emphatically denied. The advocates of the case system believe that the system produces a lawyer more quickly than the text-book system, for the reason that, in their opinion, the powers of analysis, discrimination and judgment which have been acquired by the study of cases by the student before graduation must be acquired by the student of the text-book system after he has ceased to be a student and has become a practicing lawyer.

The objection to the case system that it logically demands the examination and discussion of every case of record, case by case, loses sight of the fact that, according to the best thought of the day, while the adjudged cases are numerous, the controlling principles are comparatively few.

It is unnecessary to consider whether law can be taught *exclusively* by cases for the reason that I know of no teacher who has made the attempt. Speaking for the Columbia College Law School, with which I have the honor to be connected, I may say that in all of the courses where the case system of instruction is followed—and it is practically the system by which all the instruction in private or municipal law is given—text-books are used and oral instruction given. The distinctive feature of the case system is not the *exclusive* use of cases, but that the reported cases are made the *basis* of instruction, where in other schools they are referred to, if at all, by way of illustration only, and that text-books, which in most schools are made the basis of instruction, are used for purposes of

reference and collateral reading, and to enable students to compare their own generalizations with those of the authors of standard works.

One occasionally, but seldom in this day of advanced thought and education, hears the objection raised to the case system that it does not make the study of law easy for the student, and partaking of this objection is the suggestion that the province of the teacher is to teach. Of course, these objections raise squarely the question as to the burden that should be put upon a pupil, and of the work that should be done by a teacher. We admit that the system does not proceed on the idea of "the law made easy." We believe the law to be a difficult science which can be made easy only at the expense of thoroughness, and, therefore, at the expense of the student. We believe that the information which the student receives should be the result of thought and effort on his part. As Mr. Gray has well expressed it,¹ "The greatest teacher the world has ever known was fond of comparing himself to a mid-wife. His task, he said, was to aid the scholar to bring forth his own ideas. He, to-day, will be the most successful teacher who can best exercise this obstetrical function. And in law no better way has yet been devised to make the student work for himself than to give him a series of cases on a topic and to compel him to discover the principles which they have settled and the process by which they have been evolved." Of course, this represents a difference of ideals, and each person will choose that one of the two which more strongly appeals to his experience and common sense.

To summarize, the reasons that I would urge for the adoption of the case system of instruction are, first, that law, like other applied sciences, should be studied in its application if one is to acquire a working knowledge thereof; second, that this is entirely feasible for the reason that while the adjudged cases are numerous the principles controlling them are com-

¹ 22 Am. Law Rev. 763.

paratively few ; third, that it is by the study of cases that one is to acquire the power of legal reasoning, discrimination and judgment, qualities indispensable to the practicing lawyer ; fourth, that the study of cases best develops the power to analyze and to state clearly and concisely a complicated state of facts, a power which, in no small degree, distinguishes the good from the poor or indifferent lawyer ; fifth, that the system, because of the study of fundamental principles, avoids the danger of producing a mere case lawyer, while it furnishes, because the principles are studied in their application to facts, an effectual preventive of any tendency to mere academic learning ; sixth, that the student, by the study of cases, not only follows the law in its growth and development, but thereby acquires the habit of legal thought which can be acquired only by the study of cases, and which must be acquired by him either as a student or after he has become a practitioner if he is to attain any success as a lawyer ; seventh, that it is best adapted to exciting and holding the interest of the student, and is, therefore, best adapted to making a lasting impression upon his mind ; eighth, that it is a method distinctly productive of individuality in teaching and of a scientific spirit of investigation, independence and self-reliance on the part of the student.

So far I have considered methods only in the abstract, entirely eliminating what, in practice, cannot be eliminated, namely, the personal equation. I am free to say that, in my opinion, the case system requires a higher order of intelligence on the part of the pupil than is required under the text-book system, but it does not require a higher order of intelligence than should be possessed by any one aspiring to become a lawyer. Not only must the personal equation be considered with reference to the pupil, but the personality of the teacher is of the greatest importance in any system of education. I fully appreciate that what is meat for one may be poison for another. Any given teacher, because of his peculiarities, might succeed with a method inferior to another under which he would

fail, and for this reason every instructor in law in Columbia College has, and I hope always will have, absolute freedom of choice in his methods of teaching. But from this point of view an argument which can be fairly urged in favor of the case system is that the method of teaching involved therein is so flexible that two men may use it as a basis of instruction, and the teaching of the one hardly suggest the teaching of the other.

I agree entirely, however, with the statement made by Prof. McClain before this body last year, that "Each successful teacher has his own peculiarities growing out of his personal relation with his surroundings, and any attempt on the one hand to copy the particular method of another, or, on the other hand, to put a trade-mark upon peculiar ways of teaching will necessarily prove abortive."

Garfield's definition of a university was a pine table, with Mark Hopkins at one end and the student at the other; but it was Mark Hopkins and the personality of Mark Hopkins, which could not be transmitted to another, and not the table, that attracted Garfield. Rugby had its Arnold, but Arnold died, and with him his personality.

THE LAW DISPENSARY AT THE UNIVERSITY OF PENNSYLVANIA.

GIRARD BUILDING, PHILADELPHIA,

August 20, 1894.

GEORGE M. SHARP, Esq.,

Dear Sir:—A chance expression—"Whoever heard of a Law Hospital"—used by Dr. Weir Mitchell in a lecture on professional ethics, delivered recently to the medical classes of the University of Pennsylvania, has been the means of the establishment at the Law School of the University, of what is known as a Law Dispensary, a simple application of the principle of the medical clinic to the practice of law. The

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Dispensary is now about two years old, and is conclusively proving its usefulness. In Philadelphia, perhaps ten years ago, a large number of men prepared for the practice of the law without attending any regular lectures. They spent all their time in the office of a lawyer with whom they were registered, received their instruction from him and learnt at the same time in the most practical manner how to draw up briefs, search records, familiarize themselves with the dockets, etc. To-day the status of students in lawyers' offices is quite different. They receive their instruction at the law school; and, as perhaps a necessary result of this, consider the office merely as a place for studying. In other words, they do no practical work there. Under the present system, graduates of the Law School of the University of Pennsylvania have been in a position to incur odium through their lack of familiarity with practice. The Law Dispensary is intended to supply this defect in the system of instruction now prevalent in most Law Schools. Through it, the law student, while yet many months off from the period of his admission to the bar, is enabled to familiarize himself with the practical side of the profession, in a very attractive way, namely, the conduct of real cases; and even to argue cases themselves before magistrates.

Experience has led to the following method of presenting the various cases which are brought to the Law Dispensary at the University of Pennsylvania, before the undergraduates. Once a week, at an hour in the early evening, the applicants are asked to present themselves in one of the lecture-rooms of the Law School, where, in the presence of the undergraduates, they, one by one, tell their story. Exactly as in a medical clinic, the interest of the law student in the cases is altogether a professional one. A charitable side of the work is, of course, apparent; namely, the relief of poor people who are unable from poverty to obtain justice. It is, however, only an incidental good result of the means by which the student seeks to perfect himself in the use of the tools of his profession.

As would naturally follow from this fact, the directors of our Law Dispensary take no more pains to be sure that the applicant is really poverty-stricken than do the physicians in charge of the ordinary medical clinic.

The applicants, as I have said, are made to state the circumstances of their cases, one by one, in the presence of the undergraduates. A particular student is ordinarily assigned to draw out the story by a series of questions. When the facts are known, a member of the bar, who presides at these Dispensary meetings, invites general suggestions as to the proper course to be pursued in obtaining justice. It is taken for granted that this presiding officer is thoroughly versed in the law upon the subject. As the suggestions are made, he points out why they are or are not accurate. The last step is the assignment of a student or of two students to take charge of the case. It is the distinct understanding that the relation of student to the applicant is precisely similar to that of lawyer and client. The student assigned to the case is expected to be present and report at each subsequent Dispensary meeting. He must look up and prepare witnesses, search records, draw papers, etc., with suggestions, but not with aid, from members of the bar. Only in the case of the necessity of carrying the matter into Court is any of the responsibility shifted from his shoulders. The case is argued in Court by a graduate of the Law School, especially assigned for the purpose. Even here, however, the student is expected to be at the lawyer's elbow so that the former may be free to make suggestions and that his understanding of the proceedings may be complete. The present administration of the Dispensary is in the hands of an Honorary Director, Hon George S. Graham; an Assistant Director, Joseph Hill Brinton, Esq., also a member of the bar, and a committee of three of the law students.

Some slight statement of the kind of cases which have been brought to our doors will perhaps be interesting. One of the earliest was that of John Bentley, of Blue Anchor, New Jersey, who presented a grotesquely-worded promise made by one

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Keziah Warden, that she would convey to him a half interest in a farm for a "communal home" as soon as she could draw the necessary papers. The Dispensary was unable to enforce this document.

An inmate of the National Soldiers' Home, Virginia, asked our aid in securing his share of his mother's estate in Camden, New Jersey.

A man wrote from Phoebus, Virginia, telling us that some months before he had had a leg taken off at Morris Plains, New Jersey, and asking if we could obtain damages for him. He seemed, on inquiry, to have been intoxicated.

This man afterwards introduced to us, by letter, a friend at Oxford Furnace, New Jersey, who had lost his eyesight through a premature explosion in a mine. There seemed to be no mine laws in that State which would enable us to recover damages.

Recently a man applied, who, while driving on Market street in his wagon, was run into by a trolley car, the shock throwing him from his seat into the street and injuring both his legs.

A condemned murderer in the Eastern Penitentiary wishes us to raise a technical question as to the validity of his conviction.

The most interesting question of all so far is that of a woman and her daughter who came to tell us that they had located the husband and father, who had deserted them twenty years before, in Pittsburg. The Dispensary is still at work endeavoring to secure support for these women. The husband is said to be a man of large means.

In all, in the two years past, probably nearly one hundred applications for assistance have been received. The work has excited much attention from outside the city, letters of inquiry having already been received from Baltimore, Minneapolis and the Department of Justice at Washington.

Yours very truly,

EMLEN HARE MILLER.

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CONFERENCE OF MEMBERS
ON PATENT LAW.

A number of members of the American Bar Association assembled in the Court of Appeals room in Convention Hall, on Thursday afternoon, August 23, 1894, at 3 o'clock, to confer upon the advisability of forming a Section of Patent Law.

The conference was called to order by Francis Rawle, of Pennsylvania, and Edmund Wetmore, of New York, was elected Chairman. The objects of the conference were discussed by them and by James H. Raymond, of Illinois; Charles E. Mitchell, of Connecticut; James H. Hoyt, of Ohio; E. B. Sherman, of Illinois; Hector T. Fenton, of Pennsylvania, and Richard N. Dyer, of New York.

Francis Rawle said that, in answer to a circular which had been sent to the patent bar of the country, a large number of letters had been received, and many of the members of that bar had signified a desire for the formation of such a Section, and for membership therein. Several communications were read.

It was moved that an application be made to the American Bar Association for an Amendment to the By-Laws providing for the organization of a Section to be known as the Section of Patent Law, which motion was carried by a unanimous vote. The conference then adjourned to Friday, August 24, at the close of the session of the Association.

SECTION OF PATENT LAW.

Immediately upon the adjournment of the session of the American Bar Association, on August 24, the Section of Patent Law, which was constituted by an amendment to the By-Laws of the Association, adopted at its meeting on that day, met and organized by the election of Edmund Wetmore, of New York, as Chairman, and E. B. Sherman, of Illinois, as Secretary.

Thereupon the Section adjourned to meet in connection with the next annual meeting of the American Bar Association.

E. B. SHERMAN,

Secretary.

OBITUARIES.

ALABAMA.

GAYLORD B. CLARK.

Gaylord B. Clark, one of the acknowledged leaders and brightest ornaments of the Southern bar and one of Alabama's most distinguished and respected citizens, died at his home in Mobile on the 14th day of June, 1893, at the age of 47 years.

He was born in Mobile, Alabama, on April 16th, 1846. He was the eldest of seven children. His father, Francis B. Clark, is of the State of New York, although reared and educated in the South. His paternal grandfather was Dr. Willis Fish Clark, of Livingstone, New York, and his paternal grandmother was a Miss Barnard, of Massachusetts, all of English descent. His mother is of Scotch descent, a native of Orange County, Virginia, where her father, James Shepherd, was born. Her paternal grandfather was Louis Paul Verdier, a French Huguenot.

While quite a child, he was placed under the tuition of Rev. Dr. William N. Pendleton, a noted Episcopal clergyman in Virginia and a West Point graduate, who subsequently became General Lee's Chief of Artillery in the Army of Northern Virginia. Dr. Pendleton took a great interest in him, and persuaded his parents to allow him to remain under his tuition until old enough to enter as a cadet in the Virginia Military Institute at Lexington. The war coming on soon afterwards, young Clark, though still a boy, entered the Confederate service, at first with the cadets until after the battle of New Market in which they participated, and subsequently in the regular service under Lee around Richmond where he saw

some hard fighting. At the end of the war he re-entered the Virginia Military Institute and graduated there in 1867 with high honors as a "Star Graduate." He first followed the profession of a civil engineer, and was engaged in locating the line of the Mobile & Alabama Grand Trunk Railroad (now part of the Mobile & Birmingham Railway), of which his father was president. He subsequently studied law at Mobile under the late firm of Manning & Walker, and was admitted to the bar in 1872. It did not take long for his abilities to be recognized in this as in his former undertakings, and he soon took high rank as a lawyer and acquired a large miscellaneous practice, and became the attorney for a majority of the leading corporations doing business in his section of the country.

After several years at the bar, he formed a partnership with one of his younger brothers, Francis B. Clark, Jr., and they continued to practice together until the death of the former.

Mr. Clark was married to Miss Lettice Lee Smith, daughter of Mr. Robert W. Smith. She and their two children survive him.

He was conspicuously in the front rank of his profession, and probably no lawyer in his State had so varied a clientage, or was called upon so often to attend to important litigations in other States where large corporate interests were involved.

His fame as a lawyer was co-extensive with the vast interests that were confided to his care, and a position on the Supreme Bench of his native State was twice urgently tendered him, once by the present Governor; and he was recommended to the Supreme Bench of the United States by the ablest of Southern lawyers.

In the midst of a large practice, he found time to serve the people, and prepared a great number of the valuable general laws passed by the Legislature of his State within the last ten years.

He was a Democrat in politics, yet never sought office. At the time of his death he was a member of the Democratic State Executive Committee and Chairman of the Democratic

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Congressional Committee of his district. He had served the City and County of Mobile in the respective capacities of Councilman and member of the State Legislature, and had several times been a delegate to County, Congressional, State and National Democratic Conventions.

He was a consistent Christian and member of the Episcopal Church, of which he was a vestryman.

Mr. Clark was of fine personal appearance, of noble mien, of brilliant intellect, of heroic impulses and of beautiful character.

The high encomiums of the bench, bar and press of his State were but truthful tributes to his merits, and showed the esteem in which he was held by those best acquainted with him.

HENRY C. SEMPLE.

Henry Churchill Semple died at his home in Montgomery, on the 11th of February, 1894. At the time of his death he was the senior member of the Montgomery bar, and one of the most active, earnest and useful members of the Bar Association in Alabama. For many years he had stood among the great lawyers of this State, and in his professional association had been a partner in the law firm of Rice, Goldthwaite & Semple, and at his death, of Brickell, Semple & Gunter. He was at one time President of the Alabama State Bar Association. As a lawyer, he was learned and painstaking, more noted as a pleader and conveyancer than as an advocate. His industry and caution, with his mastery of the science of his profession, made him a safe counsellor and valued office lawyer. Beginning the practice of his profession in the city of Montgomery, he soon entered upon a lucrative professional career, which he maintained to the close of his life. He was descended from an ancient and illustrious stock who settled in the peninsula of Virginia in the seventeenth century, and with the instinct of all the true sons of the South, he promptly volunteered in the cause of the Confederate States,

and as captain of Semple's Battery, and afterwards as major of a battalion of artillery, he became as eminent in war as he was distinguished in civil life. He was born and reared at Williamsburg, Virginia. He finished his academic course at William and Mary College and afterwards received a diploma from Harvard Law School in Massachusetts. Major Semple married Miss Emily James, of Clarke County, Alabama, in 1848, who united with him in making their home noted for its elegant and cordial hospitality. Warm and loyal in his friendships, courteous to all and charitable to the needy, Major Semple was a gentleman of the old Virginia school, a consistent member of the Catholic Church and a practical Christian.

DISTRICT OF COLUMBIA.

WILLIAM E. EARLE.

William E. Earle, long a member of this Association, died at Portland, Maine, August 13th, 1894, where he had gone to visit his family who were spending the summer at that place. He had been for some time in failing health, but was supposed to be regaining his strength and was not considered dangerously ill until within two weeks of his death. He was born on October 31st, 1839, in South Carolina, in which State he spent his childhood, and graduated at Furman University at the age of twenty.

Selecting the practice of law, he entered the University of Virginia, and there attended the law school. At the breaking out of the Civil War, he at once joined the Confederate service, entered the artillery and became noted as the commander of the famous Earle's Battery which rendered excellent service on the coast.

After the war, Captain Earle began the practice of law in the city of Greenville, South Carolina, and his ability in his profession was soon recognized. He was the senior member of the firms of Earle & Blyth and Earle & Wells, and enjoyed

a large and successful practice. During this period, he received the appointment of assistant district attorney of the United States from President Grant.

Some twelve years ago, he removed to Washington, and lived there ever since, engaged in a lucrative practice. His business was mostly in the Supreme Court and the Court of Claims. He represented South Carolina in the direct tax claims, and gained the suits against the Government. He was also largely interested in the French Spoliation Claims, in which he was the principal counsel, and has been actively engaged in the prosecution of extensive interests in New Mexico, and spent much of his time in Santa Fé.

When he first moved to Washington, he formed a partnership with James L. Pugh, under the firm name of Earle & Pugh, and he subsequently became associated with N. L. Jeffries, under the style of Jeffries & Earle.

In politics he was a Republican, and a faithful adherent to that party, but in his intercourse with those who differed with him he always exhibited a conservative spirit. His interest in this Association was great; and he was a very faithful attendant of its meetings, and a strong and ardent advocate of its objects, and in his death the Association has lost a most valuable member.

His second wife was the youngest daughter of the late Judge Orr, of South Carolina, who now survives him.

LOUISIANA.

HENRY B. KELLY.

Henry B. Kelly was born at Huntsville, Alabama, on October 3, 1823. He was the son of Judge William Kelly, then United States Senator from Alabama, a native of Greenville district, South Carolina, and of Maria A. Brooke, of Prince Georges County, Maryland, a descendant of Robert Brooke, who emigrated from England to Maryland, in 1650,

and was surveyor general of the colony. Judge William Kelly removed with his family from Alabama to New Orleans in 1830, and from that year H. B. Kelly, except when in college or in military service, lived in Louisiana. He was a graduate of the St. Louis University, of St. Louis, Missouri, where he received the degrees of A. B. in 1842, A. M. in 1844, and LL. D. in 1879.

In 1844 he took an active part in the presidential canvass of that year in support of the Democratic ticket—Polk and Dallas—and was president of the largest Democratic organization of his city—the Young Men's Hickory Club—of which Edward Pillsbury and Bernard Avegno were vice-presidents, and Paul E. Theard, secretary.

He was admitted to the bar in 1846, and in the same year elected a member of the House of Representatives from the then Second representative district of New Orleans, J. B. Walton being an opposing candidate on the Whig ticket.

On the breaking out of the Mexican war, he was appointed by President Polk a first lieutenant of the Fourteenth United States Infantry, one of the ten new regular regiments raised for service in the Mexican war, and resigned his seat in the legislature to accept the appointment. Judge Kelly served with the regiment as first lieutenant of Captain Julian P. Breedlove's company, from Vera Cruz to the valley of Mexico, and participated in the battles of Contreras, Churubusco, Molino del Rey, Chapultepec and the Garitas of the City of Mexico.

At the end of the Mexican war, Judge Kelly was discharged from military service by disbandment of the regiment. He then resumed the practice of law in New Orleans, and in 1852 removed to Alexandria, Louisiana, and practiced in Rapides and adjoining parishes. He took an active part in the presidential canvass which resulted in the election of Franklin Pierce, speaking at a number of places in the section in which he resided.

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In 1855, he re-entered the military service of the United States, having been appointed by President Pierce a first lieutenant of the Tenth United States Infantry, one of the four regiments which were added to the regular army in that year.

When Louisiana seceded, Lieutenant Kelly was with his company, with which he had been engaged in a winter campaign against the Navajo Indians in the mountains of New Mexico, under Colonel Canby. He was at headquarters with his company at Bear Springs, or Fort Fontleroy, in the heart of the Navajo country, when a supply train from Albuquerque brought the news of the action of the Louisiana convention. The young man at once tendered his resignation as an officer of the United States army, and, obtaining a leave of absence, left the next morning with the returning escort of the supply train, and came to Louisiana as rapidly as the limited means of conveyance of the times would allow. Shortly after arriving in the State, he was elected Colonel of the Eighth Louisiana regiment of Infantry, with F. T. Nichols as Lieutenant Colonel. On reaching Virginia, he was assigned to duty by General Beauregard, as commandant of the post of Manassas. At the first battle of Manassas he was in command of the reserves of the center, at Mitchell's Ford, the reserves comprising eight companies of his own regiment and the Eleventh North Carolina Infantry.

As a part of the Eighth, or Louisiana Brigade, of Ewell's division, the Eighth Louisiana took a conspicuous part in the campaign in the valley of the Shenandoah, under General Jackson. Colonel Kelly led the regiment in the battles of Front Royal, Winchester, Cross Keys and Port Republic.

After the campaign in the valley, Colonel Kelly was prevented by physical disability, from which he was only partially relieved by a severe surgical operation near the close of the war, from keeping the field as an officer of the line for any great length of time, but served as a member of one of the military courts with the rank of colonel of cavalry to the end of the war. .

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After the war he resumed the practice of law at New Orleans under most adverse circumstances, but eventually became professionally engaged in many cases of importance, especially on the equity side of the Federal courts sitting in Louisiana, and before the Supreme Court at Washington, having as his professional antagonists Judge John A. Campbell, Hon. T. J. Semmes and other leading members of the bar. He was leading counsel in the premium bond litigation against the city, when an attempt was made to repudiate those bonds and they were depreciated to 22 cents on the dollar.

In the Lucas E. Moore and other cases, Colonel Kelly and his professional associates, who were opposed by Mr. Semmes and other eminent counsel, were enabled to procure the decisions of the courts which are the foundation of the good credit of the city of New Orleans.

In 1884, Colonel Kelly was elected as the successor on the bench of Judge Walter H. Rogers.

His death occurred on June 16, 1894.

MARYLAND.

CHARLES J. M. GWINN.

Charles J. M. Gwinn, who died in Baltimore, on February 11th, 1894, after a brief illness, was for more than a generation a conspicuous figure in the legal and political life of Maryland. He was born in Baltimore, on October 21st, 1822, and was educated at Princeton College where he graduated in 1840 with the highest honors of his class. He began at once the study of law with the late John H. B. Latrobe, of Baltimore, and was admitted to the bar in 1843, upon coming of age. From the outset of his career, Mr. Gwinn gave much attention to politics and throughout his life exercised great influence in the councils of the Democratic party to which he steadfastly adhered.

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In 1849, he was elected to the Maryland Legislature, and in the following year was a member of the convention which framed the new constitution of the State, adopted by the people in 1851. In 1852 he was elected, on the Democratic ticket, State's Attorney for Baltimore City for a term of four years. The only other political office held by him was that of Attorney-General to which he was elected in 1875 and re-elected in 1879 for a second term of four years. During the eight years of his service as Attorney-General, he was called upon to argue before the Court of Appeals an unusual number of cases involving important questions relating to taxation, constitutional law and criminal practice. When Mr. Gwinn's death was announced in that Court, Chief Justice Robinson said from the bench: "He was a thoroughly-trained lawyer, and during the past twenty years was of counsel in many of the most important cases before this Court. His briefs were prepared with the greatest care, while in argument he was always strong, sensible and logical. I never heard him in a case without being aided and assisted in the consideration of the questions presented."

Mr. Gwinn was a delegate to the National Democratic Convention which met in Chicago in 1892, and he was a member of several other conventions including the Charleston Convention of 1860. He drew in whole or in part many of the platforms of his party, both in State and National campaigns, and he was so entirely familiar with political history, and his judgment upon questions of measures and men was so sound, that his advice was constantly sought by other party leaders.

Mr. Gwinn was a man of affairs and a born diplomatist as well as a great lawyer. He possessed extraordinary skill in managing men, in reconciling conflicting interests and in dealing with large questions in a large way. While he was a master of his profession in every branch, he was more especially distinguished for his profound knowledge of corporation law and his success as a corporation counsel. He was for

many years counsel for the Baltimore & Ohio Railroad Company, the Western Union Telegraph Company, the Telephone Company and other large corporations. He was also the counsel of the late Johns Hopkins, and drew the will under which the Johns Hopkins University and Hospital received their splendid endowments. In both of these institutions he took the liveliest interest, and served at the time of his death as chairman of the executive committee of the University and as a trustee of the Hospital.

During his busy career of fifty years at the bar, Mr. Gwinn argued hundreds of cases before the Courts of Maryland and many important appeals before the Supreme Court of the United States, but his most arduous and unremitting labors were in chamber practice. One of his most striking characteristics was his power of legal diagnosis. He seemed to know at once, instinctively, what the real pivotal point of a case was, and to this he devoted his strength, although there was nothing in any case too minute to escape his painstaking attention.

In 1858, Mr. Gwinn married Matilda E., daughter of the eminent lawyer Reverdy Johnson, and found in his family circle, of which he was the pride and delight, his chief pleasure and the solace of his leisure hours. He was a man of distinguished presence and genial, kindly nature. Every one brought into contact with him was impressed by his winning and graceful courtesy of manner. His widow and one daughter survive him.

EDWARD CALVIN WILLIAMS.

Edward Calvin Williams, of Baltimore, was born on October 7, 1847, in the city of Lynchburg, Virginia. He was the son of Rev. John W. M. Williams, D. D., and Corinthia Read Williams, daughter of the late Dr. Calvin Hall Read and Margaret Littleton Savage, his wife, of Northampton County, Eastern Shore of Virginia. Dr. Read was a great grandson

of Colonel Edmund Scarborough, "Surveyor General under the King of England;" was a representative in the House of Delegates in 1827-28, and was elected delegate to the Convention of Virginia in 1829, which assembled in Richmond for the purpose of revising the Constitution. The youth of E. Calvin Williams was marked by love, reverence, faith and obedience to his parents. His wholesome influence over his associates was manifested in many interesting incidents that occurred while he was at St. Timothy's Hall, Catonsville, Maryland, and to Mr. E. Parsons (who was Principal of that institution at that time), he was much indebted for encouraging and developing the many true and noble principles instilled by his parents. It is also said of him that, while at the University of Virginia, many of the evil habits of gifted young men were restrained by his influence after the earnest efforts of others had been fruitless. At the age of sixteen, young Williams was called to the position of tutor in mathematics at St. Timothy's Hall. His predilections for his life work were from an early age in favor of the law, but he refused to encourage them, supposing there were greater temptations in this than in most other callings. His preference, however, becoming stronger when about to enter the University, he had a conversation with Judge W. F. Giles, of the United States District Court for the District of Maryland, a gentleman whose life had been alike untarnished and exemplary, and who assured him that he had not found the practice of law incompatible with Christian principles, that the law and gospel could and should be allies, and in no profession could he more honor his God. Thus encouraged, and aided also by the prayerful approval of his parents, he decided upon the profession of his choice, entering the University of Virginia in 1866. After being graduated in some of the schools of the University he took the degree of Bachelor of Law. He entered the law offices of Brown & Brune, (the late Judge George William Brown and Frederick W. Brune being the senior members), and in due time he was

admitted to the bar. Early in his practice his clients ranked among the largest capitalists and wisest business men of Baltimore, and he was, consequently, engaged in many important cases. He was baptized by his father at the age of fifteen and received as a member of the First Baptist Church of Baltimore, soon becoming as a right arm to his father in helpfulness and general usefulness. He was a deacon of the church and member of the body corporate, and was an efficient superintendent of the Sunday school for several years, resigning only because his health was not equal to the demands upon him with his other absorbing duties. He never went into politics, although often solicited to do so. He was, however, a decided Democrat and took much interest in the success of that party. Mr. Williams travelled extensively; he went to Europe twelve or more times and visited all its countries. He was honored by being elected a Fellow of the Royal Geographical Society of England; also Fellow of the Royal Historical Society of England, and Fellow of the Society of Science, Letters and Art, of London. He received his commission in 1887 as Judge Advocate, with rank of Major in the First Brigade, Maryland National Guard, on the staff of General Stewart Brown. He was counsel for a number of important corporations and charities in Baltimore, including the Women's Hospital, the Free Summer Excursion Society, and the Society for the Prevention of Cruelty to Animals. He has been President and Clerk of the Maryland Baptist Union Association, and Secretary of the Southern Baptist Convention. He was married October 1, 1872, to Miss Lou A. Douglas, daughter of the late Hugh Douglas, of Nashville, Tennessee. She died November 26, 1886, leaving no children. He was married the second time, February 9, 1887, to Miss Addie Colt, of the city of New York, daughter of the late Robert Oliver Colt, and granddaughter of the late Robert Oliver, of Baltimore. From this marriage are three children, one son and two daughters. Mr. Williams died at New London, Connecticut, on September 6, 1893.

MASSACHUSETTS.

WILLIAM GASTON.

William Gaston was born in South Killingly, Connecticut, on October 3rd, 1820, and died in Boston, Massachusetts, January 19, 1894. He was the son of Alexander and Kezia (Arnold) Gaston, and was named for Judge William Gaston, of North Carolina, an honored relative. He traced his ancestry on his father's side back to France—to Jean Gaston, a Huguenot, who was banished on account of his religion, and who, after a sojourn in Scotland, passed over into the North of Ireland, whence his descendants came to Connecticut about 1720. On his mother's side he was descended from Thomas Arnold, brother of the William Arnold who went to Rhode Island with Roger Williams and who was one the fifty-four proprietors of that "Plantation." Thomas followed his brother to Rhode Island in 1654.

William Gaston was married in 1852 to Louisa A. Beecher of Roxbury, Massachusetts. Of his three children, two survive him—a son and a daughter.

William Gaston was graduated from Brown University, Rhode Island, in the class of 1840 with honors. His father having removed to Roxbury, Massachusetts, he began his legal studies in that town in the office of Judge Francis Hilliard, afterwards completing them with the distinguished lawyers and jurists Charles P. and Benjamin R. Curtis, of Boston, with whom he remained until his admission to the bar in 1844. He opened his first law office in Roxbury in 1846, and soon took a leading position at the Norfolk County Bar. Mr. Gaston was City Solicitor of the City of Roxbury for five years, was its representative in both branches of the State Legislature and its Mayor in 1861 and 1862. After the annexation of Roxbury to Boston, he was Mayor of the larger Boston in 1871 and 1872.

Mr. Gaston continued his practice in Roxbury until 1865, when he formed with the late Hon. Harvey Jewell and the present Chief Justice of the Supreme Judicial Court of Massachusetts, the Hon. Walbridge A. Field, the law firm of Jewell, Gaston & Field. This firm continued until the election of Mr. Gaston to the governorship of Massachusetts in 1874, when he dissolved his connection with it and devoted himself entirely to the interests of the State. In 1875, Harvard College and his Alma Mater, Brown University, conferred upon Governor Gaston honorary degrees of LL. D. Governor Gaston was President of the Bar Association of Boston for several years.

When he retired from the executive chair he had neither a case nor a client, but he at once resumed the practice of law alone. In 1879 he took into partnership the brilliant and scholarly young lawyer, Charles L. B. Whitney, whose early and lamented death in 1892 ended the well-known firm of "Gaston & Whitney." By the admission of Frederic E. Snow soon after, the firm became "Gaston & Snow," and so continued till his death.

Perhaps no more correct and impartial estimate of William Gaston's character and ability can be given than that taken from the writings and sayings of his contemporaries. The *Bay State Monthly* of February, 1885, in a sketch of his life, says of him: "As a lawyer, his successes have been such as have been vouchsafed to but few. It is rare, indeed, that a person is encountered possessing such well-proportioned, evenly-balanced characteristics as it has been Mr. Gaston's lot to enjoy." Mr. Thomas J. Gargan, himself a prominent lawyer, said in his eloquent eulogy on Governor Gaston before the City Council of Boston: "Mr. Gaston had the elements in him that command success at the bar—tact, talent, magnetism, earnestness, integrity and untiring industry. * * * With an active and acute mind, he was one of the best cross-examiners at the bar; formidable when for the defence and almost invincible when he was for the plaintiff and had the closing

argument, always impressive and earnest, rising at times to a high pitch of eloquence. During his career at the bar, Mr. Gaston was in many important cases, and met as antagonists all the leaders of the bar of his time. * * * He had 'that chastity of honor that felt a stain like a wound.' We know that there was nothing in his life that might not have been seen of all men. He was the soul of truth and honor." To his untiring devotion to his profession, Mr. Gaston sacrificed his health and finally his life.

Among the resolutions passed after his death by his former associates at the bar were these: "They honor the memory of their deceased friend, believing that he stood for what is highest and best in the practice of the law. They cherish his memory; for they knew him as a man of spotless integrity, of an absolute purity of life, of great wisdom, of unremitting labor and of abundant kindness and courtesy. They commend to the younger men of the bar, who will soon come to the front of those who are putting off their armor, the absolute fidelity to every duty which marked the life of William Gaston and made it conspicuous." Justice Knowlton, of the Supreme Court, to whom these resolutions were presented, on receiving them, said: "Among the first to appear before me as counsel was ex-Governor Gaston. From that time onward for several years no one was engaged oftener or more successfully than he in the trial of important jury cases. * * * His addresses to the jury were always earnest and forcible, delivered in musical and beautifully modulated tones and often glowing with a fervor which was very effective. In the argument of questions of law before the full court, he bore his part, and the presentation of his propositions there was characterized by clearness of statement, dignity and grace.

"His integrity, fidelity and patriotism as a public servant in high official stations have been known and appreciated, not only in Boston, but throughout the Commonwealth. By birth and education, he represented the best elements of New England life."

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JOHN SPAULDING.

John Spaulding was born in Townsend, Massachusetts, August 8, 1817, and died at Boston, May 24, 1893. He was the seventh in descent from Edward Spaulding, who came to Massachusetts about 1630, and settled in Braintree. Mr. Spaulding was educated in the public schools of his native town, at Phillips Academy, Andover, and at Yale College, which he entered in 1842. He was obliged to leave college in his senior year on account of ill health, so that he did not graduate with his class, though at a later date he received from the college the degree of Master of Arts. He studied law at the Harvard Law School, receiving the degree of LL. B. in 1850; and afterwards in the office of George F. Farley, at Groton. He was admitted to the Massachusetts Bar in 1851. He commenced practice at Groton, which he continued there and at Groton Junction for some twenty years, when he opened an office in Boston, and continued in practice here till his death. When the first Northern Middlesex District Court was established, he was appointed a special justice and held the office for many years. He always devoted himself to his profession. In his later years he had some railroad interests in Florida, which frequently called him to that State. He was a man of much force and vigor of mind and body, and though not eminent as a lawyer, he was regarded as a man of much ability. He was somewhat aggressive and combative, after the manner of some of the members of the Middlesex County Bar of half a century ago; but to his friends he had a kindly and attractive side. He always took much interest in this Association, of which he has been a member since the third annual meeting in 1880, and frequently attended its meetings. He was married in 1861 to Miss Charlotte A., daughter of Alpheus Bigelow, of Weston. She died June 24, 1889, leaving no children.

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MISSOURI.

WILLIAM GARDNER HAMMOND.

William Gardner Hammond was born at Newport, Rhode Island, May 3, 1829. His grandfather and his father were both lawyers. His father, William Gardner Hammond, was a man of scholarly attainments, and personally supervised the education of his son, who entered Amherst College at the age of sixteen and was graduated with honors in 1849. He was admitted to the bar in Brooklyn, New York, and for six years practiced his profession there with great success. In 1856, he went to Germany and pursued his studies at the University of Heidelberg for one year. Being recalled to America for a few months, he returned to Europe and devoted two years more to the further prosecution of his studies. In 1860, his health being somewhat impaired, he returned to America and settled in Iowa, where he was associated for several months with his brother as a civil engineer. His health being restored, he went to Anamosa, Iowa, where he practiced law until 1867, at which time he removed to Des Moines for the purpose of publishing the *Iowa Digest*. He remained at Des Moines for about two years, practicing his profession, and at the same time he was associated with Judges Wright and Cole, of the Iowa Supreme Court, in conducting a private law school.

In 1869, at the request of the authorities of the Iowa State University, Dr. Hammond established the Iowa Law School as the law department of the State University. He remained in charge of this institution until 1881, when he was called to St. Louis to become the Dean of the St. Louis Law School, the law department of Washington University. He continued to fill this important office until the date of his death, April 13, 1894.

Thus, for a full quarter of a century, he was actively engaged in conducting those institutions which contribute so largely to the education of young men in the scientific study of jurisprudence. By his uncommon union of patience, moderation

and determination, he succeeded in giving to these schools an influence widely extended, a completeness and thoroughness of purpose and a clearly-defined method for the pursuit of the highest and best legal education. His industry was untiring, and nothing was irksome that lay in the path of duty. In his association with young men, Dr. Hammond was singularly attractive. His profound and varied learning gained their honor and respect, and his kindly, sympathetic nature their love and gratitude. His intellectual bent was all in the direction of producing harmony in the law. In his lectures on the common law, prepared for the students of the St. Louis Law School, he showed the essential unity of all law, and that the law, if properly studied, is seen to be one system—one science.

His scholarship also found expression in wider fields than the law schools in which he was an instructor. He was a profound student of the Roman law, as well as the common law. While at the University of Iowa he gave to the world his masterly Introduction to the American Edition of Sandar's Institutes of Justinian. His edition of Blackstone, published while he was Dean of the St. Louis Law School, has linked his name imperishably with that of the great commentator. Both of these works have not only reflected honor upon him, but have also given distinction to the law schools with which he was connected, as did the works of Greenleaf and Story to Harvard. His work as Chairman of the Committee on Legal Education of the American Bar Association is known to its members. His reports to the Association are monuments. Had he left behind him no other literary productions, these reports alone would mark him as one of the most scholarly men and one of the foremost educators of his day.

NEW JERSEY.

JOSEPH D. BEDLE.

Joseph Dorsett Bedle was born at Matawan, Monmouth County, New Jersey, January 5, 1831, and died October 21,

1894. He came of an old American family on both sides, his maternal ancestors having emigrated to this country from Bermuda, more than a century and a half ago. His father, Thomas J. Bedle, whose immediate ancestors were Jerseymen, was a merchant, a justice of the peace for upwards of twenty-five years, and a judge of the Court of Common Pleas for the County of Monmouth. His mother, Hannah Dorsett, was descended from a family which was among the early settlers of Monmouth County. Their son, Joseph D., obtained his early educational training in the Academy at Matawan, then known as Middletown Point. He at an early age manifested a predilection for the legal profession, and began his study of the law under the very able direction of the Hon. William L. Dayton, at Trenton, in 1848.

During this period of four years he attended the regular course of lectures at the law schools at Ballston Springs, New York, and in the Spring of 1852 he was admitted to the bar of New York State as an attorney and counsellor. Returning to New Jersey, he passed a short time in the office of Hon. Henry S. Little, at Matawan, and was admitted to the bar of the State of New Jersey at the June term of the Supreme Court in 1853. He took up the practice of his profession at Matawan, and in the Spring of 1855 made Freehold, the county seat of Monmouth County, his home, where he continued his practice. A large, valuable and lucrative business fell to him, and when he was at the early age of thirty-four years he was offered by Governor Joel Parker a seat upon the Supreme Court Bench of the State, which he accepted; his commission bore date March 23, 1865. He was assigned to the Circuit composed of the Counties of Hudson, Bergen and Passaic, and he took up his residence in Jersey City, at the time of his appointment, and resided there until the time of his death.

He gave universal satisfaction as a judge. He administered the law with firmness, with a high sense of his official duty, and with a firm aim to raise and maintain a high standard of

morality in society; a remark from the bench against carrying concealed weapons, "That the citizen could not have any greater shield of protection than the strength and majesty of the law," illustrates his character as a judge. His discharge of official as a judge had been so acceptable that when his term expired in 1872, he was reappointed, and shortly afterwards received the unanimous nomination from the Democratic party for Governor, which he accepted, retaining his seat on the bench, but taking no part in the canvass. He was elected Governor in 1874, by one of the largest majorities ever given to any candidate. He filled the office of Governor with great credit to himself, and with very useful results to the State, and retired after his term of three years, with the esteem and respect of all classes of citizens.

Upon his retirement, he took up the practice of his profession in Jersey City, and was steadily engaged until his death in the argument of causes of the greatest magnitude in all the highest courts of the State, and in the Supreme Court of the United States.

The College of New Jersey at Princeton, in 1875, conferred upon him the degree of LL. D.

Governor Bedle was married in 1861 to Althea, daughter of Hon. Bennington F. Randolph, of Freehold, New Jersey; their children are Bennington Randolph, Joseph Dorsett, Thomas Francis, Althea Randolph (now the wife of Mr. Adolph Rusch), Randolph and Mary (deceased).

He was elected a member of the American Bar Association at its session at Saratoga Springs in August, 1879.

FREDERICK H. TEESE.

Frederick H. Teese was born in Newark, New Jersey, October 21, 1823, and resided there until his death on January 7, 1894.

He entered the College of New Jersey at Princeton in 1840, and was graduated from that institution in 1843. He

studied law in the office of Hon. Asa Whitehead, an eminent jurist of Newark. In 1846 he was admitted to the bar of New Jersey as an attorney and in 1849 as a counsellor at law. Establishing himself as a practitioner in his native town, he rose rapidly in his profession, not only as an advocate, but as a lawyer whose sound judgment and fidelity could never be doubted.

In 1859, he was elected a member of the General Assembly of New Jersey, and in the following year was chosen Speaker of the House, and, as the presiding officer of that body, made the address of welcome to Abraham Lincoln on the occasion of his visit to Trenton on his way to his first inauguration. In 1864, he was appointed Presiding Judge of the Court of Common Pleas of Essex County for the term of five years, and, at the expiration of his first term, he was re-appointed for another term of five years, but in 1872 resigned his position on the bench and was appointed counsel for the Mutual Benefit Life Insurance Company of Newark, and continued to hold that office until his death.

In 1874, he was elected a member of Congress, and at the expiration of his term declined a re-nomination.

For many years prior to his death, he held the honorary positions of Trustee of the Free Public Library of Newark, Commissioner of the Sinking Fund of Newark, and Director of the National State Bank.

In all these fields of labor he won for himself the cordial esteem of his fellow-citizens and maintained an unblemished personal character and a high reputation as lawyer, legislator and judge. He was a man of strong intellect, trained by a wide course of reading. He had very decided convictions, a somewhat impatient scorn of wrong and thorough honesty of purpose. In his earlier years he was an advocate of marked zeal and energy, and throughout his later life, when withdrawn from the active contests of the bar, a prudent counsellor and a safe guide in public affairs.

NEW YORK.

DANIEL L. BENTON.

Daniel Lyon Benton was born on October 16, 1848, in Howard, Steuben County, New York. His father, Col. Lewis D. Benton, was of English stock and a native of Indiana. Soon after his birth his parents removed to Hornellsville, New York, and there the younger Benton passed his youth. After exhausting the educational facilities of that village, he entered college at Poughkeepsie, New York, and later graduated with honors from Asbury University at Greencastle, Indiana. He then entered the office of Senator Ira Harris, of Albany, New York, and in 1868 graduated from the Albany Law School and was admitted to practice his profession. He immediately returned to his old home at Hornellsville and there opened an office. After two years of successful practice, tempted by greater opportunities in the State of Michigan, he removed to Big Rapids in that State, and soon became attorney for the Grand Rapids & Indiana Railroad Company. In 1876, at the earnest solicitation of his parents, then in failing health and weighed down by years, he returned to New York State and for a time practiced in Wellsville, Alleghany County. Later he entered into a co-partnership with George N. Orcutt and the late Hon. Horace Bemis, and removed to Hornellsville, where he continued the practice of his profession to the close of an exceptionally busy and useful life. He was at one time counsel for the Erie Railway Company at Hornellsville, and during the great railway strike of 1877 rendered signal service in bringing about an understanding between the officials and employes of that road. In 1880, Mr. Benton was elected District Attorney of Steuben County and conducted the duties of that office in a manner satisfactory to the law-abiding citizens of the county, and by his courageous course became the dread of the vicious. Mr. Benton was a close observer of events, a careful reasoner and a diligent

student, not only of the law, but of literature and history. His many attainments, covering a wide field of learning, together with a marked social disposition and brilliant conversational powers, made him a most agreeable and pleasing companion. A vast store of anecdote, ready flow of wit and polished sarcasm combined with logic, pleasingly stated, made Mr. Benton a popular speaker. To the younger members of the profession he was kind and considerate, always ready to assist with words of counsel and advice, ever bidding the youthful work and hope. In his professional capacity he was unusually successful, his greatest victories being in appellate courts; to his clients he was faithful and upright, and by his diligence, learning and integrity left a lasting impression, not only upon the members of the profession, but upon the entire community. Early in life Mr. Benton married the daughter of the late Judge Arnett, who, with three sons, survive him. He died June 14, 1894; his remains rest upon the beautiful slope of Hope Cemetery, overlooking the picturesque Valley of the Canistoe, long his home, and where he often strolled, admiring nature's handiwork which was to him a teacher and furnished some of his most beautiful illustrations.

DAVID DUDLEY FIELD.

David Dudley Field, so long an influential member of the American Bar Association and an invaluable leader in the service it has sought to render to the profession, died April 13, 1894, in the city of New York, at the residence of his youngest brother, Dr. Henry M. Field, at the age of eighty-nine years and two months.

His father, also named David Dudley, was a Congregational clergyman in Stockbridge and in Haddam, Massachusetts. The ancestry of the family has been traced through John Field, the English astronomer of the sixteenth century, to the Fields, the De La Fields and the De La Felds mentioned in the annals of the Norman conquests.

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David Dudley and his brothers, Stephen J., the eminent Justice of the Supreme Court of the United States and the senior in service upon that bench, Cyrus, the founder of ocean telegraphs, and Henry M., the theologian and man of letters, have all been distinguished for long and admirable public services.

David Dudley Field was born on the 13th of February, 1805. He studied under Mark Hopkins in Williams' College; and in law, under Harmanus Bleecker in Albany, and Henry and Robert Sedgwick in New York. He was admitted to the bar in that city as an attorney at the age of twenty-eight, and to the degree of counsellor at the age of thirty, and became partner with Robert Sedgwick upon the retirement of the elder brother of the latter. He made himself a master of procedure under the common law system (then in operation in this State and in Massachusetts, from which State the Sedgwicks came) and also of procedure in equity.

During the period of his study much public attention was called to the question how far the common law and particularly its methods of procedure were adapted to the situation and condition of the American people. In 1822, Edward Livingston published his report of a plan of a penal code for the State of Louisiana. In the next year William Sampson, an Irish lawyer of note in New York, made an address before the Historical Society in which he attacked with great force and vivacity the technical features of the common law. And in the following year Edward Livingston's penal system prepared for Louisiana appeared. Sampson's address brought on an extended discussion in the newspapers and magazines of the day, and these publications gave David Dudley Field a vivid interest in the subject. On a visit to Europe in 1836 and 1837 his observation of the English Courts and of continental systems broadened his view, and after his return he began a systematic study of what he could do for the improvement of the law. His active engagements in practice prevented his lapsing into a theoretic or academic view of the subject, and

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led him to consider it in the most practical aspect. At the time when public interest in the question had begun to arise in New York, the courts of common law there had already begun to assume without legislative authority the power to order a discovery of books and papers in actions at common law; and the legislature had already authorized those courts to issue in ejectment a sort of common law injunction to stay waste. The revised statutes adopted in 1829 had confirmed and extended this borrowing by common law courts of equity powers.

The mind of Mr. Field went deeper and looked further in this regard. His conception was that there should be but one court of general jurisdiction and but one form of action; one rule for all pleading; namely, that facts, as distinguished alike from evidence on the one hand, and charges and traditional legal conclusions on the other, should be stated in plain and common language, and that the defendant's good faith in answering should be challenged by requiring him to make oath to the truth of his defense, if the plaintiff had made oath to the truth of his allegation. It was further his view that the provisional remedies of arrest, attachment and replevin, previously allowed at common law, and of injunction and receiver, previously allowed in equity, should no longer depend upon the frame of the action, but should be readjusted on a broader basis so as to be allowed according to the nature of the grievance of which the plaintiff complained or the redress to which he was entitled, irrespective of the distinction previously dependent upon the form of action. He proposed one mode of trial, namely, by witnesses in open court, to be with or without a jury according to the constitutional or statutory right to jury trial; and, if without a jury, to be by reference, according to judicial convenience or agreement of the parties; one rule as to variance and amendment at the trial, according to which only the following distinctions were made; that a mere variance in some particular or particulars only should be disregarded unless counsel affirmatively satisfied the court that his client

had been misled to his prejudice in maintaining his action or defense; and that only the failure of proof of an essential allegation in its entire scope and meaning should prevent recovery; and that the court might allow an omitted allegation to be supplied at the trial. He proposed a single mode of review, namely, by appeal in all cases, instead of a writ of error as at law; and a simple system of supplementary proceedings as a summary and inexpensive substitute for creditor's bills, available at the option of the suitor.

It was due to Mr. Field's active influence, aided by that of Charles O'Connor and a number of other men eminent at the bar, that the necessary provisions were introduced into the constitution of 1846 to open the door for such changes as these.

The time was not unfavorable for a great step in advance of this kind. The decade which fell in the middle of this century and which saw very important political movements on the continent of Europe in the direction of liberal government, also, from some cause which perhaps has not been explained, witnessed a remarkable number of ameliorations in the law. Lord Campbell's Act; the making transferable the interests of a disseisee of land; the extension of the American Admiralty Jurisdiction; the introduction of the doctrine of *ultra vires*; the establishment of the English Court of Criminal Appeal and the introduction of suits against the nation; the reforms in the law of evidence; the merchant's shipping acts; the royal commission on simplification of titles; the married women's acts; the substitution of general laws allowing free formation of corporations in place of special charters; the shipping limited liability act, and other progressive measures originating at about the same time make this period of the merger of law and equity and the adoption of the new procedure in New York a brilliant epoch in legal history.

The legislature hesitated, and adopted only about one-half of the code of procedure which Mr Field and his associates in the commission prepared. That, however was the most important part. The judges were more reluctant. To study

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a new system of procedure which it took a small volume to set forth was no light addition to the labors of a court of thirty-two judges presiding in branches in different parts of the State and meeting each other only in continuous groups of four in the eight different districts. Under these circumstances there ensued for many years a period of judicial antagonism both to the code and to the rulings of each other, which resulted in the habit on the part of the profession of regarding the code not as the outlines of a free system for the direct administration of justice, but as the edict of superior authority forced upon the bench with detailed regulations only to be administered by studying the letter of the law minutely and inquiring for the absolutely necessary construction so far as diverse interpretations in different districts admitted.

Notwithstanding these hindrances, the new procedure steadily gained in acceptance and appreciation, and was in substance adopted in at least twenty-three of the States and Territories of the Union, and some main features of it were adopted in other States where the changes of form were not sanctioned.

During all this period, David Dudley Field was engrossed in active practice at the bar, where he was for at least a third of a century a most commanding figure. The great causes in which he was engaged are familiar to the profession and it cannot be necessary here to do more than mention the Erie Railroad litigation, the Milliken case, the McArdle case, the Cruikshank, and the Cummings and Garland cases, the case of the State of Georgia, the elevated railroad litigation and the Electoral Commission. Such leisure as his practice afforded, he applied in the preparation of a system of codes of substantive law and criminal procedure. In this effort he arranged the law of New York in five parts or small volumes upon a scheme which presented: (1) That part which public officers and citizens dealing with them need, called the *Political Code*; (2) That part which the community need touching their civil rights, duties and responsibilities, called the *Civil Code*; (3) The code of procedure already spoken of; (4) A *Code of*

Criminal Procedure for courts and lawyers engaged in criminal cases, and lastly the law of crimes and punishments called the *Penal Code*. The Code of Criminal Procedure and the Penal Code after careful revision have become part of the law of New York. The Political Code and Civil Codes with local adaptation have been adopted in some other States, but not in New York.

Mr. Field's untiring labors in this direction which were carried on chiefly if not wholly at his own expense, were crowned by his *Outlines of an International Code*. He, first, we believe, among jurists brought out into light the fact that the numerous treaties and conventions which have been adopted by civilized nations, two by two, already form, when taken together, a complete network of international legislation on many subjects, which only requires to be seen in its entirety and reduced from a multiplicity of special agreements between two parties, to a single general principle affecting each and all in their relation to each other, to form the basis of what would truly be International Law. The large circulation of this work has undoubtedly contributed much to the great advance which the doctrine of international law and international arbitration has made in the last few years.

Mr. Field's conception of law regarded it as a great system of harmonious principles, having recognition, it is true, in the books of reports, but having their sanction in the general sense of justice and in their actual adaptation to public and private welfare. "His work" as has been said, "will never be forgotten, because it forms a conspicuous part of the progress of man himself toward that intelligent regulation of life which is the object of all law."

WILLIAM WALTER PHELPS.

During the spring of 1894, the writer of this notice attended with Mr. Phelps the funeral of a friend who was buried in a country church-yard near the last resting-place of Edwards

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Pierrepont and Hamilton Fish. As we turned away from the grave, he said two simple words of inquiry, "Who next?" Little did the writer dream at the time how that laconic question was to be answered, and that but a few weeks later he should be called upon to mourn the unexpected death of the inquirer with whom he had enjoyed a long and unbroken friendship. At the close of April, Mr. Phelps had gone to Fort Monroe for the benefit of his health. On June 18, he unexpectedly died, to the great loss of his country and troops of friends and admirers both at home and abroad.

The first of his ancestors was William Phelps, a younger brother of John Phelps, secretary to Oliver Cromwell. He came to this country in 1630 and settled at Simsbury, Connecticut. John J. Phelps, the father of William Walter Phelps, was the first of the family to leave Simsbury. He settled in New York, where his only son was born on August 24, 1839. The latter was early sent to Yale College and, notwithstanding a serious affection of the eyes which rendered it necessary to give them two years rest, he stood second in his class at his graduation in 1860. Three years later he secured the valedictory in Columbia College Law School, and immediately began the practice of his profession. Before he was thirty, Mr. Phelps was acting as counsel for the Rock Island and the Delaware, Lackawanna & Western Railways, the United States Trust Company, the National City Bank and other important corporations. The death, in 1869, of his father constrained him to retire from active practice and to devote his attention to the management of his large estate and the trusts connected with it.

Ever retaining warm interest in his Alma Mater, Mr. Phelps was a leader in the "Young Yale" movement, resulting in affording the alumni a share in the government of the College. He was immediately elected a member of the Board of Trustees, and by successive elections was continued in that office to the end of his career. He had always taken a warm and deep interest in politics, and in 1872 he was elected to Congress

from the fifth New Jersey district, composed of the counties of Bergen, Morris and Passaic, by a majority of nearly three thousand. Mr. Phelps soon attained a high rank as a debator, and was one of the few members to whom the House would always listen. His reputation in Congress was first made by an attack upon the franking privilege, and he also discussed questions of banking and currency, the Pacific mail subsidy and the government of the Southern States. With Clarkson N. Potter and Charles Foster, Mr. Phelps was sent by the House to investigate the outbreak of the White League in Louisiana. Both political parties finally agreed to abide by the committee's decision, and the legislature of Louisiana was organized in accordance with their report. Although an ardent Republican, Mr. Phelps was always independent in action. He was of the opinion that the so-called Civil Rights Bill would be an injury rather than a benefit to the colored race, and, moreover, he deemed it unconstitutional (as the courts subsequently held), and, therefore, voted against his party. This action cost him his re-election.

In 1881, while traveling in Europe for the benefit of his health, somewhat impaired by his labors as a speaker in the presidential campaign of the previous year, he was appointed by General Garfield, United States Minister to Austria. At Vienna his familiarity with the court language and the customs of the country, his liberal mode of life and his intense Americanism rendered him a valuable and most successful representative. On the succession of President Arthur, he immediately tendered his resignation, returning to the United States in August, 1882. He was at once elected to Congress and continued to serve through the Forty-eighth, Forty-ninth and Fiftieth sessions. All of his years in Washington were marked by the earnestness, activity and devotion to duty that had characterized his first term in the House of Representatives. He was always a strong advocate of American as against foreign interests, and was confirmed in the doctrine of protec-

tion to the industries of his native land by the observations made during his public and private life abroad.

In June, 1889, President Harrison appointed Mr. Phelps to the German Court. He presented his credentials to the Emperor in September, and from that time till his final retirement from politics, in May, 1893, he devoted himself assiduously to the promotion of his country's interests and affairs at the German foreign office. In June he returned to this country, and five days later he took the oath of office as one of the lay judges of the Court of Errors and Appeals to which he had been appointed by Governor Werts of New Jersey. With characteristic energy and devotion he entered upon his duties. Once a week or oftener he went to Trenton to listen to law arguments, as long as his health permitted.

On the day of his graduation from Yale College, Mr. Phelps married Miss Sheffield, of New Haven, whose father was the founder of the Sheffield Scientific School. On the death of his father, he took up his legal residence in New Jersey. His original purchase was added to from time to time until it amounted to two thousand acres, extending from the Hudson to the Hackensack River, a distance of five miles. On this large estate he constructed twenty-five miles of macadamized road and planted nearly half a million trees. Mr. Phelps was a Regent of the Smithsonian Institute, President of the Columbia Law School Alumni Association, and a founder of the Union League and University Clubs of New York. He published many of his most important addresses and speeches, including those on the Franking Privilege, 1874; the Civil Rights Bill, 1875; Fitz John Porter's Case, 1884; an oration before General Grant and his Cabinet on "The Dangers of War," 1886, and one on Congress before the New England Society of New York in December, 1886. So far as the writer is aware, his last literary work was a scholarly and exhaustive article on General Garfield, contributed to a volume entitled "The Presidents of the United States, 1789-1894," the other contributors to the volume being such men

as George Ticknor, Curtis, Carl Schurz, Robert C. Winthrop, and John Fiske. Mr. Phelps was a generous contributor to his Alma Mater as well as to other institutions and causes in which he was interested, and by his will gave \$50,000 to Yale University, besides liberal bequests to friends and employees.

ORLANDO BRONSON POTTER.

Orlando Bronson Potter, born at Charlemont, Franklin County, Massachusetts, March 10, 1823, was descended through both his father and mother from Puritan pioneers, who came over from England among the early emigrants. He was the third of ten children. He worked upon his father's farm at Charlemont until sixteen year of age, and during the last six years of this period the management of the farm devolved largely upon him, his father being most of the time absent from home on public business. Between the ages of sixteen and eighteen, he prepared himself for college, working on the farm during spring and summer, and attending school in autumn and winter. He entered Williams College in August, 1841, and maintained a high standing in his class, but ill health and lack of funds forced him to leave the institution in his sophomore year. After a short mackerel-fishing trip, he taught school in the academies at East and West Dennis on Cape Cod. Having resolved to study law, in order to provide means, he engaged in the spring of 1845 to teach a class of young ladies in the afternoons, and at the same time rented several acres of stubble ground, enriched with a fertilizer made of sea-weed cut with his own hands from the rocks on the seashore at low tide, and cultivated his garden during the forenoon of each day. In August, 1845, he closed his school, harvested his remaining garden products and entered the Law School of Harvard College in 1845.

He continued the study of law at Harvard, and in the office of the late Charles G. Thomas, at Boston, until 1848, during the time teaching two terms of school. During part of this

time, to eke out his means, he boarded himself, buying and cooking his own provisions. He was admitted to the bar, in Boston, in 1848. Declining a partnership with Mr. Thomas, the young lawyer opened an office at Court Square, Boston, and one in South Reading, ten miles from the city, attending the former office during the day and the latter in the evenings. He evinced considerable skill and tact as a collector of bad debts, was successful from the start, and soon had a paying practice. His defense of two young men engaged in the sewing machine business, Messrs. William O. Grover and William E. Baker, against an unjust claim, in 1852, proved an important factor in determining his career, for he soon became interested with them, forming the firm of Grover, Baker & Company, in which he took the active management of the financial and even more important legal departments. In both these spheres he was eminently successful, and he made the Grover & Baker business one of the most profitable of any sewing machine business known during that time or since.

In May, 1853, he removed to New York to establish the business here. In 1854, the company was chartered, and from that time known as the Grover & Baker Sewing Machine Company. Mr. Potter was its first and only president. The active business of this company terminated in 1876, and from that time he has not been identified with manufacturing or commercial trade.

From the time of his removal to New York, until his death, Mr. Potter was actively identified with the growth of New York city, constructing under his personal supervision many large stores and warehouses, and at the same time becoming well known and highly respected in financial circles. He was the originator of our present national banking system. The unsatisfactory scheme of State banks was in operation at the beginning of the civil war, and realizing the inability of the system to sustain the business of the country and furnish means for the war, immediately after the defeat at Bull Run, Mr. Potter, on August 14, 1861, wrote an exhaustive letter

to the ~~Secretary of the Treasury~~ on the subject. The plan proposed in this letter, after careful consideration and discussion, was at length adopted by Congress in the National Banking Act, passed February 25, 1863.

A Whig before the war, Mr. Potter voted for Lincoln in 1860, and since 1861 was allied with the Democratic party. In 1878, he was nominated for Congress from the Tenth Congressional District of New York, but was defeated. In the fall of 1882, he was elected to Congress from the Eleventh Congressional District of New York. He served upon the House Committees on Banking and Currency and on Expenditures in the Treasury Department, and, contrary to the usual custom with new members, was called upon to participate in most of the important discussions before the House. He opposed every step towards centralization by assuming to the general government the duties and responsibilities of the States.

Among other services, in speeches delivered June 13, 1884, and February 11, 1885, he contended successfully for the extension of the free delivery system under the postal service to towns and cities not then supplied by such service. Again, in the interest of the consular and diplomatic service of the country, he opposed, in a speech delivered May 14, 1884, the reduction in salaries in this field to a point so low that the service could only be entered by the wealthy, contending that these duties should be shared equally by those not possessed of wealth, and to this end should be rewarded by just and adequate compensation. Almost unsupported upon his side of the House, he urged that the necessary authority be given the President to complete negotiations then in progress for the acquisition by this government of the control of the Nicaragua canal route. In opposition to the Democratic side of the House, he supported successfully the Senate amendment then pending authorizing the Postmaster-General to contract for carrying our foreign mails in American bottoms, under the American

flag, at the same price paid foreign ships for equivalent service. Mr. Potter declined a renomination for Congress in 1884.

In the affairs of the city of New York also, Mr. Potter was one of the most prominent and well-known citizens, active in local public affairs and of national reputation. He was identified with State and National legislation affecting mercantile and commercial interests. He originated and secured enactment of the laws under which the debt of the city is being refunded at a low rate of interest; and he contested in the Supreme Court the law of the State ordering the destruction of the city reservoir at Forty-second street, and gained a decision of the unconstitutionality of the law on the ground that the State could not control the private property of the city. For this service he received a vote of thanks from the Common Council of New York.

In 1886, there was a movement by the independent citizens of New York city for the election of a mayor independently of party machinery. At a public meeting, called for this purpose, a committee of one hundred was appointed to make such a nomination.

This committee, in its report recommended unanimously the nomination of Mr. Potter, but he declined the nomination.

As stated in the resolutions of the New York Board of Trade and Transportation, passed soon after his death, among other things: "From that time (1884) Mr. Potter became the most prominent man in this State in championing the improvement and preservation of our State canals, and upon the death of Abram B. Miller was made Chairman of the Canal Committee of this Board. He represented this Board on several occasions in the National Board of Trade and in other gatherings and conventions. Not a winter for ten years has passed without his making frequent visits to Albany to use his influence and persuasion before committees and with members of the legislature and the governor in behalf of public interests."

Mr. Potter was given the honorary degree of LL. D., by Williams College in 1889.

The bent of his mind was always towards serious things. Mindful of his own early struggles, he took great interest in young men, and was ever ready with friendly counsel and assistance to help those he thought deserving. He was an earnest friend to the colored race, and was always ready to help them in their endeavors for better education and the improvement of their condition.

Mr. Potter was married in 1850 to Martha G. Wiley, daughter of Benjamin B. Wiley, Esq., of South Reading, Massachusetts. He had seven children by this wife, of whom four are living. His first wife died in 1879. Mr. Potter married again, his second wife being Mary Kate Linsly, daughter of the late Dr. Jared Linsly, of New York.

AUGUSTUS SCHOONMAKER.

Augustus Schoonmaker was born in 1828 and died on April 10, 1894. In early childhood he removed from Rochester, Ulster County, his birthplace, to Kingston, where he came to the bar in 1853.

He labored and advanced in prosperity and popularity in his town, and before many years his reputation had extended and he was widely known. In 1863, he was elected county judge and re-elected in 1867. On the county bench he displayed an excellent knowledge of the law, combined with a judicial temper that made practice at his chambers a pleasure.

In 1885, Judge Schoonmaker was elected to the State Senate, and two years later he was elected Attorney-General of the State. During that period he was a well-known and popular resident of Albany. He was defeated for re-election and retired to the private practice of law until 1883. In that year Governor Cleveland re-organized the State Civil Service Commission and he called upon Judge Schoonmaker to become one of its members, the other two being Jay, of New York, and Richmond, of Buffalo. In that not very popular office he did all that the condition of affairs would permit.

In 1887, Congress passed the law creating an Interstate Commerce Commission, and President Cleveland, knowing his excellent abilities, named him as one of the commissioners. During his term, Judge Schoonmaker resided in Washington. He took a prominent part in the deliberations of that commission and wrote many important opinions.

After President Harrison's election, Judge Schoonmaker returned to Kingston. Since that time he devoted himself to private practice, though several months ago his name was mentioned in connection with the Supreme Court nomination.

He was a man of fine character, solid abilities, kindly disposition, constant study and a controlling sense of justice. A clear and broad intellect was accompanied by tenacity of will, unwearied application and great capacity for investigation, which very early in his professional life developed the able counsellor, and later the powerful advocate at the bar, which placed him at the head of the bar in his county for many years past. His solid judgment and sagacity made him a safe adviser, and his integrity and fidelity rendered his aid invaluable. His friendships were strong, and while in the active conflicts of political and public life he gave blow for blow, his adversaries admired his strength and honored his courage, firmness and sincerity, actuated as all knew him to be by conviction, loyalty and the high sense of duty he exhibited in every relation of life—social, religious, political, and in the great public stations he was called upon to occupy.

His reputation long ago ceased to be local. In every station he at once took rank with the foremost of his associates and predecessors. His literary culture was wide, and had his professional and public duties absorbed less of his time, it is not unwarrantable to say that his ability as a writer upon various subjects to which he had given much attention would have made him prominent among the publicists of his time.

Judge Schoonmaker, in his home life, was admirable; as a citizen every duty was discharged with scrupulous fidelity, and his sympathy and helpful generosity extended in many directions,

and none the less efficiently because his benefactions were never proclaimed as aught beyond what he felt it incumbent upon him to do. In brief, he was a strong, wise and helpful man, and he has gone hence revered as he deserved to be.

ANDREW J. TODD.

Andrew J. Todd was born on February 9, 1836, in the City of New York, of Scotch ancestry. He was a graduate of the Collegiate and Polytechnic Institute of Brooklyn. After spending two years in foreign travel, he commenced the study of the law and was admitted to practice in 1862 in the City of New York.

He confined his attention almost wholly to the litigation of patents, and had a very large and important practice extending all over the United States.

His love of his profession and great industry made him generally successful. He had a clear and judicial mind which enabled him to grasp the points of a case and advise his clients as to the merits of their claims. He always counseled a settlement out of court in cases which were in his judgment at all doubtful. Although of a kind and genial disposition, he seldom spared the time from his profession to mingle much in general society.

He was a member of the Episcopal Church, being in his youth a member of old St. Ann's, and later of St. Luke's in Brooklyn. For the last twenty years of his life he lived in New York City, and represented two different churches in the Vestry and Diocesan conventions. He was a member of the Church Club and the New York Academy of Sciences. He was generous and public-spirited, always ready to extend a helping hand to those who needed it, and no one ever applied to him in vain. His death was primarily caused by being thrown from a carriage which injured the spine and caused a long and painful illness which ended on April 16, 1893.

His widow and seven children survive him.

OHIO.

JOEL W. TYLER.

Joel W. Tyler, of Cleveland, Ohio, passed from life on the morning of September 15, 1894.

Judge Tyler's career was a notable one. He was born in Portage County, Ohio, in February, 1822, and lived in that State all his life. He was an early student in the Western Reserve University, of Hudson, Ohio. So eagerly did he pursue his studies that his eyesight failed him, and for weeks he was confined in a darkened room, a fellow-student reading his lessons to him. This love of study characterized his whole life. He studied law in the office of Tilden & Ranney at Ravenna, Ohio, and was admitted to the bar when quite a young man. In 1851, he was offered the nomination of State Senator, but declined it.

In 1853, he began to act as General Counsel for The Atlantic & Great Western Railway. Some of the largest transactions of that road were effected by him. He entered into partnership with Judge Matthew Birchard, late one of the Judges of the Supreme Court of Ohio. In 1865, Judge Tyler, still attorney of The Atlantic & Great Western Railway, made a proposition to Judge Rufus P. Ranney, then on the Supreme Bench of the State, and one of the most distinguished jurists that Ohio ever had, to join him in partnership. Judge Ranney resigned his position and accepted the proposition.

For many years Judge Tyler was General Counsel for The Cleveland, Lorain & Wheeling Railway Company, which position he held at the time of his death. He was also senior member of the firm of Tyler & Tyler. He was an ardent Republican. He was a Presidential elector in 1880, and voted for Garfield at the Chicago convention. Senator John Sherman and Horace Greeley were numbered among his intimate friends. He was a great admirer of Washington Irving's

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writings, and personally knew him. Irving, in one of his works, referred to a certain memorable visit made him by Judge Tyler.

He was Probate Judge in Trumbull County, Ohio, just before the war of the Rebellion. He magnanimously resigned his position in favor of a wounded soldier, who had returned from battle.

He was highly respected and admired by the Cleveland Bar, and left a host of friends who deeply mourn his death.

PENNSYLVANIA.

LAZARUS DENISON SHOEMAKER.

Lazarus Denison Shoemaker, of the Wilkes-Barre bar, was born in what is now the borough of Forty Fort, Luzerne County, Pennsylvania, November 5, 1819. There and in Wilkes-Barre, a few miles distant, he continued to reside until his death, September 9, 1893, except when absent in college or in public service. His remote ancestor in the male line was Jochem Schoonmaker, who emigrated from Amsterdam, Holland, in 1680, and settled in Ulster County, New York. One of his sons, Benjamin, moved to Pennsylvania in 1735. While living there his name became changed from Schoonmaker to Shoemaker—the latter being the English of the former. The remote maternal ancestor of Lazarus Denison Shoemaker was William Denison, born in England in 1586, who came to America in 1631 and settled in Roxbury, Massachusetts. One of the ancestors of Mr. Shoemaker was John Holland, who came over in the Mayflower and was an Assistant Governor of Plymouth Colony. The paternal grandfather of Lazarus Denison Shoemaker was Lieutenant Elijah Shoemaker, who was slain at the ever memorable battle and massacre of Wyoming, July 3, 1778, and his maternal grandfather, Colonel Nathan Denison, gallantly led the left wing of the American army in the same battle. The marriage of Col.

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Denison to Betsy Sill was the first white marriage in the Wyoming Valley.

Coming from a union of two such families, it would have been indeed strange had not Lazarus Denison Shoemaker within him the elements out of which successful and useful men are made. There flowed in his veins English, Irish, French and Dutch blood, and all of it good blood. His preliminary education was obtained at the celebrated Moravian school, Nazareth Hall, Bethlehem, Pennsylvania.

From there he was sent to Kenyon College, at Gambier, Ohio. From Kenyon, Mr. Shoemaker entered the freshman class of Yale College in 1836, and graduated with honors in 1840. He then engaged in the study of the law with General E. W. Sturdevant in Wilkes-Barre. In 1842, he passed a highly creditable examination and was admitted to the bar August 1 of that year. From that time he was in the continuous practice of his profession, except when called away for the performance of official duties to which his superior abilities made it the pleasure of the people to assign him. In 1866, he was elected a State Senator for a term of three years. From 1871 to 1875 he represented his district in Congress.

In addition to having been a leading lawyer with a large and successful practice and an official of the sort whose acts justify the public confidence, Mr. Shoemaker occupied a conspicuous place in the banking, industrial and other corporate enterprises of the Wyoming Valley. At the organization of the American Bar Association at Saratoga Springs, New York, in 1878, Mr. Shoemaker was present and assisted in the organization and remained a member until his death. In 1885, the writer of this sketch wrote of Mr. Shoemaker, "Personally Mr. Shoemaker is universally liked. He has a temper which it seems impossible to ruffle, a genial good nature that is pictured in a pair of the merriest twinkling eyes and a countenance almost constantly wreathed in smiles. With such a disposition, an excellent though far from bulky physique, a family of whom any father might be proud, and a handsome

income he bids fair to live to an honored and contented old age."

Mr. Shoemaker married October 10, 1848, Esther W. Walhams, a descendant of John Walhams who emigrated to America in the first half of the seventeenth century, and from the old records of the town of Wethersfield, Connecticut, appears to have settled there as a farmer as early as 1650. She died August 4, 1889.

VERMONT.

NORMAN PAUL.

Norman Paul, a resident for many years of Woodstock, the County seat of Windsor County, Vermont, was born in the adjoining town of Pomfret, February 29, 1832. He was descended from a sturdy New England ancestry which came to Vermont early in the century from New Hampshire, characterized by strict honesty, industry and frugality, stalwart in form and manly in purpose. In addition to the common school privileges of the time, he was aided in his early preparatory studies by the personal influence and encouragements of the venerable scholar and instructor, Hosea Doten, completed his academical studies at South Woodstock and at Newbury Seminary, and was graduated at the University of Vermont, in 1860. After graduation he immediately commenced the study of law and was entered as a student in the office of Washburn & Marsh, at Woodstock, one of the leading law firms in Eastern Vermont. In December, 1862, Mr. Paul was admitted to the bar, and opened a law office in Woodstock the following February. During his continuous study and practice of the law in Windsor County for a period of thirty-two years, he retained the same suite of office rooms where he began practice. He accumulated an extensive law library for a country attorney, kept himself in touch with various serial publications of law reports, and was diligent in reading and annotation, methodical, persistent, but deliberate and painstaking. He was

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elected in 1876 for a biennial term as State's Attorney. In 1884, he was chosen as one of the three representatives of Windsor County in the State Senate. Mr. Paul was interested in the objects and purposes of the bar association of the State, after its formation, and was elected a member of the American Bar Association, at its first meeting in August, 1878, continuing a member up to the time of his death, and rarely failed to be in attendance at its yearly meetings. A classmate and personal friend of Hon. H. Henry Powers, who, from the Vermont Bench, was recently re-elected Member of Congress from Vermont; Mr. Paul was interested in the current and progress of political events. Enjoying the esteem and respect of the entire community in which he lived, and known to be reliable and trustworthy in any position of trust or responsibility, he was called upon to serve in many of the local offices of public duty. At the time of his death he was one of the Board of Trustees of the Ottauquechee Savings Bank, a member of its investing board, Deputy County Clerk, County Auditor, and Chairman of the Board of Road Commissioners for Windsor County. Although he was not a member of any religious society, he was constant in his attendance upon the service of worship upon the Sabbath, his daily life was marked by a wholesome purity of thought and conversation and a high respect for all the proprieties of social life. Possessed of strong personal attachments for his friends and benevolence toward those who confided in him from ties of kindred, he made very few, if any, enemies in the intercourse and contact of professional life. Of a rugged constitution and correct habits of life and a uniform condition of good health for sixty years, he had little apprehension or suspicion of physical ailment or the weakening disability which overtook him in the last year preceding his death. Visiting his office upon the last day of the week, suffering the indisposition of an ordinary cold or exposure, the following Monday brought pneumonia and on Tuesday, a day later, March 13, 1894, he passed away, at the age of sixty-two.

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LIST OF BAR ASSOCIATIONS IN THE UNITED STATES.

NOTE.—This list has been compiled by the Secretary of the American Bar Association from replies to circulars sent out; and while pains have been taken to make it as complete as possible, it is probable that some Associations have been omitted. All Associations which are purely Library Associations are intended to be omitted. In some cases the officers for former years are given where officers for 1894 are not known. The Secretary will be much indebted for information of any omissions and for corrections of the names of the officers.

ALABAMA.

NAME.	PRESIDENT.	SECRETARY.
Alabama State Bar Association.	James E. Webb, Birmingham.	Alex. Troy, Montgomery.
BIRMINGHAM BAR ASSOCIATION.	Alex. T. London, Birmingham.	W. K. Terry, Birmingham.

ARIZONA.

The Territorial Bar Association of Arizona.	William Herring, Tombstone.	E. E. Ellenwood, Tucson.

CALIFORNIA.

California State Bar Association.	Lawrence Archer('93), San José.	Charles J. Swift ('93), San Francisco.
LOS ANGELES BAR ASSOCIATION.	F. H. Howard, Los Angeles.	F. G. Finlayson, Los Angeles.
OAKLAND BAR ASSOCIATION.	J. H. Smith, Oakland.	Geo. E. DeGolia, Oakland.
BAR ASSOCIATION OF SAN FRANCISCO.	Edward R. Taylor, San Francisco.	E. Burke Holladay, San Francisco.

COLORADO.

DENVER BAR ASSOCIATION.	T. J. O'Donnell, Denver.	Robert H. Latta, Denver.

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CONNECTICUT.

NAME.	PRESIDENT.	SECRETARY.
State Bar Association of Connecticut.	Chas. E. Perkins, Hartford.	Chas. M. Joslyn, Hartford.
BRIDGEPORT BAR ASSO- CIATION.	David B. Lockwood, Bridgeport.	Wm. H. Kelsey, Bridgeport.
HARTFORD COUNTY BAR ASSOCIATION.	Charles E. Perkins, Hartford.	William F. Henney, Hartford.
LITCHFIELD COUNTY BAR ASSOCIATION.	James Huntingdon, Woodbury.	Dwight C. Kilbourn, Litchfield.
NEW HAVEN COUNTY BAR ASSOCIATION.	John W. Alling, New Haven.	Edward A. Anketell, New Haven.
TOLLAND COUNTY BAR ASSOCIATION.	B. H. Bill, Rockville.	Lyman T. Tingier, Tolland.
WINDHAM COUNTY BAR ASSOCIATION.	John J. Penrose, Central Village.	S. H. Seward, Putnam.

DELAWARE.

BAR ASSOCIATION OF NEW CASTLE COUNTY.	John Biggs, Wilmington.	Herbert H. Ward, Wilmington.

DISTRICT OF COLUMBIA.

Bar Association of the District of Columbia.	Nathaniel Wilson, Washington.	Blair Lee, Washington.
FEDERAL BAR ASSOCIA- TION OF D. C.	John W. Douglass, Washington.	George A. King, Washington.

GEORGIA.

Georgia Bar Associa- tion.	Wm. H. Fleming, Augusta.	John W. Akin, Cartersville.
ATLANTA BAR ASSOCIA- TION.	Jno. L. Hopkins, Atlanta.	W. P. Hill, Atlanta.

IDAHO.

Idaho Bar Association.	John Ainslie.	Hugh McElroy.

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ILLINOIS.

NAME.	PRESIDENT.	SECRETARY.
Illinois State Bar Association.	Elliott Anthony, Chicago.	William L. Gross, Springfield.
CHICAGO BAR ASSOCIATION.	David B. Lyman, Chicago.	Howard Henderson, Chicago.
THE LAW CLUB OF THE CITY OF CHICAGO.	Ingolf K. Boyesen, Chicago.	Russell Whitman, Chicago.

INDIANA.

DEARBORN COUNTY BAR ASSOCIATION.	Hugh D. McMullen ('93), Aurora.	Charles Stopp ('93), Lawrenceburg.
GRANT COUNTY BAR ASSOCIATION.	Geo. W. Harvey, Marion.	Elias Bundy, Marion.
INDIANAPOLIS BAR ASSOCIATION.	Roscoe O. Hawkins, Indianapolis.	Vincent G. Clifford, Indianapolis.
NOBLESVILLE BAR ASSOCIATION.	Wm. Garner, Noblesville.	Meade Vestal, Noblesville.
TERRE HAUTE BAR ASSOCIATION.	Joshua Jump, Terre Haute.	Saml. M. Huston, Terre Haute.
WABASH COUNTY BAR ASSOCIATION.	B. F. Williams, Wabash.	James D. Conner, Jr., Wabash.

IOWA.

DECATUR COUNTY BAR ASSOCIATION.	R. L. Parrish, Leon.	Stephen Varga, Leon.
DES MOINES BAR ASSOCIATION.	C. L. Nourse, Des Moines.	Jesse A. Miller, Des Moines.
DUBUQUE BAR ASSOCIATION.	J. C. Longueville, Dubuque.	P. S. Webster, Dubuque.

KANSAS.

Bar Association of the State of Kansas.	J. D. Milliken, McPherson.	C. J. Brown, Topeka.

www.libtool.org KANSAS—Continued.

NAME.	PRESIDENT.	SECRETARY.
TOPEKA BAR ASSOCIATION.	W. P. Douthitt, Topeka.	Jas. A. Troutman, Topeka.
WICHITA BAR ASSOCIATION.	Vacant.	Charles H. Brooks, Wichita.

KENTUCKY.

Western Kentucky Bar Association.	Malcolm Yeaman('93), Henderson.	J. G. Poore ('93), Frankfort.

LOUISIANA.

Bar Association of Louisiana.	J. W. Burgess, Baton Rouge.	T. Sambola Jones, Baton Rouge.
NATCHITOCHES BAR ASSOCIATION.	Wm. H. Jack, Natchitoches.	C. V. Porter, Natchitoches.
NEW ORLEANS LAW ASSOCIATION.	Jas. McConnell, New Orleans.	J. Ward Gurley, Jr., New Orleans.

MAINE.

Maine State Bar Association.	Chas. F. Libby, Portland.	Leslie C. Cornish, Augusta.
CUMBERLAND BAR ASSOCIATION.	Henry B. Cleaves, (V.P. Frank W. Robinson, acting) Portland.	Portland.
FRANKLIN COUNTY BAR ASSOCIATION.	H. L. Whitcomb, Farmington.	E. Richards, Farmington.
OXFORD BAR ASSOCIATION.	David R. Hastings, Fryeburg.	A. S. Austin, Paris.
PENOBSCOT BAR ASSOCIATION.	Albert W. Paine, Bangor.	F. H. Appleton, Bangor.
YORK BAR ASSOCIATION.	John M. Goodwin, Biddeford.	Graham N. Weymouth, Biddeford.

MARYLAND.

BAR ASSOCIATION OF ALLEGANY COUNTY.	A. A. Wilson, Cumberland.	D. W. Sloan, Cumberland.

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MARYLAND—Continued.

NAME.	PRESIDENT.	SECRETARY.
BAR ASSOCIATION OF BALTIMORE CITY.	Stewart Brown, Baltimore.	Conway W. Sams, Baltimore.

MASSACHUSETTS.

BAR ASSOCIATION OF THE CITY OF BOSTON.	Richard Olney, Boston.	Sigourney Butler, Boston.
BERKSHIRE BAR ASSO- CIATION.	Henry W. Taft, Pittsfield.	Edward T. Slocum, Pittsfield.
ESSEX BAR ASSOCIATION.	Eldridge G. Burley, Lawrence.	Alden P. White, Salem.
FALL RIVER BAR ASSO- CIATION.	Jonathan M. Wood, Fall River.	Arthur S. Phillips, Fall River.
FRANKLIN COUNTY BAR ASSOCIATION.	Samuel O. Lamb, Greenfield.	Samuel D. Conant, Greenfield.
HAMPDEN BAR ASSO- CIATION.	Geo. D. Robinson, Chicopee.	Robert O. Morris, Springfield.
NEW BEDFORD BAR ASSOCIATION.	Edwin L. Barney, New Bedford.	Frank A. Milliken, New Bedford.
BAR ASSOCIATION OF NORFOLK COUNTY.	Edward Avery, E. Braintree.	George K. Clarke, Needham.
PLYMOUTH COUNTY BAR ASSOCIATION.	Benj. W. Harris, E. Bridgewater.	Arthur Lord, Needham.
WORCESTER COUNTY BAR ASSOCIATION.	Wm. S. B. Hopkins, Worcester.	Webster Thayer, Worcester.

MICHIGAN.

Michigan State Bar As- sociation.	M. V. Montgomery, Lansing.	Eli R. Sutton, Detroit.
BAY COUNTY BAR ASSO- CIATION.	H. H. Hatch, Bay City.	Frank S. Pratt, Bay City.
DETROIT BAR ASSOCIA- TION.	Geo. V. N. Lothrop, Detroit.	Edward W. Pendleton, Detroit.

www.libtool.org MICHIGAN—Continued.

NAME.	PRESIDENT.	SECRETARY.
HOUGHTON COUNTY BAR ASSOCIATION.	T. L. Chadbourne, Houghton.	R. S. Shelden, Houghton.
LENAWEE COUNTY BAR ASSOCIATION.	Alfred L. Millard, Adrian.	Walter S. Westerman, Adrian.
SAGINAW COUNTY BAR ASSOCIATION.	Charles H. Camp, Saginaw.	Samuel G. Higgins, Saginaw.

MINNESOTA.

Minnesota State Bar Association.	J. W. Hahn, Minneapolis.	Edward H. Ozmun, St. Paul.
BLUE EARTH COUNTY BAR ASSOCIATION.	E. P. Freeman, Mankato.	Jean A. Flittie, Mankato.
MINNEAPOLIS BAR ASSO- CIATION.	Stanley R. Kitchel, Minneapolis.	John T. Baxter, Minneapolis.
RICE COUNTY BAR ASSO- CIATION.	Geo. W. Batchelder, Faribault.	A. D. Keyes, Faribault.
ST. PAUL BAR ASSOCIA- TION.	E. H. Ozmun, St. Paul.	Samuel E. Hall, St. Paul.
SEVENTH JUDICIAL DIS- TRICT BAR ASSOCIATION.	A. Barto, St. Cloud.	Jas. R. Bennett, Jr., St. Cloud.
STEARNS COUNTY BAR ASSOCIATION.	J. D. Sullivan, St. Cloud.	James A. Martin, St. Cloud.
WASHINGTON COUNTY BAR ASSOCIATION.	E. G. Butts, Stillwater.	James N. Castle, Stillwater.
WINONA COUNTY BAR ASSOCIATION.	William H. Yale, Winona.	Wm. B. Anderson, Winona.

MISSISSIPPI.

Mississippi State Bar Association.	Robert Lowry, Jackson.	William R. Harper, Jackson.
ABERDEEN BAR ASSO- CIATION.	Lock E. Houston, Aberdeen.	Q. O. Eckford, Aberdeen.

MISSISSIPPI—Continued.

NAME.	PRESIDENT.	SECRETARY.
ADAMS COUNTY BAR ASSOCIATION.	Vacant.	James A. Clinton, Natchez.
COLUMBUS BAR ASSOCIATION.	W. H. Sims ('92), Columbus.	Jas. T. Harrison ('92), Columbus.
GREENVILLE BAR ASSOCIATION.	Wm. G. Yerger, Greenville.	Chas. H. Starling, Greenville.
YAZOO BAR ASSOCIATION.	Robert Bowman, Sr., Yazoo City.	John S. Williams, Yazoo City.

MISSOURI.

Missouri State Bar Association.	H. C. McDougal, Kansas City.	William A. Wood, Kingston.
KANSAS CITY BAR ASSOCIATION.	O. H. Dean, Kansas City.	T. H. McNeil, Kansas City.
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