LAW, LAWYERS AND HONESTY

BY

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1922

THE STEVENS PRESS, INC.
BRIDGEPORT, CONN.

DEDICATED TO

MY WIFE

PREFACE

In attempting to write on the subject of Law, Lawyers, and Honesty, the author was fully aware that he was entering upon a field of governmental and legal history which may be said, indeed, to be bounded on the South by the Garden of Eden, West by the Nebular Theory, East by the League of Nations, and on the North by Heaven.

Therefore, he has endeavored to keep in mind three distinct purposes. First, to eradicate, if possible, some of the many fallacious ideas held by the general public concerning lawyers and the law profession. Second, to abstain from the use of technical legal phrases contained in books of the law, and, instead, to use the plain English language. Third, to write in a style which may, perchance, prove to be readable, interesting, and instructive to persons who have not studied the law.

The author's research thru the dusty, yellow-worn pages of legal history, from the date of the execution of the conditional deed of grant of said Garden to Adam and Eve, revealed a definite form of studied propaganda against the law profession in general, and the lawyers in particular. It was, moreover, difficult to fully comprehend how men, centuries ago, who surely must have been busily engaged in search of a livelihood other than eating bark from the trees, could yet find time to engrave on the tombstone of a departed lawyer such an inscription as the following, to wit:

Here lies the body of Thomas Sawyer,
An honest man, although a lawyer.

A further discovery from the records of the dingy ages of the distant past, disclosed that the brain of man originated and

proposed the scheme of sending a real, successful lawyer down to hell to trap the devil into submission and to take over the works of Satan in their entirety, with the intention of assuming the future management of that plant. This may be, at least, some evidence to prove that even the lawyers in those days were recognized as men of marked ability. It might be added, with a touch of modesty, that lawyers are still considered capable of performing great things. Aside from the plan of taking over hell, the lawyer seemed also to have starred in the leading role of ancient comedy. And no tragedy could possibly succeed without the man of law.

About the time of the birth of the law profession, there was also born in the immediate vicinity, a sort of mongrel. This mixbreed, with attributes of suspicion and ignorance, gradually developed thru the weary ages of increasing civilization, into a strong but ugly animal of hideous nature and appearance. This brute is still in existence, a genuine relic of the dark days of ignorance. In this century of modern thought he is readily recognized as a member of the famous organization of know-nothingism.

Nevertheless, the healthy law baby grew to powerful virility thru the stone, the iron, and the gold ages, in spite of the constant opposition of its arch enemy, and, in this twentieth century, (with the authority of right, and power of justice) he still continues to lead the advancing procession of civilization. But the followers of the mongrel "school of thought" verily believe, as the white man believed in colonial times in this country with regard to the Indian, that the only good lawyer is a dead lawyer.

This vicious type of lawyer-hater will soon pass on and be forgotten like the mound-builders of old, but in every land there will remain a great mass of people who do not, never did, and never will, know anything about the honorable profession of the law, who will continue to amuse themselves with ridicule and broadside criticism which, in turn and in truth, are of boundless amusement and enjoyment to all lawyers, without exception.

The author takes pleasure in acknowledging with gratitude the use of material from certain books mentioned herein and, in

addition, the Harvard Classics, Dictionary of Thoughts, Library of the World's Best Orations, Wit and Humor of the American Bar, and Sparks of Laughter.

Any and all references to lawyers, appearing in the third person under the rules of grammar, is not intended, of course, to exclude the author from the same general criticism as that directed against his brothers of the Bar.

The writer of this book entirely comprehends, with all humility, the concise answer of the man who never pretended to be an author, when he and one who claimed to be such were hotly discussing the merits of a certain book. After the exchange of many opinions and divers arguments relative to the book in question, the man who had written several books finally said to the other, "No, Thomas, you can't appreciate it. You never wrote a book yourself." "No, retorted Thomas, "and I never laid an egg, but I'm a better judge of an omelet than any hen in the country."

J. B. D.

LAW, LAWYERS, AND HONESTY

CHAPTER I.

Public attitude regarding lawyers and law profession. The requirements of a lawyer. The young lawyer. Rural and city justices of the peace. The older lawyer. Origin of law profession. Mosaic or Hebrew law. Lawyer, advocate, "counsel", attorney, barrister and solicitor defined. Cradle of law and lawyers in America.

The law profession has been a target for unfavorable criticism for many centuries, if not from the time of its inception. This criticism has at times been extremely slanderous, malicious, and vitriolic but has, generally, taken the form of mere ridicule. In modern times the lawyer and his profession conitnue to be subject to adverse and rather harsh comment on the part of a great many people who certainly are supposed to be better enlightened and, also, by another and larger class who probably know not whereof they speak.

In the early days of the profession there seems to have been created a sort of "legal presumption" that all lawyers were clever tricksters who would bear watching in court and out of court. Many years ago a picture or cartoon circulated in England and Ireland in which the plaintiff in a lawsuit appeared in the act of strenuously pulling the horns of a cow, and the defendant was pictured as pulling in like manner the cow's tail, while the lawyer was seated serenely on a stool gathering the milk. Does not this picture portray the sentiment of a great many people today? When a lawyer is accused of misconduct in the practice of his profession, even prior to the proof of such allegations, a large portion of the public has definitely decided upon the following verdict or judgment: "Guilty, and there can be no excuse since

he should have known better." The mere publication of the charges preferred against him is sufficient proof in the minds of many people that the unfortunate member of the bar who is being "brought upon the carpet" is guilty as charged. Without the slightest thought of justice, without waiting until the accused had had "his day in court", without hearing his defence, such a public viewpoint condemns, sentences, and almost executes its prejudgment at the moment of hearing such charges. If, per-

chance, a judgment of the court (where justice seeks the truth) is contrary to such a public verdict or judgment, the opinion of that same class of people still remains unaltered. Their notion, then, is that because the accused person is a lawyer, his brothers of the bar, including the judge and the prosecuting attorney, are merely going through the motions of trial with no intention of causing his conviction. The slant of this public view reasons that courts and lawyers will not, under any circumstances, function properly when they are called upon to prosecute a member of the law profession, as the proceedings would only move in a circle within a circle. Of course, the foregoing reasoning is born

of ignorance and will die with ignorance. But there must be some reason for such public viewpoints where the lawyer is concerned. The reason is probably based upon the public demands respecting the lawyer and his profession. Most people consider lawyers to be public men and therefore men who should possess high integrity. But the Supreme Court of Connecticut, in the case of Fairfield County Bar vs Taylor in 1891, proceeds to place upon the lawyer or attorney a still greater responsibilty. It says, "It is not enough for an attorney that he be honest. He must be that and more. He must be believed to be honest." The decision continues in part, as follows: "A lawyer needs, indeed, to be learned. It would be well if he could be learned in all the learning of the

schools. There is nothing to which the wit of man has been turned that may not become the subject of his inquiries. Then, of course, he must be specially skilled in the books and rules of his own profession. And he must have prudence, and tact to use his learning, and foresight, and industry, and courage. But all of these may exist in a moderate degree and yet he may be a creditable

and useful member of the profession, so long as the practice is to him a clean and honest function. But possessing all these great faculties, if once the practice becomes to him a mere 'brawl for hire,' or a system of legalized plunder where craft and not conscience is the rule, and where falsehood and not truth is the means by which to gain his ends, then he has forfeited all right to be an officer in any court of justice or to be numbered among the members of an honorable profession.''

Public trust and confidence demand that a practitioner of law be an upright man, a good citizen, and an honest lawyer. If he is not so considered by his fellowmen in the community wherein he practices, his future will eventually end with failure. It is unquestionably true, however, that most laymen, in modern times, who have become more or less acquainted with the duties of an attorney at law are the last to speak in a derogatory manner of the profession. Hardly ever does a man who with the aid of his lawyer has won a splendid victory in a court action, or procured a substantial settlement before or pending litigation, complain of the law or lawyers. On the other hand, many defendants who have lost their cases, which legally and in justice should have been lost, complain bitterly of the injustice of the entire system of law and its administration. A clearer understanding of the legal profession by the people at large will gradually dislodge some of the biased opinions against the judicial and legal system of law as it exists at present in the United States.

The sharp blade of public opinion does not seem to avoid even the young lawyer. His conduct is watched by many eyes; his words are accepted with reservation, and his political affiliations are recorded in the book of time, never to be erased. Yet where is the young man who steps from school life into life's school upon whom more sympathy should be bestowed than upon the green young lawyer? He usually begins his legal career by facing a rural justice of the peace, unless he happens to locate in one of the larger cities, in which case the justice of the peace may be a lawyer of a few years standing which fact does not necessarily inure to the benefit of the younger lawyer.

Most lawyers know something about the country justices of

peace who generally control the judicial, and often all the other destinies of the little towns in this country. Most of them except in the larger cities, have never studied law and their judicial acts and mannerisms have always been the source of interest, amusement, and pleasant memories to those lawyers who have had occasion to often practice before them. In the purely country towns the justices of the peace, who actively function as such, are usually practical men of considerable common sense, and some, at least, feel keenly the power and dignity of that office.

A "judical decision" was handed down by a justice of the peace in South Carolina in the following case which shows a curious line of legal reasoning. In a South Carolina city, not many years ago, a fight occurred on the street between two citizens. One of the belligerents, breaking away from the other, rushed into the middle of the street and picked up a stone, which he threw at his antagonist with great force. The other dodged, and the missile smashed through a plate-glass window in the front of a store. The proprietor ran out hurriedly, and soon had the two men taken before a police magistrate for trial. The case hinged upon who should pay for the broken window. The justice heard a good many witnesses, and when he had taken the testimony of the fighters themselves, he ponderd for a few moments, and then delivered himself about as follows: "There is no doubt that a window was broken. Who is to pay for it? There is no doubt that the man who threw the stone had no intention of inflicting any damage on the window. He threw at his antagonist. Had the latter remained still, he would, in all probability, have been struck by the stone, and the window would not have been broken. How, therefore, in view of the fact that the thrower of the stone had no desire to break the window, and as it was done only when the other man dodged, I declare that the damages for the window are to be charged to the man who would have been struck had he not stepped aside in order to be safe from the stone. The other prisoner is discharged."

Another justice once said to a prisoner, "I can't convict you on the evidence but I'm going to fine you for contempt for lookin' like I couldn't." And he did. Notwithstanding this rather harsh

judgment, which probably existed only in the mind of some legal humorist, the following case shows that even a justice of the peace has the sympathetic cords from which the lawyer may bring forth the angelic music of his soul. Recently a suit was tried before an Indiana justice of the peace wherein a lady was plaintiff, and a bank the defendant. The evidence showed conclusively that the fair plaintiff had no right to recover; of this no one could have the "shadow of a doubt." Her learned counsel knew well that unless he could get the sympathy of the "squire," his client would have a "lost cause." He therefore labored hard in applying the "sympathetic process." He gushed with eloquence of great warmth in referring to his client's rights, until finally great tears came trickling down his checks, at the sight of which the justice (who was a very tender-hearted individual) was also moved to tears. This satisfied the attorney that the sympathy of the court was in behalf of the lady, and he closed his argument by saying, "It does my heart good to believe that this honorable court, in the exercise of a sound discretion, will not allow the rights of a pure and noble lady to be trampled beneath the cloven feet of a soulless corporation"; and took his seat, as confident that he would get a judgment as ever poor Miss Flite was. Thereupon the squire rendered the following comprehensive and satisfactory decision: He said: "The plaintiff in this case is a woman, and her counsel has for the last hour touched the sympathy of the court in her behalf, and I am glad of it; but I think, under the law, that justice is on the side of the bank. I therefore will find in favor of the bank, and let the record show that Mrs. ..... has the full sympathy of the court."

The stern dignity and abrupt manifestation of legal knowledge on the part of the "three year old lawyer justice" of the cities, likewise, overwhelms the young practitioner to the point of absoute despair. Even some judges of the higher courts delight in initiating the young lawyer in the realm of heartaches. In one of the western higher courts one of the very young attorneys was entering into the second hour of his plea, when he noticed that "His Honor" was becoming quite inattentive. The young man reached the conclusion that the judge was not grasping the nici-

ties of his extended oration, so he said, "Your Honor, perhaps you do not follow me". "I'm following you alright", the judge answered, "but I wish to emphasize the fact that if I thought I could find my way back I'd quit right here."

In Connecticut, however, the young lawyer is treated with the utmost respect and consideration by the judges of the higher courts. These judges are famous for their astute manouvering in bringing both the young and the older lawyers to the full realization that a vociferous avalanche of words is not necessary to convey the desired thought. As illustrating the gentlemanly manner in which such situations are handled by the judges of the Nutmeg State, the following may be mentioned. A young attorney who was quite forensically inclined, while in the midst of his spread eagle speech said, "Your Honor, I hope I am not unduly trespassing on the time of this court." "There is some distinction," the Connecticut judge replied gravely, "between trespassing on time and encroaching on eternity."

The older lawyer also is not always considerate of the natural susceptibilities of his young antagonist. The tendency of the older attorney to take advantage of every favorable turn in a court proceeding for his client's benefit causes him to delight in out-witting the young man without apology, mercy, or pity. An old Iowa practitioner, a lawyer of ability and an orator of reputation, was pitted against a recent graduate in the profession in the trial of a case before a jury. The young lawyer had the first say, and in making his address to the jury he took particular pains to imitate certain mannerisms of the old lawyer. He carefully adjusted his cuffs before beginning his argument, stroked an imaginary imperial on his chin, and then rested the index finger of his right hand along the side of his nose. These were the habitual preliminary mannerisms of the older lawyer, and as they were repeated several times throughout the argument which was made by the young man they provoked the jury and the judge to laughter.

When the veteran arose to make reply he did not neglect to go through his preliminary motions with even more deliberation than usual. He bowed to the judge and to the jury, and then be-

gan: "Gentlemen of the jury and honorable sire, that young man acts like a good lawyer, but he talks like a blamed fool." The advantage which the young man thought he had gained in the contest vanished in the roar of laughter which followed at his expense.

To accurately describe the origin of the law profession, the student would be obliged, according to Weeks, author of "The Attorney at Law", to make an elaborate and extended historical research through the volumes in which is unfolded the full history of the bar and the judiciary of Greece and Rome, of early France, of the times of the Roman Republic and the Empire, of the times of Constantine and Charlimague. Such an attempt would not be in harmony with the plan and purpose of this volume.

No mention was made by the above author of the Hebrew or Mosaic Law relative to this particular phase of the subject. In addition to the moral laws, the Jews also had a definite system of statute laws under the threefold division of Civil, Criminal and Ceremonial. The civil law was divided into two kinds, regarding person and things.

There were specific laws govering parent and child, husband and wife, master and slave, rich and poor, debtor and creditor, and strangers. The authority of parents, especially fathers, over the children, was very great. The children were required to pay all respect to their parents. The penalty of death might be enforced against a child who cursed his father or mother, on complaint of the parent. The relation of husband and wife was regarded very sacred. They recognized a right of divorce which appeared to belong, however, exclusively to the husband. A servant was hired by his master and received wages, and although the property of his master, the latter was bound to treat him kindly or otherwise suffer a penalty or loss. The Jewish law was especially considerate of the poor with a special provision for their relief. It required that every one who had the means should attend to the supply of a neighbor's wants either by lending him for return or giving him for naught. The loaning and borrowing of money or property was allowed only in circum-

stances of poverty induced by adversity. There was no idea of giving and receiving credit in the conduct of business. If the lender should be too strict with the debtor, the latter, if unable to restore what he had borrowed, was released from his bond on the Sabbatical year, as the year of release proclaimed by the Lord. The relation of creditor and debtor was regarded as that of mutually helpful brethren and therefore no interest was charged in such transactions. The Jew was to give gratuitous entertainment to a stranger who would be sent away with a blessing, keeping in mind the time when he was also a stranger in Egypt.

The law regarding things concerned property, inheritance, debt, taxation, tithes, labor, and wages. The land belonged to the Lord, and was held by its holder direct from Him, for the benefit of the nation. Land could be exchanged, given in dowry, or forfeited by disloyalty. The purchase of land was originally made before witnesses, afterwards by sealed bonds. The sons were the sole heirs of the family property, both real and personal, except that a daughter could receive property under a father's will and also if there were no sons. This property, however, would revert to her male children.

A debt was regarded as a loan and if not paid back was remitted on the seventh, or Sabbatical, year. Being a pure loan no Israelite was permitted to take interest of another, because he was considered his brother, though he might do so of a stranger.

Before the monarchy, the only taxes imposed on the people were for the support of religion, as free-will offerings to the Lord, and were considered as coming from the real owner of the land, the Lord Himself. (Surely those must have been the good old days—verily an earthly paradise!) Under the monarchy the taxation was at first light, but under Soloman it became heavy a fact which proved the real cause for the revolt against his successor, Rehoboam, who threatened still heavier taxes. Foreign domination was becoming crushing to the people, directly and indirectly, until, under Roman rule, the communities were sacrificed to the exactions of those in power.

Tithes, tenths of all produce, were offered to the Lord, for religious festivals and for the poor.

Labor consisted mostly of the cultivation of land, attending to the flocks, and the performance of the necessary crafts. The poor who labored were paid their wages daily. There were special laws for justice in dealing, but the Mosaic Law contained no rules for the regulation of commerce.

The Criminal Law included in part, offences against God and offences against man. The punishments were either capital or secondary. The capital punishments were stoning to death; hanging, burning, strangling and decapitation. To these may be added, sawing assunder and precipitation, and later the Roman execution by crucifixion. The secondary punishments were retaliation, or the lex talionis, as it was called. This was a law which rendered anyone who deliberately and maliciously injured another's person in certain respects liable to have similar injury inflicted on himself. The offences against God were idolatry, practicing divination, blasphemy and Sabbath profanation.

The offenses against man were, 1. Disrespect to parents and sacred persons, the cursing of which would bring punishment of death. 2. Murder, the commission of which was unpardonable and punishable with death. 3. Homicide, the accidental slaying of a man. The slayer could escape from being slain himself at the hands of the avenger of blood only by making straight for a city of refuge and remaining there until the death of the high-priest. 4. Assault, which invoked the law of retaliation. 5. Adultery, for which the punishment was death. 6. Seduction, a crime which could only be condoned by marriage, the granting of a dowry, and the forfeiture of the right of divorce. 7. Theft, for which the thief was penalized by a twofold to a fivefold restitution or was sold as a slave. 8. Unnatural crimes, the punishment for which was death.

The Ceremonial Law, for obvious reasons, could not be properly treated with the subject now under consideration.

Justice was administered by local judges, generally of the Levitical class. They were presumed to be skilled in the law and they exercised this office under the sanction of the supreme

authority, to which appeal was allowed and whose judgment was final. A judgment could be rendered only under the written law which was regarded as the standard of authority. These judges were to judge righteously between every man and his brother, to have no respect to persons, to fear no man, only God, and to bring any matter to Moses which proved too difficult for them. There were three definite tribunals for the administeration of law. 1. Petty Courts of three judges. 2. Provincial Sanhedrins of twenty-three judges. 3. The Great Sandhedrin, with supreme authority over the whole nation. Any well-educated Jew was eligible to be a judge. They were known as "elders" from the time of the sojourn of the children of Israel in the wilderness, when Moses, by the suggestion of Jethro and at the command of the Lord, selected and set apart seventy of the chief men of the tribes to assist him in administering the affairs of the congregation. Religion and law were so interwoven under the Mosaic Law that there were no lawyers who confined themselves to the practice of a legal profession, as it was later known and understood in Greece, Rome, France or other civilized countries, or as it is understood to-day.

A lawyer is sometimes known as an advocate, a term which denoted in the old Roman Law one who in a law suit was called upon for advice by a party and appeared with him in court but did not plead for him. The pleading in those days was done by one who was called the Patronis. In modern civil law, however, the term "lawyer" was so extended as to include the function of the ancient Patronis and has now been defined as "an officer of the court, learned in the law, who is engaged by a suitor to maintain or defend his cause". "An attorney," says Cooke, "is one that is set in the turn, stead or place of another." The word "attorney" is derived from an old French word, attournée, or substitute. An attorney in fact, who may be a lawyer or a layman, is appointed for a particular purpose, not necessarily connected with a law proceeding, and he cannot, as such, perform the duties of a lawyer in court. The authority to act as an attorney in fact is usually in the form of a letter or power of attorney.

The present definition of an attorney at law might be said to be, "an officer of a court of record legally qualified to prosecute and defend actions in courts of law on the retainer of clients."

A "counsel" is defined "as an advocate associated in the management of a particular case or one who acts as a legal adviser in reference to any matter requiring legal knowledge and judgment." It will be noted that the word "counsel," as a noun, is defined as an "interchange of opinion; advise; consultation, etc. while the word "counselor" means one who gives advice, especially legal advice." The United States constitution, in Article VI of the amendments, uses the word "counsel" in the following manner: "In all criminal prosecutions the accused" among other rights, shall "have the Assistance of Counsel for his defence." The probable meaning of the word in this article may be construed to be the right of an accused in criminal matters to have not only legal advice but also a lawyer to conduct his defence.

In the United States a lawyer may now act both as an attorney and counselor in every court in the country from the national Supreme Court (upon proper admission) down to the court of a justice of the peace.

"Barrister" and "solicitor" are terms used under the English system. The former is "counsel" or advocate in the modern sense. The barrister cannot argue a cause of a client in court but the English attorney can. The term "solicitor" is applied to the class who practice in courts of equity and manage the matters and suits in chancery. The solicitor performs the same duties as the English attorney does in the courts of common law. The word, "solicitor," cannot be applied to the entire body of lawyers in England,

The question has been raised as to whether an attorney at law is a public officer in this country. There is now a final judicial decision which states that an attorney is not a civil, government, or public officer and that he is not a holder of an office of public trust within the meaning of the constitutions. He is,however, an officer of the court. A lawyer, therefore, is one skilled in the law, and whose profession is to give advice and aid in legal

matters and to represent in the prosecution and defence in the courts the causes of the parties by whom he is employed.

The State of Connecticut may be termed the cradle of law and lawyers in America, as the lawyer and his profession is understood in modern times. The first law school in America, known as The Litchfield Law School, was established in the "land of steady habits" in 1784, three years before the existence of the government and constitution of the United States. Many of the leading lawyers and statesmen who participated in the events of that important period in the history of our country immediately after the Declaration of Independence, received their legal training from this law school in Litchfield. The school was continued for fifty years, first under Judge Reeve and afterward under him and Judge Gould together.

The Harvard Law School was the second one to be established in this country.

CHAPTER II.

Law and lawyers in literature. Opinions of Butler, Shakespeare, Carlyle, Franklin, Colton, Voltaire, Sidney, More, Swift, Feltham and Macaulay. What Christ said to the lawyers. Jewish Legalism.

The lawyer and his profession has proved a ready subject in literature from the time of Noah, the P. T. Barnum of antiquity. The broadside attacks upon the learned and honored profession of the law by the literary scholars in general and by pretentious men of letters in particular, is not only of intense interest to most lawyers but, indeed, it is the source of not a little amusement. Some of the literatesque gentlemen exhibited a higher capacity in erecting a handsome vehicle to convey an idea, than in the production of the thoughts necessary to create the idea. Hence, the present generation, their posterity, must be content with having the full and immeasurable benefit and pleasure of excellent prose and beautiful poetry, which embodies the purest fiction.

An old Chinese proverb expresses clearly the Chinese conception of litigation in these words: "Going to law is losing a cow for the sake of a cat." Samuel Butler's version of the profession with its accompanying uncertainties is expressed briefly as follows: "In law nothing is certain but the expense". Our old friend, "Bill" Shakespeare, tells the world that "A fish that hangs in the net, like a poor man's right in the law, will hardly come out of it." One certain gentleman whose name is Macklin kindly contributes the following "piece of literature" on the subject. He says, "The law is a sort of hocus-pocus science that smiles in your face while it picks your pocket; and the glorious uncertainty of it, is of more use to the professors than the justice of it."

Carlyle strives to maintain his literary reputation by presenting the matter in this style. He says "Chancery, and certain other law courts, seem nothing; yet, in fact, they are, the worst of them, something; chimneys for the deviltry and contention of men to escape by." It is not lacking in interest, at least, from the viewpoint of the grammarian that the thought conveyed by this sentence necessitated six commas, one semi colon, one colon, and ends with the preposition "by". But even if Carlyle would have grammatically pleased the lawyers he still could logically insist that "smoke goes up the chimney just the same."

Our own Benjamin Franklin, having also read of Shakespeare's fiction of the fish and Chinese proverbial cats, in the course of his great, useful and brilliant career on mother earth pays a slight tribute to the much abused lawyers of the day by presenting this beautiful bouquet of thorny roses. Ben says, "A countryman between two lawyers is like a fish between two cats".

C. C. Colton very cleverly expresses his opinion of man-made law and its administration in the following manner: "Law and equity are two things that God hath joined together, but which man has put asunder". Not to be surpassed by Colton in his polished impudence, Henry Fielding believed he hit the solar plexus of the legal profession for a knockout with the following blow: "As the law", says he, "dissolves all contracts which are without a valuable consideration, so a valuable consideration often dissolves the law." Voltaire said, "I never was ruined but twice—once when I gained a lawsuit and once when I lost one."

Sir Philip Sidney in "The Defense of Poesy" published after his death in 1586, was endeavoring to choose a moderator "for the highest form in the school of learning" and finally picked the poet. He puts the lawyer "out of the running" for the job of moderator in the following words; "Truly, as me seemeth, the poet" is the man "that ought to carry the title from all other sciences." "And for the lawyer, though Jus be the daughter of Justice, and Justice the chief of virtues, yet because he seeketh to make men good rather formidine paenae (by fear of punishment) than virtutis amore (love of virtue);" and "as our wickedness maketh him necessary, and necessity maketh him

honorable", consequently the lawyer could not "in the deepest truth stand in the rank with these" such as the poet, philosopher, historian and others "who all endeavor to take naughtiness away and plant goodness even in the secret cabinet of our souls."

A defense of the learned and honorable profession of the law "seemeth" not as necessary as the defense of poets and their poetry in the estimation of Sir Philip in which conclusion the gentleman of letters undoubtedly had the hearty approval of the bar, especially in those days of much poetry.

Sir Thomas Moore banished the lawyers from Utopia as St. Patrick did the snakes from Ireland. Sir Thomas, although once a law student himself, writes in his theory of model society that "Furthermore, they utterly exclude and banish all proctors and sergeants at the law; which craftily handle matters and subtly dispute the laws. For they think it is most meet that every man should plead his own matter and tell the same tale before the judge that he would tell to his man of law."

The author of "Utopia" was considered quite a jester in his time; in fact, his biography states that one "found it hard to know when he spoke seriously". Notwithstanding the disbarment of their late brothers of the bar from Moore's ideal commonwealth, most lawyers who have read "Utopia" will doubtless concede that Sir Thomas would have been a great lawyer, if he had completed his law course and had become a practitioner, and if, further, King Henry VIII had not chopped off his head because Moore objected to Henry's desire for another wife. If law, rather than despotism had existed under the rule of Henry VIII, the latter's head would have dangled from the hangman's noose and Sir Thomas Moore would have lived to witness the proceeding.

Dean Swift wrote: "Laws are like cobwebs, which may catch small flies, but let wasps and hornets break through".

Owen Feltham attempted to expose to the world the hidden treasure—the unsolved mysteries, of the law profession, by this concise and precise diction. "To go to law," he wrote, "is for two persons to kindle a fire, at their own cost, to warm others and singe themselves to cinders; and because they cannot agree

as to what is truth and equity, they will both agree to unplume themselves that others may be decorated with their feathers".

Blessed are the lawyers who are all "dolled up" with the decorative feathers of some "birds" they have represented in the tribunal of justice!

When discussing the question as to the duties and privileges of a lawyer to break down, if possible, the opposition encountered in court, Macaulay attempted to split the cornerstone of the legal profession with this rhetorical outburst: "We will not at present inquire whether the doctrine which is held on this subject by English lawyers be or be not agreeable to reason and morality; whether it be right that a man should, with a wig on his head and a band around his neck, do for a guinea what, without these appendages, he would think it wicked and infamous to do for an empire; whether it be right that, not believing, but knowing a statement to be true, he should do all that can be done by sophistry, by rhetoric, by solemn asseveration, by indignant exclamation, by gesture, by play of features, by terrifying one honest witness, by perplexing another, to cause a jury to think that statement false."

The point made by this intellectual giant is based, of course, upon the assumption that the lawyer who performs all the feats above mentioned not merely believes that the witness is telling the truth but he knows the testimony is true and with that knowledge he then proceeds to "beat up" the witness. To most lawyers the statement would appear entirely hypothetical. When does a lawyer know that a witness with whom he never talked and whom he never before saw or met, is testifying to the truth? Certainly the sex, age, or appearance of a witness is not conclusive. And even if the testimony appeared to be corroborated by a written document the attorney then, upon further inquiry, may find such a paper tainted by fraud or a manifest forgery. The writer was once cross-examining a very lovely and demure lady (who had recently lost her husband) in a trial before the Superior Court in Connecticut. Her countenance was extremely pleasing to look upon. Her natural beauty was made the more striking by the black and white widow's weeds encircling her

brow. She was the possessor of a voice, the equal of which only can be found among the milder and more gentle angels which fly about somewhere above the blue canopy. Her answers to the questions propounded to her were accompanied with dainty smiles indicating confidence and generosity. She appeared to all in the court room, the judge included, as the personification of eternal truth in human form. All who heard her testify believed every word that crossed her pretty lips except the writer, who knew she told more plain, and deliberate lies in fifteen minutes than most people do in a lifetime. The new discovery or invention which it is claimed will be able to detect a lie by means of ascertaining the blood pressure when one is prevaricating is interesting, but it must be well oiled the day it is strapped to the smiling widow.

No one who has perused the literary efforts of Lord Macaulay would perhaps deny that he, if a lawyer, would also have utilized his great vocabulary, fluency of speech, and natural wit before a jury of peers in the cause of truth and justice. But even the great Macaulay fell into the common error of other literary scholars that a lawyer who fights his client's battle too strenuously is therefore a declaimer, a trickster or a bully.

The ancient and medieval records will show many more men who, in displaying their ability at sarcasm, ridicule, and satire, strove to excel in their ironical phrascology and composition at the expense of the lawyer, without the slightest respect for truth and veracity.

Notwithstanding the foregoing criticism one should never permit himself to fall into the depths of despair even though the whole world seems against him. Ex-Emperor William of Germany is perhaps to-day, justly or unjustly, the most hated man in the world, but he still continues to "saw wood". To search on in the hope of finding justice for the lawyer and his profession is the only road open to courageous seekers of truth. Such a search would naturally lead to the Holy Scripture. If, perchance, the lawyer should be confronted with statements found therein which may not prove wholly satisfactory, the process of "sawing wood" must continue.

It may be appropriate to mention at this point the sincere belief possessed by the father of William Jennings Bryan, who once occupied the bench in one of the inferior courts of Illinois. He was an honest judge and always opened court with a prayer for divine guidance in his rulings in the cases tried before him. Although Judge Bryan rendered his decisions with entire faith that they were inspired, yet his rulings were reversed again and again by the Supreme Court. When his attention was called to this fact he ignored such a base inference by declaring, "Well, I know that the Supreme Court is wrong and God is right!" And he clung steadfastly to his view.

When the lawyers have read the following dialogue concerning our brethren who pleaded at the bar a couple of thousand years ago, most of them will probably agree with the writer's deep seated belief that the construction and interpretation of a great many passages of the Bible should be left solely to the theologians.

In the gospel according to St. Luke it appears in Chapter XI, verse 44, that Christ was talking rather pointedly to the scribes and pharisees and was particularly denouncing the latter for their ardent desire to always occupy the uppermost seats in the synagogues and was saying, "Woe unto you, scribes and pharisees, hypocrites, for ye are as graves which appear not, and the men that walk over them are not aware of them."

At this point, one of the "lawyers" of the aggressive and irrepressible type, with an apparent hankering to question and cross-examine for the purpose of finding some defective reasoning in Christ's teachings, spoke to the Lord as set forth in verse 45. "Then answered one of the lawyers and said unto him, 'Master, thus saying thou reproachest us also'." No judge from the bench ever reprimanded a conceited lawyer in a more forceful manner than did Christ on this occasion for He said, "Woe unto you also ye lawyers for ye lade men with burdens grievous to be borne; and ye yourselves touch not the burdens with one of your fingers."

Christ continued to upbraid the "lawyers" of those days for their obstructive and destructive tactics in religious matters and

He concluded by saying, (Verse 52) "Woe unto you, Lawyers! for ye have taken away the key of knowledge; ye entered not in yourselves; and them that were entering ye hindered."

On this occasion the scribes and pharisees were "provoking Him to speak many things" for they were "laying wait for Him, and seeking to catch something out of His mouth; that they might accuse Him." Not even an enemy of the lawyer in these days would exhibit such a want of knowledge or entertain such an abject thought as to assume that the present-day lawyer bears the slightest similarity with the eternally wrangling religious law men in the time of Christ. No lawyer in this age is meddling with the theological and dogmatic questions of religion, faith, and morals; these remain in the hands of the doctors of divinity.

A brief explanation of Jewish Legalism, appearing in the Comprehensive Teachers Edition of the Holy Bible, by Bagster, may be required to prevent a misunderstanding of the above passages in Holy Scripture, regarding the status of the "lawyer", as he was called, in the Gospel according to St. Luke. It says that "among the Jews everything was regulated by Law and to observe this Law was the duty and distinction of every Israelite. He was trained from infancy to keep it, the possession of it was regarded as the most precious charge committed to him, and he would rather part with life itself than part with it.

"The motive to observe the Law was the belief that the weal or woe of the nation depended exactly on the degree of national conformity or nonconformity to its requirements, and the reward of keeping it and the penalty of breaking it were believed to be regulated according to the strict principles of retributive justice.

"This principle, it was felt, was not, and could not be, called out at once; but the realization of it in a glorious future was confidently expected by believing Jews of the earliest period. In New Testament times this was looked for in the great judgment after the resurrection.

"The result of this system was to externalise more and more the religious and moral life of the people, to the decay, and ultimate dissolution, of every religious and moral principle. The Law took cognisance mainly of the external action, and it justi-

fied or condemned according to mere external behaviour. The external character of the Law and the vexing exactions of its elaborate details were enormously aggravated by the traditional additions of the Pharisees in the nominal form of interpretation. No regard was had to the heart or the conscience, the seat and source of all moral and religious well-being; while the mind was distracted by attention to such a number of minute requirements as to swamp the thought of spiritual and higher interests. Thus there were no fewer than thirty-nine kinds of work that were prohibited to be done on the Sabbath, and each of these prohibitions were split up into a number of included ones, which had to be respected with equal scrupulosity. Reaping was forbidden, plucking the ears of corn was pronounced a species of reaping, and the act of doing so a sin. Making and tying a knot were forbidden but other laws stated what kinds of such acts were, and what kinds were not included in the prohibition. So with writing on the Sabbath, with baking and boiling, with kindling and extinguishing a fire, with the bearing of burdens, and such like. The same minuteness of legislation was necessary to determine what things were clean and what unclean. No fewer than twelve treatises of the Mishna, which constitutes the text of the Talmud, treat of matters pertaining to this subject alone. There were also minute directions concerning amulets, which derived their charm from Scripture passages attached, concerning prayers, also saying grace at meals, fasting, and such like; and the observance of these exhausted the power of Hebrew devotion. Whosoever was perfect in them, however, fulfilled all that was required of him, and was free from the discharge of every other obligation. The effect of all this was that 'life was continual torment to the earnest man, who felt at every moment that he was in danger of transgressing the law; and where so much depended on the external form, he was often left in uncertainty whether he had really fulfilled its requirements. On the other hand, pride and conceit were almost inevitable for one who had attained mastership in the knowledge of the law. He could indeed say that he had done his duty, had neglected nothing, had fulfilled all righteousness. But none the less the supercillious and ostenta-

tious spirit which this righteousness engendered was not the spirit which was acceptable to God, and it was condemned by the Founder of Christianity (Luke XVIII 9-14; Matt. VI 2, XXIII 5).' ''

The Gospel according to St. Luke, is the only place in the Holy Bible where it appears that the term ''lawyers'' was used instead of the word ''scribes'' who were actually the men, in those days, with knowledge of the law, as contained in the Old Testament, and against whom, with the pharisees, Christ directed His severe rebukes. No lawyer of modern times should take unto himself the slightest rebuff in reference to verses quoted in that Gospel, since the functions of the scribes in bibical times are not in the least comparable to the functions of the present day lawyer.

CHAPTER III.

More criticism of law and lawyers heard in private and public places. Lawyers as "robbers." How they "deceive" clients. Use of technical language. "Collusion" between judge and lawyer. Documents drawn by lawyers. The old charge of dishonesty by defending guilty persons. Lawyers and liars. Charge of dishonest businessmen. Perjury and subordination of perjury. Forensic oratory.

There is another kind of criticism of lawyers in the form of insinuations and accusations which emanate from the mouths of unscrupulous and loose talking individuals in private and public places. This anonymous defamation is uttered, as a rule, without any apparant reason and is frequently mere repetition of what has been heard from others. Purely "hearsay" the lawyers would term it. Some of the criticism is spoken with deliberation and with intent to injure the reputation of a lawyer on the ground of personal enmity, some for reasons of supposedly unfair treatment by members of the profession, some from a real or imaginary grievance that they have been overcharged for services rendered, some for political reasons; but by far the large portion of such comment is made in a spirit of jest and ridicule. In fact, one is bound to observe that from time immemorial the law profession has borne the brunt of remarks and sayings, oral and written, which are equally as sarcastic as they are jocose and facetious.

Most laymen have unquestionably heard from various people such remarks as the following but have perhaps never taken the time to apply to them the test of reason, common sense, or probability. For example—"The lawyers will rob you if you have much to do with them."

There is no doubt that many people believe they are being "robbed" if they are charged a fee which to their minds seems

large and unreasonable. The system of charging compensation for services by members of the legal profession is somewhat different from that in other professions, a fact which probably accounts for the apparent lack of knowledge on the part of the public. The regular physician charges a small fee for house or office calls the number of which, incidentally, is usually a matter of conjecture. The doctor has considerable advantage over the lawyer in this respect since the former is at liberty to call on his patient until cured, dead, or bankrupt. The man of the law, on the contrary, does not go to the home of his client but must wait for the client to come to him. The dentist, who need not usually leave his office, has a very similar system of charges as the physician. Almost everyone will acknowledge however, that the method of charging by the dentist especially, is very effective. It requires considerable "nerve" occasionally to make a fair charge for services but the D.D.S. fraternity, being schooled in the treatment of this particular human tissue, are the proud possessors of this sort of courage in abundance.

The public is generally unaware that a lawyer follows a system of charges for services which is not usually computed on a daily or hourly basis but is mainly based upon the nature of the case, the work in preparation for trial, the time consumed in the preparation and trial, and the amount involved in litigation. The fees may be as different as the cases themselves. Many lawyers have probably, on more than one occasion, rendered services to the value of two hundred dollars in cases involving less than one hundred dollars and they received for such services perhaps twenty-five dollars. Concerning such cases the lawyer who gets the twenty-five dollars follows the unwritten law of the legal practice by recording the one hundred and seventy-five dollars he doesn't get in the book under the head of experience. The lawyer who persists in making unfair charges, however, will sooner or later run against the rocks.

A just and adequate compensation for legal services is essential to the independence and efficiency of the legal profession. Furthermore substantial fees or charges by lawyers, have proved

a very effective means of diminishing litigation and are universally recognized as such by the ethics of the bar in this country.

Daniel Webster charged a retainer of $50 in a certain case which was later amicably settled over his head and without his knowledge. His client, after making settlement, walked sheepishly into his office one morning and told Mr. Webster that he and the defendant had settled matters satisfactorily and requested the return of the $50. Webster looked his client straight in the eye and said, "So you want me to return to you the retainer of $50 which you paid me. Now I want you to clearly understand that I took your case in good faith and I intended to handle it in the same way. Furthermore, 'retainer' is derived from the Latin word 'retineo' which means to hold, keep and retain and that's just what I intend to do with the $50." The client, knowing that his lawyer was perfectly justified in being paid that amount for the work he had already done in the case, replied that he did not desire Mr. Webster to say he was a "detainer", by detaining him longer, so he left the office with a Good Morning.

"They are all alike—they fight each other while you're watching them but they play the game together behind your back." This is a common insinuation against the lawyer and is due without doubt to a lack of understanding of legal practice. A lawyer at times seems in the eyes of his client to appear entirely too friendly to opposing counsel and sometimes to the other party to an action. But it should be thoroughly understood that many times a person may seek counsel to sue another when the lawyer representing the defendant may be a particular friend of the plaintiff's lawyer; in fact, in not a few instances, the lawyers may be chums. If the respective clients fully comprehended such a situation they would congratulate themselves in retaining such friendly lawyers instead of harboring any burdensome thoughts of suspicion. The danger would come from the fact that opposing lawyers were not friends but enemies. When the contending attorneys are really enemies, the "fur is going to fly" in a battle royal. Then the conclusion of Benjamin Franklin might be said to apply on all fours, when he wrote, "A countryman between two lawyers is like a fish between two cats."

But the court without fail will see that the rights of either party to an action shall not be jeopardized by the improper conduct of his attorney irrespective of Ben's "legal conclusion."

A client, for some curious reason, is often desirous that his attorney should possess the same degree of prejudice and hatred which he holds against the other party to a lawsuit, sometimes with the lawyer included. It would manifestly be entirely improper for a lawyer to permit his mind to become instilled with the extraordinary state of mind of some clients in a bitterly contested court action. It almost seems that some of them have murder in their hearts. There is no reason why a lawyer should not treat the parties and witnesses on the other side with the utmost kindness and consideration, unless their demeanor should demand more rigorous treatment. Indeed, the reputable and successful lawyer will never fail to conduct the trial of a case in such a manner.

Every lawyer knows of many instances where the plaintiff or defendant, and sometimes the witnesses on either side of a case, will recognize the ability of one of the opposing lawyers in the trial of an action and will retain him for his future business. The fact that a lawyer overwhelmingly defeats his adversary frequently causes the latter to hold such a lawyer in a high degree of respect. But, of course, an attorney cannot represent a person against his former client when any information in the possession of such attorney would place the first client in an unfair and disadvantageous position. No lawyer of any reputation will use any knowledge which he gained during such confidential relationship to the injury of such client. The rules of the bar generally cover the situation arising in these cases and the duties of the lawyer are plainly and adequately stated in this respect.

But the conduct of a lawyer should be that of a gentleman, although his work in a given case may cause him to become stern and often severe. Most people who have occasion to appear as witnesses generally realize this fact. But those who expect their lawyers to treat opposing counsel and parties with undue and unnecessary harshness to appease their appetite for blood will

be completely disappointed. Such conduct would be extremely discourteous, entirely unethical, and usually fatal, legally, if not physically, to lawyer or client or perhaps both.

From the more suspicious and usually illiterate type of litigant one sometimes hears such a complaint as this: "They talk to the judge in technical language which only he and the lawyers can understand and that's how they fool us." As a matter of fact most lawyers are unable to use many technical phrases of law after about two or three years from the date of admission to the bar, for the reason that they are readily forgotten during the period when the young man is looked upon as "a rising young attorney." How many lawyers can repeat any Latin maxims or legal sentences and phrases in the dead language? The number, perhaps, will be and ought to be infinitesimal. But when the English language is spoken by attorneys in court and out of court there is no good reason for unfavorable criticism on the part of those who unfortunately do not or cannot appreciate an Anglo-Saxon linquist. Such suspicion of some people is a natural sequence of innocent ignorance of the duties and exclusive privileges of the lawyer, and it is consequently incumbent upon the members of the profession to try and allay or eradicate such groundless fears by a calm explanation of their seeming misconduct rather than by an outburst of indignation. Can it be imagined how a foreigner with little knowledge of English, or any other illiterate person, would receive the following speech made in one of the Southern Courts some years ago by a gay and festive country attorney of the old school of learning?

"The counsel for the plaintiff," he said, "has been somewhat discursive in his remarks to you gentlemen. He has alluded to almost everything in the pages of history, ancient and modern. He has socked with old Socrates, roamed with old Romulus, demonstrated with old man Demosthenes, rocked with Blackstone, riped with old Euripides and canted with old Cantharides. But, gentlemen of the jury, what has that to do with this case? All his allegations are false, and the old alligator knows it, himself. My client doesn't need any of this fine talk. Look at him,

gentlemen, and say, if you can, that he hasn't done the honest thing by the plaintiff! From his youth up he has been as you now find him—A No. 1 extra inspected, scaled and screened, copper-fastened, free from scoots, silver-steel, buck-horn handle, nine yards to the dollar-thread thrown in."

It seems almost unbelievable, but there are not a few persons who have accused the judge and lawyer of collusion upon failure of their cases to succeed in a judicial tribunal. This accusation is as false as it is ridiculous and a direct attack on the judiciary—the bulwark of American Government. If one will reflect for a moment upon the scant number of impeachments of judges among the thousands who have occupied the benches of the higher and inferior courts of this country since the establishment of our government, the conclusion will be reached without much hesitation that their high integrity is well nigh beyond reproach. The judges in our country have, without question, the united support and respect of the great mass of citizens and aliens alike who realize fully that because of the general, irreproachable conduct and character of these judicial officers, they truly deserve such wholehearted confidence.

Another slander, with a shade of difference from the preceding one, may be heard in the following words: "I did not win because the lawyer on the other side is a close friend of the judge." What has been stated above partly, if not wholly, disposes of this absolutely unwarranted criticism which is simply another way of asserting the same falsification. Most members of the legal profession have no desire to try a case before a judge with whom they are intimately acquainted. Experience has taught them that a judge under such circumstances is quite apt to lean a little the other way and toward opposing counsel who may not be so friendly. Experience has shown that a very courteous and sympathetic smile from His Honor during the sunset period of a hard fought legal battle generally spells "Waterloo."

George R. Peck, a leading attorney of one of the Western States, had made a splendid argument in a very important case in the Federal Court, after which he happened to walk to the

hotel with the presiding judge. "I liked your argument very much, Mr. Peck," said the judge, "it was a masterly presentation of your case. I don't think you left anything unsaid that could have been said." Mr. Peck thanked the judge for the compliment and later met his friend, Mr. Kittredge, afterwards a U. S. Senator, and said, "I'm going to win that case, Kittredge." "What makes you think so?" asked Kittredge. "Well, I'll tell you on the quiet. Walking with me to the hotel today, the judge complimented me and added that I left nothing unsaid." "Oh, is that all?" replied Mr. Kittredge. "Don't let him fool you by that kind of talk. We all know him here. I'll tell you a little story. Once upon a time there was a lion tamer whose duty it was to go into the cage and put his head in a big lion's mouth twice a day. One day, after he had gotten his head in the animal's mouth, he asked the keeper in a low voice, 'Is the lion wagging his hail?' 'He is,' replied the keeper. 'Then I'm gone,' said the tamer and in an instant thereafter the lion closed his jaws and swallowed his head." Mr. Peck lost his case.

Another casual comment which could not be considered serious in its nature but which still is heard spoken many times is in the following form. "Of course that document was drawn up by a lawyer because no one can understand it." Once again the technical phraseology of the legal fraternity becomes a subject of adverse criticism. This complaint does not necessarily come from the uneducated class but is made usually by those of more than average intelligence. Even members of the higher walks of life really believe in good faith, it seems, that lawyers use certain technical language in written documents for the purpose of ambiguity and in order that further interpretation of the paper in question may be necessary. In this manner, they reason, the lawyers will procure additional legal employment. Such reasoning, of course, is very absurd and the result is necessarily nonsense.

At the outset it should be realized that the composition of a group of sentences with the sole intention of conveying certain thoughts and at the same same preventing other ideas from creeping in and causing confusion and misinterpretation, is no

easy task for lawyer or layman. If the critics would make a study or investigation of the arduous work involved in framing the bills and resolutions in Congress or the state legislatures they would readily perceive that such work can be successfully performed only by experts. It may be said without fear of contradiction that the drawing of long and intricate wills, contracts, and other written instruments of similar import constitutes the more difficult portion of a lawyer's work. Only recently a married man residing in New York came into Connecticut and married another woman who also hailed from the Empire State. After their marriage they returned immediately to their home state. The Connecticut authorities were at once confronted with the question of prosecuting the man for the crime of bigamy. The Connecticut statute of this crime read at the time as follows: "Every person who shall marry another, if either be then lawfully married, and shall live with such other as husband and wife, or shall so marry in any other state or country, in violation of the laws thereof, and shall knowingly cohabit and live with such other in this state as husband and wife, shall be imprisoned not more than five years." This statute appears to define and cover this crime in language that is clear and comprehensive. Yet, after it was discovered that the "newly-weds" had not cohabited or lived together as husband and wife in Connecticut a serious question was thus raised as to whether this man was guilty of bigamy under the statute. This particular statute has been revised several times and another revision was made in 1921 to cover the point in the foregoing case. Therefore, anyone who feels capable of redrafting this statute for the purpose of clarification on this, and other points that may arise in the future, is at liberty to present the same before the legislature of Connecticut at his convenience.

There are instances, almost countless in number, where statutes and written documents are ambiguous in meaning which at first sight appear clear and plain. Some have accused the lawyers in legislatures of causing the laws to be so framed that later interpretations are bound to differ and naturally become a ground for disputes by members of the legal profession. This

accusation is without foundation in fact. The actual framing of a law is, as has been said, done by experts who are invariably lawyers, to be sure, but whose knowledge of such work is necessary to word the proposed law in the clearest and most concise language. If the intention of the legislature is clearly expressed the law should remain as framed. The members of that body are in position, however, to amend the measure at any stage of proceding until signed by the executive officer, or after a certain period of time elapses when, of course, it becomes the law. Obviously it is impossible at the time of drafting to fortell all the situations that may arise which the statute is intended to cover. Indeed, the insertion, omission, or misplacement of a mere comma may entirely change the meaning of a law. The element of human frailty is bound to be present to prevent perfection in this as in most matters of human endeavor.

For example, to show how apparently plain English may be completely misunderstood it may be interesting to note a peculiar instance which occurred in one of the courts of South Carolina. The old rules of the English courts were in full force in that state for a long time, one of which rules provided that each attorney and counselor, while engaged in trial, must wear "a black gown and coat". On one occasion James L. Pettigue, one of the leaders of the bar, appeared in a light coat. The presiding judge turned to him and said, "Mr. Pettigue, you have on a light coat. You cannot speak, sir." "May it please, your honor", Pettigue replied, "I conform to the law." "No, Mr. Pettigue, you have on a light coat. The court cannot hear you." "But, your honor," insisted the lawyer, "you seem to misinterpret. Allow me to illustrate. The law says that a barrister must wear 'a black gown and coat', does it not?" "Yes," replied the judge. "And does your honor hold both the gown and the coat must be black?" "Certainly, Mr. Pettigue, certainly, sir," answered his honor. "And yet it is also provided by law," continued the lawyer, "that the sheriff must wear a 'cocked hat and sword', is that not true?" "Yes, that's true", the judge admitted. "'And does the Court hold," asked Mr. Pettigue, "that the sword must be cocked as well as the hat?" "Perhaps you

had better continue your speech", said his honor rather impatiently.

"How can lawyers be honest when they will defend a person they believe is guilty?"

This charge that lawyers cannot be honest in defending a person who they believe is guilty of a crime, is a common and oft repeated accusation against the legal profession. Under the legal system of this country and England, for example, all persons accused of crime are presumed to be innocent until proven guilty beyond a reasonable doubt. In some other countries the accused person must prove his innocence and therefore is presumed to be guilty from the time of his arrest or apprehension. But in the United States, a person accused of first degree murder steps into the court room, clothed in the garments, as it were, of the legal presumption of innocence, which he is entitled to wear until a verdict of twelve men says he is guilty as charged beyond a reasonable doubt. Now, the question to be determined is, whether a lawyer is justified in defending such a person if he believed him guilty, for instance, of murder in the first degree. The writer was one of the lawyers for the defense in the case of State vs. Micholas Mikita which was tried in the Criminal Court of Fairfield County in Connecticut in 1908. The defendant was charged with murder in the first degree in that he was accused of stabbing to death a young man in the back yard of a house where a large number of people were gathered in celebration of a wedding. The state introduced several exceptionally important witnesses who testified that they saw the accused, Mikita, standing on a little veranda at the rear door of the house and while pointing to someone in the crowd in the back yard (which was very dark), heard him use these words (as nearly as can be remembered) "Damn you, get out of here or I'll kill you." Within less than a minute after the stabbing occurred. The young man who was stabbed ran around the house and across the street, at the same time crying out, "Cement-House Mike killed me" and repeated it several times. He died shortly after. This dying declaration was testified to by several witnesses. The defendant,

Mikita, was called and known as "Cement-House Mike" because he lived in a house which was called the "Cement-House."

The trial continued for about two weeks. The state consumed perhaps one week in presenting its case and during all that time no witness mentioned, except incidentally, the name of any other person that might be connected with the commission of the crime. Stains of blood were found on Mikita's trousers the morning after the murder. That the stains were actually blood were proven by a Yale professor and medical expert. The finger of guilt unmistakably pointed toward the accused, Mikita. At this stage of the trial the jury, and doubtless everyone else who followed the testimony, verily believed this man guilty of the murder beyond any sort of doubt. The defendant now was to have his "day in court". As Ex-Chief Justice Simeon E. Baldwin expressed it in his book, "The Young Man and the Law," "The protection of law, like the showers from the heavens, descends upon the just and the unjust alike."

The defense opened and unfolded evidence that permitted the "truth, crushed to earth" to rise again. A girl, 16 years of age, testified that she stood on the door-step at the rear of the house and saw a man, of the same name as her own, and an acquaintance of hers, strike the deceased with some kind of an instrument. The father of the girl, also intimately acquainted with the person who struck the blow, stated that such person ran into the house and quickly handed him a knife. The witness continued to tell the jury that he became very much frightened in having the knife in his possession and gave it to a woman who placed it inside of her waist. Another woman who washed the clothing of the one who had the knife, testified that her waist was stained with blood. The blood stains on Mikita's trousers were explained by his having slept in the same cell in the jail with a young man who cut his hand at the time of the trouble by jumping through a window. Other witnesses were produced who swore that the man who did the stabbing had left town the morning after the murder for parts unknown. Further testimony was presented to show that this person had also lived in the Cement-House and was likewise called and known as "Cement-House

Mike''! The man is still at large. The accused, Micholas Mikita, took the witness stand, the last witness in the case, and admitted what the chief witnesses for the state had testified he said immediately before the murder, that is, "Damn you, get out of here or I'll kill you." But he denied committing homicide. After being subject to a most grilling cross-examination, the man charged with murder in the first degree convinced the state's attorney and the presiding judge that the presumption of innocence had not been removed. By direction of the court he was thereupon given his liberty. It is the firm belief of the writer that if the close friends of the man who actually committed the crime had disclaimed any knowledge of the case when first questioned, the real truth would never have been known and Mikita would have suffered the penalty of death for a crime he never committed.

If therefore, such important witnesses had not been discovered, the belief that the accused was the guilty man would have been quite natural and entirely logical. Under such circumstances the lawyers representing him would have been justified in holding such a view. When it is realized that the little girl, the eye witness, held the key to the truth of the case, and that she lived in the house of her father, with whom the actual murderer boarded, it may readily be perceived that the defense would have totally failed if she had held her tongue. If this girl, in order to protect the real murderer, had claimed to have seen or heard nothing relative to the crime, which, under the circumstances and because of her acquaintance and nationality, would not have been an unnatural attitude to assume, the lawyers for the defense would, of course, have been perfectly justified in believing their client guilty. Should they for this reason have refused to defend him? Is not even a guilty person entitled to the protection of law? And is it not the paramount duty of the lawyers for the prosecution and defense to assist the court in the application of such legal protection? The lawyer, in the trial of cases civil or criminal, is absolutely necessary. It is said that a "person who represents himself has a fool for a client".

(It is assumed that this conclusion does not apply when a lawyer acts for himself.)

Concerning the duties of a lawyer in the matter of representing clients under such circumstances, a clear explanation may be found in "The Young Man and the Law", heretofore mentioned, on page 81 et seq:

"Who indeed is to say which side in a lawsuit is in the right? What is to determine the guilt or innocence of one prosecuted for crime? These are necessary functions of judges and juries, rather than lawyers.

"Boswell once asked Dr. Johnson if a lawyer could honestly support a cause which he knew to be bad. 'Sir', was the reply, 'You do not know it to be good or bad till the judge determines it. I have said that you are to state facts fairly; so that your thinking, or what you call knowing, a cause to be bad, must be from reasoning, must be from your supposing your arguments to be weak and inconclusive. But, sir, that is not enough. An argument which does not convince yourself, may convince the judge to whom you urge it; and if it does convince him, why, then, sir, you are wrong, and he is right. It is his business to judge; and you are not to be confident in your own opinion that a cause is bad, but to say all you can for your client, and then hear the judge's opinion.'

"At a subsequent period, the subject came up again during a conversation in the course of which one of the company, Sir William Forbes, remarked that 'he thought an honest lawyer should never undertake a cause whch he was satisfied was not a just one.' 'Sir', said Johnson, 'a lawyer has no business with the justice or injustice of the cause which he undertakes, unless his client asks his opinion, and then he is bound to give it honestly. The justice or injustice of the cause is to be decided by the judge. Consider, sir, what is the purpose of courts of justice? It is, that every man may have his cause fairly tried, by men appointed to try causes. A lawyer is not to tell what he knows to be a lie; he is not to produce what he knows to be a false deed; but he is not to usurp the province of the jury and of the judge, and determine what shall be the effect of evidence,—what shall

be the result of legal argument. As it rarely happens that a man is fit to plead his own cause, lawyers are a class of the community, who, by study and experience, have acquired the art and power of arranging evidence, and of applying to the points at issue what the law has settled. A lawyer is to do for his client all that his client might fairly do for himself, if he could. If, by a superiority of attention, of knowledge, of skill, and a better method of communication, he has the advantage of his adversary, it is an advantage to which he is entitled. There must always be some advantage, on the one side or the other; and it is better that advantage should be had by talents than by chance. If lawyers were to undertake no causes till they were sure they were just, a man might be precluded altogether from a trial of his claim, though, were it judicially examined, it might be found a very just claim'."

"Everyone knows they are the biggest liars in the world" is another rather uncouth manner of attacking the veracity of lawyers. It may be frankly admitted that there are some members of the legal profession, not as lawyers, but as men, who may quite naturally prevaricate to the same degree that persons do in other walks of life. But lawyers, as such, in the performance of their legal duties, speak the truth more frequently than any other class of people in the world with the possible exception of the reputable members of the clergy. It is not to be implied that lawyers are inherently honest in this respect. But those lawyers who are not naturally honest have honesty thrust upon them.

There is no profession or business in this country, at least, before entering which a proposed member is required to take an oath to be honest in thought, word, and deed, except the law profession.

To be sure, an oath is administered to office holders in municipal, state, and national government but these cannot be said to come within the same category since the lawyer is an officer of the court—the judicial branch of the government, and his oath is considerably far more reaching and comprehensive.

The following oath taken by persons upon entering the bar

in Connecticut is probably similar to the oaths used in most of the other states of this country.

"You shall do no falsehood, nor consent to any to be done in the court, and if you know of any to be done you shall give knowledge thereof to the justices of the court, or some of them, that it may be reformed. You shall not wittingly and willingly promote, sue or procure to be sued any false or unlawful suit, nor give aid or consent to the same. You shall delay no man for lucre or malice, but you shall use yourself in the office of an attorney within the court according to the best of your learning and discretion, and with all good fidelity, as well to the court as to the client. So help you God."

Yet thousands of good-souled people are of the sincere belief that lawyers are not honest. In fact they believe that a lawyer cannot be honest because honesty and practice of law are incompatible, if not impossible. But is it not true that a lawyer occupies a position which demands fair dealing and honesty? His client demands of him honest treatment; the opposing lawyer will insist on proper treatment; the court will compel obedience and honest dealing to all concerned. A client who is deceived to his injury by his attorney has a means of redress. He may call upon another lawyer to investigate and the latter is bound to give to the injured person the result of such investigation, or he may refer the matter to the attention of the grievance committee of the bar of which the suspected lawyer is a member, or he may institute an action against him for redress if his claim is actionable.

The statute making it necessary to take the above oath was enacted in Connecticut in 1708. The obligations of this oath were not new even at that time, for they were recognized as binding upon the lawyer long before that date in all countries where these basic principles, upon which efficient administration of justice must rest, have been maintained.

In Connecticut, therefore, from the day of the enactment of this statute to the present time the law has recognized the lawyer as an officer of court exercising a privilege which cannot be exercised without obedience to the laws of truth and fidelity to

which he is bound by his oath of office; and for due observance of this oath, as well as for the manner in which his privilege is exercised in other respects, he is continually accountable to the court.

Dishonest and disreputable practices by a lawyer will surely and finally end with suspension or disbarment of the guilty party.

There is no other professional or business organization which possesses so much power, and will so readily use such power in the enforcement of a reasonably strict obedience to the obligations of its members, as the law profession. In consequence, therefore, there is more truth, honesty, faithfulness, and fair dealing in the law business than in any other business in the world.

Another common insinuation directed against the profession is conveyed in this language: "If you hire a lawyer to straighten out your business, he'll own the business before he completes the job."

Perhaps the laity is not fully informed, nevertheless, it is an undisputed fact (and admitted by the legal lights themselves) that most lawyers know considerable about law but all lawyers know something about business. The experience of lawyers in general as regards some business men, in reference to the conduct of their business has taught them that such men would make very successful hod-carriers. Experience has also proven to the entire satisfaction of many lawyers that the conduct of some other men in business warrants universal condemnation.

The first class is usually made up of men of good intentions but bad judgment and with no practical knowledge of the affairs of business. The other class might be termed "bankrupt sharks". The first class is composed of honest men but the second class is not. The bankruptcy laws are enacted for the advantage of respectable persons who are entitled to use them when they find themselves in financial distress. But the men who consider the gross income of a business as accrued profits and thereupon "pocket" all of it up to the moment of filing a petition in bankruptcy, are a menace to any community. The

men, who, before or after entering their case into the bankruptcy court, cart large portions of their stock away to some hidden place, are thieves. The men who practice divers cheating schemes to deceive the buying public, as for example, the marking of a regular $10 suit of clothes with a crossed-out $25 under which appears the present selling price of $15, should be driven out of business.

The poor, illiterate people who attempt to purchase household furniture or other such articles on a lease from some out-of-town firms at a stipulated amount each week or month, often suffer the loss of the money already paid, in addition to losing the furniture. The installment plan is a recognized and creditable method of business policy and is the means of great assistance and convenience to many people of the middle and poorer classes, but the abuse of such plan has caused much misery which is often due to the conduct of such out-of-town firms rather than of local merchants. No business man who deceives the public will long continue such practice, since his dishonesty will become known before many moons. Yet it is doubtless true that thousands of poor people throughout the land are daily sacrificing their hard-earned money for the benefit of dishonest merchants.

The business man who misrepresents his goods, wares and merchandise, or sells at prices which are plainly extortionate, or takes advantage of the ignorant or unenlightened foreigner to his injury, should be ostracised by means of publicity. These types of disreputable businessmen, always in search of an "alibi", usually attempt to blame the lawyer for their villainy.

The honest but ignorant business man, however, is an object of pity. His lack of knowledge generally centers on the fact of not knowing that some sort of accounting is absolutely necessary to ascertain whether his business is progressing or retrogressing. No one can remember the amounts, coming and going, without a record. As a consequence when he sees his large bank balance, large stock on hand and cash continually pouring into the money drawer, be believes himself actually wealthy, but, in truth, he may be a bankrupt. It is this type of business men also who

cause the lawyers to be called in to unravel, if possible, their intricate business entanglements.

If the lawyer representing the owner or creditors deems a receivership or petition in bankruptcy the only proper solution for the benefit of all concerned, such action is generally followed. The final outcome of these proceedings in most cases is the sale of the business or assets for the benefit of the creditors. All the legal steps taken in such matters are, of course, by the direction and under the supervision of the court. But even in these situations the owners, their relatives or friends, often attempt to place the blame for their financial difficulties upon the shoulders of the lawyers involved by insinuating that they have taken the business from its rightful owners. Most lawyers would not be so stupid as to appropriate to themselves a business consisting mainly of liabilities even if possible. A fool would not steal a dead horse. The great majority of business men are, of course, reputable in every sense of the term. From such men there is no criticism of lawyers since they believe most men like themselves to be honest and upright until the contrary is shown. The dishonest sort expect to discover a similar germ in their fellowmen.

There is another utterance made by a certain class of people who obviously do not realize the importance of an oath and the very serious consequences that may follow from the violation of its sanctity whether taken in court or elsewhere. This sort of statement is expressed in various forms, two of which may be mentioned. One expression puts it this way—"If my lawyer had told me what to say in court I would have won the case." Another form conveying a similar idea is, "If he had told me that a witness was needed to prove such a point in issue I could have easily procured one."

It will be acknowledged that a lawyer should make a thorough examination of his client's witnesses to properly conduct his case in court and, in so doing, the strength of his client's cause will be shown. This duty of examining witnesses before trial is recognized to be a most important and delicate part of the lawyer's work. It is of paramount importance when testing the truth and accuracy of witnesses in ascertaining the real facts,

that such an examination shall not intentionally or accidentally be perverted into a training school for perjury. Those witnesses who seem inclined to exaggerate or minimize, whenever expediency demands it, should be cautioned with the utmost firmness. A general warning to all the witnesses that the truth only must be told is absolutely necessary in some instances. All lawyers are fully aware of the necessity of truth in the presentation of testimony in courts and the tampering with witnessess by suggestion or request on the part of the lawyer is a very serious breach of professional conduct and is also punishable as subordination of perjury. The testimony of a witness under oath, if it is false in whole or part as to any material matter, will cause such witness to be prosecuted for the crime of perjury.

There are some persons who have testified in courts, or made sworn statements in affidavits, where falsification is patent but to prove that they willfully or corruptly so testified or affirmed is rather difficult. Still it is very frequent that the judge, the lawyers or the jury are able to spot the untruthful witnesses in the trial of a case, and, invariably the side for which those witnesses testified, will lose the verdict or decision. False testimony has won few if any cases in the judicial tribunals of this country.

When one witness affirms a certain thing and another denies it, one or the other is certainly falsifying but it is sometimes very hard to point out the liar. In the matter of written documents which have been sworn to, it often happens that a person of less than ordinary intelligence will take oath to the contents of such paper without reading it carefully or perhaps without reading the statements appearing therein at all. This is not only extremely foolish but may be serious. Indeed persons of the most reputable sort sometimes seem to be indifferent in this respect.

Many witnesses seem to possess an astuteness, if it may be so termed, which is used for the purpose of making an apparent fact appear real. This type of witness requires a very rigid cross-examination to break down the apparent logical truthfulness of his testimony. This almost super-human or rather subhuman capacity of some people to falsify with saintly face,

their oily manner of expression, the slow, eely movements of their thought waves, their pugnacity of reasons, excuses and alibis without fear of God, oath, or man is, indeed, interesting to the lawyer examining but very exasperating. Most women, because of their intuitive power, and for other reasons, can be very dangerous witnesses in the trial of a case. Their inherent alertness of thought, their gift of fluent means of expression, their extraordinary talent for minute and detailed description with the natural persuasive powers of the sex, when vitally interested, make them witnesses difficult to examine by opposing counsel, who must, in nearly every instance, treat them with respectful consideration unless their conduct forfeits such treatment. Women can lie more successfully than men but the fact is that since there are far more moral perverts among men than among women, it follows logically that women's moral regard for truth and veracity is considerable higher than that of the male species.

There are times when a witness may stretch the truth almost to a breaking point but at the same time he may save his integrity by the use of real wit. In this instance the truth is almost unanimously disregarded by all concerned but a withdrawal of the witty and untruthful statement is usually made. But humorous situations not infrequently arise in court proceedings. Sometimes the judge or lawyer and at other times the witness will relieve the tension of the judicial atmosphere by sparks of laughter. In one of the courts of New Jersey, Judge Collins is said to have turned upon a witness who had indulged in long winded replies in the following manner. "I tell you what, my man," exclaimed his honor, "I won't listen to you any longer unless you can hold your tongue and give your evidence clearly."

Most judges have been successful trial lawyers before their elevation to the bench. When presiding in cases they are in a position to know generally where the meat of the case can be discovered. Hence they often take a hand by examining or cross-examining a witness themselves. It is related that when a judge put an important question to a witness on one occasion, one of the lawyers was thereby annoyed at both the question and the

answer and immediately arose, addressing the court in this language: "I should like to know," he said, "whether your honor has put that question for the other side or for our benefit; because, if it is in behalf of my opponent, I deny its relevancy, and, if it is for us, we don't want it." The following incident may be mentioned to show the surprises a lawyer sometimes receives from a witness.

During his boyhood Benjamin F. Butler was a frequent visitor in the town of Nottingham, New Hampshire, where his uncle, General Butler resided. Among the many stories related of the general is one concerning his examination of Pat Murphy, a local character.

Tim Dolan had been accused of selling liquor, and the prosecution summoned Pat to testify in the case. Now Pat was a job teamster, and Butler endeavored to make him admit that he had delivered liquor to the defendant.

Butler asked: "Did you ever take any freight from the railroad office and deliver to Tim Dolan?"

"Yis, sor."

"Part of this freight was a barrel, wasn't it?"

"Yis, sor."

"Pat, what was in that barrel?"

"I don't know, sor!"

"Don't know! Wasn't the barrel marked?"

"Yis, sor."

"Then how dare you tell the court that you don't know what was in it?"

"Because, sor, the barrel was marked Tim Dolan on one end and bourbon whiskey on the other. How the divil did I know which was in it?"

The law is invoked by the foreign population in this country to a great extent. This has been true for some years and the number of legal actions brought by and against aliens is increasing each year. Many of them well know that the laws in America are for their protection to the same degree as for the protection of citizens and they are never adverse to taking advantage of the privileges of our courts and other American institutions.

They are fully aware that justice may be obtained in a judicial determination of a disputed matter although the opposing party is an American citizen whose great-grandfather fought in the Revolutionary War. But most of them admire speech-making and some favor oratory with all its power and glory. Most lawyers who have had occasion to observe in this respect will probably agree that this fact is notably true as to those who might be termed the lineal descendants of the Ireland and the Roman Empire. The Irish and the Italians certainly are still sincere worshippers at the shrine of oratory.

This is not surprising when one recalls the great oratorical idols of Ireland, ancient Rome and Greece and the high places they occupied in those states. In modern times, however, the Greeks have not followed the tradition of their race regarding the art of public speaking. On the contrary an energetic son of Erin, in the capacity of a client, generally desires to do the talking in court himself, or tells his lawyer what he wishes him to say in his behalf and also in what manner he wishes his attorney to say it. They fully appreciate the possibilities of a good and well delivered speech. From the sturdy members of the Italian race, many lawyers have heard such comment as the following: "My lawyer—he's no good—he did not talk for me. The lawyer on the other side—he made a big talk—a great biga noise in the court room." Obviously, it is very difficult to judge the real ability of a lawyer, as such, by his power of speaking. Great lawyers may be great or poor speakers, and poor lawyers may be great or poor speakers. The same is true in any other profession, business or vocation. Men or women of great intellect, such as, theologians, physicians, college professors, historians, authors, captains of industry, inventors, and even statesmen may not be able to address an audience of over five people, yet their entire career is symonymous with success.

However, there are many foreigners and some natives in this country who believe that the art of oratory should not be permitted to die without an appropriate eulogy to its memory now and then. The aliens who have been reared in lands of royalty may not comprehend the theory and practice of law in

a great democracy but they still enjoy the loud enunciation of living words with the sweeping wave-like gestures of a real persuasive orator. They want to hear their opponent in a law-suit everlastingly condemned with words of fire and, on the contrary, they love to hear their lawyer with a tongue of silver portray to the judge and jury with beautiful and most laudatory words that their whole lives have been lived in righteousness and loveliness and that the sweet countenance of humanity smiles its eternal approval upon this particular client.

The lawyer who fails to live up to such requirements in some cases will be, in plain English, "fired." He may convince the judges of the Supreme Court that he knows some law but not "John." Yet, a lawyer who says too much may lose his case in several ways. The judge may perceive very quickly that his long argument is simply the means of grasping for the straw and decide against him upon the ground that the lawyer thus exploring does not himself believe what he is saying. Again the attorney may be using his power of speech to the extent that it reaches beyond his control and, in consequence, he lets slip a word or two whch may cause his whole case to also slip out of the court. It may be exceedingly difficult for the loquacious brethern of the bar to constrain the gnawing incentive to dwell at some length upon the many points in a court case just as a base-ball fan would want to describe a base-ball game that had reached the 11th inning, with a tie score of 1 and 1, two out and three men on bases when up to the bat walks his idol, Babe Ruth, and makes it a "homer". Some base-ball fans wouldn't stop talking to their friends about this game with its glorious climax until they were cracked on the head with the bat that hit the ball. The lawyer who becomes all "het up" over a case in which he has worked hard, with all the facts at his fingers' tips, with the ardent desire to tell the judge, jury, or both all about it, and believing that all he says is assisting his client, is naturally going to talk on and on until, at least, his mind is somewhat relieved of the bulging mass of data, facts, figures, and law which have been quite uncontrollable and restless for sometime and must of necessity be liberated like the bursting of a toy balloon.

An eminent jurist characterized a long-drawn out speech of a certain lawyer as "the last hair on the tail of procrastinaton."

It is told of Andrew H. Green, "the father of Greater New York," that he took a serious view of life and was little given to humor. He spoke of his first case to an acquaintance one day and in the course of his conversation said, "I had been retained to defend a man in an action for damages. I was young and bunptious . The plaintiff's presentation was short and I didn't get much chance. When that side rested I arose and with the utmost confidence made three or four different motions, one after the other. Each was overruled by the judge as soon as made, and on entirely just grounds, as I have since come to see. I then began a laboriously prepared address."

"Your Honor, 'I commenced,' my unfortunate client—"

"There the court is with you", came from the bench in the gentlest tones.

CHAPTER IV.

Further criticism of lawyers in jury trials. Methods of influencing the jury. Duties and privileges of jurymen. Examination for jury duty. "Song" of the bluebird. Criticism of all learned professions. The work of the **clergy.** Charge of hypocracy. Liberty of conscience and spirit of religion. The **physician** criticized. "Cancer cure". Chiropractors and Osteopaths. Criticism of **judges.** Contempt of court. Connecticut method of appointment. Their qualifications and human instincts.

Criticism is sometimes directed against the profession on the ground that lawyers wield an influence over the members of a jury by means of tactics which are both questionable and objectionable.

This complaint does not imply that the lawyer is in collusion with one or more members of the jury in a given case but refers to the attempt to influence the jury by the power of speech. It has been said that the lawyers should not be permitted to present to a jury their interpretation of the evidence introduced by the witnesses nor to make any sort of a plea whatever but should let the jurymen pass upon the evidence without the assistance of counsel in this respect.

These critics claim that since the jury must eventually decide the facts of the case by their verdict, the pleas of counsel are wholly unnecessary and only tend to confuse the minds of the jury rather than help to clarify the points in issue. Furthermore, they claim that some lawyers can weep as easily as they can laugh and in this way play upon the hearts of the jurymen; that the smooth and convincing talker is bound to have the advantage over the lawyer without such a gift of speech, that the trained mind of the lawyer in his interpretation of evidence would naturally and invariable sway the minds of the jurymen to a degree commensurate with his ability to persuade, and, the

opposing side, without such advantage, would suffer accordingly. There is no doubt but an industrious, brilliant, and seasoned lawyer with natural talents has a considerable advantage in the trial of a case before a judge or jury, but his success is based not so much on his power to influence the jury as it is upon his ability to have properly presented within the sight and hearing of a jury every bit of evidence that is favorable to his client's case. Most jurymen rely on the testimony of the witnesses and their demeanor on the witness stand. The evidence of a sincere and honest witness unquestionably has more weight with a jury than a three hour speech of counsel. Under the civil and criminal procedure of our courts the jury occupies a very neecssary, if not indespensable, position in the administration of justice. Their duties and privileges are jealously guarded and protected by law and their work is performed under the personal direction and supervision of the presiding judge. The jury will probably remain a part of the judicial system of this country as long as our government exists.

Most citizens are subject to jury duty and are made to serve in the trial of court cases if they qualify for such service. Some men consider a summons for jury duty rather lightly at times but such conduct generally leads them into no end of trouble. It is difficult for some well meaning men to admit the right of the state to take them away from their business or other work to serve on a jury at a rate of compensation less than they receive in their usual occupation. Especially so, if such men have no inclination for court work. During the examination of men to qualify for jury duty it is indeed interesting and amusing to perceive the mental sparing between the proposed juror and the lawyer conducting the examination. When the man is very desirous of being accepted as a juryman his answers to the questions propounded by lawyers for the state and defense, if a criminal case, must show a total lack of interest in the parties involved, and a lack of knowledge of the facts to the extent of not being prejudiced for or against the accused; they must also show that from the standpoint of the state or commonwealth, he is not too sympathetic by nature, and, if a murder case, that he has no

conscientious scruples against capital punishment or the death penalty. To the lawyers for the defense his answers must show that he is not too severe or strict in temperament or disposition, that although believing in capital punishment because it is the law, he would vote to inflict such punishment only when the evidence is clear and convincing.

This examination continues along the above and similar lines of questioning, each of the contending lawyers searching the innermost depths of his mind to find some reason why the proposed juryman could not fairly and impartially try the case. The stern and fearless type of man is generally desired by the state in criminal cases but is refused by the defense. The mild and sympathetic kind are sought for by the defense but of course are not accepted by the state. The larger portion of men called for jury duty do not seem at all desirous of serving but they are at a loss to know how to avoid it. Being under oath their answers must be truthful and if such answers demonstrate their fitness as jurors they are bound to serve unless the Court excuses them on the grounds of sickness or other important reasons. It is readily perceived that the choosing of twelve men who are able to answer satisfactorily the fusillade of questions from both sides of an important case is no easy task and many days are sometimes required to complete a jury.

The questions and answers in the examination of men for a jury are bound to cover a broad field of inquiry. The rules of evidence do not cover such examination, hence the inquiry concerning the qualifications of a juryman may start at the cradle and end on the witness stand. He may be asked his age, where born, how many times he has moved, whether married or single, divorced or engaged, the number of children, if any, whether boys or girls or both, their ages, the number of grand children, if any, his business or employment, whether a church member, his health, condition of sight and hearing, the offices he has held especially those involving police duty, prior jury duty, when, where and what cases, etc. etc.

If he answers all the questions to the entire satisfaction of the court and respective attorneys he will probably be accepted

tentatively upon condition that further information concerning him is not forthcoming which may bar him absolutely from that particular jury. Furthermore, if perchance his appearance and demeanor should seem to belie his answers, one of the attorneys is certain to challenge him. When a jury is finally chosen it is usually composed of men who have no previous knowledge of the case on trial and as the evidence is gradually unfolded in accordance with the rules of legal procedure, the twelve men are in a position to observe clearly the witnesses, weigh the evidence, and finally decide the facts by a just verdict.

In one of the Vermont courts a lawyer, some years ago, was conducting an examination of a man concerning his qualifications as a juror.

"Have you ever served on a jury?" he asked.

"No, sire," answered the man. "I've been drawn a good many times, but I was always too smart to get caught on a jury."

"What's that, sir?" interrupted the judge, sternly. "Do you boast of your smartness in escaping jury duty?"

"No, your honor," said the man. "Not at all. When I said I was too smart I meant that I was always excused because the lawyers thought I wasn't ignorant enough."

The majority of the juries in Connecticut are made up of those sturdy men of the farms. During the winter months they are, probably, more willing to give their time to jury duty than the city business man.

The following is told of a pair of ex-jurors who were swapping recollections in New York one day. The retired member of the brace agreed with the one who expected to serve some more that there had been cases in which jurors were not altogether contrained to go according to the evidence.

"I was some years ago on the jury that tried Jere Dunn for killing Jim Elliott, the prize-fighter, in Chicago," said the retired one. "Jere Dunn was a Beau Brummel gambler. Jim Elliott was—well, he was a prize-fighter.

"The killing occured in a questionable resort. There was nothing in the case that appealed to a New Englander such as I

am. When all the evidence was in I didn't know how I stood. It was a case of six and six.

"Dunn's lawyer was Emory Storrs, the brilliant, erratic Storrs, the great criminal lawyer of his day.

"In his peroration Storrs said, as well as I remember the words, 'Gentlemen of the jury, acquit Jere Dunn, and tomorrow the sun will shine brighter, and the bluebirds will sing more joyously.'

"Now when I was a young man in Connecticut the woods were full of bluebirds and robins and other plumaged species, but the bluebird was my favorite. I killed robins and sparrows and other things that had feathers, but I never harmed a bluebird.

"Storrs' reference to the bluebirds touched me. When the jury retired we were all about of one mind, and Jere Dunn was acquitted.

"Some months later I was at the banquet which Emory Storrs gave to Henry Irving and I told Storrs about the lines in his defense of Dunn that caught me.

" 'That was very good of you,' he said, 'but I made an awful slip in that sentence. If you know anything about a bluebird you know it can't sing any more than a cow.'

"Then I remembered that I had never heard a bluebird sing.

"Sir Henry Irving, the tragedian, was among the listeners of this story. He laughed, and said, in his most gracious manner;

" 'I presume the barrister referred to the bluebird he was asking the jury to release.' "

If the juror referred to in the above narrative was brought up in the woods of Connecticut he evidently must have been more of a fisherman than hunter or perhaps his cider was getting good during the season of bluebirds.

By the casual reading of the writings of the ancient and modern dramatics, novelists, essayists, and historians one is readily convinced that there has always been a marked tendency on the part of mankind to rail against and make fun of all learned

professions. To call the clergyman a hypocrite, the physician a murderer and the lawyer a liar has long been one of the favorite amusements of a great number of people. The mass of men do not fall in love with other men who appear able to get a living and obtain honors without the use of money or muscle. But necessity usually changes the attitude of many men against the professional man. When a man believes himself on his last journey across the River Jordan he forgets the fun and jokes about the clergyman's long face and long black coat but on the contrary he tenderly beseeches the reverend gentleman to fervently pray over him lest he should cross the River without a spiritual pilot. So when one is suddenly attacked with sharp pains in the region of the appendix he forgets about the unkind remarks he made about the fatality of medical advise, experimentation and the appropriateness of the doctor's heading the funeral procession and the like. He wants a doctor and wants him in a hurry. When relief follows, the sufferer proclaims the physician a savior of mankind. When a man wants a contract or a will drawn, or to sue, or to defend a suit, or to get rid of his wife, or to prevent his wife's getting rid of him or to rescue his own estate from scheming relatives, or to capture somebody else's lands, titles or hereditiments or to save him from a prison cell and a nice striped suit, he wants a lawyer no matter whether the man of the law is a big liar or a little liar.

Oliver Wendell Holmes has said, "the lawyers are the cleverest men, the ministers are the most learned, and the doctors are the most sensible." Irving Browne, the author of "Law and Lawyers in Literature" says, "The clergyman knows a good deal of a considerable number of things; the physican knows a great deal more of a smaller number of things; the lawyer knows a little of a great many more things than either."

It might be well at this time to trespass upon the fields of the clergyman, physician, judge, statesman, editor, dentist, nurse and teacher with a view of ascertaining to what extent they are subject to adverse criticism.

The clergy, with some notable exceptions, are a good, industrious and sincere group of religious and patriotic men who

work harder for less pay than any other class of educated men in the world. Their work is extremely important and far reaching in that the moral standards of the country are fostered and maintained by them and the churches they represent. Not many people realize the enormous sacrifices that have been, and still are being made, by many young men in this country alone by taking up a religious life as a vocation. It seems, without question, that their desire to spread the gospel of Christ is genuine and compelling with no thought of just compensation for the splendid services they render to mankind. When the great mass of people fully comprehend the absolute necessity of religious teaching of the children of all countries to perpetuate the sort of civilization universally desired, the churches and clergy will be more generally supported.

To be sure, some members of the clergy have been critized for apparent acts of hypocracy. They have been charged with gross inconsistancy in denying some citizens the privilege, for instance, of witnessing a base-ball game on Sunday while they enjoy a pleasure trip in their automobiles on the same day. Others are accused of meddling with the affairs of their fellow citizens in matters beyond the lines of their jurisdiction. In other words, when such affairs do not involve a question of morals, in the stricter sense, it is said the reverend gentlemen should not interfere. Some more are charged with desiring publicty and other sensational advertising. And still others, the critics say, are not only harboring political ambitions but seem to be silently planning to stage a political jump into high offices. Most ordinary people believe that ministers of the gospel, when properly functioning, should interpret the laws of God and His Church for the enlightenment of their respective flocks and like true shepherds should suggest and advise the members of their herds regarding the proper way to live in order to save their souls and gain eternal salvation.

Of course, the duties of the clergy cannot be enumerated in one sentence. They are many and exacting. They may call for harsh advise to some members of the church or they may be merciful and comforting. The men of the cloth must also attend

to the material side of their religious establishments. They must build and maintain places of worship. They must buy and pay for shelter, food and clothes, just like every other honest man including the lawyer. In most cases their salaries will not suffice. In order to succeed in material things, therefore, they must perform a duty distasteful to them as it would be to almost every other professional man. They must pass the plate. They must take up a collection. It would seem the faithful church members should provide another means of support. Some would say that passing the collection plate would not be frowned upon by a lawyer but such an assertion is utterly untrue. The lawyer abhors silver, nickel and copper coins.

The clergyman is critized by some members of his parish because he calls a spade a spade and it sometimes hurts the tender feelings of such members. In some churches the minister cannot talk with too much candor or speak his mind too freely when influential members of his flock may be offended thereby without making himself subject to an enforced resignation. Members of other churches are quite accustomed from childhood to receiving advice and instruction which is ordinarily given without fear or favor. They seem to thoroughly enjoy being told how very far from being perfect they really are. They attend service Sunday after Sunday with the full expectation that at least one of their many faults shall be touched upon, directly or indirectly. They are hardly ever disappointed. They do not desire to be told that they are good or angelic because they don't want to be "humbuged". Is the strict and inflexible method of conducting a religious organization more efficacious in reaching the heart and conscience than the more or less social, brotherly, and perfunctory means used extensively by many forms of religious teaching?

Shall the members of a church or religious sect follow the dictates of their own consciences in the interpretation and observation of the moral laws or shall they follow the interpretations and advice in respect thereto of the learned men who have been trained in the great theological field of learning? Is it not curious that men will refuse to accept the opinion and advise of the

doctors of divinity in respect to divine law while they will seek and gladly accept the opinion of a judge or lawyer concerning the law of the land? Such refusal respecting the interpretation of divine law is based, presumably, upon the right of liberty of conscience guaranted by the constitution of this country as well as the state constitutions. It is unquestionably true, however, that the real reason why most people uphold the dignity of our judges and courts is due solely to the power which they possess and readily use in respect to the strict enforcement of the primary law of obedience. Liberty of conscience is not involved in the compliance of a court order. The observance of the laws of man may be enforced but the laws of God are observed or violated at the discretion of each and every one of us. But still the power of religious thought wields a tremendous influence in the world today. The world war clearly demonstrated that the laws of God must also be observed or the punishment is severe. It is even now manifest that the terrible chastisement of the human race will not have been suffered in vain. The great nations are now ready and willing to use their best endeavors to prevent, if possible, a recurrence of the wholesale destruction of life, that such wars "shall not be again". The spirit of religion and the application of divine law permeates such noble efforts. It is the solemn duty and honorable privilege of the clergy of America, because of their resources and other advantages, to lead the great army of Christian soldiers in the fight for a lasting "Peace on Earth and Good Will Toward Men."

The physician may be critized somewhat by a small number of individuals in a community where he conducts his practice but this is usually the result of personal rather than professional grievances. In fact, it is almost impossible for anyone to honestly accuse a doctor of making a mistake which proves disastrous to a patient. In this particular there is a marked difference in the technique of the legal and medical sciences. The lawyer, as before stated, must be honest with his client, who is very much alive; he must be honest with the opposing lawyer who is also alive respecting the interests of his client, and he must be honest with the judge whose judicial eyes are both penetrating

and far seeing. A dishonest transaction conceived by an unscrupulous lawyer cannot pierce the three lines of defenses. The physician is not confronted with the same difficulties in this regard. The patient usually lies prostrate and conforms to the rules and suggestions of the attending M. D. Whether brown pills or white pills should be administered is decided by his medical opinion. This opinion or ruling is final. There is no appeal and therefore there can be no reversal of the doctor's judgment. It may happen that if the white rather than the brown pills had been given to the patient he would have survived. But the physician was perfectly honest in his opinion. He would have been delighted to cure and save the patient but the latter was simply a victim of an honest mistake. An old Greek physician, who practiced in his native country about 300 years B. C. said that a physican should possess more than an opinion before he attempted to practice his profession. He said that a doctor should also have knowledge. This was not said in sarcasm by the venerable doctor but he was supplementing a former assertion that in his day there were too many medical men posing as physicans who were such only in name.

Whether this condition exists at the present time is probably known by the members of that profession, but it would seem in this age of progress that the rules and regulations govering the practice of medicine are sufficiently strict to prevent anyone from attempting to heal the sick without a proper certificate of authority.

The physician, however, is accountable only to the law and his own conscience and the law will not interfere with his conduct unless he is guilty of a direct violation thereof or of negligence in the legal acceptation of that word. If the patient, hereinbefore mentioned, was given by mistake for example, a red or poisonous pill instead of a brown one the physician would probably be found guilty of criminal negligence.

A 7-year-old girl who had listened to medical talk all her life surely could not have correctly understood her father when upon being asked his business, she replied, "My father is a doctor, but he isn't a quack! My father's got a license, so if he

kills anyone then can't arrest him!'' The little girl's medical and legal conclusion recalls to the writer's mind the means by which he himself attained his ''knowledge'' of the medical profession. His mind began to grasp the mysteries of the technical phases (not phrases) of the medical science when he was retained some years ago by a doctor who was arrested by the United States authorities for the crime of using the mails to defraud. This doctor sold medicine which he made at his home to persons in nearly every state in the Union. The concoction was bought by men and women who claimed to have been afflicted with cancer at the price of two dollars a bottle. The doctor received through the mails many orders for this medicine. Those who were familar with the inner workings of his mail-order business claimed that in a very few years he could retire to a life of leisure. After the United States Marshal had taken the writer's client in custody, a bond was filed and numerous conferences of lawyer and client immediately followed. The lawyer was absolutely convinced that the medicine was not only helping those unfortunate people but was a positive cure for cancer. How could he reason differently when he had in his possession hundreds of letters or testimonials from the afflicted ones, who emphatically stated that the first or second bottle had actually cured them of that terrible disease. The lawyer packed all the testimonals in his traveling bag, boarded a train for Boston, and went into session with the expert chemists of the United States Laboratory in that city. He tried to prove to them that unless they were likewise convinced that the medicine was a sure cure for cancer their knowledge of chemistry was fundamentally lacking. Their replies were courteous and their smiles generous. The issue between the two ''schools of thought'' at this session was indeed very clear. The chemists asserted that the concoction in question was without any merit whatsoever and the lawyer based his contention on the testimonials of those who claimed to have been cured and also upon the statement of a respectable old gentleman who proved to the lawyer's satisfaction in his office that the medicine had entirely cured and eradicated a cancer from his right hand. ''Seeing is believing'' was the lawyer's main argument to the

United State chemists in Boston. This was not the end in the fight for truth. The lawyer soon after the Boston trip, journeyed to Washington with the same traveling bag containing the same precious testimonials. A great many of the letters or testimonials, by the way, were sworn to by the writers and were truly affidavits of the curable qualities of the medicine. Arriving in Washington the lawyer, who incidentally had, at that time, completed about one year in the practice of his profession, went immediately to the Department of Agriculture where he was confronted with more U. S. chemists. The affidavits were once more introduced and a discussion followed in due course at the end of which the main argument of "seeing is believing" was again made as the last weapon to break down the barriers of "ignorance." When the lawyer had finished, the delightful and courteous smiles of the auditors followed also in due course. The expert chemist in charge of the office turned toward the young lawyer and said, "Do you know, young man, there has not as yet been found a cure for cancer?" The lawyer replied that he understood such to be the fact before this particular medicine was discovered. The chemist continued, "I have had that medicine analyzed and I will say positively that if we were to bottle up the rain water as it drops from the roof of this building it would cure cancer just as readily as the medicine your client is selling." "But how about the affidavits and the man I saw with my own eyes?" inquired the lawyer. "Why", he answered, "we have seen trunks full of such testimonials from people who honestly believe they have been cured of various diseases but they are generally worthless because the poor innocent souls never were afflicted with the disease at all. And in regard to the old gentleman who showed you the scar as the 'last remains' of a cancer on his right hand the answer is, 'it ain't no such thing' and never was." So much for the session in Washington, D. C.

The journey home was filled with deep meditation and while thus "commercing with the skies" he thanked God repeatedly that his chosen profession was the law and not the medical. At the proper time a plea of guilty was entered in the U. S. District

Court at Hartford and a substantial fine imposed on the doctor for using the mails to defraud.

Most honest people will admit that if there is a specific remedy for the ailments of the human body such remedy should be applied by a physician and not by the sufferers themselves. There are too many persons who are attempting to act as their own doctors in taking that sort of medicine which is advertized to bring results or money refunded.

In recent times when the science of medicine seems to have made great strides toward progress and perfection, another school of the healing art has arisen in sharp competition with the former. This new profession is made up of Chiropractors, Osteopaths and perhaps kindred healers. Their contention is that the principle of administering drugs is fundamentally wrong.

It seems that some medical doctors are forsaking their profession and becoming Chiropractors. A certain physician of Birmingham, Alabama, wrote the following letter to a brother doctor,

"Dear Doctor:

From boyhood, (1886) till 1905, I was employed in a retail drug store. October 1, 1905 I entered upon the study of Medicine, and graduated from the University of Alabama, School of Medicine (a class "A" school), located at Mobile, Alabama. I have had about as much success with drugs and medicine as most any other medical man, and I gradually lost confidence in them. I moved to Birmingham in July, 1913, and I had not been here very long when one day, as I walked in the streets, I saw a circular on the sidewalk with a cut of the spinal column on it. I picked it up, looked it over and wondered—what is Chiropractic; it must be some very new fake scheme. I put it in my pocket with a purpose to look it up. Well, I looked in my medical dictionary; nothing there. I looked in Webster; nothing there; so I pulled down my 'bible', Gray's Anatomy—studied those awhile, then pulled down my text book on 'Nervous and Mental Diseases, by Church and Peterson. Well, I hadn't gone far into that (page 56) until I found a table that made the whole thing

clear to me. Then I saw that I had been educated in the art of healing, with the cart before the horse. Since that I have been studying and preparing myself to change the harness, and I have advised a lot of my medical friends to wake up and get out of the rut.

I now have associated with me a graduate chiropractor, giving adjustments and obtaining results that I could not have obtained with medicine and surgery."

Osteopathy is said to be founded upon the so-called re-adjustment of all the human tissues. The chiropractors and osteopaths are not only in disagreement with the theory of the medical profession but they also have "agreed to disagree" between themselves. The osteopaths claim that the chiropractors in adjusting the spine only, do not extend their adjustments far enough. On the other hand, the chiropractors assert that the osteopaths, by attempting to re-adjust all the tissues of the human body are extending too far and because of this method they are called "engine wipers."

The attitude of the medical profession toward the new healing art might be shown in the expression of a leading physician during a legislative hearing in Hartford, Connecticut, in 1921, when he was charged by a prominent chiropractor with not having any knowledge about the art. The physician replied that he was very proud of his ignorance and furthermore he said, "I do not want to know anything about it."

The battle still rages and will probably continue for a long time to come because the members of said professions have many patients who are extremely loyal in support of their choice.

It is hardly necessary to mention that doctors are indispensable in every community and their great work in saving lives, healing the sick, giving aid and comfort to the afflicted and suffering members of the human family, is universally recognized.

The judicial and lawful acts of all courts of record are not subject to adverse criticism except at the proper time and place. A person who makes an oral or written statement at any other time imputing improper motives to the judge in the trial or decision of a case may be found guilty of contempt.

Under Connecticut law, all courts may punish by fine and imprisonment any person who shall, in their presence, behave contemptuously or in a disorderly manner, but justices of the peace cannot inflict a greater fine than seven dollars, nor a longer term than thirty days, but all other courts may fine the person guilty of contempt one hundred dollars and sentence him to jail for six months.

Even the freedom of the press is limited in respect to articles which may reflect upon the court in a cause on trial and by improper comment upon the evidence. And if such newspaper articles disparage the cause of either of the parties or are calculated to prevent a fair trial, it makes no difference whether the publication was issued with criminal intent or good intent. Bringing contempt upon the court in the public mind, it is, therefore, considered to be contempt in either case.

The Connecticut Supreme Court of Errors rendered a decision in the case of McCarthy vs. Hugo in 1909, in which the petitioner, who was charged with violating the liquor law, committed an act of contempt in open court before the Town Court of Branford.

The prosecuting attorney, after court had opened for trial, took from his pocket a bottle of whiskey which had been delivered to him as evidence and was the state's exhibit of the identical whiskey which it claimed, the petitioner illegally sold. The prosecutor placed the bottle of whiskey on the table directly in front of himself. The trial proceeded for a few minutes when a foreigner was called to the witness stand. Not being able to understand English intelligently, an interpreter was requested and sent for. While in search of an interpreter, the court ordered a short recess, and the judge went to his retiring room which opened directly from the bench and court-room. When the prosecuting attorney was not looking, McCarthy took said bottle of whiskey and placed a similar bottle, containing ginger ale, upon the table at the place where the bottle of whiskey had been. The lower court found him guilty of wilfully, contemptuously and with intent to deceive, insult and impose upon the court, and obstruct and prevent the due administration of justice. He

was fined $7. and costs and given thirty days in jail. Judgment by the Court of Common Pleas on the petitioner's application for a writ of habeas corpus being rendered in the defendant's favor, the petitioner, McCarthy, appealed to the Supreme Court of Errors. The court said in part that "Contempts are openly to insult or resist the powers of the court, or the persons of the judges or to do acts which may lead to a general disregard to their authority, and from their nature, require a summary interposition to preserve order in court, and maintain the dignity of judges", and held that the act committed was criminal contempt and, although the judge was at the time in his retiring room, the Supreme Court further held that such contempt was committed in his "presence" in violation of the statute in such case made and provided.

The power to punish for contempt is inherent in all courts of record to enable them to preserve their own dignity and to duly administer justice in the causes pending before them.

The only opportunity offered for criticism of a judicial officer is during the time he is a candidate for a re-appointment or re-election, or at the time of impeachment proceedings. When a nomination has been made by a Governor or member of the legislature, as obtains in Connecticut, or at a nominating convention or primary used in other states, the candidate for a judicial office may be subject to criticism to the same degree as a candidate for any other office. In Connecticut a public hearing is held on all resolutions providing for the appointment of the judges of the higher and inferior courts with the exception of the justices of the peace who are elected to office by a direct vote of the people of the respective towns. At such public hearings the qualifications of the proposed appointees of the inferior courts are generally questioned with apparently no limitation. Just as certainly as the legislature assembles for its biennial session just so surely will appear a great number of contests for appointment to the city, police, borough, or town courts of the state. The attacks made upon candidates at times are so extremely harsh and vile that they are often very amusing. If some of the accusations made at such hearings were true the

candidate would never dare to permit himself to become embroiled in the controversy. He would spend his time more profitably conferring with some famous criminal lawyer. But the fact is that many local political quarrels which have furiously raged for years are finally carried to such a hearing where the "stage setting" is quite appropriate for the climax and an excellent vent for the pent up and excruciating inner feelings of political enmity. A prominent state's attorney of Connecticut appeared at such a hearing some years ago and in summing up his opinion of the candidate who had presided in one of the large city courts for a long term of years, said, "Why, gentlemen of the committee, it is my honest opinion that the candidate is tempermentally unfit to be a judge of that court or any other court." But no word was uttered derogatory of his character or integrity. The fortunate judges of the city or town courts who have not entered such a contest should remain patient and simply look forward to a very delightful legislative proceeding in which they will assume a leading role in the festivities or obsequies whichever it may be.

The appointment of the judges of the higher courts of Connecticut does not create such hearings as do the appointments of the inferior courts. It may be stated that perhaps never has there been any serious opposition to the appointments of the supreme or superior court judges who are nominated by the governor and ratified or confirmed by the senate and house. The appointment of judges of the court of common pleas are now placed in the same category, which fact means an important, proper and forward step for the betterment of that court. The method of appointing judges of the higher courts of Connecticut may be criticized by some people of other states which employ the method of electing their judges by popular vote, but thoughtful study of the question will not fail to convince any student of the American judicial system that the Connecticut method, quite similar to that used by the national government, is truly idealistic.

The Connecticut law provides that every nomination made by the governor to the general assembly for a judge of the su-

preme court of errors, superior court, court of common pleas and district court (in Waterbury) shall be referred to the joint standing committee on the judiciary and a public hearing on said nomination is held within six days, after which the committee reports its recommendation in respect thereto. The members of both houses of the general assembly may then vote by a "yes" or "no" ballot on the resolution containing the name of such nominee. If the nomination fails of approval by the affirmative concurrent action of both branches of the general assembly, the governor shall, within five days, make another nomination to such office.

In respect to the caliber of the men who have and are now presiding in such courts in Connecticut it seems almost unnecessary to repeat what has been the prevailing, if not universal opinion and sentiment of the people of the state that the personnel of its judiciary is like Caesar's wife—absolutely beyond reproach.

The judges of every court and perhaps everywhere are considered to be by a great many people to be a class of cold, stern and stone-hearted men, devoid of sympathy, pathos and humor. The truth is, however, that because of their daily contact with the inner and intricate workings of human life, they possess just such qualities as make them genuinely human themselves. It is told of a certain case of theft which was tried in one of the Connecticut courts some years ago and the lawyer for the defense was an old school mate of the man accused of the crime of stealing some farm tools of the value of $25.00. The attorneys for the state and defense were allowed fifteen minutes each to argue the case. The young attorney, defending his friend of boyhood days, began his well prepared speech by referring to the swimming hole where the defendant and he splashed each other in the cooling waters of the dear old spot during the hot and sultry days of summer. He alluded to the balmy air, the singing birds and rapturous joys of youth and returned once more with most exquisite and flowery oratory to the beautiful glistening waters of the adorable swimmin' hole when he was interrupted

by the drawling voice of the judge who said, "Come out Chauncey and put on your clothes. Your fifteen minutes are up."

In the State of Louisiana the following case occurred. A man left his native town and disappeared. He was adjudicated dead and his property and effects were distributed after seven years absence in accordance with the law in such case made and provided. He came back after twenty years and upon investigation found that his worldly goods had been given to others during his absence. Then he appeared before the court which issued such decree and asked the judge to revoke the former order and make a new one restoring to him his property. The judge said "In the eye of the law you are dead. This is not the place for you to get mistakes rectified. Get a lawyer and he will tell you what to do." The man persisted and said he wanted his property, and it was an outrage to deprive him of it another day. The judge quickly replied, "I tell you that in the eye of this court you are *dead*. Sheriff, take this apparition out of court."

Chief Justice Shea of the Marine Court of New York occasionally availed himself of an opportunity to take down those members of the bar who were unmindful of proprieties. Not long since, two lawyers who were trying a case before his honor gave each other the lie direct. Judge Shea, after a moment's pause, remarked in his quiet, bland way, "As no one in court appears to contradict *either* of the gentlemen, let the argument proceed."

There are thousands of witticisms which have emanated from the lips and pen of apparently stern and austere judges, which space prevents being included here, showing a highly developed vein of humor running through their judicial lives. And most judges are sympathetic and merciful toward the truly unfortunate. Punishment rather than mercy should of course, be administered to other and more vicious types of criminals for the protection of life, property, and the pursuit of happiness in a free land.

CHAPTER V.

The **statesman** defined and criticised. Party politics. Opinions of Washington, Lavater, DeTocqueville, Pope, Disraeli, Shakespeare, Phillips, O'Connell and Burke. Political battles in America. Abraham Lincoln, a practical politician. Other presidents and candidates. **Women** in politics. A statesman between friends and enemies. Criticism of **editor.** His power and knowledge. His work compared with lawyer's. The editor's virtue. The policies of a newspaper and partisanship.

A statesman is a difficult subject for analitical discussion. Whether by way of fact, fable or fiction he is a "hard nut to crack." The dictionary defines a statesman as "one who is skilled in public affairs and art of government; politician." The author of the dictionary was not without a sense of humor when he placed the semi-colon between the word "government" and "politician."

If the authors of the dictionaries would play the game of politics for a time they might, perchance, wish to revise the above definition to read briefly as follows: "A statesman is a successful politician". Lincoln was without doubt one of the greatest of American statesmen but none will deny he was also a skilled politician. The word "politician" is very often used to denote a more or less disreputable tendency on the part of those who practice politics. Such an inference is entirely wrong. Every good citizen should strive to be a politician to some degree, otherwise the affairs of government will continue to be managed by the few who are skilled in such matters. The same dictionary which defines a statesman gives the following definition of a politician: "one who is skilled in politics; a statesman." It will be perceived that a "man of the state" possesses two separate and distinct natures; to wit, statesman and politician. And since a man can

not become a statesman before he is a politician, the above suggestion that "a statesman is a successful politician" may be considered a fair definition of the word. When a man is truly politic or other words a good politician, he must be shrewd, specious and sagacious, especially in the policy of public matters. He should qualify himself to promote the welfare of the state by learning the art of government and the administration of public affairs. He then would be able to influence political opinion for better government by means of party management and policy. In the American form of government the doctrine of checks and balances should be maintained by the people themselves through the instrumentality of political parties. The welfare of state and national governments would suffer without at least two parties in their continuous struggle to take over the management of such governments for higher efficiency, increased improvement, and general reform. To a great many men in the past, membership in a political party carried with it almost religious belief in its principles and policies. Strict party men did not fail to instill in the minds of their children the importance of such belief. Many years ago two little boys, 5 and 6 years of age, were sitting on a fence in a little town of Vermont and one of them pushed the other so he fell upon the ground. The boy that fell was slightly injured and became very angry at his chum and he said, "nobody but a red-headed Democrat would knock a feller off a fence." The little Democrat replied, "That's how we're going to knock all the b'ack Republicians out of the white house next time." The fathers of the respective boys were good friends and never discussed politics with one another but evidently both talked it over with or in the presence of their offspring. The great Macaulay expressed an idea not dissimiliar with the above incident when he wrote, "Men naturally sympathize with calamities of individuals; but they are inclined to look on a fallen party with contempt rather than pity." One would almost believe that Macaulay was referring to the national election of November, 1920.

George Washington in writing of partisanship said, "If we mean to support the liberty and independence which have cost

us so much blood and treasure, we must drive far away the demon of party spirit and local reproach."

J. C. Lavater wrote, "He knows very little of mankind, who expects, by any facts or reasoning, to convince a determined party-man."

"Most modern partisans," said De Tocqueville, "go for what they regard the seven cardinal principles, namely, the five loaves and two fishes."

Pope's knowledge concerning the political plumb tree was rather incomplete, when he said that "Party is the madness of the many, for the gain of the few," because the success of a party benefits a considerable large number of persons if the census of the national office holders and employees is correct. The great Lincoln said something of interest in this respect in the following language: "If ever this free people—if this government itself is ever utterly demoralized, it will come from this incessant human wriggle and struggle for office, which is but a way to live without work."

"There is no gambling," says Disraeli, "like politics."

Shakespeare was as unkind to the politician as he was to the lawyer and the law. In the Merchant of Venice he set up a "court" in which Shylock appeared as plaintiff to recover the money that was legally due him. The court scene was interesting, but extremely ridiculous. This play proves conclusively, however, that Bacon was not the author of Shakespeare's works, since Bacon could not have prostrated his knowledge of the law as portrayed in that classic. It also proves that Shakespeare never studied or even read law. Some great men of the law have taken a serious view of the trial as shown in the Merchant of Venice. They say that Shylock was perfectly justified in seeking an adjudication of his legal claim but instead of receiving justice the "old pathetic figure," who respected law and justice himself, was turned from the so-called court in humility and disgrace when in fact the "court and administration of justice" was the real disgrace. If it were not for the lasting stigma on the character of Shylock the play might be considered a good comedy.

Every student of literature fully realizes the important position Shakespeare occupied in the literary world and mankind would have been the loser if his great writings had not been produced. He seems to have touched nearly every phase of human life His manner of expression in the English language is indeed superb and elegant. When his mind created a sentence expressing his conception of the much discussed politician his soul of wit sent down through the ages this piece of brevity. "A politician—one that would circumvent God."

But "Two kinds of men generally best succeed in political life", says Wendell Phillips, "men of no principle, but of great talent, and men of no talent, but of one principle—that of obedience to their superiors." When the great statesmen of the past and present are impartially considered, Phillips' conclusion is quite fallacious. On the other hand, C. N. Bovee stated the gist of political practice when he said, "In politics, merit is rewarded by the possessor being raised, like a target, to a position to be fired at."

Daniel O'Connell said, "Nothing is politically right which is morally wrong." Edmund Burke expresses the same thought in this way; "What morality requires, true statesmanship should accept."

"Honest statesmanship," said Abraham Lincoln, "is the wise employment of individual meannesses for the public good."

Pope wrote concerning this subject in a vein which might well serve as the beacon light for men and women who are now in, or expect to enter, public life. "Statesman," he wrote, "yet friend of truth! of soul sincere, in action faithful, and in honor clear, who broke no promise, served no private end, who gained no title, and who lost no friend; ennobled by himself, by all approved, praised, wept and honored."

Needless to say, a statesman is not only a subject, but the center or target, for all sorts of criticism, and the higher he goes, the harder he's hit. Although his every public act is performed according to the dictates of his conscience and with a single view toward the public good and welfare, yet he will be opposed by either sincere or selfish men, usually both, who desire only to

bring him to an humble defeat. And such result will invariably end his public career unless he proves to be sufficiently strong and powerful to safely weather the storm of political strife. Such has been the nature of human kind since the beginning of time and the theory of the "survival of the fittest" or perhaps, the survival of the strongest, will probably long endure in political, as well as every other form of animal life.

The sentiment developed for and against a candidate for local, state or national office is difficult and at times impossible to analyze or understand. The outspoken animosity or admiration of the people at large toward and for a candidate for president holds true along the line down to the aspirant for the smallest elective office in the smallest towns of this country. Political battles are waged as fiercely in the small towns as the battles of a national character, but the battle lines of the contending forces in a national encounter are, of course, far more extensive with the utilization of more numerous and powerful weapons of combat. Let the student delve into ancient history, centuries before the birth of Christ and follow the political paths of the statesmen of those days; let him pursue his search during the period of the high civilization of Greece and Rome when other great statesmen rose and fell; let him follow the devious course of English political history; then let him scan the pages of the comparatively brief history of the United States up to and including the present time, and he will be absolutely convinced that man has not undergone any great change since the days of Adam. In political, as well as in every other phase of life, man is "limited in his nature, indefinite in his desires."

Great men of our country have harbored indefinite and also definite desires to occupy the presidential chair since Washington's time. Great political battles have been fought nearly every four years of our national life.

The immortal Lincoln had to fight his way to victory. Opposition to him was powerful, since the Union was at that time split asunder. But he rose above the hell of war and political conflict and guided the tottering nation along the road of its national destiny. While the great civil war was still raging, Presi-

dent Lincoln at Gettysburg, in 1863, warned the American people that the nation would be fraught with other dangers unless "We here highly resolve that these dead shall not have died in vain; that this nation, under God, shall have a new birth of freedom and that government of the people, by the people and for the people shall not perish from the earth."

The new freedom born at the critical period of the civil war verily grew and developed so that this nation during the World War carried that inalienable right of liberty to every nation of the earth. That some nations and peoples are yet unprepared to accept it is conceded, but time will surely bring the blessings of that freedom, championed by this nation, to liberty loving people everywhere.

Lincoln was a good lawyer, a practical politician, a great statesman, and a greater American. In more recent times we had other great men who fought political battles for the presidency. Garfield, Cleveland, Harrison, Blaine, McKinley, Roosevelt, Taft, Wilson, and a few others who quit when they were defeated. Bryan was one of those candidates who would not quit. It required three distinct defeats to remove him from the political arena. From the viewpoint of the Democratic party much credit is due him for holding the leadership of his party for a period of twenty years. No other party leader has a similar record. The Republican party probably never regretted his leadership at any time. If Woodrow Wilson had not finally and definitely "knocked him into a cocked hat" in 1912 the Republican Party might have ridden in the saddle during the history making epoch of the recent war, providing however, Taft and Roosevelt had not likewise knocked each other into a "cocked hat" in that same eventful year of our Lord.

The American people have only just passed through another presidential election which was remarkable from the viewpoint of the power of a majority in a great democracy. But the last election was also unique in respect to a new group of electors who participated in governmental affairs. The newly enfranchised voters—the women—assumed the duties and responsibilities of citizenship for the first time in that election. The numeri-

cal strength of such voters will increase with the passing years. Their interest in political affairs will gradually grow with the desire to learn and understand the power of the elective franchise when intelligently used. The practical workings of political science will become more comprehensible to them when they actually engage in politics. All the women of the nation cannot be transformed into active politicians in a day or a year any more than twenty million moderate drinkers of intoxicating beverages can be changed into teetotalers in such a brief period of time. The traditional habits of both women and men must change slowly, but the transformation by gradual steps will be thereby the more permanent. The women voters have the power to elevate the present standard of politics but their active participation is necessary to accomplish such result. If they desire to guide the men along the paths of political righteousness with the same success that usually attends their efforts to maintain or to elevate the standard of morals in general, the opportunity lies before them to offer this increased devotion for the nation's welfare. No institution for good ever failed because women were a part of it but many establishments of a religious, charitable, or similar character would today fall to the ground were it not for the lively interest and support of the weaker sex. The women should now, with justifiable pride, aspire to become great politicians and stateswomen so that they may progress shoulder to shoulder with the men to make America even better and stronger in every particular than it is today. When the women voters fully realize that the privilege of voting carries with it a corresponding duty to utilize this sovereign power in order to make their influence in the electorate effective, the constant efforts made by the women's political organizations will be more understood and appreciated. A great many sincere women of the nation who do not yet desire to take advantage of the elective privilege should abstain, at least, from criticizing those who are actively engaging in political affairs since the latter are properly performing their duties of citizenship while the former are not. The ills and evils which endangered the body politic before the advent of the women were due specifically to the gross indiffer-

ence of the men in not exercising their right to vote at the primaries and elections. The prevailing opinion among thoughtful men is, however, that once the women become interested in the affairs of government, their work in this sphere will be carried on with energy, foresight, and faithfulness hitherto unknown to mere man. The base in the field of their political operations will be located at an entirely different angle than the men's—their point of view will continue to differ from man in this, as in most other respects, but they will achieve without drum or trumpet, as great, patriotic, and lasting things in governmental affairs as did the men when in complete control of the political arena. The women will not work separately but they will work differently. They will cooperate with the men in the furtherance of good causes for the ultimate accomplishment of substantial results but they will oppose sinister methods of political action. Many shrewd leaders in both parties were aware of women's idealistic attitude in such matters, hence they fought vigorously against enfranchising them. Many ambitious men love victory more than justice. Most women seek justice rather than victory. In the future men and women will work more closely together in a practical way toward the betterment of this great and glorious country which is destined to lead among the nations of the earth. Can we not agree with R. R. Sheridan who said, "Women govern us, let us try to render them more perfect. The more they are enlightened so much the more we shall be. On the cultivation of the minds of women, depends the wisdom of man."

Great statesmen from time immemorial to the present have been and are subject to penetrating criticism, good, bad and indifferent. In the eye of his friends and admirers, the statesman sits on the pedestal of fame surrounded only by the sunlit rays of hope, trust, charity, honesty, and love; truly patriotic and devout to his fellowman; firm but ferocious in the battle for right, but kind, gentle, and considerate toward the poor and downtrodden; possessor of Soloman's wisdom in addition to his own, indeed, an intellectual and moral giant—the pillar of the government! By his political enemies he is known and recognized as a cruel, crooked, and selfish boss, the product of a corrupt politi-

cal machine; but nothwithstanding such diversity of opinion, mother earth will probably continue to revolve and rotate in the same old way.

The editor of a newspaper occupies a very influential and powerful position in the world today. His profession is somewhat similar to law in so far as it touches upon and comes in contact with nearly every phase of animal and vegetable life and inanimate things in general. The editor has proved that the pen is mightier than the sword by controlling governments, political parties, policies, and multitudes. Without a voice, yet he speaks to us each day between the rising sun and the setting thereof. His editorials are devoured by the reading public at the end of his daily task but before the ink is dry. The writers of the editorial columns of the great dailies are highly educated men, in fact, it is claimed that a large percentage are lawyers. But whether this is true or not, they are recognized to be men of large proportions in the sphere of intellectuality. That the editorials of many newspapers would produce volumes of truth, facts, knowledge, and wisdom is a foregone conclusion. Thought ful readers often marvel at the broad and endless scope of their knowledge when but yesterday they discussed in a scholarly fashion, the intricate problems of reconstruction of the world's affairs and today they consider the foundamental reasons why girls use paint. This great abundance of almost super-human mentality of the editors has not been unnoticed by their readers, since most men are naturally suspicious of their fellow beings when the latter are apparently granted special super natural gifts. Some faithful readers of the inspired editorials, without seeming to appear unkind to their highly enlightened brethren who penned them, have intimated in a casual way that, perchance, some of the facts, knowledge, or wisdom appearing daily in most of the editorial columns may have been appropriated from the newer volumes of the handy encyclopedia or other books of reference. But such volumes or books would not however furnish data on the important current events which also emanate from the editor's sanctum. There seems only one method to persue in attempting to fill up the spreading gap that lies between

an editor's knowledge and the reader's lack of knowledge. The method suggested would require the application of the same sort of reasoning that might be used in the ascertainment of a lawyer's apparent knowledge in a given case. The lawyer who is proficient in looking up the law, which is a special study itself, familarizes himself with every conceivable phase of the case and then finds the law applicable to every point involved. If a constitutional question, he must learn about the constitution. If a medical question, he must study the law on medical jurisprudence. If a city case, he must refresh his memory on municipal corporations. When the matter is covered by statutary law, the interpretation of the statute may be decisive. The same course is followed in the study of each new case. The road to be traveled in search of the correct legal decision may be long and winding. It may finally end in failure and disappointment because no court has yet ruled upon the point at issue. A trial of the case and a decision of a Supreme Court may be necessary for a final adjudication. Then and only then will the law in the given case be known to all parties concerned. Therefore studious endeavor and hard work are the only human methods of gaining knowledge. The editor of a newspaper undoubtedly gains his knowledge by constant study and thought of the subject in hand. The readers are given the benefit of his daily work as it appears in the editor's columns at two cents a copy. Sometimes it is worth two cents but more often it is of a much higher value to the reading public. But an editor is the possessor of one virtue, at least, of which no other professional man can boast and that virtue is modesty. One may scan and scrutinize the editorial pages of any newspaper and the pronoun "I" will not be found. The ego is completely eliminated from an editor's vocabulary. His messages at times seem to come from afar—from an unknown world. In recent years he has cut his way into the land of promise. In America he has reached the crest of the wave of human progress because he has dared boldly to print the aspirations, desires, and sentiments of the American people rather than of the privileged few. And his efforts have not fallen on barren ground. The voters of this great country, at the close of

the recent war, chose two of these editors to compete for the highest office in the world—the presidency of the United States. To be sure, the Republicans won the election but, in either case, an editor would have occupied the presidential chair in Washington. The only criticism directed against editors, or the men in control of a newspaper establishment, centers upon the political policies of such paper. Sometimes an otherwise reputable newspaper supports a party's cause with so much determination and bias that it fails in the original purpose of party loyalty and serves, on the contrary, the party of the opposition because of such intense partisanship. Most men of reason are willing to bestow credit where it is due. When a newspaper attempts to persuade its readers on the theory of "my party, right or wrong" without even a pretention of independent reasoning, that newspaper is bound to alienate members from the party in question. The so-called silent vote is larger than one supposes and there is hardly any doubt that most elections are won and lost by this balance of power which is generally composed of independent thinkers.

If a newspaper should strive to pursue a policy of reason rather than rancor in dealing with party affairs, the majority of its readers would be more appreciative of both their party and their paper. A newspaper establishment is subject, of course, to about the same sins of commission and omission as any other human institution. The gentleman who controls the policies of a publication possesses certain particular propensities, like every other individual species of the animal kingdom, and the newspaper will naturally display his mental state. His power of love and hate, his prudence, prejudices, knowledge and eccentricities will eventually appear on the pages of the printed sheet. But still none would wish for the elimination of the newspaper for a single day. Would not this world be barren, indeed, without this great distribution of news? People could perhaps live without it, but civilization would be thereby retarded, if not forced backward.

CHAPTER VI.

The dentist criticized. "Painless" dentists. The nurse and teacher immune from adverse criticism. The work of both professions essential to country's welfare. Need of improvement in all avocations and occupations. Much criticism due to ignorance. The necessity of law and lawyers. Great brotherhood of the bar. Harry Thaw case. Judicial procedure. Civil and criminal procedure compared. Connecticut rules of civil practice. Trial of issues. General rules of criminal procedure. The right to plead, not guilty. William J. Bryan, the "speeder."

A dentist is a necessary adjunct to the medical profession to which it is similar in one respect, at least, and that is that both professions are the products of the same school of experimentation.

The dentist is universally accepted by suffering humanity with open arms and perhaps open pocket books. The nerve of a tooth when on a pulsating rampage generally drives its owner to a dentist or insanity. Within the bounds of a man's domain there may be other suffering more excruciating than the real old fashioned tooth-ache of several days and nights duration, but most men are unaware of what that other pain could be.

When the dentist carries the suffering soul through the twilight sleep into the realm of final relief no words would adequately measure the gracious attitude of the fortunate patient toward his benefactor. But still the dentist profession is subject to criticism in the same degree as most other professions. As in the law and medical professions, the members of the dental fraternity who are ethical in the conduct of their practice abstain from advertising the business of dentistry beyond the point of their accepted ethics. Not that the method of advertising is deemed to be wrong or unbusinesslike in itself, but if certain forms of advertisement transgress the rules and regulations of the dental

association of city, county, or state, the offending member is, of course, guilty of unethical practices. For example, the dentist who hangs a large sign near his office for public consumption bearing the words "Painless Dentist" cannot reasonably complain if a small boy with chalk in hand writes underneath thereof the paradoxical but truthful word, "Liar". Whether the dentist so advertising was violating a rule of ethics is within the province of that profession to determine. Some critics claim by way of ridicule, perhaps, that dentists practice an invincible but indefensible method of holding a patient by means of a continuous repetition of appointments. On Monday the tooth may be opend and the absorbent cotton applied. On Wednesday said cotton is removed to be replaced by a smiliar application. On the following Monday improvement is noted and necessarily the same application follows, and so on almost ad infinitum. From the viewpoint of dental surgery the method employed may be perfectly justifiable even if the tooth requires, in some cases, treatment for a period of years. The technique of the dental profession cannot be understood by laymen who must, after all, rely on the integrity of the doctors of dentistry whose knowledge and work is so important to life and health. Again, by way of amusement, many people poke fun at a prominent row of substitutes affixed to a plate and held in position by some sort of suction. The owner is sometimes extremely sensitive because his relatives or friends at first sight may be forced to smile at the changed appearance of his whole countenance. But the change is manifestly a marked improvement over the appearance presented by having no teeth at all. And although an artificial set of teeth is the only salable commodity on the market which is guaranteed to be false, still the invention is recognized as necessary and suitable for most persons who unfortunately are without their own teeth. The importance of possessing a sufficient number of teeth not only from the standpoint of heatlh, but as regards the general facial appearance, may be clearly understood by noting the changed countenance of one who loses one of his front teeth. The same effect is attained by one who temporarily blackens one or two of his front teeth. Comedians custom-

arily use this means of producing a ludicrous effect in play or circus. False teeth, therefore, are common to-day because most people realize their true worth. In fact the profession is not in absolute agreement as to whether all bad teeth should not be extracted and replaced by false ones. There is a mooted question also concerning the injury to the general health of one who persists in keeping in his mouth teeth which are not in a healthy condition. These and other important questions in that profession will eventually be solved to the benefit of mankind. The work of the dentist among the children of the schools must surely prove very helpful towards their physical, mental, and moral improvement. The dentists in general are sought and supported by the public because of their vast opportunities to alleviate suffering and direct many of us on the path of health and happiness.

The nurse is probably the most popular and admired of any member of any profession. Verily, her duties are almost as arduous and important as the physician with whom she works. The orders of the attending physician are executed by the nurse with the same promptness, exactitude, and intelligence as are shown by a disciplined officer in a military establishment. But, in addition, the woman nurse performs her duties with a tenderness and care not known outside of that profession.

The world war taught people everywhere many things they knew not before, and among those things it taught us that the nurse proved herself second to none in the great humanitarian work on the battle-fields of that war. History will record her deeds with the battles that were fought, but posterity will never know how many tens of thousands lives she saved!

The Catholic Sisters and other orders of a similar nature are, of course, recognized the world over as having consecrated their lives, without compensation, to the care of the sick and afflicted, and their acts of mercy and heroric deeds of sacrifice are a part of the history of the human race which no comment here could enlarge upon.

The teaching profession is likewise immune from unfavorable criticism. The responsibility for the civil good and welfare of the children of this country, at least, rests upon the shoulders

of the school teachers. The teachers of sectarian schools assume a further responsibility of teaching religious faith and morals. Surely, it is one of the highest virtues to educate faithfully the children of others. Aristotle once said that "Those who educate children well are more to be honored than even the parents, for these only give them life, those the art of living well."

Teachers in the colleges and schools are not sufficiently compensated for their important services to state and nation. The apparent reason for the past prevailing indifference, if not opposition, to higher salaries for public school teachers was based probably upon the notion that since most of the teachers were young and unmarried women, their condition of living did not require a higher compensation. Furthermore, most men in control of municipalities did not fully appreciate the absolute necessity of properly educating the children, not only for the children's benefit, but for sake of their country. Teachers should receive adequate remuneration for the good of the nation. As a matter of fact, however, the underlying reason for opposition to paying higher salaries to woman teachers was, doubtless, due to lack of power on part of the teachers to enforce any reasonable demands through political channels. The men in control of such affairs did not fear the consequences of a refusal of the teachers' demands because they well knew their inability, without a vote, to force the issue. Now, conditions are quite different. The women, being entitled to an equal right with the men in the participation of town and city government, will cause their requests or demands to be received with more courtesy and consideration in the future.

To attempt to discuss further professions, occupations or avocations for the ascertainment of the quantity or quality of criticism to which they are subject, would be impossible within the limits of this volume. Most of them, including captains of industry, authors, financiers, the various lines of business and trade, employers and employees, et cetera, are not without causes of adverse criticism to the same degree at least as most of the learned professions. Human imperfection is present in each and everyone of them and improvement is necessary all along

the line of human activities. The fundamental cause of unfavorable comment of the other man's profession or vocation is due primarily to ignorance of the critic relative to the actually existing circumstances of such profession or vocation. If conditions require to be remedied in this profession or that vocation it may be safely left in the hands of the members themselves. The improvement coming from within the ranks will, necessarily, be accomplished in less time and with more permanent results. Thus, in the law profession, the attacks made from the outside because of the known unscrupulous acts of an individual member will not tend to improve the profession. The individual member will be dealt with from within and by the other members of that profession. No professional organization will long permit an offending member to remain within the ranks.

The law profession is composed of men selected because of their knowledge of law and known integrity at the time of their admission to the bar. Governments, whether local, state, or national, are founded on law. Civilization could not exist or long endure without it. The lawyer must lead, therefore, in the support of law. Public welfare demands the undivided support of the legal fraternity. All men and women must also uphold the law of the land. If one or more laws are defective the people possess the power and means of remedy in the halls of legislation. Edmund Burke said the true end of legislation was, in effect, to follow, not to force, the public inclination and to give a direction, a form, a technical dress, and a specific sanction to the general sense of the community. But existing law should be respected, enforced, and obeyed. "Of law, says Hooker, "there can be no less acknowledged than that her seat is the bosom of God, her voice the harmony of the world. All things in heaven and earth do her homage; the very least as feeling her care, and the greatest as not exempt from her power. Both angels and men, and creatures of what condition soever, though each in a different sort and name, yet all, with one uniform consent, admire her as the mother of their peace and joy".

Those who practice law, young and old, are equal before the courts of justice. The members constitute the great brotherhood

of the bar and the custom of addressing each other as "Brother" exists in this country as it has done in England for centuries. Judge Simeon E. Baldwin wrote in his book referred to above, "There are different sects in theology; different schools in medicine; absolute unity in law. The law which they profess is always in principle one and the same It stands for justice and it generally is justice." He also mentions the attitude of Alexander Hamilton, who refused a retainer in an important case because it was offered by a man who had made unfair criticisms of the legal profession. The person who sought to retain Hamilton had critized the profession in a letter to a third person. Hamilton wrote to the critic that said letter "contains a general and, of course, unjustifiable reflection on the profession to which I belong, and of a nature to put it out of my power to render you any service in the line of that profession."

Much criticism of the profession is due to the failure thoroughly to understand the machinery of the tribunals of justice and the duties and responsibilities of those who practice the law. For example, many believe that court cases, similar to the infamous Harry K. Thaw case, are bound to cause, in the minds of many intelligent people, a great disrespect for the law and its administration. The strongest attack made against the law in that case seems to center upon the power of wealth in destroying legal justice. To be sure, Thaw's money was able to procure the assistance of some of the greatest legal minds in the country. Certain it is, that his wealth materially helped to summon to his aid famous insanity experts and other important witnesses. It cannot be denied that every defense known to the law was raised in his favor in the course of his many legal battles for acquital and liberation. If he was legally insane the average person will concede that he should not have been found guilty of murder for shooting White to death no matter what the motive was. The homicide occured nearly fifteen years ago and in spite of all his wealth and financial friends, and in spite of all his rights under the constitution of his country and his state and the laws in pursuance thereof, this man Thaw is still confined in an insane retreat in the State of Pennsylvania!

The Thaw trial was conducted like every other case in the courts of this country, that is, the same rules of procedure were applied in that case that are applied in any other murder case.

Many critics of the profession and administration of justice complain of this judicial procedure which is a part of the machinery of a court. The purpose of rules of evidence, for instance, is not clearly understood by many laymen. They are astonished that statements made by one man to another concerning some vital fact in a controversy cannot be testified to by the second man in the trial of the case, since the statements in question might readily aid the court in finding the truth. The admission of such statements would be a direct violation of one of the settled rules of evidence known as the rule against "hearsay" evidence. The reason for the rule is obvious when one considers the absurdity of permitting John to testify as to what James told him concerning William's cow breaking down a fence. James, who apparently knows something about what the cow did, should testify in the trial and not John, who knows nothing of the facts having not been witness to them.

A lawyer on one occasion shook his finger warningly at a country gentleman who was on the witness stand in the trial of an assault case and said: "Now we want to hear just what you know, not what someone else knows, or what you think, or anything of the kind,—but what you *know*. Do you understand?

"Wal, I *know*," responded the witness with emphasis, as he lifted one limber leg and laid it across the other. "I *know* that Clay Grubb said that Bill Thompson told him that he heard John Thomas's wife tell Sid Sanford's gal that her husband was there when the fight took place, and that he said that they slung each other around in the bushes right considerable."

The lawyer glared at the witness and said curtly, "You may stand down, sir."

In criminal cases there are settled rules of procedure which must be followed for the orderly presentation of material evidence to the court. For example more evidence is necessary to convict a person of crime than is required to obtain a judgment in a civil action. The person accused of a felony or crime

need not testify unless he so desires, and the judge or jury must not, under any circumstances, use that fact against him. It is his constitutional right to refuse to be a wtiness for or against himself and such right is respected by the judge, jury, and lawyer. Again, the requirement of more than one witness in certain criminal prosecutions, as in treason; the right of the accused to a speedy trial and the right to be heard by himself and by counsel; the compulsory process to obtain witnesses in his favor; the right to be confronted by the witnesses against him and a public trial by an impartial jury. All these are guaranteed by the constitution to those accused of crime. The criminal proceedings of trial cannot violate any of the above named rights of a defendant or any other rights to which he is, by law, entitled. The general rules of such procedure are definite, fixed, and settled. When, therefore, a criminal court is opened by order of the presiding judge, the machinery of that court starts in motion, and with the power of law, moves slowly with irresistable force, within the lines of the prescribed rules of procedure to the end that justice may be attained. It is said that because of the inflexible system of the rules of court procedure, injustice in some cases is bound to result. If such misfortune befalls one who has passed through trial in a court of law, relief can come only from the power of pardon or the legislature. The system of procedure is an essential part of a court of justice and must substantially remain. Necessary amendments may be made from time to time when occasion demands them, but time and usage have proved the adaptibility of the system at least in countries of the Anglo-Saxon.

In criminal prosecutions the state or commonwealth is the party who seeks conviction because the penal laws of such governments must be sustained by punishing the guilty and protecting the innocent. The dignity of government requires the strong arm of the law to be effectually upheld and maintained so that it may properly function for the public welfare. In actions of a civil nature, the party claiming redress, known as the plaintiff, does not, in any way, represent the state but is merely an individual suing another for money damages or other relief. The

civil court, likewise, has settled rules of procedure. In a criminal prosecution, the accused must be found guilty beyond a reasonable doubt. In a civil action the same quantity of evidence is not required. A preponderance of evidence only is necessary to obtain a judgment against a defendant in a civil court. The lawyers in a civil proceeding are retained by and represent the plaintiff or defendant respectively. In criminal cases the lawyers, acting in the capacity of prosecuting officers, are representatives of the state or commonwealth. They are sworn officers of the government, state or national, and are compensated from public funds. Persons accused of crime are entitled to the assistance of counsel although they are financially unable to engage or retain a lawyer to defend them. Connecticut has recently created the office of public defender in each county of the state. The lawyers acting in that capacity must protect the interests of all persons accused of violations of the criminal law if they are not able to hire counsel themselves. The public defenders may act in the inferior as well as the higher courts of the state. This right of the accused to have counsel free of charge in criminal prosecution does not obtain in civil courts. In these courts the plaintiff and defendant retain their own counsel.

The procedure of a civil court is made up of rules which outnumber, by far, the rules of criminal procedure. This is primarily due to the nature of civil cases since they are considerably more numerous and of almost infinite variety. The rules therefore, governing a civil process from the time it is entered in court, through the many stages of its journey to final judgment, are many and exacting. Under the practice act of Connecticut, the rules of civil practice provide that after the complaint is entered the following pleadings may be offered in the order named.

1. Plea in abatement, or to the jurisdiction.
2. Any motion addressed to the complaint.
3. Demurrer to complaint.
4. Answer.
5. Motions addressed to answer.
6. Demurrer to answer.
7. Reply.

The rules permit further pleading, if necessary, until issue is joined. To attempt to show the basic reasons for the above rules and the purpose of each and upon what grounds they may be filed or entered, would not be appropriate here, since they are mostly technical, and to most laymen and many lawyers very intricate and difficult, still in the wisdom of the judges and lawyers such rules, in the main, with many more of a subsidiary and supplementary nature, are deemed absolutely necessary for the proper and orderly administration of justice in a civil court. In all civil cases there must be some point or issue which the court or jury can pass upon or decide. In order to make that point or issue clear, the lawyers on both sides file the necessary pleadings until this point or that point or several points are affirmed by one of the litigants and denied by the other. Then and only then has an issue been made or raised. There may be one issue in a case or there may be more. When the issues are closed, the trial of the case follows with the verdict or judgment or both. If tried before the judge alone it is called a "court case" and a judgment only is rendered. When the trial is had before the judge and jury it is known as a "jury case". At the conclusion of such a trial a verdict is rendered first by the jury, to be immediately followed by the judgment of the court or judge. The judge may or may not accept the jury's verdict, but his decision is subject to appeal to a higher or to the highest court of review, depending upon which court tried the case.

An issue is not hard to understand in a simple case where one party says so and so is the fact and the other party denies it squarely. In a greatly complicated case in which there are many points in dispute between the litigants, the issues cannot be made clear to the court without considerable pleading on the part of the attorneys. The general issue in a criminal case is raised by the accused person entering a plea of "not guilty" of the crime as charged in the complaint read to him by the court clerk. When the prisoner enters a plea of "guilty", an immediate disposition of the case may be made by the presiding judge

in the rendition of the judgment which may be the death penalty, imprisonment or fine.

The general rules of criminal procedure as laid down in The Elements of Jurisprudence may be briefly stated in the following order, assuming that the prosecuting officer is within his jurisdiction, and the court, a proper one:

1. The summons, warrant, or arrest by which the accused is compelled to appear and answer the charge against him.

2. The preliminary hearing or trial in the lower court. If the crime is not beyond the jurisdiction of that court, a final judgment may be passed finding the accused guilty or not guilty, otherwise the lower court must discharge the accused or hold him for trial in the higher courts. In Connecticut the lower courts find probable cause for holding the accused for trial in the higher court or discharges him for lack of probable cause in all cases beyond the criminal jurisdiction of the inferior courts. If the crime is an indictable offence a grand jury indicts the accused before trial in the higher court.

3. The committing of the accused to jail or accepting a sufficient bond ensuing his appearance at the trial.

4. The pleadings, by which the prosecuting officer sets forth in the complaint or information the charge against the accused and apprises the court of the nature of the same. This is followed by the defense of the accused, as the filing of a demurrer to the complaint attacking its legality, or any other form entered in his behalf.

5. The trial before a judge and jury in accordance with the settled rules of criminal procedure and rules of evidence.

6. The verdict and judgment.

7. When appeal is allowed the procedure governing the same is, of course, followed in the same manner as in civil cases.

The plea of "not guilty" is not generally understood by most people. How can a person, knowingly guilty of a crime, stand up in open court and plead "not guilty", especially when he later intends to change his not guilty plea to "guilty"?

In English speaking countries, at least, a person accused of violation of a criminal law, is presumed to be innocent until

proven guilty. The constitution and laws place the burden of proving the guilt of the accused squarely upon the state or commonwealth. The prisoner at the bar of justice may compel the state or commonwealth to prove, before an impartial jury, that he is guilty of the crime with which he is charged, beyond a reasonable doubt. By using the plea of "not guilty" which may be considered a legal fiction sanctioned by law, the accused person may sit in silence while the state proceeds to prove him guilty as charged. The accused, with the assistance of legal counsel may interpose all of his legal defences without himself uttering a single word.

Some young lawyers when they first enter the practice of law are occasionally over-enthusiastic in their work and, in consequence, step beyond not only the legal rules, but, likewise, the ordinary rules of propriety. For instance, the young lawyer of Irish parentage, recently admitted to the New York bar, thus addressed the judge when about to begin the defense of his client in his first criminal case: "Your honor, I shall first absolutely prove to the jury that the prisoner could not have committed the crime with which he is charged. If that does not convince the jury, I shall show that he was insane when he committed it. If that fails, I shall prove an alibi."

Most people have an inherent fear and dread of law and especially the law which compels a person to appear in a criminal court and answer the charge of having committed a crime or misdemeanor. The common expression of "do not get into the clutches of the law" applies, of course, to not violating a law for which you may be arrested, hailed into court, and punished. It may also apply when one acts or fails to act, unlawfully, to the injury of another, civilly, and is, consequently, sued in a civil action. The defendant must attend court and defend such action or take the consequences of having a judgment entered against him. William J. Bryan also fell into the clutches or jaws of the law very recently in Chicago. He was arrested for speeding in his automobile along the North Shore toward Waukegan, where he was to lecture on prohibition.

A whiskered constable in Antioch nabbed him first.

"But I am William Jennings Bryan", he protested.

"What's stand for?"

"Didn't you ever hear of 'Bill' Bryan?", asked Jack Barstow of Waukegan the commoner's chauffeur.

"Never did," said the constable.

"There used to be a Bryan down Zion way, but his name weren't Bill. He's dead now, anyway. What business are you in?"

Mr. Bryan gasped.

"I'm a writer on subjects of political economy," he explained a bit indignantly. "I've been in politics forty-one years. I have been a candidate for the presidency of the United States. I have been Secretary of State, in Lincoln, Neb., where I live. I am fairly well known and respected as a law abiding citizen."

"That may go in Lincoln", admitted the policeman, "but I never heard of you, Mr. O'Brien, and you'll have to tell the judge about it."

There came a talk between Jack, the chauffeur, and the constable.

"I'll let you go with a warning," the cop informed the commoner at length. "If you're a friend of Jack's you probably are all right."

There was no further adventure until Zion City, where a motorcycle drove them to a curb.

"I'm William Jennings Bryan," said Mr. Bryan in response to a request for his name.

"Glad to know you," said the motorcycle cop. "We've met before, I'm Woodrow Wilson, and that man in uniform across the street there is Robert E. Lee. Christopher Columbus is out shooting craps with Queen Elizabeth."

The commoner, unable for the first time in his life to frame an answer, stepped out of the car into the light. This time the copper apologized.

"Let me shake the hand that raised grape juice to its present high estate," he said. Mr. Bryan complied and sped on toward Waukegan.

CHAPTER VII.

General theory of **proof in court.** Professor John Henry Wigmore quoted. Evidence discussed. Value of **circumstantial evidence** in Connecticut and elsewhere. Weber's case. Eugene Abram's case. Madam LaFarge's case. Jonathan Bradford's case. William Shaw case. Obstinate Juryman's case. Twitchell case. The Case of Sailmarker's Apprentice.

The general theory of proof required in any court is an extremely interesting branch of the law but of a very difficult character and not easily comprehended by those who have not studied law. It would, moreover, be impossible to present even a small portion of this subject and expect to do it justice in this book. There are many text books covering this branch of the law alone, and in addition there are thousands of judicial decisions touching upon the many questions involved therein. Professor John Henry Wigmore, one of the highest authorities on evidence in his book, Principles of Judicial Proof, *Little, Brown & Co., Publishers*), has divided the subject into three heads:

1. Circumstantial Evidence.
2. Testimonial Evidence.
3. Problems involving a Mass of Evidence of Both Kinds.

Circumstantial evidence has always been of particular interest to mankind because of its mysterious and uncertain aspect. When circumstances connected with an important court case are gathered together and presented in logical order in accordance with judicial procedure, the door of conjecture may close slowly but firmly or remain wide open, depending entirely on the probability or improbability of such circumstances.

The question of whether or not a person can be convicted upon cirsumstantial evidence only has been discussed by many people in as many climes.

In Connecticut in 1894 this question was clearly settled. The Supreme Court said in the case of State vs. Rome that "the whole subject must be left in the hands of the jury. So long as they are informed as to their duty not to draw any inference whatever from any fact not sufficiently proved, the inferences which they may draw from those which are proved, if such as the evidence tends to prove, must be left to their exclusive and free judgment, with which it is neither the duty nor the privilege of the court to interfere." Quoting from Wharton on Criminal Evidence and deeming it correct the court continues, "There is, therefore, no ground for the distinction between circumstantial and direct evidence. All evidence admitted by the court is to be considered by the jury in making up their verdict; and their duty is to acquit, if on such evidence there is reasonable doubt of the defendant's guilt; if otherwise, to convict."

Wigmore cites the following, known as Webber's Case under proof of identity as one of the famous cases of circumstantial evidence.

On December 29th, 1876, a terrible disaster occurred at Ashtabula, Ohio, on the Lake Shore Railroad. The train fell through the bridge, and as the cars immediately caught fire, and a large number of the passengers were burned, most of the bodies were so charred as to prevent recognition. Shortly after this accident, Mrs. Webber, who was a poor woman with two children, appeared in the office of a lawyer, in Rochester, N. Y., and stating that she had every reason to believe that her husband had been killed in that disaster, requested him to commence a suit against the railroad company on her behalf. The evidence which she offered to introduce in proof of her husband's sad fate was only of a circumstantial nature, as nothing was ever found of the body, which was supposed to have been consumed in the flames. She had been to Ashtabula, and in the debris of the wrecked train she had found a bunch of keys which she positively recognized as those having been in the possession of her husband. One of these keys, in further proof, she had ascertained exactly fitted the clock in her house, and an Auburn man was ready to swear that he had made such a key for the deceased. Another key fitted

a chest which she had in her possession, while still another of the keys fitted the look of the door. But the strongest proof of all which she had discovered was a piece of cloth, which she had recognized as having been part of her dead husband's coat. The proof by no means stopped there, however. A physician of Rochester, who knew Mr. Webber, testified that he rode to Buffalo on the same train with the deceased on the fatal 29th of December; while another gentleman testified to seeing deceased take the train at Buffalo which went to ruin at Ashtabula. With this all but positive proof that the husband was among the victims of the disaster, the suit was commenced, the funds enabling her to carry it on being supplied by a kind hearted gentleman. When the railroad company's attorneys were confronted with the proofs of the plaintiff's case, they advised a settlement with her for $4000. But she wanted $5000, or nothing, and the company's lawyers concluded to let the matter go before the Courts. The investigations concerning the fate of the husband were continued, and it was ascertained that he had been sent by Gen. Martindale, his former superior officer in the army, to the Pension Home in Wisconsin, several days previous to the Ashtabula disaster, and this fact soon brought to light the very important disclosure that a man of his name, answering his description exactly, and who stated that he had a wife and two children in Rochester, was till alive and safe in that institution, and that he was not near Ashtabula at the time of the disaster. The case is a most remarkable one, however, from the fact that no person doubted the truthfulness of the witnesses whose evidence formed the basis on which the suit was commenced.

Under the subdivision of proof of knowledge, human trait, etc. he cites this one called Eugene Aram's Case.

In the memorable case of Eugene Aram, who was tried in 1759 for the murder of Daniel Clark, an apparently slight circumstance in the conduct of his accomplice led to his conviction and execution. About thirteen years after the time of Clark's being missing, a laborer employed in digging for stone to supply a limekiln near Knaresborough, discovered a human skeleton near the edge of the cliff. It soon became suspected that the

body was that of Clark, and the coroner held an inquest. Aram and Houseman were the persons who had last been seen with Clark, on the night before he was missing. The latter was summoned to attend the inquest, and discovered signs of uneasiness; at the request of the coroner he took up one of the bones, and in his confusion dropped this unguarded expression. "This is no more Daniel Clark's bone than it is mine"; from which it was concluded, that if he was so certain that the bones before him were not those of Clark, he could give some account of him. He was pressed with this observation, and after various evasive accounts, he stated that he had seen Aram kill Clark, and that the body was buried in St. Robert's Cave, with the head to the right in the turn at the entrance of the cave, and upon search, pursuant to his statement, the skeleton of Clark was found in St. Robert's Cave, buried precisely as he had described it. Aram was consequently apprehended and tried in York in 1759, Houseman being the sole witness against him. He was convicted and executed.

The following one, known as Madam La Farge's Case, is mentioned under *proof of trait or plan.*

One of the greatest poisoning trials on record in any country is that of Madame Lafarge, and its interest is undying, for to this day the case is surrounded in mystery. Although the guilt of the accused was proved to the satisfaction of the jury at the time of the trial, strong doubts were then entertained, and still possess acute legal minds, as to the justice of her conviction....

In the month of January, 1840, an iron-master, Lafarge, residing at Glandier, in the Limousin, died suddenly of an unknown malady. His family, friends, and immediate neighbors at once accused his wife of having poisoned him. This wife differed greatly in breeding and disposition from the deceased. Marie Fortunee Capelle was the daughter of a French artillery colonel, who had served in Napoleon's Guard. She was well connected, her grandmother having been a fellow pupil of the Duchess of Orleans under Madame de Genlis; her aunts were well married, one to a Prussian diplomat, the other to M. Garat, the

well-known general secretary of the Bank of France. She had been delicately natured; her father held good military commands, and was intimate with the best people about, many of them nobles of the First Empire, and the child was petted by the Duchess of Dalmatia (Madame Soult), the Princess of Echmuhl (Madame Ney), Madame de Cambaceres, and so forth. Colonel Capelle died early, and Marie's mother, having married again, also died. Marie was left to the care of distant relations; she had a small fortune of her own, which was applied to her education, and she was sent to one of the best schools in Paris.... Marie grew up distinguished looking, if not absolutely pretty; tall, slim, with dead-white complexion, jet black hair worn in straight shining plaits, fine black eyes, and a sweet but somewhat sad smile. These are the chief features of contemporary portraits.

To marry her was now the wish of her people, and she was willing enough to become independent. Some say that a suitor was sought through the matrimonial agents, others deny it positively. In any case, a proposal came from a certain Charles Pouch Lafarge of Glandier, a man of decent family but inferior to the Capelles, not much to look at, about thirty, and supposed to be prosperous in his business. The marriage was hastily arranged, and as quickly solemnized—in no more than five days.

Lafarge drew a rosy picture of his house; a large mansion in a wide park, with beautiful views, where all were eager to welcome the bride and make her happy. As they traveled thither the scales fell quickly from Marie's eyes. Her new husband changed in tone; from beseeching he became rudely dictatorial, and he seems to have soon wounded the delicate susceptibilities of his wife. The climax was reached on arrival at Glandier, a dirty, squalid place. Threading its dark, narrow streets, they reached the mansion—only a poor place, after all, surrounded with smoking chimneys, a cold, damp, dark house, dull without, barge within. The shock was terrible, and Madame Lafarge declared she had been cruelly deceived. Life in such surroundings, tied to such a man, seemed utterly impossible. She fled to her own room, and there indicted a strange letter to her husband, a

letter that was the starting point of suspicion against her, and which she afterwards explained away as merely a first mad outburst of disappointment and despair. Her object was to get free at all costs from this hateful and unbearable marriage.

This letter, dated August 25, 1839, began thus: "Charles,—I am about to implore pardon on my knees. I have betrayed you culpably. I love not you, but another...." And it continued in the same tone for several sheets. Then she implored her husband to release her and let her go that very evening. "Get two horses ready, I will ride to Bordeaux and then take ship to Smyrna. I will leave you all my possessions. May God turn them to your advantage, you deserve it. As for me, I will live by my own exertions. Let no one know that I ever existed.... If this does not satisfy you. I will take arsenic, I have some.... spare me, be the guardian angel of a poor orphan girl, or, if you choose, slay me, and say I have killed myself. Marie."

This strange effusion was read with consternation not only by Lafarge, but by his mother, his sister, and her husband. A stormy scene followed between Lafarge and his wife, but he won her over at length. She withdrew her letter, declaring that she did not mean what she wrote, and that she would do her best to make him happy.

"I have accepted my position," she wrote to M. Garat, "although it is difficult. But with a little strength of mind, with patience, and my husband's love, I may grow contented. Charles adores me and I cannot but be touched by the caresses lavished upon me." To another she wrote that she struggled hard to be satisfied with her life. Her husband under a rough shell possessed a noble heart; her mother-in-law and sister-in-law overwhelmed her with attentions.

Now she gradually settled down into domesticity, and busied herself with household affairs. M. Lafarge made no secret of his wish to employ part of his wife's fortune in developing his works. He had come upon an important discovery in iron smelting, and only needed capital to make it highly profitable. His wife was so persuaded of the value of this invention that she lent him money, and used her influence with her relatives to secure a

loan for him in addition. Husband and wife now made wills whereby they bequeathed their separate estates to each other. Lafarge, however, made a second will, almost immediately in favor of his mother and sister, an underhand proceeding, of which his wife was not told. Then he started for Paris, to secure a patent for his new invention, taking with him a general power of attorney to raise money on his wife's property. During their separation many affectionate letters passed between them.

The first attempt to poison, according to the prosecution, was made at the time of this visit to Paris. Madame Lafarge conceived the tender idea of her having her portrait painted, and sending it to console her absent spouse. At the same time she asked her mother-in-law to make some small cakes to accompany the picture. There were made and sent, with a letter, written by the mother, at Marie Lafarge's request, begging Lafarge to eat one of the cakes at a particular hour on a particular day. She would eat one also at Glandier at the same moment, and thus a mysterious affinity might be set up between them. A great deal turned on this incident. The case containing the picture and and the rest was dispatched on December 16th, by diligence and reached Paris on the 18th. But on opening the box, one large cake was found, not several small ones. How and when had the change been affected? The prosecution declared it was Marie's doing. The box had undoubtedly been tampered with; it left Glandier, or was supposed to leave, fastened down with small screws. On reaching Paris it was secured with long nails, and the articles inside were not placed as they had been on departure. But the object of the change was evidently evil. For now Lafarge tore off a corner of the large cake, ate it, and the same night was seized with violent convulsions. It was presumably a poisoned cake, although the fact was never verified, but Marie Lafarge was held responsible for it, and eventually charged with an attempt to murder her husband.

In support of this grave charge it was found that on the 12th of December, two days before the box left, she had purchased a quantity of arsenic from a chemist in the neighboring town. Her letter asking for it was produced at the trial, and it is

worth reproducing. "Sir," she wrote, "I am overrun with rats. I have tried nux vomica quite without effect. Will you, and can you, trust me with a little arsenic? You may count upon my being most careful, and I shall only use it in a linen closet." At the same time she asked for other harmless drugs. Further suspicious circumstances were adduced against her. It was urged that after the case had been dispatched to Paris she was strangely agitated, her excitement increasing on the arrival of news that her husband was taken ill, that she expressed the gravest fears of a bad ending, and took it almost for granted that he must die.

Yet, as the defense presently showed, there were points also in her favor. Would Marie have made her mother-in-law write referring to the small cakes, one of which the son was to eat, if she knew that no small cakes but one large one would be found within? How could she have substituted the large for the small? There was as much evidence to show that she could not have effected the exchange as that she had done so. Might not some one else have made the change? (Here was the first importation of another possible agency in the murder, which never seems to have been investigated at the time, but to which I shall return presently, to explain how Marie Lafarge may have borne the brunt of another person's crime.) Again, if she wanted thus to poison her husband, it would have been at the risk of injuring her favorite sister also. For this sister lived in Paris, and Lafarge had written that she often called to see him. She might then have been present when the case was opened, and might have been poisoned too.

Lafarge so far recovered that he was able to return to Glandier, which he reached on the 5th of January, 1840. That same day Madame Lafarge wrote to the same chemist's for more arsenic. It was a curious letter, and certainly calculated to prejudice people against her. She told the chemist that her servants had made the first lot into a clever paste which her doctor had seen, and had given her a prescription for it; she said this "so as to quiet the chemist's conscience, and lest he should think she meant to poison the whole province of Limoges." She also informed the chemist that her husband was indisposed, but that this same doc-

tor attributed it to the shaking of the journey, and that with the rest he would soon be better. But he got worse, rapidly worse. His symptoms were alarming, and pointed undoubtedly to arsenical poisoning, judged by our modern knowledge.

Madame Lafarge, senior, now became strongly suspicious of her daughter-in-law, and she insisted on remaining always by her son's bedside. Marie opposed this, and wished to be her husband's sole nurse, and, according to the prosecution, would have kept every one else from him. She does not seem to have succeeded for the relatives and servants were constantly in the sick room. Some of the latter were very much on the mother's side, and one, a lady companion, Anna Brun, afterwards deposed that she had seen Marie go to a cupboard and take a white powder from it, which she mixed with the medicine and food given to Lafarge. Madame Lafarge, senior, again, and her daughter, showed the medical attendant a cup of chicken broth on the surface of which white powder was floating. The doctor said it was probably lime from the white-washed wall. The ladies tried the experiment of mixing lime with broth, and did not obtain the same appearance. Furthermore, Anna Brun, having seen Marie Lafarge mix powder as before in her husband's drink, heard him cry out, "What have you given me? It burns like fire." "I am not surprised," replied Marie, quietly. "They let you have wine, although you are suffering from inflamation of the stomach."

Yet Marie Lafarge made no mystery of having arsenic. Not only did she speak of it in the early days, but during the illness she received a quantity openly before them all. It was brought her to Lafarge's bedside by one of his clerks, Denis Barbier, and she put it into her pocket. She told her husband she had it. He had been complaining of the rats that disturbed him overhead, and the arsenic was to kill them. Lafarge took the poison from his wife, handed it over to a maid-servant, and desired her to use it in a paste as a vermin killer. Here the facts were scarcely against Marie Lafarge.

Matters did not improve, however, and on the 13th Madame Lafarge senior, sent a special messenger to fetch a new doctor

from a more distant town. On their way back to Glandier, this messenger, the above-mentioned Denis Barbier, confided to the doctor that he had often bought arsenic for Marie Lafarge, but that she had begged him to say nothing about it. The doctor, Lespinasse, by name, saw the patient, immediately he ordered antidotes, while some of the white powder was sent for examination to the chemist who had originally supplied the arsenic. He does not seem to have detected poison, but he, (the chemist) replied that nothing more should be given Lafarge unless it had been prepared by a sure hand. On this the mother denounced Marie to the now dying Lafarge as his murderess. The wife, who stood there with white face and streaming eyes, heard the terrible accusation, but made no protest.

From that till his last moments he could not bear the sight of his wife. Once, when she offered him a drink, he motioned, horror stricken, for her to leave him, and she was not present at his death on the 14th of January. A painful scene followed between the mother and Marie by the side of the still warm corpse. High words, upbraidings, threats on the one side, indignant denials on the other. Then Marie's private letters were seized, the lock of her strong box having been forced, and next day, the whole matter having been reported to the officers of the law, a post mortem was ordered, on suspicion of poisoning. "Impossible", cried the doctor, who had regularly attended the deceased. "You must all be wrong. It would be adominable to suspect a crime without more to go upon."

The post mortem was, however, made, yet with such strange carelessness that the result was valueless. It may be stated at once that the presence of arsenic was never satisfactorily proved. There were several early examinations of the remains, but the experts never fully agreed. Orfila, the most eminent French toxicologist of his day, was called in to correct the first autopsy, and his opinion was accepted as final. He was convinced that there were traces of arsenic in the body. They were, however, infinitesimal; Orfila put it at half a milligram. Raspail, another distinguished French doctor, called it the hundredth part of a milligram, and for that reason declared against Orfila. His con-

clusion, arrived at long after her conviction, was in favor of the accused. The jury, he maintained, ought not to have found her guilty, because no definite proof was shown of the presence of arsenic in the corpse.

This point was not the only one in the poor woman's favor. Even supposing that Lafarge had been poisoned—which, in truth, is highly probable—the evidence against her was never conclusive, and there were many suspicious circumstances to incriminate another person. This was Denis Barbier, Lafarge's clerk, who lived in the house under a false name, and whose character was decidedly bad. Lafarge was not a man above suspicion himself, and he long used this Barbier to assist him in shady financial transactions—the manufacture of forged bills of exchange which were negotiated for advances. Barbier had conceived a strong dislike to Marie Lafarge from the first; it was he who originated the adverse reports. At the trial he frequently contradicted himself, as when he said at one time he had volunteered the information that he had been buying arsenic for Marie, and at another, a few minutes later, that he only confessed this when pressed. Barbier then was Lafarge's confederate in forgery; had these frauds been discovered he would have shared Lafarge's fate. It came out that he had been in Paris when Lafarge was there, but secretly. Why? When the illness of the iron-master proved mortal, Barbier was heard to say, "Now I shall be master here!" All through that illness he had access to the sick-room, and he could easily have added the poison to the various drinks and nutriment given to Lafarge. Again, when the possibilities of murder were first discussed, he was suspiciously ready to declare that it was not he who gave the poison. Finally, the German jurists, already quoted, wound up their argument against him by saying, "We do not actually accuse Barbier, but had we been the public prosecutors we would rather have formulated charges against him than against Madame Lafarge."

Summing up the whole question, they were of opinion that the case was full of mystery. There were suspicions that Lafarge had been poisoned, but so vague and uncertain that no conviction was justified. The proofs against the person accused were

altogether insufficient. On the other hand, there were many conjectures favorable to her. Moreover, there was the very gravest circumstantial evidence against another person. The verdict should decidedly have been "not proven."....

Marie Lafarge was sentenced to hard labor for life, after exposure in the public pillory. The latter was remitted, but she went into the Montpellier prison and remained there many years. Not long after her conviction there was a strong revulsion of feeling, and during her seclusion she received some six thousand letters from outside.... At last, having suffered seriously in health, she appealed to Napoleon III, the head of the Second Empire, and obtained a full pardon in 1852.

Under proof of the doing of a human act and as to the time and place the following, called Jonathan Bradford's case, is given.

Jonathan Bradford, in 1736, kept an inn, in Oxfordshire, on the London road to Oxford. He bore a very unexceptionable character. Mr. Hayes, a gentleman of fortune, being on his way to Oxford, on a visit to a relation, put up at Bradford's. He there joined company with two gentlemen, with whom he supped, and, in conversation unguardedly mentioned that he had then about him a sum of money. In due time they retired to their respective chambers; the gentlemen to a two-bedded room, leaving, as is customary with many, a candle burning in the chimney corner. Some hours after they were in bed, one of the gentlemen, being awake, thought he heard a deep groan in an adjoining chamber; and this being repeated, he softly awakened his friend. They listened together, and the groans increasing, as of one dying and in pain, they both instantly arose and proceeded silently to the door of the next chamber, whence they had heard the groans, and, the door being ajar, saw a light in the room. They entered, and perceived a person weltering in his blood in the bed, and a man standing over him with a dark lantern in one hand and a knife in the other! The man seemed as petrified as themselves but his terror carried with it all the terror of guilt. The gentlemen soon discovered that the murdered person was the stranger with whom they had that night supped, and that the man stand-

ing over him was their host. They seized Bradford directly, disarmed him of his knife, and charged him with being the murderer. He assumed, by this time, the air of innocence, positively denied the crime, and asserted that he came there with the same humane intentions as themselves; for that, hearing a noise, which was succeeded by a groaning, he got out of bed, struck a light, armed himself with a knife for his defense, and had but that minute entered the room before them. These assertions were of little avail; he was kept in close custody till the morning, and then taken before a neighboring justice of the peace. Bradford still denied the murder, but, nevertheless, with such apparent indications of guilt, that the justice hesitated not to make use of this most extraordinary expression, on writing out his mittimus, "Mr. Bradford, either you or myself committed this murder."

The extraordinary affair was the conversation of the whole country. Bradford was tried and condemned, over and over again, in every company. In the midst of all this pre-determination, came on the assizes at Oxford. Bradford was brought to trial; he pleaded—not guilty. Nothing could be stronger than the evidence of the two gentlemen. They testified to the finding Mr. Hayes murdered in his bed; Bradford at the side of the body with a light and a knife; that knife, and the hand which held it, bloody; that, on their entering the room, he betrayed all the signs of a guilty man; and that, but a few moments preceding, they had heard the groans of the deceased.

Bradford's defense on his trial was the same as before the gentlemen; he had heard a noise; he suspected some villainy was transacting; he struck a light; he snatched the knife, the only weapon near him, to defend himself; and the terrors he discovered, were merely the terrors of humanity, the natural effects of innocence as well as guilt, on beholding such a horrid scene.

This defense, however, could be considered but weak, contrasted with the several powerful circumstances against him. Never was circumstantial evidence more strong! There was little need of the prejudice of the county against the murderer to strengthen it; there was little need left of comment from the judge, in summing up of the evidence; no room appeared for ex-

tenuation; and the jury brought in the prisoner guilty, even without going out of their box.

Bradford was executed shortly after, still declaring that he was not the murderer, nor privy to the murder of Mr. Hayes; but he died disbelieved by all.

Yet were these assertions not true! The murder was actually committed by Mr. Hayes' footman, who, immediately on stabbing his master, rifled his breeches of his money, gold watch, and snuffbox, and escaped back to his own room; which could have been, from the after circumstances, scarcely two seconds before Bradford's entering the unfortunate gentleman's chamber. The world owes this knowledge to a remorse of conscience in the footman (eighteen months after the execution of Bradford) on a bed of sickness. It was a death-bed repentance, and by that death the law lost its victim.

It is much to be wished that this account could close here, but it cannot! Bradford, though innocent, and not privy to the murder, was, nevertheless, the murderer in design; he had heard, as well as the footman, what Mr. Hayes declared at supper, as to the having a sum of money about him; and he went to the chamber of the deceased, with the same diabolical intentions as the servant. He was struck with amazement! he could not believe his senses! and, in turning back the bedclothes, to assure himself of the fact, he, in his agitation, dropped his knife on the bleeding body, by which both his hands and the knife became bloody. These circumstances Bradford acknowledged to the clergyman who attended him after his sentence.

Also the William Shaw Case under the same subtitle is of interest.

William Shaw was an upholsterer at Edinburgh, in the year 1721. He had a daughter Catherine Shaw, who lived with him. She encouraged the addresses of John Lawson, a jeweler, to whom William Shaw declared the most insuperable objections, alleging him to be a profligate young man, addicted to every kind of dissipation. He was forbidden the house; but the daughter continuing to see him clandestinely, the father on the discovery, kept her strictly confined. William Shaw had, for some time,

pressed his daughter to receive the addresses of a son of Alexander Robertson, a friend and neighbor; and one evening, being very urgent with her thereon, she peremptorily refused, declaring that she preferred death to being young Robertson's wife. The father grew enraged, and the daughter more positive; so that the most passionate expressions arose on both sides, and the words "barbarity," "cruelty," and "death," were frequently pronounced by the daughter! At length he left her, locking the door after him.

The greater part of the buildings in Edinburgh are formed on the plan of chambers in English inns of court, so that many families inhabit rooms on the same floor, having all one common staircase. William Shaw dwelt in one of these, and a single partition only divided his room from that of James Morrison, a watch-case maker. This man had indistinctly overheard the conversation and quarrel between Catherine Shaw and her father, but was particularly struck with the repetition of the above words, she having pronounced them loudly and emphatically! For some little time after the father had gone out, all was silent, but presently Morrison heard several groans from the daughter. Alarmed, he ran to some of the neighbors under the same roof. These, entering Morrison room, and listening attentively, not only heard the groans, but distinctly heard Catherine Shaw faintly exclaim: "Cruel father, thou art the cause of my death!" Struck with this, they flew to the door of Shaw's apartment; they knocked—no answer was given. The knocking was still repeated —still no answer. Suspicions had before risen against the father; they were now confirmed; a constable was procured, an entrance forced; Catherine was found weltering in her blood, and the fatal knife by her side.... Just at the critical moment, William Shaw returns and enters the room. All eyes are on him! He sees his neighbors and a constable in his apartment, and seems much disordered thereat; but at the sight of his daughter, he turns pale, trembles, and is ready to sink. The first surprise and the succeeding horror leave little doubt of his guilt in the breasts of his beholders; and even that little is done away on the constable discovering that the shirt of William Shaw is bloody.

He was instantly hurried before a magistrate, and upon the deposition of all the parties, committed to prison on suspicion. He was shortly after brought to trial, when, in his defense, he acknowledged the having confined his daughter to prevent her intercourse with Lawson; that he had frequently insisted on her marrying Robertson; and that he quarrelled with her on the subject the evening she was found murdered, as the witness, Morrison, had deposed; but he averred, that he left his daughter unharmed and untouched; and that the blood found upon his shirt was there in consequence of his having bled himself some days before, and the bandage becoming untied. These assertions did not weigh a feather with the jury, when opposed to the strong circumstantial evidence of the daughter's expressions, of "barbarity," "cruelty", "death," and of "cruel father, thou art the cause of my death,"—together with that apparently affirmative motion with her head, and of the blood so seemingly providentially discovered on the father's shirt. On these several concurring circumstances, was William Shaw found guilty, was executed, and was hanged in chains, at Leith Walk, in November, 1721.

There was not a person in Edinburgh who believed the father guiltless, notwithstanding his last words were, "I am innocent of my daughter's murder." But in August, 1722, as a man, who had become possessor of the late William Shaw's apartments, was rummaging by chance in the chamber where Catherine Shaw died, he accidentally perceived a paper fallen into a cavity on one side of the chimney. It was folded as a letter, which, on opening, contained the following: "Barbarous father, your cruelty in having put it out of my power ever to join my fate to that of the only man I could love, and tyrannically insisting upon my marrying one whom I always hated, has made me form a resolution to put an end to an existence which is become a burden to me..... My death I lay to your charge: when you read this, consider yourself as the inhuman wretch that plunged the murderous knife into the bosom of the unhappy—Catherine Shaw." This letter being shown, the handwriting was recognized and avowed to be Catherine Shaw's by many of her relatives and friends. It became the public talk; and the magis-

tracy of Edinburgh, on a scrutiny, being convinced of its authenticity, ordered the body of William Shaw to be taken from the giblet, and given to his family for interment; and as the only reparation of his memory and the honor of his surviving relations, they caused a pair of colors to be waved over his grave, in token of his innocence.

Under the subdivision of physical and mental capacity, instruments, etc. this one is cited among others and is called the Obstinate Juryman's Case.

Two men were seen fighting together in a field. One of them was found, soon after, lying dead in that field. Near him lay a pitchfork which had apparently been the instrument of his death. This pitchfork was known to have belonged to the person who had been seen fighting with the deceased; and he was known to have taken it out with him that morning. Being apprehended and brought to trial, and these circumstances appearing in evidence, and also that there had been for some time, an enmity between the parties, there was little doubt of the prisoner's being convicted, although he strongly persisted in his innocence. But, to the great surprise of the court, the jury, instead of bringing in the immediate verdict of guilty, withdrew and, after staying out a considerable time, returned and informed the court, that eleven, out of the twelve, had been, from the first, for finding the prisoner guilty; but that one man would not concur in the verdict. Upon this, the judge observed to the dissentient person, the great strength of the circumstances, and asked him how it was possible, all circumstances considered, for him to have any doubts of the guilt of the accused? But no arguments that could be urged, either by the court or the rest of the jury, could persuade him to find the prisoner guilty; so that the rest of the jury were at last obliged to agree to the verdict of acquittal.

This affair remained, for some time, mysterious; but it at length came out, either by the private acknowledgement of the obstinate juryman to the judge who tried the cause (who is said to have had the curiosity to inquire into the motives of his extraordinary pertinacity), or by his confession at the point of death (for the case is related both ways), that he himself had

been the murderer! The accused had, indeed, had a scuffle with the deceased, as sworn on the trial, in which he had dropped his pitchford, which had been, soon after, found by the juryman, between whom and the deceased an accidental quarrel had arisen in the same field; the deceased having continued there at work after the departure of the person with whom he had been seen to have the affray; in the heat of which quarrel, the juryman had unfortunately stabbed him with that very pitchford, and had then got away totally unsuspected; but finding, soon after, that the other person had been apprehended, he had contrived to get upon the jury, as the only way of saving the innocent without endangering himself.

This one, known as George Manners' Case, is given proof of human act and motive.

A Miss Lascelles, of Middlesex, England, formed a matrimonial engagement with one George Manners. Her elder brother, Edmund Lascelles, who acted towards her as a guardian, their parents being dead, strongly objected to the proposed union, but was either unable or unwilling to give any satisfactory reasons for his objections. His conduct towards his sister was extremely violent and harsh; and finally, to appease him, she consented to postpone for an indefinite period the proposed marriage. All correspondence between Mr. Manners and Miss Lascelles was not, however, stopped, and they only decided to wait for a more auspicious season.

One evening, about six o'clock Mr. Manner suddenly appeared at the residence of Miss Lascelles and her brother, Mr. Lascelles, was absent at the time. Mr. Manners complained bitterly that their happiness should be sacrificed to the passionate freak of the brother, and urged Miss Lascelles to leave the house, go to the residence of a relation, and there be married. The plan she willingly agreed to; but as a condition, made Mr. Manners promise to wait and make one last effort with her brother. Mr. Lascelles returned about nine o'clock, and immediately assailed his sister with insults and reproaches. At the request of Mr. Manners, she left the room, and the two men had a stormy interview, lasting about twenty minutes. Then the

door opened, and Mr. Manners, was heard to say; "Good night, Mr. Lascelles, I trust our next meeting may be a different one": and immediately afterward, Mr. Lascelles appearing to have refused to shake hands on parting, in a half-laughing way—"Next time, Lascelles, I shall not ask for your hand—I shall take it."

About an hour later, Mr. Lascelles also went out, and about eleven o'clock the house was aroused by two men carrying his dead body into the kitchen, followed by George Manners with his hands and clothes dabbled with blood. Death appeared to have been caused by two instruments, a bludgeon and a knife; and what appeared most singular the right hand, on which was a sapphire ring, was gone. As Mr. Manners had been heard to speak the words, "he would not ask Laselles' hand, but take it," suspicion at once pointed to him, and he was accordingly arrested, and committed for examination.

On the inquest, the following testimony was given by James Crosby, a farm laborer: "I had been sent into the village for some medicine for a sick beast, and was returning to the farm by the park, a little before eleven, when near the low gate I saw a man standing with his back to me. The moon was shining, and I recognized him at once for Mr. George Manners of Beckfield. When Mr. Manners saw me, he seemed much excited, and called out, 'Quick! help! Mr. Lascelles has been murdered.' I said 'Good God! who did it?' He said, 'I don't know: I found him in the ditch; help me to carry him in.' By this time I had come up and saw Mr. Lascelles on the ground, lying on his side. I said, 'How do you know he's dead?' He said, 'I fear there's very little hope; he has bled so profusely. I am covered with blood.' I was examining the body, and as I turned it over I found that the right hand was gone. It had been cut off at the wrist. I said, 'Look here! Did you know this?' He spoke very low, and only said, 'How horrible!' I said, 'Let us look for the hand: it may be in the ditch.' He said, 'No, no! we are wasting time. Bring him in, and let us send for the doctor.' I ran to the ditch, however, but could see nothing but a pool of blood. Coming back, I found on the ground a thick hedgestake covered with blood. The grass by the ditch was very much stamped and trodden. I

said, 'There has been a desperate struggle.' He said, 'Mr. Lascelles was a very strong man.' I said, 'Yes; as strong as you, Mr. Manners.' He said, 'Not quite; very nearly, though.' He said nothing more till we got to the hall; then he said, 'Who can break it to his sister?' I said, 'They will have to know. It's them that killed him has brought this misery upon them.' The low gate is a quarter of a mile, or more, from the hall.'' Miss Lascelles was also forced to testify to the interview before mentioned, and also to the parting words between the two men.

George Manners was fully committed to stand his trial at the ensuing assizes. Upon the trial the same evidence was produced, and the jury found the accused guilty.

A few days before the time set for his execution some circumstances directed the search for the missing hand—which was still being prosecuted by the friends of Mr. Manners—to the cellar of a barn belonging to one Parker, a small farmer in the neighborhood; and as a reward of their diligence, the missing hand was there found, together with a rusty knife. Parker was as once arrested, and confessed his guilt. The wretched man said, that being out on the fatal night about some sick cattle, he had met Mr. Lascelles by the gate; that Lascelles had begun, as usual, to taunt him; that the opportunity of revenge was too strong, and he murdered him. His first idea had been flight; and being unable to drag the ring from the hand which was swollen, he had cut it off, and thrown the body into the ditch. On hearing of the finding of the body, and of George Manner's position, he determined to brave it out, with what almost fatal success we have seen. He dared not sell the ring, and so buried it in his barn.

Under proof of human act by way of habit, the Twitchell Case is related as follows:

A very striking instance of the effect of habit on the memory, especially in relation to events happening in moments of intense excitement, was afforded by the trial of a man by the name of Twitchell, who was justly convicted in Philadelphia some years ago, although by erroneous testimony. In order to obtain possession of some of his wife's property which she always

wore concealed in her clothing, Twitchell, in great need of funds, murdered his wife by hitting her on the head with a slung shot. He then took her body to the yard of the house in which they were living, bent a poker, and covered it with his wife's blood, so that it would be accepted as the instrument that inflicted the blow, and having unbolted the gate leading to the street, left it ajar, and went to bed. In the morning, when the servant arose, she stumbled over the dead body of her mistress, and in great terror she rushed through the gate into the street, and summoned the police. The servant had always been in the habit of unbolting this gate the first thing each morning, and she swore on the trial that she had done the same thing upon the morning of the murder. There was no other way the house could have been entered from without excepting through this gate. The servant's testimony was, therefore, conclusive that the murder had been committed by some one from within the house, and Twitchell was the only other person in the house. After the conviction Twitchell confessed his guilt to his lawyer, and explained to him how careful he had been to pull back the bolt and leave the gate ajar for the very purpose of diverting suspicion from himself. The servant in her excitement had failed either to notice that the bolt was drawn or that the gate was open, and in recalling the circumstances later she had allowed her usual daily experience and habit of pulling back the bolt to become incorporated into her recollection of this particular morning. It was this piece of fallacious testimony that really convicted the prisoner.

Under traces of human act, The Case of the Sailmaker's Apprentice is cited:

In the year 1723, a young man who was serving his apprenticeship in London to a master sailmaker, got leave to visit his mother, to spend the Christmas holidays. She lived a few miles beyond Deal, in Kent. He walked the journey, and on his arrival at Deal, in the evening, being much fatigued, and also troubled with a bowel complaint, he applied to the landlady of a public house, who was acquainted with his mother, for a night's lodging. Her house was full, and every bed occupied; but she

told him, that if he would sleep with her uncle, who had lately come ashore, and was boatswain of an Indiaman, he should be welcome. He was glad to accept the offer, and after spending the evening with his new comrade, they retired to rest. In the middle of the night he was attacked with his complaint, and wakening his bedfellow, he asked him the way to the garden. The boatswain told him to go through the kitchen; but, as he would find it difficult to open the door into the yard, the latch being out of order, he desired him to take a knife out of his pocket, with which he could raise the latch. The young man did as he was directed, and after remaining near half an hour in the yard, he returned to his bed, but was much surprised to find his companion had risen and gone. Being impatient to visit his mother and friends, he also arose before day, and pursued his journey, and arrived home at noon.

The landlady, who had been told of his intention to depart early, was not surprised; but not seeing her uncle in the morning, she went to call him. She was dreadfully shocked to find the bed stained with blood, and every inquiry after her uncle was in vain. The alarm now became general, and on further examination, marks of blood were traced from the bedroom into the street, and at intervals, down to the edge of the pierhead. Rumor was immediately busy, and suspicion fell, of course, on the young man who slept with him, that he had committed the murder, and thrown the body over the pier into the sea. A warrant was issued against him, and he was taken that evening at his mother's house. On his being examined and searched, marks of blood were discovered on his shirt and trousers, and in his pocket were a knife and a remarkable silver coin, both of which the landlady swore positively were her uncle's property, and that she saw them in his possession on the evening he retired to rest with the young man. On these strong circumstances the unfortunate youth was found guilty. He related all the above circumstances in his defense; but as he could not account for the marks of blood on his person, unless that he got them when he returned to the bed, nor the silver coin being in his possession, his story was not credited. The certainty of the

boatswain's disappearance, and the blood at the pier, traced from his bedroom, were two evident signs of his being murdered; and even the judge was so convinced of his guilt, that he ordered the execution to take place in three days. At the fatal tree the youth declared his innocence, and persisted in it with such affecting asserverations, that many pitied him, though none doubted the justness of his sentence.

The executioners of those days were not so expert at their trade as modern ones, nor were drops and platforms invented. The young man was very tall; his feet sometimes touched the ground, and some of his friends who surrounded the gallows contrived to give the body some support as it was suspended. After being cut down, those friends bore it speedily away in a coffin, and in the course of a few hours animation was restored, and the innocent saved. When he was able to move, his friends insisted on his quitting the country and never returning. He accordingly traveled by night to Portsmouth, where he entered on board a man-of-war, on the point of sailing for a distant part of the world; and as he changed his name, and disguised his person, his melancholy story never was discovered. After a few years of service, during which his exemplary conduct was the cause of his promotion through the lower grades, he was at last made a master's mate, and his ship being paid off in the West Indies, he, with a few more of the crew, were transferred to another man-of-war, which had just arrived short of hands from a different station. What were his feelings of astonishment, and then of delight and ecstasy, when almost the first person he saw on board his new ship was the identical boatswain for whose murder he had been tried, condemned, and executed, five years before! Nor was the surprise of the old boatswain much less when he heard the story.

An explanation of all the mysterious circumstances then took place. It appeared the boatswain had been bled for a pain in his side by the barber, unknown to his niece, on the day of the young man's arrival at Deal; that when the young man wakened him, and retired to the yard, he found the bandage had come off his side during the night, and that the blood was flowing afresh.

Being alarmed, he arose to go to the barber, who lived across the street, but a press gang laid hold of him just as he left the public house. They hurried him to the pier, where their boat was waiting; a few minutes brought him on board a frigate, then underway for the East Indies, and he omitted ever writing home to account for his sudden disappearance. Thus were the chief circumstances explained by the two friends, thus strangely met. The silver coin being found in the possession of the young man, could only be explained by the conjecture, that when the boatswain gave him the knife in the dark, it is probable that as the coin was in the same pocket, it stuck between the blades of the knife, and in this manner became the strongest proof against him.

CHAPTER VIII.

Testimonal evidence. Generic human traits, affecting testimonial process. Effect of race, age, sex, mental disease, moral character, feeling, emotion and bias, and experience on testimony of witnesses separately discussed.

The second kind of evidence, known as testimonal evidence, does not include only the assertions made on the witness stand. These assertions are merely the commonest class of testimonal evidence. Any other assertion in the way of inference to the existence of the matter asserted, is testimony, whether made in court or out of court. All statements of such a nature that do not conflict with the hearsay rule are proper testimony. Wigmore classifies the generic human traits affecting the testimonial process under the following heads: 1. Race; 2. Age; 3. Sex; 4. Mental Disease; 5. Moral Character; 6. Feeling, Emotion and Bias; 7. Experience (acquired skill).

In regard to speaking the truth the various uncivilized races possess many standards. Some have high respect for truth while others consider a successful lie a matter for popular admiration. Many of the people of certain uncivilized races will commit a murder but will not tell a lie. Certain other tribes display, in a high degree, the virtues of honesty, plain dealing, and candor. One race is said to have imbibed treachery from infancy and to practice it until death. Another race "will say 'Yes' to any mortal thing if you want them to." And still another race of people practice lying "almost as the very breath of their nostrils and all classes, young and old, male and female, indulge in it. A great deal of their lying is without cause or object; it is lying for lying's sake."

The foregoing observations were made by Edward Westermarck in his book on the "Origin and Growth of Moral Ideas."

The author continues to explain that the code of Chivalry strongly insisted on adherence to truth and fidelity to a promise, but the knightly duty of sincerity seems to have gone little beyond the formal fulfillment of an engagement. "The age of Chivalry was an age of chicane, and fraud, and trickery, which were not the least conspicuous among the knightly classes." In modern times, according to Mr. Pike, the public records show a decrease in deception in England. At present the civilized countries of the West hold various opinions as to what the duty of sincerity implies, and it naturally varies among the different individuals and classes and nations.

Most people who have mingled in business, or otherwise, with members of other races than their own, have been confronted, at first, with the difficulty of interpreting the other's mind. It is not easy to understand one of another race. Professor Sully describing this difficulty as follows: "There is a characteristic danger in reading the minds of others which arises from an excessive propensity to project our own modes of thinking and feeling into them. This danger increases with the remoteness of the mind we are observing from our own. To apprehend, for instance, the sentiments and convictions of an ancient Roman, of a Hindu, or of an uncivilized African, is a very delicate operation." The difference in language, color, rank, faith, experiences and traditions, in general, have caused a stubborn resistance to the growth of sympathy in the human race.

"A defect of the Eastern races which particularly strikes the European mind", continues Professor Wigmore, "is their want of veracity." He further reasons that in some few races truthfulness does not usually occupy in the popular mind a very prominent position in the catalogue of virtues. They may be habitually dishonest and untruthful, in many ways, but still their lives are influenced by a deep religious feeling and they practice the highest of virtues. Mr. Lecky, author of the "History of European Morals", says, "That accuracy of statement or fidelity to engagements which is commonly meant when we speak of a truthful man, is usually the special virtue of an industrial nation, for although industrial enterprise affords great tempta-

tions to deception, yet mutual confidence, and therefore strict truthfulness, are in these occupations so transcendently important that they acquire in the minds of men a value they had never before possessed. Veracity becomes the first virtue in the moral type, and no character is regarded with any kind of approbation in which it is wanting. It is made more than any other test distinguishing a good man from a bad man."

Most lawyers, who practice in the lower or police courts, are aware of the great amount of perjury of a petty nature, which many times interferes with the proper administration of justice. In the higher courts the witnesses are usually of a different class, and in consequence, there is less perjury.

Regarding the effect of age on witnesses, Hans Gross says the best are children between 7 and 10 years of age. Love and hatred, ambition and hypocrisy, considerations of religion or rank, of social position and fortune are as yet unknown to them. An intelligent boy is considered the best observer to be found. The world takes him by storm with a thousand matters of lively interest. The school and daily life cannot satisfy his overflowing and generous heart. He discovers the bird's nest, he sees the runaway horse and knows who owned it, he runs to the fire, he reaches the spot where the automobiles collided and smashed, and he will repeat the registration numbers of the cars to his parents at home, no matter how many figures the numbers contain; the quickness of the caddie's eyes in finding the ball in creek, woods or grass makes the game of golf possible and pleasant for many adults. Nothing seems to escape the boy in the exercise of his wits for his extension of knowledge; he seems to be everywhere and observing everything. It is different with the little girl of the same age. She does not acquire the breadth of knowledge or view which the boy achieves and which are quite indispensable for accurate observation. She remains nearer and longer in the narrow family circle; she sees nothing of human life, and, if there is danger, noise, or fear which attracts the boy and excites his curiosity, the little girl retires in alarm, seeing nothing or observing it indistinctly from a distance. But little girls notice certain things more cleverly than anyone else. No

one, for example, discovers more quickly than a sprightly young girl approaching maturity the little carryings-on and intrigues of her neighbors. A beautiful girl with a young man acquaintance have no more vigilant watcher of all their goings on than their neighbor—a girl of twelve to fourteen. She can well observe the moral traits of those coming under her supervision. The little school-girl is the best witness to such matters and all others which come within her sphere of interest and curiosity.

Adults are far from being the best witnesses for they are in general the worst of all observers. The young man, passing through the happiest epoch of his life, full of hope and ideals, interested only in himself and his ambitions, generally finds nothing really important but himself. The young lady, during the romantic period of her life, would consider the disappearance of the world of small moment compared with her immediate future coupled with that of her young man friend. But youth is both truthful and trustworthy, as a general rule, and their idealistic desires tend to lead them on and upward.

In middle age, the man employs all the forces with which he has been endowed by nature; his good and bad qualities alike have reached their fullest development. There is no period of life in which a man is assailed more violently by his passions, malevolence, egoism, self-seeking, and discord than when he mounts to the highest plane of his life, when he is the most active but also the most unreasonable. "These passions", says Gross, "never exert their influence on him more strongly than at this age; their omnipotence makes him an unconscious liar; and there is no witness more difficult to tackle, or more dangerous than the man in full possession of all his faculties, both good and bad."

The old gentleman comes last and as a witness he is either sweet and conciliatory or sour and cynical according to his luck in life. Frequently, his opinion may be summed up in the words, "To understand is to forgive." When the lady and gentleman are very old, of course, they are as children again, except that their testimony is inclined to be bound up with their judgment rather than with the objective presentation of facts.

Under the head of sex, regarding witnesses, Hans Gross says the judgment of woman is one of the most difficult tasks of the criminalist engaged in psychological investigation. "We have always estimated" he says, "the deeds and statements of women by the same standards as those of men, and we have always been wrong. We procede wrongly in the valuation of a woman. We cannot attain proper knowledge of her because we men were never women, and women can never explain themselves to us because they were never men." In the apprehension of situations, the perception of attitudes, the judgment of people in certain relations, in all that is called tact and finally in all that involves human volitions, a woman is superior and more reliable than ten men to-gether. The position and task of woman requires her to observe her environment very closely and this requirement has naturally made her inner sense become so keen as to develop into a definite unmistakable form of unconscious conception. "Feminine interest in the environment is what gives female intuition a swiftness and certainty unattainable in the meditations of the profoundest philosophers", continues Gross, who further says, "Woman does not reason and infer, and if things miss her intuition, they do not exist for her." It is difficult to believe that many women do not exercise the power of reasoning, in this age, when so many of that sex occupy high places in the intellectual spheres of human activities, as professors and instructors in colleges and schools and various administrative offices, all of which require a logical reasoning and inferences from facts.

The testimony of women is not considered any better or any worse than that of men and whatever difference does exist in their testimony is due to the recognized diversity in the mental processes of the two sexes, the men most commonly relying on their powers of reason, women upon their intuition.

Arthur C. Train, in his book, "The Prisoner at the Bar" mentions the effectiveness of "silent cross-examination" and gives an illustration of an examination of a woman witness as follows:

"How do you support yourself?" asked the lawyer.

"I am a lady of leisure!" replied the witness (arrayed in flamboyant colors) snappishly.

"That will do, thank you", remarks the lawyer with a smile. "You may step down."

Mr. Train on one occasion, while examining a rather deceptively arrayed woman, asked, "What do you do for a living?" Turning on him with a glance of contempt, she retorted, "I am a respectable married woman with seven children. *I do nothing for a living except* cook, wash, scrub, make beds, clean windows, mend my children's clothes, mind the baby, teach the four oldest their lessons, take care of my husband, and try to get enough sleep to be up by five in the morning. I guess if some lawyers worked as hard as I do, they would have sense enough not to ask impertinent questions."

Regarding the effect of mental diseases on the value of a witness, it is acknowledged that during the lucid intervals in insanity or idiocy, a lunatic or idiot may be examined and that a lunatic, particularly, should not be ignored because he can sometimes render considerable assistance. It has been said that madmen may be excellent observers and are not so averse to telling the truth as many people who rejoice in all their faculties. The testimony of all persons, mentally deranged, however, should be carefully weighed before accepted as evidence in a case.

Relative to the moral character of a witness as affecting the value of his testimony, Wigmore reasons that his veracity, commonly known as his character for truth, must be the immediate basis of inference in order to judge his trustworthiness. He says some argue that a bad moral character would tend to show an inevitable degeneration in veracity while, on the contrary, others argue that, as a matter of human nature, a bad general disposition does not necessarily or commonly involve a lack of veracity and that the estimate of an ordinary witness as to another's bad general character is apt to be formed loosely from uncertain data and to rest in large part on personal prejudice and on mere difference of opinion on points of belief or conduct. It is said that a person with vicious habits will more easily utter

a falsehood, while on the other hand it is claimed that experience has shown that although the character of a man may be bad, his veracity is often unimpeachable. Wigmore says a thorough study of this subject will show, however, that the lie is a phenomenon common to all civilizations, all classes of society all ages and both sexes, and that it originates spontaneously,—apart from imitation or faulty education, and merely by the combined operation of imagination and the personal tendencies or aims unsatisfied by the natural course of events. He further says that education, imitation, fashion, manners and morals, all strengthen the mendacious tendency; while weakness, illness, mental and physiological incapacity, lack of the higher sentiments (united sometimes with arrest of intellectual development) degeneracy, all favor the hatching of the lie-tendency; and, finally, social causes,—such as war, persecution, popular emotions, mob frenzy, —repression by violence or coercion, combine to make mendacity almost inevitable.

Although Professor Wigmore wrote the foregoing, concerning the lying habit before the world war, his words rung true in every particular regarding the mendacious tendency of the warring nations from the beginning to the end of that war, for never before was there such manifest and wholesale lying, from officialdom to peasantry, than during that unhappy period of man's history.

Warfare must still continue, but not a war to slay mankind, just warfare against the lie. To "nail" the lie upon detection would possibly tend to help a liar to the path of truth. "The hell that a lie would keep a man from," it is said, "is doubtless the very best place for him to go."

The effect of feeling, emotion, and bias on the testimony of witnesses is well known to members of the legal profession. There is hardly any case tried in the courts which does not show such generic traits of witnesses to a greater or less degree. Wigmore quotes C. F. Arnold who says that the effect of *desire on belief* cannot be omitted in cases if a correct conclusion is to be reached. Feeling acts in part by warping the intellectual element in belief, and emotion is a great source of illusion, because it

disturbs intellectual operations. While imagination may be an important quality for correct thinking, prejudice is said to be perhaps the worst impediment. When several witnesses are testifying to some occurrence, as for instance, a street fight between two intoxicated persons, one will say that he saw John strike Joe but that Joe was the aggressor; another will swear that he did not see John strike Joe but he distinctly saw Joe punch John in the face; another eye witness will testify positively that neither of the men struck the other but they were simply holding one another; still another will say he saw the trouble from the beginning to the end and that both of the men were only slightly intoxicated and appeared to be only fooling! All of the witnesses may be absolutely truthful, but their powers of observation and perception are so differently developed that they are bound to testify in the manner above stated. Hans Gross says, "And we know as little whether the slower or the quicker observer sees more correctly, as we little know what people perceive more quickly or more slowly." The fact is that there are different varieties of conception. The difference of observation among people in general is probably well known. One person fails to see an important fact or object through inattention or looking at the wrong place or time; another substitutes his own inferences for objects; another may observe the quality but neglects the quantity, and still another divides what is to be united and unites what is to be separated and so on, until these profound differences will inevitably result in conflicting assertions by witnesses. The foregoing takes under consideration only such witnesses as possess no interest, feeling, or emotion as to the object of their testimony. An attitude for or against a person who is the object, or a deep interest in the outcome of a case, or a feeling of love or hate toward a party to an action, or acts which have excited the emotions of the witness, will all cause the testimony to be considerably more inaccurate than testimony of merely an indifferent observer or witness. Three honest witnesses testified in a Connecticut court within a year that the color of a certain automobile was red, green, and yellow, respectively. Hans Gross asked four officials at an execution what was the color of the

executioner's gloves. Three replied respectively, black, gray, and white and the fourth said he had no gloves at all. In times of great fear and excitement a person will always imagine he sees and hears things which did not exist, or greatly exaggerates the things he has observed or heard. A person in a railroad wreck will many times tell, immediately after the accident, of having seen hundreds killed or injured while in fact there may be only a few killed or injured.

Perhaps the most marked tendency of witnesses is the attitude of partisanship displayed in their testimony. Very seldom does a witness appear to regard one side of a case as favorably as the other. Francis L. Wellman, in his book on "The Art of Cross-examination," says that this unconscious partisanship is perhaps the most subtle and prolific of all the "fallacies of testimony." "What is it," he asks, "in the human make-up which invariably leads men to take sides when they come into court?" He reasons that witnesses usually feel more or less complimented by the confidence that is placed in them by the person calling them to prove a certain state of facts and it is simply human nature to prove worthy of this confidence. This motive of taking sides does not generally lead to perjury, but, unconsciously, the witness will dilute or color the evidence, or add a little here or suppress a bit there, or exaggerate or minimize to suit the purpose, all of which, however, will convey a different meaning which is favorable to his view of the case. Most people are rarely neutral in any matter of interest whether it be a war, a ball game, or a lawsuit. They want to see their side victorious, and, in court cases, "their side" is the side on which they are testifying. Wellman points out the intense partisanship manifested in admiralty cases. All the crew, for example, on one ship will often testify in unison against the opposing crew, and, what is more significant, the passengers on either ship will invariably substantiate the stories of their respective crews.

The strongest sources of bias seem to be near relationships and the desire to wreak out feelings of personal vengeance. Members of a family will usually show a strong bias in favor of

each other by greatly colored testimony. A direct pecuniary interest in a lawsuit will not show any more prejudice on the part of a witness than the interest growing out of love and affection in family ties.

Wigmore quotes A. G. W. Carter who says that, among others, preachers make bad, very bad, witnesses in court. He tells of a distinguished preacher who was called to testify for the state in a murder case in Cincinnati. His testimony plainly showed he was strong for hanging the prisoner. He colored everything he said against the defendant. For instance, he said, "the dead man had trusted the defendant, and had all confidence in him, but the defendant was a Judas to him, and stabbed him to the heart, and set his house on fire." He stated this as the truth although he did not see it or know it. Of course such testimony was stricken from the record as entirely irrelevant and immaterial. Carter concludes by saying "Avoid preachers, then, as witnesses, we somewhat serio-comically say to lawyers—they are not good witnesses—they are bad, very bad, witnesses—almost as bad, good brethern, as doctors, and lawyers, and we all well know that they, the doctors and the lawyers, make the very worst of witnesses in any case in any court."

Under the last subtitle of experience (acquired skill.) Wigmore explains in great detail the importance of expert testimony. He again quotes Hans Gross on this subject who writes in his book on "Criminal Investigation and Criminal Psychology" that experts are the most important auxiliaries of an investigating officer and they are nearly always the main factor in deciding a case. Some years ago experts were considered to be only the doctors, analysts and gunsmiths. But Gross says it never crossed the minds of investigating officers to consult workmen and artisans of all kinds. He once sent for a cutler, gave him a knife found in the wound of a murdered person and asked him if he knew anything about the knife. The cutler replied that such knives were manufactured only in the north of Bohemia. And this information brought about the discovery of the criminal. A turner pointed out that an article a criminal had left behind must have been turned by a left-handed person. The person

arrested (who denied the crime) came from a distant town. Search was made in that town for a left-hand turner, who, when found identified the accused as the person who had bought the article from him. Another case clearly showed that a tiny piece of wood found in a lock, after a serious theft had been committed, was the work of a man who had skill in carving and in this way the thief was captured. Gross claims the microscope is an important instrument for the detection of crime and in locating the perpetrator, but is not employed by investigating officers as much as it should be. To have an expert microscopist examine merely the hairs found in a hat which is lost at the time of a crime, may offer important, if not convincing evidence, of certain facts. It is, likewise, true regarding the examination of dust. On one occasion a coat was found upon the scene of a crime and it was placed in a well-gummed paper bag. The bag was then beaten with sticks for a long time without tearing the paper. After a time the bag was opened and the dust carefully collected and submitted to a chemical examiner. The examination proved that the dust was entirely composed of woody fibrous matter pulverized. The deduction drawn was that the coat belonged to a carpenter, joiner, or sawyer. But among the dust much gelatine and powdered glue were found which proved the owner was a joiner and the criminal. In addition to the microscopist, Hans Gross mentions the chemical analyst, experts in physics, experts in mineralogy, zoology, and botony, and experts in firearms, as very important in the discovery of evidence. A lawyer must question an expert witness with great care and must first ascertain how intelligent he actually is and in what manner he reasons. Starting with some simple fact in the case the examiner may try to discover what the witness will do with it. If he handles it properly he may be trusted with his reasoning as to the more important facts. The witness may quickly show his knowledge and experience in testimony on a minor point in a case to the extent that further and indispensable evidence may be obtaind from him, or, on the other hand, it may show his utter lack of knowledge of the fact in question. An expert witness will sometimes admit his ignorance as to certain phases of a

subject in which case a lawyer may have no difficulty with him. But when such a witness is not sufficiently honest to admit his lack of knowledge, he should be so questioned as to make him realize his position, for it would be quite unfair to spare him while another is shown in his true colors. Richard Harris, in "Hints on Advocacy", says that the semi-professional witness is deserving of notice. "He is in fact semi-everything,—half veracious and half liar; his word is positive and his respectabiilty comparative," continues Harris. He pictures a little, lean old man, with a high, narrow forehead and a much underhanging lip, a mouth that twitches with self-importance and an impatience of contradiction. This little man wears glasses that shut up and he waives them with an air of importance when answering a question, putting them on and taking them off with his hand in front of his face when he wishes to evade your question. He always seems to have a map or plan of something and considers himself a surveyor. He is a great authority on party walls, boundary fences, old drains, and the locality of disused cesspools. The cases in which he is a witness could not possibly succeed without him, for the reason of the fact, that but for this worthy gentleman there would probably have been no action at all, for he usually combines the greed of a pettifogging lawyer with the quarrelsome faculty of a neighborly meddler. With his many architectural expressions and his eyeglasses he could prove any case against anybody if you did not cross-examine him. He possesses all the qualities of a genuine deceptive witness—truthful, false, dogmatic, opinionative, clever, cunning, and courteous. He could not be bullied into telling a lie any more than he could be persuaded to tell the truth. "How, then", says Harris, "will you cross-examine a man who has all the goodness of the canting hypocrite with all the pretenses of the scientific witness?" But because of his tenacity of opinion he will sacrifice truth rather than give it up. On account of this weakness of clinging to his opinion, the cross-examiner may drive him in the net and capture him safely.

Medical witnesses should be carefully watched since they are witnesses of *theory* and also tenacious of their opinions. A

great deal of what is termed medical evidence, because given by medical practitioners, is no more medical evidence than the evidence of a woman is "female evidence."

When a doctor says in court that he "discovered considerable ecchymosis under the left orbit, caused by extravasation of blood beneath the cuticle," he surely does not assist a jury in arriving at the truth. With the use of a little plain English the jury could be made to understand that the medical expert meant that the person he examined simply had a black eye. Harris says, "If you look at a plain fact through the lens of scientific language, its shape usually becomes distorted." Medical experts are absolutely necessary in the trial of certain kinds of cases, but the more successful ones learn with experience that an opinion based upon facts rather than theory has considerable more value as evidence. The subject will not permit a more extended discussion of testimonial evidence which concludes here with the above and last subdivision of such evidence.

CHAPTER IX.

Responsibilities of **prosecuting officials.** "Generic traits" of lawyers. A few faults of lawyers in conduct of trial. Examination of witnesses. Example of an examination-in-chief.

From what has been written it will be readily perceived that to take up in detail the third big subdivision, that is Problems involving a Mass of Evidence from both Circumstantial and Testimonial Evidence would be quite impossible in this volume. The lay reader will quickly grasp the boundless fields which an investigating officer or lawyer must explore in order to obtain evidence of value in almost every important case. In criminal prosecutions the burden of discovery of sufficient evidence to convict an accused person rests, of course, upon the prosecuting officials and police. The responsibilities of a prosecuting office are, indeed, many and great. After the evidence is gathered by the police and detectives and presented to such officials, the work of testing and scrutinizing it with a view of ascertaining its true worth, must be performed by the lawyers in that office who possess the skill and training to judge accurately the quality and quantity of evidence necessary to cause a conviction in a criminal case. Prosecuting officials have much power of judgment regarding this highly important part of their work. They may issue, or refuse to issue, a complaint or warrant against an accused, at their discretion, after due consideration of the evidence before them. And the exercise of this great power is final, unless it has been abused or the action of the prosecuting official is tainted with corruption. In other words, a prisoner accused of either a serious or minor offense may be set free or held for trial through the judgment of the proper prosecuting officer.

If the complaint or warrant is issued and the accused is brought to trial, further legal skill is required in presenting to the court the evidence which the prosecuting officer deems sufficient to convict the prisoner beyond a reasonable doubt. The settled method of criminal procedure, with its many and various rules of evidence, must, of course, be adhered to under direction of the court. The successful prosecutor must be familiar with the procedure and rules of evidence peculiar to criminal cases and must possess, in addition, an ability to examine the witnesses for the state with intelligence and skill, in order to present to the court and jury the evidence in the strongest form, and, furthermore, to conduct ably the cross-examinations of the defendant's witnesses to break down, if possible, his constructed defense. The same opportunity is offered to the lawyers for the defendant in gathering and presenting the evidence in his behalf, with the similar right of destroying the force of the state's evidence by means of direct testimony and the art of cross-examination. The lawyers acting in the civil courts must follow the same method in the discovery, examination and cross-examination of witnesses, as obtains in criminal courts, with the natural exceptions due to the differences of procedure. One can easily imagine the innumerable difficulties with which lawyers must contend in the examination of persons of every sort in courts of law from the brief outline given under the subject of evidence.

But the generic traits of witnesses are not the sole cause of the hard and perplexing work in the production of legal evidence in court. We lawyers unfortunately possess "generic traits", also, when conducting examinations of witnesses. How many times have witnesses under examination been abused to a degree which is truly disgusting? How often have the answers from witnesses who speak broken-English been intentionally distorted by unscrupulous lawyers for the purpose of an apparent momentary gain in the examination? Some such lawyers would accept the answer "Yes" to a question which he is fully aware the witness did not understand, and which, in truth, should be answered "No". And further on in the examination the lawyer will persistently refer to that manifest mistake on the part of the witness

in an attempt to make it appear important when, in fact, the lawyer is injuring his client's case by such methods.

Again, many lawyers form an unpardonable habit of following an inconsistent answer of an ordinary truthful witness, on some minor point in the testimony, until every phase of such answer has been explored and exhausted. This proceeding usually develops into a long-winded and tiresome battle between lawyer and witness without achieving any result except, perhaps, to utterly and finally exhaust the patience of the judge, jury, and all others within hearing. If, however, the inconsistent or unreasonable statement of a witness touches upon or is clearly connected with the vital part of his testimony, a rigid cross-examination is, of course, necessary and proper. But to follow up unimportant and, usually irrelevant matter, contained in a witness's answers is invariably of no avail in the trial and result of a court proceeding. Another common fault of lawyers is shown by continuing to ask a witness questions after the direct and cross-examination is completed. Although further questions are not necessarily improper, if kept within reasonable bounds, the general practice among many members of the bar, young and old, is to re-question the witness on every new and insignificant matter raised by opposing counsel until both lawyers are taking their turn, (in the field and at the bat) with the witness, the "game" running often times to nine, ten, and eleven innings. When a lawyer has succeeded, to his own surprise, in drawing from the witness an answer quite favorable to his side of a case, he becomes so elated that he will quickly reply to the witness, "I thought so" or "precisely as I thought." Now, it seems a lawyer must sometime learn that the judge and jury are not at all interested in what he thinks; and, further, hearing such favorable evidence for the first time coming, as it were, out of a clear sky, he cannot exactly mean to convey that the golden nugget in the case was anticipated or expected. Moreover, the thoughts of lawyer or witness are without evidential value.

There is another rather evident trait manifested by a small number of lawyers. When conducting the cross-examination of a witness who is both firm and intelligent, a lawyer who is making

no appreciable headway in breaking down the direct evidence, will many times lose all at once, his temper, patience, and equipoise, with the result that he will thereupon begin to fire a fusillade of questions like a human machine gun. Of course, he accomplishes nothing other than to arouse sympathy from his friends and pleasure for his opponents.

Still another "generic trait" of many lawyers is exhibited to the great amusement of a court gallery and sometimes to court officials in the line of sharp retorts to opposing counsel. Most lawyers have rapid thinking powers, ever-ready wit and very flexible tongues. Preparedness of the lawyer may be reasonably compared to preparedness of a nation. When a nation has the weapons of war, the desire to use them is a natural sequence, all arguments to the contrary notwithstanding. Therefore, the lawyer, ever prepared, is always ready and never adverse to opening hostilities with his legal brother, especially if things have not been going well "along the Potomac." When a lawyer realizes that his side of a case is based upon a wrong conception of both law and fact, it is almost a legal maxim that he will then turn upon the opposing lawyer with thundering abuse. The battle of brains is then on with all its fury and is stopped only by a firm order of the judicial peacemaker, the presiding judge. These and other minor faults or traits of members of the legal profession are caused primarily by the ardent spirit of enthusiasm with which most lawyers take hold and fight the legal battles of their clients.

Not all lawyers are proficient in the examination of witnesses in court. Their abilities may serve them better in other legal activities in which they are exceedingly capable. A good court lawyer must possess the natural temperament, poise, and diplomacy, in addition to a sound knowledge of the rules of procedure and evidence to compete with those lawyers who have acquired such qualifications. The best rule for lawyers to follow is to try constantly to confine themselves to the sort of work in the profession for which they have the greatest talent, knowledge, and inclination. The person who once retained three lawyers to defend him, when asked by a friend what sort of counsel he had,

replied by saying that the lawyer with the long black hair and lovely white teeth was his spread-eagle orator who would carry the jurymen over the verdant fields and hills in the baski: g rays of noon-day sun to a land of eternal justice. The second lawyer, with the Napoleonic countenance and swallow tail coat, he continued, was his "sob-counsel", who would weep and make weep, when painting in vivid colors the tearful picture of an innocent victim of legal torture. "The third lawyer, who sits at the farther end of the table in the secluded part of the court room," he concluded, "that little insignificant looking scrimp, with a little red hair near his ears, and a large round head resting on a ninety-seven pound body, well, *he knows the law.*"

The following examination-in-chief may be interesting, first, because of its apparent antiquity and, secondly, for the reason that although ancient, it proves again that like mankind in general, the lawyers have not undergone a marked change in the manner of examining witnesses in a judicial tribunal.

"Q. Call John Tomkins.

A. Here (is sworn)!

Q. Look this way—what's your name?

A. John Tomkins.

Q. John Tomkins, eh! And pray, John Tomkins, what do you know about this affair?

A. As I was going along Cheapside—

Q. Stop, stop! not quite so fast, John Tomkins. When were you going along Cheapside?

A. On Monday, the 26th of June.

Q. Oh, oh! Monday, the 26th of June; and pray, how came you to know that it was Monday, the 26th of June?

A. I remember it very well.

Q. You have a good memory, John Tomkins: here is the middle of November, and you pretend to remember your walking along Cheapside in the end of June?

A. Yes, sir: I remember it as if it was but yesterday.

Q. And pray, now, what makes you remember it so very well?

A. I was then going to fetch a midwife.

Q. Stop there, if you please. (Gentlemen of the jury, please to attend to this.) So, John Tomkins, you, a hale, hearty man, were going to fetch a midwife? Now, answer me directly,—look this way, sir; what could you possibly want with a midwife?

A. I wanted to fetch her to a neighbor's wife who was ill abed.

Q. A neighbor's wife! What, then, you have no wife of your own?

A. No, sir.

Q. Recollect yourself: you say you have no wife of your own?

A. No, sir: I never had a wife.

Q. None of your quibbles, friend: I did not ask you if you ever had a wife. I asked you if you have now a wife, and you say no.

A. Yes, sir: and I say truth.

Q. Yes, sir! and no, sir! and you say truth! We shall soon find that out. And was there nobody to fetch a midwife but you?

A. No: my neighbor lay ill himself.

Q. What! did he want a midwife too? (A loud laugh).

A. He lay ill of fever, and so I went to serve him.

Q. No doubt, you are a very serviceable fellow, in your way. But pray, now, after you had fetched the midwife, where did you go?

A. I went to call upon a friend.

Q. Hold: what time in the day was this?

A. About seven o'clock in the evening.

Q. It was quite daylight, was it not?

A. Yes, sir: it was a fine summer evening.

Q. What! is it always daylight in a summer evening?

A. I believe so (smiling).

Q. No laughing sir, if you please: this is too serious a matter for levity. What did you do when you went to call upon a friend?

A. He asked me to take a walk; and when we were walking, we heard a great noise—

Q. And where was this?

A. In the street.

Q. Pray attend, sir: I don't ask you whether it was in the street, I ask you what street?

A. I don't know the name of the street, but it turns down from—

Q. Now, sir, upon your oath, do you say you don't know the name of the street?

A. No, I don't.

Q. Did you ever hear it?

A. I may have heard it, but I can't say I remember it.

Q. Do you always forget what you have heard?

A. I don't know that I ever heard it; but I may have heard it, and forgot it.

Q. Well, sir, perhaps we may fall upon a way to make you remember it.

A. I don't know sir: I would tell it if I knew it.

Q. Oh, to be sure you would! you are remarkably communicative. Well, you heard a noise; and I suppose you went to see it too.

A. Yes: we went to the house where it came from.

Q. So, it came from a house! and, pray, what kind of a house?

A. The Cock and Bottle,—a public house.

Q. The Cock and Bottle! why I never heard of such a house. Pray, what has a cock to do with a bottle?

A. I can't tell: that is the sign.

Q. Well, and what passed there?

A. We went in to see what was the matter, and the prisoner there—

Q. Where?

A. Him at the bar there: I know him very well.

Q. You know him? How came you to know him?

A. We worked journey work together once, and I remember him very well.

Q. So, your memory returns: you can't tell the name of the street, but you know the name of the public house, and you know the prisoner at the bar. You are a very pretty fellow! And, pray, what was the prisoner doing?

A. When I saw him he was—

Q. When you saw him! Did I ask you what he was doing when you did not see him?

A. I understand he had been fighting.

Q. Give us none of your understanding: tell what you saw.

A. He was drinking some Hollands and water.

Q. Are you sure it was Hollands and water?

A. Yes: he asked me to drink with him, and I just put it to my lips.

Q. No doubt you did, and I dare say did not take it soon from them. But now, sir, recollect you are upon oath; look at the jury, sir; upon your oath, will you aver that it was Hollands and water?

A. Yes, it was.

Q. What! was it not plain gin?

A. No: the landlord said it was Hollands.

Q. Oh! now we shall come to the point—the landlord said? Do you believe everything the landlord of the Cock and Bottle says?

A. I don't know him enough.

Q. Pray, what religion are you of?

A. I am a Protestant.

Q. Do you believe in a future state?

A. Yes.

Q. Then what passed after you drank the Hollands and water?

A. I heard there had been a fight, and a man killed; and I said, 'O Robert! I hope you have not done this:' and he shook his head.

Q. Shook his head; and what did you understand by that?

A. Sir?

Q. I say, what did you understand by his shaking his head?

A. I can't tell.

Q. Can't tell! can't tell what a man means when he shakes his head?

A. He said nothing.

Q. Said nothing! I don't ask you what he said: what did you say?

A. What did I say?

Q. Don't repeat my words, fellow, but come to the point at once. Did you see the dead man?

A. Yes, he lay in the next room.

Q. And how came he to be dead?

A. There had been a fight, as I said before.

Q. I don't want you to repeat what you said before.

A. There had been a fight between him and the—

Q. Speak up! his lordship don't hear you: can't you raise your voice?

A. There had been a fight between him and the prisoner—

Q. Stop there: pray, when did this fight begin?

A. I can't tell exactly; it might be an hour before: the man was quite dead.

Q. And so he might, if the fight had been a month before: that was not what I asked you. Did you see the fight?

A. No: it was over before we came in.

Q. We! what we?

A. I and my friend.

Q. Well, and it was over; and you saw nothing?
A. No.

Q. Gem'men of the jury, you will please to attend to this; he positively swears he saw nothing of the fight. Pray, sir, how was it that you saw nothing of the fight?
A. Because it was over before I entered the house, as I said before.

Q. No repetitions, friend. Was there any fighting after you entered?
A. No; all was quiet.

Q. Quiet! you just now said you heard a noise, you and your precious friend.
A. Yes: we heard a noise—

Q. Speak up, can't you? and don't hesitate so.
A. The noise was from the people crying and lamenting.

Q. Don't look to me, look to the jury. Well, crying and lamenting.
A. Crying and lamenting that it happened, and all blaming the dead man.

Q. Blaming the dead man! why, I should have thought him the most quiet of the whole (another laugh). But what did they blame him for?
A. Because he struck the prisoner several times without any cause.

Q. Did you see him strike the prisoner?
A. No: but I was told that—

Q. We don't ask you what you was told: what did you see?
A. I saw no more than I have told you.

Q. Then why do you come here to tell us what you heard?
A. I only wanted to give the reason why the company blamed the deceased.

Q. Oh, we have nothing to do with your reasons, or theirs either!
A. No sir: I don't say you have.

Q. Now, sir,—remember you are upon oath,—you set out with fetching a midwife: I presume you now went for an undertaker.

A. No, I did not.

Q. No! that is surprising—such a friendly man as you. I wonder the prisoner did not employ you.

A. No: I went away soon after.

Q. And what induced you to go away?

A. It became late, and I could do no good.

Q. I dare say you could not; and so you come here to do good, don't you?

A. I hope I have done no harm. I have spoken like an honest man: I don't know anything more of the matter.

Q. Nay, I shan't trouble you further (witness retires, but is called again). Pray, sir, what did the prisoner drink his Hollands and water out of?

A. A pint tumbler.

Q. A pint tumbler! what? a rummer?

A. I don't know: it was a glass that holds a pint.

Q. Are you sure it holds a pint?

A. I believe so.

Q. Ay, when it is full, I suppose! You may go your ways, John Tomkins. A pretty hopeful fellow that. (Aside.)"

CHAPTER X.

Law and civilization. Effect of militarism on liberty. Homeric Period. Ancient Rome and Greece. Roman empire established. Birth of Christ. Teutonic self-government. Magna Charta. Thirteenth century. Civil law in England and Europe. Law and liberty in America. The United States Constitution. High ideals of the law profession. True ambition of the lawyer.

The civilized races of the world would surely deteriorate were it not for law, and the order it creates and maintains among the members of the human family. Ancient Greece and the great Roman Empire fell to decay when the sword was considered by those peoples greater than law, which is, and always has been, the standard and guardian of liberty. Other nations, for the same reason, have disappeared from the face of the earth because of a liberty without law where the stronger man with sword in hand destroyed the weaker. That all governments must maintain sufficient military power for the execution of law and preservation of order among their people is conceded to be a necessary and sound national policy. But to support and encourage a military policy which is in absolute control of a nation's welfare and destinies will invariably bring upon the people of that nation the punishment which befalls those who "take the sword", for they "shall perish with the sword." Ancient history may have persuaded posterity of the truth of this doctrine, but the World War has produced the facts which must have convinced mankind that militarism as now understood, is destructive of the liberties it pretends to protect. In our nation, where the military is entirely within the control of and subservient to civil authority, the American people proudly enjoy a more perfect liberty than any other country on God's earth. The military arm cannot even be raised for purposes of war

without the sanction of congress, composed of the duly accredited and direct representatives of the people of this country. In the United States of America, the law prevails—the law, which Blackstone says, "is the embodiment of the moral sentiment of the people." History shows plainly that those races which strove to make laws that were supported by such moral sentiment enjoyed the greatest freedom. Only when the "men in arms" grasp the reins of government and substitute force, therefore, does freedom fail. Beginning at the time of the Homeric Period of the world's history, about 900 years before the Birth of Christ, and following the activities of man through that age to the founding of Rome in the year 753 B. C. we have a panoramic development which would, in itself, prove to be a highly interesting picture on a modern screen. To try and think the thoughts of Cardinal Manning, as contained in his great address on "Rome the Eternal", on the 2615th anniversary of the founding of that city, would surely refresh the reader on his journey. With the passing of the hills and vales, the fields and brooks, the great architectural structures, antique and unique, of Greece, in the period between 700 B. C. and 500 B. C., and arriving in the ancient City of Athens, there to quietly retire and read the old constitution of Solon, the law-giver of Athens, one does not wonder that our own great Thomas Jefferson may have utilized some of the ideas of Solon in helping him to formulate the democracy under which we now live in America. While in Athens, the writings of the famous Grecian scholars, like Pericles, Euripides, Herodotus, Socrates, and others of almost equal importance, should be perused in order to fully appreciate the value of law for the creation and maintenance of civilization. Before departing from Athens, the criminal procedure that obtained in that city about 400 B. C., as illustrated by Lysias, and the writings of Isocrates on virtue and law, will not be without interest to those who are loyal to law, order, and justice among men. Passing on to the Macedonian empire, founded by Philip and Alexander, between the years of 355 and 323 B. C., the great address of Demosthenes against Macedonian imperialism, and his "Oration on the Crown" should not be

overlooked in a study of law and government in that distant age. Going into Italy, the notable address of Hannibal to his army will demonstrate the power of force to destroy, in that period of history about 200 years before the Birth of Christ. About 100 years later the great Cicero appears and his speeches will clearly describe the difficulties of government at that time and, in particular, the conspiracy of Catiline against that government. The great Caesar and Cato also spoke against Catiline and their orations became a part of the Latin classics. Antony likewise appears in this period and, of course, Brutus to whom Caesar said, "Et tu Brute" when Brutus stabbed him to death in the senate chamber in Rome. The women will also find interest in the address of Cato the Elder about 150 B. C. on the legal status and rights of their sex before the founding of the empire. Cicero speaks of the Roman political and criminal cases within the century before Christ. From about 300 B. C. to 510 A. D., the Roman law held sway in those lands over which the jurisdiction or influence of Rome extended. The Roman empire was established 29 B. C. and the reign of Nero followed about 75 years later. Nero, it will be remembered, was that unsympathetic musician who played his fiddle while Rome was being burned to ashes. At this particular period one will enjoy the celebrated passages of Pliny the Younger on Liberty and Order. All the great thinkers, scholars, and statesmen of those eventful days were fighting the powers of force led by the avaricious, selfish, and ambitious men of that age and before the Christian era.

The Birth of Christ and the beginning of the early Christian period is pictured in glowing colors in the writings of Holy Scripture. The works of Gregory, Basil, Chrysostom, and Augustine have proclaimed the truths which, of course, can never change and must remain forever. The doctrines based upon such truths have withstood and weathered cyclonic storms for nearly two thousand years and they stand to-day as firmly as the rock of their foundation. The period of intense teaching of Christianity between 300 and 500 A. D. was followed by the Saxon period in England to about 1100 A. D. During this time the work of spreading the teachings of Christ was centered upon the preach-

ing of The Venerable Bede and Saint Anselm, of Canterbury. A hundred years later the revival of learning was begun in France and about the same time Saint Bernard was preaching sermons on such subjects as "Advice to Young Men", "Irreverence in Church" and other moral dissertations.

From 500 to 1200 A. D. Teutonic self-government developed on the continent. The Christian world was then seeking government by law which would receive the moral support of the governed. The moral wave of Christianity had swept into every civilized land and was bearing fruit among the people everywhere. In 1215 A.D. the great Magna Charta appeared in England. The people had demanded some form of self-government with the result that they received this great charter of liberty. The Bill of Rights, which the English subjects further demanded, were granted, supplementing the rights and privileges of the charter. The thirteenth century produced new legal thought in many countries. The great common law in England came to its supreme expression under Edward I, the English Justinian, as he has been called. The book on "The Thirteenth, Greatest of Centuries", by Dr. Walsh, dwells at some length on the great origins in law during this century, specifically pointing out, in addition to the Magna Charta, many laws relative to Church, widows and orphans, common pleas, international questions, rights of freemen, and the first expression of the principle of no taxation without consent. Dr. Walsh further shows the important legal origins in France, Germany, Hungary, and Poland in the same century. "As a matter of fact every nation in Europe saw the foundation of its modern legal system laid, and was responsive witness to the expression of the first principles of popular rights and popular liberties," writes Dr. Walsh concerning this period of history. St. Louis himself sat under the famous old oak of Versailles as a Court of Appeals, reviewing especially the cases of the poor. He made it his business to bring about a proper enforcement of laws for the security of the rights of all. The Fehmic Courts were established and achieved their highest importance in Germany at this time. In Hungary a constitution

was granted to its people more liberal than that of the Magna Charta of England.

It is a curious historical analogy, Walsh says, that at the two ends of civilized Europe, these two constitutions were granted in the same decade. Poland, in the thirteenth century, was one of the most important countries of Europe. The basis of Polish law was framed by Casimir the Great, who was born shortly after the close of this century. The codification of the canon law by the Popes of that century, with a compendium of Roman Law, so as to approximate canon and civil procedure, can be appreciated by students of law who realize how closely related was the canon to civil law in the evolution of the principles, practice, and procedure during the progress of the latter. In Scotland, for example, the canon law formed the basis of the civil jurisprudence at that time and its influence was felt for centuries after.

With the ending of the 13th century, the screen might show the eventful period of the so-called reformation, when the Church of Rome was put to its severest test, but even a brief outline of the religious upheavals of that period could not be appropriately pictured in this book even though the civil law was thereby effected as was almost every other human institution.

It is interesting to note here that movable types were invented by Gutenberg and the first Bible was printed in 1450 and Columbus discovered American in 1492.

Then followed the great trials of Martin Luther for heresy by the Diet of Worms in 1521 and, four years later, the trial of Sir Thomas More for treason at the instigation and command of Henry VIII. of England. Luther was excommunicated from the Church of Rome and More was beheaded.

Passing on to 1600, the English colonization in America was begun and the great issues between Puritanism and Aristocracy were forced to the front. For a hundred years the trials and tribulations of England were patent. Charles I, Strafford, Pym, Rumbold, and Cromwell were the more prominent "stars" during this time, with the revolution in favor of William of Orange and the century ended with a record of religious persecutions.

Departing from the Old World and returning to America on the Mayflower in 1620, one would naturally step on Plymouth Rock in Massachusetts, where about ten years later that colony made a declaration of rights in the beginning of the great fight for liberty.

With a mere mention of the establishment of slavery by law in Massachusetts, in 1641, the German emigration from the Palatinate to America fifty years later and the wave of witchcraft in New England, we come to the consideration of the right of free speech, asserted by Alexander Hamilton in 1735, three years after the birth of George Washington. This assertion is the commencement of American independence of thought in affairs of government. In 1761 the writs of assistance appear, to be followed by the Stamp Act difficulties. With Washington, Franklin, John Adams, Warren, Hancock, and Jefferson leading the procession, the Articles of Colonial Confederation were framed in 1774, and, finally, Patrick Henry, throwing the bombshell with his "Give Me Liberty or Give Me Death" speech, prepared the way for the battles of Lexington, Concord, and Bunker Hill in 1775. The great document of the Declaration of Independence was proclaimed to the world on July 4th in the following year. The revolutionary war having been fought to victory another great document was framed in 1787, the Constitution of the United States of America, which William E. Gladstone said was "the most wonderful work ever struck off at one time by the brain and purpose of man." The constitution being the only source of power in the new national government, and containing many provisions, covering as many matters of national and international importance, the work of interpreting and construing that written instrument, when first functioning, was, indeed, arduous and exacting. The debates on the constitution which followed and in which Marshall, Henry, Hamilton, Corbin, Monroe, Mason, Madison, Lansing, and other great men participated, is of vital interest to the lawyers and statesmen the world over.

That document, which contains the sentiments of a free people, has withstood attacks which no other charter of government has faced in the history of the world. During the great

Civil War it trembled, wavered, and tottered like a wounded soldier on the battlefield, but it bravely survived the wounds which touched the very heart of the covenant. About a half a century later the World War aimed at other vital parts of our constitution and government, but "The Home of the Brave and the Free" came through clean, untarnished—greater and stronger than ever before. The American Republic stands, today, proud of its stability, proud of its past, and proud of its power to continue the undying fight for the preservation and extension of liberty everywhere.

Can anyone reasonably question that law, therefore, has not been indispensable in the government and conduct of the human race from time immemorial?

Will it be denied that both moral and civil law must actually combine, when possible, to perpetuate stable government and civilization? Has not history proven that men, read in the law, have been highly important factors in the steady progress of mankind from the distant and dark centuries of the past to this day? It must be admitted that the recent World War caused serious infractions of international law, and possibly of the civil law in many of the nations involved in that conflict. If, however, the simple moral law which is founded on faith, hope, and charity, was applied by the prime movers of that war, it would seem the beginning of hostilities might have been delayed and consequently avoided. Not only were the primary laws of morality ignored immediately prior to the opening of hostilities by means of deceptive communications bearing upon intended military measures of some of the larger powers, but also the law of nations was confessedly violated many times from the beginning to the end of the war.

As intimated above, the nations are now paying in full the penalties for the violations of those laws. Although the ordinary laws of civilization were to a large degree suspended from August 4, 1914 to November 11, 1918, perhaps, as Daniel Webster once said, "there's a divinity which shapes our ends."

It is nevertheless true that whether it was church or canon law, or the law of civil jurisprudence, the origin, formulation,

construction, and interpretation of either or both rested, through the ages, upon the shoulders of men learned in the law. With the unfortunate exceptions of notable departures, it may be assumed that the structure of the civil laws is founded entirely npon the laws of God. Should not lawyers, therefore, who represent the civil law, be jealous and proud of a profession which seeks to "do equity" between man and man?

The comparatively brief history of our country clearly indicates the value of law and the opportunities for good afforded the members of the profession. Of all the 27 presidents of the United States, 21 have been lawyers. From the establishment of our national government, the members of the law profession, of course, assumed the leading role in both the national and state legislative branches of this country. The majority of the present congress are members of the legal profession. The judicial branch of the national government is composed entirely of lawyers and the same is nearly true of the state branches of the judiciary system.

If some members have forsaken the principles and high ideals which they held close to their hearts upon entering the legal profession, public scorn falls not only on them but on all practioners of the law. Those misguided lawyers who may now be attempting to prostitute the honored profession of law by divers means and methods of deceit, trickery, and dishonesty, for the god of gold, can only end in final disgrace. It is significant to note that many states of the Union are formulating stricter laws concerning the legal profession by definite rules and regulation regarding the legal activities of lawyers outside of the courts.

The ambition to accumulate great wealth from the practice of law must generally end in failure. Only a few lawyers of national reputation have reached that goal of fortune.

A few more leading lawyers in their respective communities may succeed in earning rather large incomes, but the vast majority of the members of the legal profession receive yearly sums which may be termed, extremely modest. Connection with great business enterprises or other strictly business interests has often

afforded many lawyers the opportunity to earn large sums of money. Most lawyers are well equipped to succeed in many kinds of business adventures not necessarily included within the confines of legal practice. It is claimed that there is now in this country one lawyer to every 700 people, a statement which, if true, offers ample argument that all of them will positively not amass great wealth in the practice of the profession.

The want of sufficient legal business is no good reason for straining or stretching the rules of professional conduct. It is the paramount duty of the lawyer to engage in other lines of endeavor even to the performance of work by the "sweat of his brow" rather than be guilty of betrayal to his "first love", the vocation of law. A lawyer with courage and wisdom will gladly face the fact of failure, and inevitable consequences thereof, by seeking income from other sources and at the same time remain an honorable member of the bar. It cannot be denied, however, that the rank and file of lawyers who are members of a state or national bar association of this country are men and women of a high standard of intelligence, integrity, and honesty and second to none in the performance of their duties of citizenship and love of country.

Edmund Burke once said, "Judges are guided and governed by the eternal laws of justice to which we are all subject. We may bite our chains, if we will; but we shall be made to know ourselves, and be taught that man is born to be governed by law; and he that will substitute will in the place of it is an enemy to God."

Criticism of the profession is expected and welcomed for the good it may serve, but justice demands that that criticism shall not take from the legal tree "caterpillars and blossoms together."

When sorely disappointed with the outcome of a court trial, and with words of condemnation of courts, judges, law, and lawyers about to pass through our critical lips, to be scattered broadcast like a basket of bird feathers thrown to the winds of a prairie, never to be recalled, we can doubtless receive a grain of satisfaction from the words of Chief Justice Bleckley when he

said that many meritorious cases are, indeed, lost in passing through the justice of procedure. Quoting Judge Bleckley from "The Young Man and the Law," he writes, "That a just debt is unrecognized, a just title defeated, or a guilty man acquitted is no evidence that justice has not been done by the court or the jury. It may be highest evidence that justice has been done, for it is perfectly just not to enforce payment of a just debt, not to uphold a just title, not to convict a guilty man, if the debt or the title, or the guilt be not verified. It is unjust to do justice by doing injustice."

Unjust criticism may continue to strike against the bulwark of law in every land like the splash and roar of the ugly waves of the deep against the Rock of Ages; the constant blows may wear it and slightly change its form, but it shall remain always the Law, like Justice itself, with its face turned toward heaven and its lower extremities rooted in the eternal soil of truth and righteousness; unmovable, indivisable, and perpetual.

We lawyers, born with original sin, and like all other men, subject to temptations of the world, the flesh and the devil, can only strive to represent the Law, according to our best endeavors in the actual practice thereof, but always with the faith, respect, and honor due the Law. If this is faithfully done, it will also bring lasting honor to ourselves. Humor and wit will never cease to flow from the fountains and springs of the lands of law, and, curiously enough, in contradiction to the old adage about "the water that has passed shall never return", the jokes and puns about law and lawyers found in the Ark, will periodically return in all their glorious refulgence. And the point of the pun, generally, painfully penetrates the penitent lawyer, as in the case of Tom Ochiltree, who, having been injured in a railway accident, had brought suit for damages. Walking with the aid of crutches some months afterward, he met a friend, who inquired, "Can't you get along without crutches, Tom?"

"The doctor says I can," said Ochiltree, "but my lawyer says I can't."

The writer would deem this book unfinished without quoting the following inspirational and beautifully written passage from

"The Story of a Great Court" by Chief Justice Ryan of Wisconsin, in the form appearing in "The Young Man and the Law", concerning the duties and privileges of a lawyer.

"This is the true ambition of the lawyer: To obey God in the service of society; to fulfill His law in the order of society; to promote His order in the subordination of society to its own law adopted under His authority; to minister His justice by the nearest approach to it under the municipal law which human intelligence and consicence can accomplish. To serve man by diligent study and true counsel of the municipal law; to aid in solving the questions and guiding the business of society according to law; to fulfill his allotted part in protecting society and its members against wrong, in enforcing all rights and redressing all wrongs; and to answer before God and man according to the scope of his office and duty for the true and just administration of the municipal law. There go to this ambition, high integrity of character and life; inherent love of truth and right; intense sense of obedience, of subordination to law, because it is law; deep reverence of all authority, human and divine; generous sympathy with man, and profound dependence on God. These we can all command. There should go high intelligence. That we cannot command. But every reasonable degree of intelligence can conquer adequate knowledge for meritorious service in the profession."

THE END.