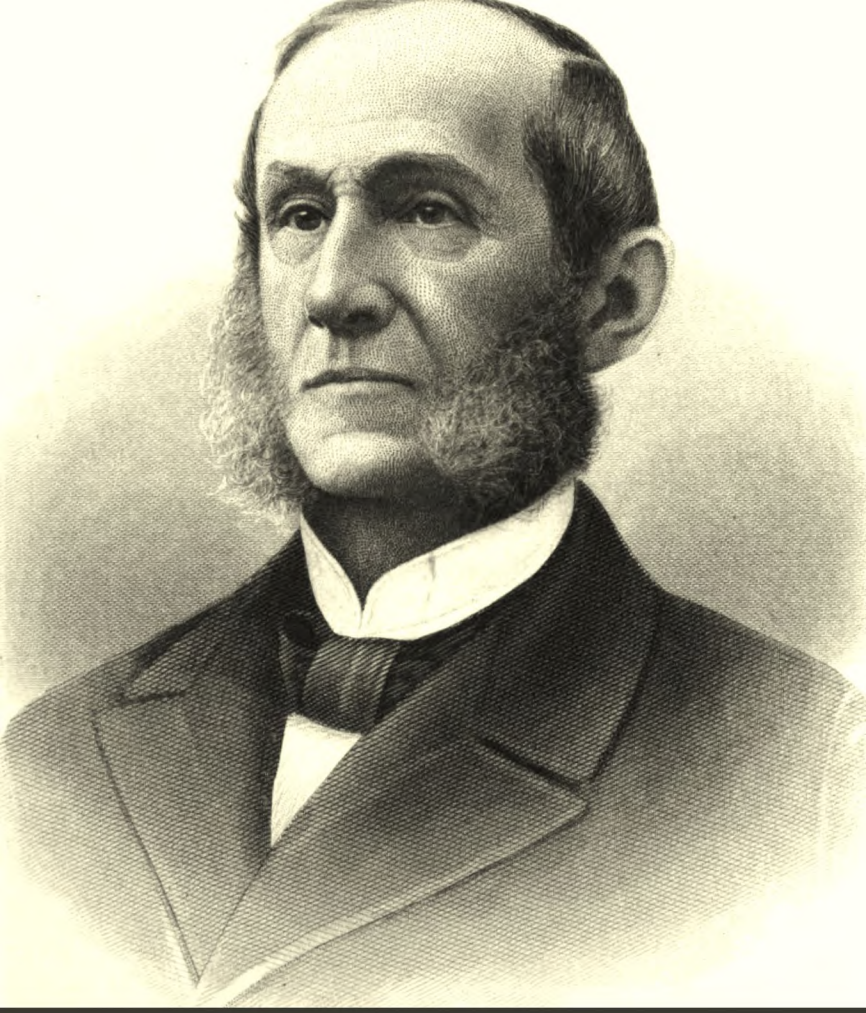
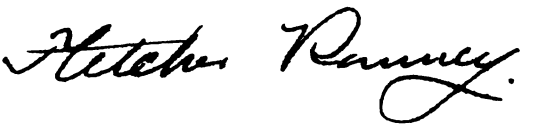


Half a century with judges and lawyers

Joseph Augustus Willard



Jos. A. Kellard

HALF A CENTURY WITH JUDGES AND LAWYERS

BY

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PREFACE.

VERY often the preface is the most important portion of a work.

The stories, anecdotes, scenes, in this collection, by whatever name they may be called, are mainly from my own hearing and personal observation; as to those which are not so, I have endeavored to state the facts correctly. These I am sure I do not forget, though I may not have named in every instance the exact year of their occurrence. I should have been pleased to delineate and describe at greater length the personages who figure in these reminiscences, as their actual appearance is unknown to many of the younger members of the bar; but the work would be too great. Moreover, I am not able to do it, *currente calamo*.

Many of the anecdotes have been current among the senior members of the bar, and others have been told by me, and so have become known.

I am handicapped very much in this: that, as I have said, the reader is not acquainted with the actual appearance of the persons referred to, their dress, their tones of voice, their *tout ensemble*, so to speak; and hence many sayings and doings will seem stale, flat, and unprofitable, and the point may be lost.

It is quite essential to be acquainted with the *dramatis personæ* to appreciate a joke in full. I have therefore, where I thought it proper, given names; but in some instances a just regard for the feelings of those living has led me to refrain.

I have not written aught in malice, and I launch this trifle, trusting to the good-will of my brethren of the bar who have known me so long, and by whom I have always been treated with the utmost kindness and consideration.

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HALF A CENTURY WITH JUDGES AND LAWYERS.

I.

QUIS APERIT?

I SHALL begin by giving some account of myself. The ancestor from whom my branch of the Willard family descended was Major Simon Willard, born in the parish of Horsmonden, county of Kent, England. He came to Massachusetts in 1634, and after a long and honorable career in the service of the colony was actively engaged in military duty in King Philip's War at the time of his death. He first took up his abode in Cambridge, and nearly two centuries later my father purchased the house and lot of land which had been the property of Simon, and subsequently resided there. A stone erected at Concord, Mass., where the Major afterwards lived, bears the following inscription:

"Here on this farm dwelt Simon Willard, who did good service to the town and his country, for more than forty years."

I am a descendant from Simon, in the seventh generation. My paternal grandfather was Jo-

seph Willard, President of Harvard College. My father, Sidney Willard, who was graduated from Harvard in the class of 1798, was Professor of Latin, Hebrew, and other Oriental languages for nearly twenty-five years, as well as librarian and tutor. He was also a Representative in the Massachusetts Legislature in 1833, 1837, and 1843; Senator in 1834, 1835, 1839, and 1840; member of the Governor's Council; and Mayor of Cambridge in 1848 and 1850.

My maternal grandfather was Asa Andrews, a well-known lawyer in Ipswich, in the county of Essex, and a direct descendant of Ann Dudley, better known as Ann Bradstreet. I am of the fifth generation from Ann Bradstreet, wife of Governor Bradstreet.

Mr. Andrews was appointed collector of the port of Ipswich by President Washington. He held his commission until the election of Andrew Jackson, when he was removed. The United States government brought a suit against him and recovered $5000. Rufus Choate and Judge Otis P. Lord, then a practicing lawyer, saw the injustice of it, and brought a writ of error in the United States Court at Washington. The judgment was reversed, and he in turn recovered judgment against the United States for $5000, which sum was paid to him, Mr. Choate and Mr. Lord giving their services.

I was born in Cambridge, Mass., on the 29th day of September, 1816. My mother died one year after my birth. The first seven years of my life were passed in Cambridge; the next year at Westford Academy, of which John Wright was teacher, and where I began the study of the classics.

After that I returned to Cambridgeport, and resumed my studies at a school in which James Freeman Clarke was teacher. And here I will mention my second meeting with James Freeman Clarke, some forty years later, when at a friend's wedding where he officiated I recalled myself to his memory as his old pupil, Joseph A. Willard, and received the following kindly criticism: "Oh, yes, I remember you well, — a very mischievous boy, but nothing malicious."

Shortly after this, my father let his house in Cambridge to Rev. Mr. Coit, an Episcopal minister who was settled there, and who married a sister of Wendell Phillips; my father and I residing with them. I remained at school in Cambridgeport for some time.

There was then no means of conveyance to Boston, except a stage, which ran twice a day to and fro, and was driven by Cyrus Morse, an old stage-driver; so I walked to my school twice each day. This stage carried the mail, the postage on letters from Cambridge to Bos-

ton being then six cents. The fare was twenty-five cents. In the summer, the time of leaving Cambridge was eight A. M. and two P. M. The stage returned from Boston at twelve and six. In the winter, the time was an hour later in the morning and an hour earlier at night.

Mrs. Morse, wife of Cyrus, had charge of me for a short time after my mother died, and always in after years regarded me with motherly affection; frequently as I passed her house on my return home from school when at Cambridge, she had a slice of brown bread and butter ready for me. If I happened to be on the road when Mr. Morse came out from Boston with the stage, he always asked me to get on and ride with him while he distributed his passengers at their several homes. When Morse got too old to drive he resigned; and when he had partially lost his mind the ruling passion was so strong that he hitched lines to his tea-kettle and drove at home.

The stage property was owned by James B. Read, who also kept a livery stable, and who, knowing that I was developing a fondness for horses, often gave me a ride on horseback whenever any of his horses needed exercise. For greater accommodation of the public a two-hourly stage, established by Eben Kimball on April 1, 1826, and later an hourly, were put

on the road, and other drivers were joined with Morse, in charge of these conveyances.

In 1824, I remember being one of the school-children in Cambridge who were arrayed, boys and girls, on each side of Main Street, with a badge pinned to each of them, on which was inscribed, "Welcome, Lafayette," with his likeness upon it; while Lafayette sat in a barouche which was driven between the lines, the boys bowing, and the girls courtesying.

At the house where I boarded in Cambridgeport lived a gentleman of singular character by the name of Amasa Clapp. He was a good singer. He had in his possession a handsome mare, which he had educated, and which would tell the time of day, take off the owner's hat, and perform various other tricks. Erastus Brigham, a brother of Chief Justice Brigham, was also a musician, and a friend of Clapp, and they often made the welkin ring with their songs and stories.

Many years after, while riding horseback one day in Dorchester, I lost my way. Along the road came a rider in whose person I recognized Mr. Clapp.

I said: "Mr. Clapp, where am I?"

He said: "Who are you?"

I replied: "My name is Willard; I boarded with you, at Cambridgeport, many years ago,

when I was a boy, and you had a horse which would tell the time."

"That 's singular," he said. "I have one here now that will do the same thing. Charley, what time is it?" and by some means or signals, the horse pawed the hour and minute. Afterward I saw Mr. Clapp frequently on the mile trotting ground, in sleighing time, sitting in a crate fastened to a pair of runners with a horse harnessed to it, Mr. Clapp fantastically dressed and attracting general attention.

In the autumn of 1824, a private school was opened in Cambridge, to which I went, and among my schoolmates were Thomas Thacher Higginson, Charles E. Ware, Horatio Bigelow, Charles and Arthur Devens, George A. and Israel Foxcroft, Richard H. Dana, jr., John Holmes, brother of Oliver Wendell Holmes, Eugene and Henry W. Fuller, brothers of Margaret Fuller, and others. Among the teachers of this school were Ralph Waldo Emerson, —— Sanford, Barzillai Frost, and Henry S. McKean. Sunday services took place in the chapel, in University Hall, all the professors, their families, and the students attending.

President Kirkland and Rev. Dr. Ware preached alternately; the organ was played

by one of the students, and the choir furnished from the same source.

In vacation we attended services in the old meeting-house in the square, Rev. Abiel Holmes, minister; and I remember well on entering the pew one Sunday, the lines of some sacrilegious student, who had written on the boards of the pew, —

"Dr. Holmes devoutly looks,
First to Heaven, and then his books."

My father lived near the residence of Mr. Edmund T. Dana, a brother of Richard H. Dana, senior. Mr. Edmund T. Dana was a retired gentleman and somewhat of an artist. In 1827, or 1828, I cannot say exactly which, I went one night with him to the old Federal Street Theatre to see "Der Freischütz," with Henry J. Finn as Caspar. It was not then an opera, but a play. The *diablerie* was to me so terrific, that when I reached home and went to bed, though tired with the walk of three miles from Boston, I could not sleep because of the weird impression it had made upon me.

Fresh Pond was a gentleman's resort for fishing, fish dinners, and suppers. A well-known place was kept there by Jacob Wyeth, who was a graduate of Harvard, and quite a learned man. I remember on one occasion going there with my father, accompanied by Professors Channing

and Sales. We were in a flat-bottomed boat, and when we endeavored to row in, such a stiff breeze was blowing that we could make no headway. Professor Sales in sonorous tones uttered his usual expletive, "By George! we shan't get in;" but luckily for the three learned professors, two students (one of them the late Robert Rantoul) who were in a sailboat near by came to our assistance and, taking us in tow, brought us safely to the wharf.

Nathaniel J. Wyeth succeeded Jacob, but being an energetic and impulsive man, life there was too quiet for him, and in 1830, or thereabouts, he organized a band, in which were many of my acquaintances, for an expedition to the far West, and crossed the Rocky Mountains into Oregon. Their sufferings were extreme. After he returned he became a large ice dealer, and was one of the first to send ice abroad. The hotel then went into the hands of Jonas Wyeth. Latterly it has been some kind of a Roman Catholic Institution which is now removed, and the ground taken for a public park.

Commencement days were the great sensation of Cambridge. Some time beforehand a number of improvised sheds covered with brush were built for the teams that came from Boston. The streets were lined on both sides with candy stands, gambling, dice, and roulette tables;

there were booths on the common with fiddling and dancing, and inside were shows of learned and flying horses, and of learned pigs. A great many gamblers and roughs came out from Boston and made Cambridge boisterous and disorderly for three days; many fights ensued, and many black eyes were given, but there was no pugilistic ring, and though football was played on the college grounds there was no slugging and no broken limbs.

At one of the Commencements the Siamese twins were exhibited there. They were joined together by a band of flesh from side to side, as nearly as I remember, of about four inches in width; the physicians said that the blood in their veins and arteries flowed through it, and that they were afraid to attempt their separation. Subsequently they went south and purchased a plantation. They made another visit to Boston later, and died shortly after their return home.

Captain Coffin, who brought them over from Siam, was a friend of my uncle, who was also a captain of an East Indiaman; thus I had free admittance to the show, and from curiosity my acquaintance soon progressed to friendly relations. They were adepts at the game of checkers, and I frequently saw them play games with other persons, although I never saw them both

attempt to move at once. Sometimes one would move, sometimes the other. Captain Coffin said that only once did he ever know them to disagree; one wanted to bathe and the other did not.

As an instance of their perfect unanimity of feeling, he said, one day when the hatches of the ship were off to ventilate the hold, the twins being then abreast of the hatchway, the ship gave a lurch, when both sprang simultaneously and cleared the hatchway. Had they been of a different mind, they would probably have been severely injured.

I remember another pair of twins who were not joined together by flesh, who kept an oyster cellar in Cambridge. They were simple minded, and the boys and students were continually teasing them. Their sign was "Peter and Solomon Snow," and one morning it was covered with a quotation from Horace, "*Jam satis nivis.*"

There were other quaint characters in Cambridge, more, it would seem, than there are in every country town; the contrast between the college and the town served to render more marked the peculiarities of the latter. Royal Morse, the auctioneer, was another original, and a bright, amusing man. I remember one thing in particular, that after one of his sales was over, a table was left. He asked his clerk who bought that table. "Mr. and Mrs. ——"

Then Mr. Morse said: "They are the most un-com-for-*table* folks I ever saw."

Abram Bigelow, who was somewhat of an aristocrat, was at that time clerk of the courts. My father told me this story: —

One Mr. Tarbell, of Cambridge, who had been a cooper, was appointed deputy sheriff. This was much against the notions of Clerk Bigelow, and when Mr. Tarbell made his first return of writs to the clerk's office, Mr. Bigelow looked them over critically, and observed something which was not quite correct. He said: "Mr. Tarbell, bung stave loose here, sir."

George Meacham, of Cambridge, was another well-known character, and a great horsedealer. He was in the habit of making trips or excursions to Canada, for horses. He told me that when he arrived at Montreal — a serious journey in those days — he gave the priest who officiated at the principal Roman Catholic church fifty dollars for announcing to the congregation after services were over that Colonel Meacham was in town, and would remain for a week; and in consequence the farmers would bring in their horses to him.

Old Gilson was a cobbler who kept shop at the entrance of a passageway to the wharf where the students and boys bathed. He usually had a companion with him named Gordon. Gilson

claimed to have broken his neck by falling off his horse on some muster field, and the boys liked to go in and tease the old man and hear him tell his story. Before he would finish it, while pounding leather on his lapstone, there would be a sudden jerk in his neck. "There goes my neck again," he used to say; and putting a hand on each side of his head he would straighten it, remarking, "Now it is all right; Gording, pass the rum."

Another singular character was Abram Hilliard, a lawyer, and a very able one. He was much troubled with what is now called neuralgia, which *he* called *tic douloureux*, and in cold weather always wore a long black coat reaching to his heels, his neck bound with a red bandanna. He was indeed "*justus et tenax propositi.*" Having once carried a case of one of his clients to the Supreme Court, he told him that the law was in his favor. The Supreme Court, however, decided adversely, and when the client first met him after the decision he said: "Mr. Hilliard, the Supreme Court has decided that so and so is not the law;" to which Mr. Hilliard replied, "The Supreme Court decides *one* way, but *I* decide the *other*."

For Sunday-school I attended Dr. Holmes's church, where a kind old deacon named Munroe went also. I studied the Westminster Cate-

chism, which was as repugnant to me then as it is now, and neglected my lessons.

The deacon did not seem anxious to compel me, and perhaps his gentle latitudinarianism bore fruit in the next generation, for his three sons (two of whom I knew well) each joined a different denomination, one becoming a Unitarian, one a Baptist, and the other an Episcopal clergyman.

There was a sloop in Cambridge called the Harvard, belonging, I think, to Harvard College, which made periodical trips during the open weather from "Down East" to Cambridge with wood to supply the College. She was commanded by Captain Elwell, who was a kind, genial old man, and very willing to loan us the sloop's boat to row about the river; and that was my first experience on the water, to which I intuitively or naturally took.

I learned early to swim and also to ride horseback; of my horseback excursions I shall speak hereafter.

Notwithstanding my knowledge of swimming, I was nearly drowned twice.

The first time, I was on my way to see Mr. Lauriat go up in a balloon. I took a boat from Cambridge, and after getting through the two bridges (there was no Brookline bridge then) I put up my foresail. The boat was ballasted with two 56-pound weights.

After proceeding a short distance I attempted to put up the mainsail. Just as I had shipped it the main sheet caught, and before I could reach the tiller a flaw struck the boat, the ballast shifted and rolled down to the gunwale, and over went the boat, throwing me into the water. I came to the surface, and as the craft was afloat on her beam ends, I climbed up on her. The water was very cold, as it was early in the spring, and I sat shivering on the boat, until she was halfway between Magazine Wharf and Boston, a distance of a mile or thereabouts, when a party of United States officers who were surveying the river picked me up, towed my boat ashore, turned her over and emptied out the water; then I righted my ballast, put up my foresail, and sailed to Boston.

Another time when I was in Gottenburg, Sweden, I had some shirts hanging in the rigging to dry. They blew overboard, and I stripped and plunged over the side of the ship to recover them. I had not considered the coldness of the water in those northern latitudes, and had swam not more than two rods from the ship, when I felt as though something had clasped me tightly around the body, and I gasped for breath, and sank. I came to the surface, and sank again.

When I came to the surface once more, I

felt that something hit my head. I seized it, and it proved to be a coil of rope thrown from the ship. I was hauled in, more dead than alive, and restored.

There is a common notion that at such a moment of extremity all the sins and wickedness of a whole life appear before the drowning man as if revealed by a lightning flash: I am sorry not to be able to confirm this from my experience on this occasion; for after the pain (which I suppose was the cramp) had left me, everything, on the contrary, appeared beautiful, and I felt as if I were going to sleep. Not being able to attribute the peace and calm I felt at the time to any exemption from human frailty, the fact remains that the apparitions of the past failed to appear, and after the episode at Gottenburg I never had another opportunity to test the truth of the old belief.

In 1828, I was accustomed to go occasionally with my father in the stage to Portsmouth, N. H., his mother's birthplace, and where his aunts and uncles lived. Generally I rode on the outside of the stage, even in winter. There were many marked characters among the stage-drivers, notably an odd little figure, Jack Mendum by name, whose shortness of limb obliged him to be strapped to his seat. On one of our Portsmouth

journeys one very cold day, my father asked for me the privilege of a seat beside the driver, Mendum. "D—— it," said Jack, "he 'll freeze, but I 'll try him;" and I mounted to the place of perilous honor, and rode safely to Portsmouth, a proud and happy boy.

The stage started from Wildes' Hotel in Ann Street, Boston, now North Street, at about 7.30 in the morning, stopped at Lynn Hotel, which then stood near the westerly end of the Common in that city, where the fares were taken, and the horses watered by an old colored man named True, a well-known factotum about the hotel.

At Salem, Ipswich, Newburyport, and Hampton the horses were again changed, and the stage arrived at Portsmouth about 7.30 in the evening; and this was then regarded as speedy traveling.

Now in this age of rapid transit, the same twelve hours takes us to Portsmouth, with the voyage to and from the Isles of Shoals, including a pause for dinner, and a leisurely return to Boston.

I pursued my studies until the autumn of 1830, my father intending me for college. About that time I had gone through Nepos, Cæsar, Sallust, a part of Cicero and Horace, the Æneid of Virgil, and some Greek; the names of the books I do not recollect, as I did not take readily to Greek.

I also went through the regular course of arithmetic, geography, and algebra, and had I remained at home, I should have tried to enter Harvard the following year. I had also a great fondness for reading tales of fiction and noted trials; some of my favorite books were Robinson Crusoe, Sanford and Merton, Hogg's Scottish Tales, Fielding, and Smollett, Miss Edgeworth, etc.

My holidays were Wednesday and Saturday afternoons, and I usually spent them shooting game in the Stoneham woods.

I had an excellent gun, a well trained dog, and I never went out shooting without getting at least six or seven woodcock and as many partridges. Occasionally my companion and I varied our sport by decoying wild pigeons into the open field, concealing ourselves behind an extemporized screen made of brush, and shooting them on what was called a setting-pole. A stake was placed in the ground ten feet high, another one, fifty feet from that, fifteen feet high; then a long pole resting on each end of the stakes at an angle of about forty-five degrees, so that if the long pole was extended it would just about reach the muzzle of the gun. The birds were decoyed by means of a captured wild pigeon, whose flight was checked by a light cotton string tied to its legs, and if it fell to the ground it was thrown again into the air.

When the pigeons lighted on this long pole, which they would do in numbers from fifty to seventy-five, we fired at the same time, often getting twenty or thirty pigeons from the two shots. Wild pigeons at that time were so numerous here that they lighted in the apple-trees in my father's yard. A Mr. Pomeroy who lived at Sweet Auburn, now Mt. Auburn, and raised strawberries and hydrangeas for market, caught hundreds of them on the marshes with nets.

In the autumn, on the marshes in the vicinity of my father's house, and all along the banks of Charles River, might be found peeps, yellow-legs, and doe birds in great numbers, and occasionally a plover.

Besides indulging in this favorite pastime, I rode horseback frequently.

Some time between 1826 and 1830 I went with my father to see the Misses Byles, daughters of Mather Byles, who lived on Tremont, opposite Common Street.

I was asked to sit in an old-fashioned chair, on the top of which a crown was carved. "Now, my dear," said Miss Byles, "you can say you have been under the crown."

They told my father many anecdotes of their father. I remember one instance of parental

and Puritan discipline, very characteristic of the man and the times. They were made to get up out of bed on a very cold winter's night, just to show them how comfortable their bed was in comparison with the weather; an object lesson which they never forgot.

And also this one: A man was advertised to fly from a certain place. A gentleman asked the Doctor if he were going to see him. "Pooh, no!" said the Doctor, "I have seen a horse fly." Not far from the house was a stagnant pool of water, which the Doctor had often asked the selectmen to fill up. One summer day, when it was apparently dry, the selectmen came to examine the place, and on stepping in, went up to their knees in mud and water. The Doctor appeared and said: "Gentlemen, I am glad to see you stirring in the matter." He was arrested, taken before a magistrate, marched out under guard, and discharged. He said he had been "guarded, regarded, and disregarded." In answer to the question asked of him one day, whether he were a Whig or a Tory, he pointed to a tower not far off. It was an observ-a-tory.

In October, 1830, I left home for a voyage to the West Indies. I do not intend to speak at any great length of my voyages, which continued till the latter part of 1838, but this one was so

unfortunate in its event for the owners, that I will give a few particulars. The vessel I sailed in was a fore-and-aft schooner of about 125 tons, Isaiah W. P. Lewis, captain. We carried out spars to rig her into a double topsail schooner. The first port we made was Montego Bay in the island of Jamaica.

After she was unloaded, we took on board some logwood and fustic, which were stowed fore and aft next the keelson to make even flooring. Then the hold was lined with mats, and we took in a cargo of oranges in bulk; that is, they were poured immediately into the hold.

We had a remarkably quick passage to the Balize. During the passage the captain was taken sick and became delirious. Why a steam-tug was not hired, I never knew, for there were plenty which hailed us, to offer their services.

We attempted to go up the river under sail; in some places, where the current did not flow too rapidly, we towed the schooner, and when the wind blew strong down the reaches, we anchored and went ashore.

One incident occurred which was quite amusing to me. We happened to go ashore just at the time when a large number of slaves on a plantation were going to their dinner. I talked with some of them, and a very old man with white locks told me how hard they had to work.

I said, "Then you are glad when it rains." "Oh, no, Massa," he said, "de more rain, de more shelly corn." We were twenty-one days getting to a bend in the Mississippi called the English Turn, where the current was so rapid that the mate gave up all attempts to sail further, and we took a tug and arrived at New Orleans at night.

The next day was Sunday, when Captain Lewis was taken ashore. The following day, Monday, the hatches were taken off, and when one of the men jumped into the hold he went in above his knees in rotten oranges.

I think, as well as I can remember, that there were not twenty bushels of sound oranges taken out of the whole cargo.

We had brought as passengers from Montego Bay a captain and two men who had left a vessel which had been condemned there and sold. The captain, whose name was Ellis, brought the proceeds of the sale with him. Sunday morning he dressed in his best clothes and went ashore. At twilight, as I was sitting on the fore-scuttle, a man with no other clothes than a flannel shirt and drawers came running breathlessly on board; as he ran down the companion way, I said to my shipmate, "That 's Captain Ellis; had n't we better see what is the matter?" "No," he said, "let 's mind our own business."

On the following morning, when we turned out, we found his underclothing, covered with spots of blood, on the flooring of the lower deck, but he had disappeared.

After Captain Lewis had recovered, he set on foot various inquiries, and at last ascertained that Ellis had, in a moment of insanity, enlisted in the United States service, and was in one of the forts down the river. Having become sane, he was released after some negotiation. He stated to Captain Lewis that he had taken with him all the money received from the sale of the vessel, and while in a gambling-house was drugged, stabbed, and robbed, which accounted for his frenzy on our vessel.

Thereafter we took a new mate, some new men, a cargo, and sailed for Port-au-Prince, on the island of San Domingo. On the passage to Port-au-Prince, while sailing along the south side of Cuba, I met with an accident which had a marked effect upon my subsequent actions in certain emergencies, when at sea. To a landsman, it is necessary to explain somewhat.

In a schooner as rigged then, carrying a jib and a flying jib, the jib-boom passed through an iron band about three inches wide, covered with leather on the end of the bowsprit; the head stays ran from the mast head to the end of the bowsprit, also to the jib-boom. When the

schooner pitched forward the head stays were slackened, and there was the space of an inch or so between the jib-boom and the band. When she pitched aft the stays were tautened, and the jib-boom brought "chock up" against the band. I was sent out to help take in the flying jib. The schooner was pitching heavily in a head sea, plunging our legs into the water every time she pitched forward. My wet feet slipped on the foot ropes, and I caught the first thing I could get hold of; it was the iron band; but hardly had I grasped it, when she pitched aft and held me like a vice, taking off three of my fingernails, besides jamming my fingers badly. I determined that I would never go out on the jib-boom again, and I never did; for afterwards when I sailed in a square rigger and the order was given to take in the light sails, I was always quick enough to go for a royal.

We arrived at Port-au-Prince, and there I saw President Boyer, a short, copper-colored man, of the Napoleonic type, review his troops, an array which put me in mind of Falstaff's ragged army.

We took in a cargo of coffee, and when the schooner was two thirds full, it was observed by the mate that she was very low in the water. The pumps were rigged, and we pumped her most of the forenoon. All the coffee was wet. We unbent the sails and carried them ashore,

took out the coffee, carried it ashore, dried it, and re-bagged it. Upon examination of the schooner by the surveyors, a rotten plank was found under the counter, ten inches square or more, where the water had been pouring in. It was not thought sufficient to condemn her, and we took the coffee back to New Orleans, and the owners or charterers sold it for what it would bring as damaged coffee. Thus ended this unfortunate voyage. I was thrown adrift, in the spring of 1831, and as many able seamen could be obtained who were willing to work their passage to go North, there was no chance for a boy. I found a captain of a schooner who was willing to take me to Boston, and trust to having my passage paid when I got home. I do not care to say much about my voyages; they are more or less interesting, some quite exciting, and on one ship on which I sailed a mutiny occurred. I was with one captain who was in the habit of saying when we got down to Boston Light, "Steward, bring me a basin of water, and let me wash off my Boston face, and get on my sea one." I went to Havana, the west coast of Africa, Smyrna, Batavia, the Isle of Wight, London, Amsterdam, Gottenburg, and Manila. On my voyage home from Batavia I stopped at St. Helena and saw Bonaparte's grave. One ship I sailed in from Boston was a Salem ship, chartered by a man

who was then an eminent Boston merchant. The bread we ate was so bad, that after fully soaking it in our coffee to enable us to eat it, there would be an inch or so of small cockroaches, spiders, etc., in our coffee dippers. We took hold of the bread barge, carried it to the captain who was then pacing the quarter-deck, and asked him if he thought it was fit to eat. He replied, "Yes, d—— you, I 'll make you eat it and earn it too." We expected a serious time, but a little decisive action on our part brought him to reason; seizing the offending stuff, we hurried it to the leeside and threw it all overboard in his presence, thus losing our bread for breakfast; shortly after we went below all hands were called. "Rig a tackle on the mizzen stay," was the order. The tackle was rigged, the mizzen hatchway opened, and a hogshead hoisted out containing what proved to be excellent bread that we used all the time thereafter. In the Eastern Archipelago we spoke a ship which hoisted signals of distress. We hove to, and learned that they had over one hundred Lascars on board, and were short of bread, and they were given our condemned stuff.

The ship's cousin, who had sailed in her some years, told me upon inquiry that the ship's owner bought this bread in Boston at auction; that it had been three years in the frigate Potomac on

her last cruise to the East Indies, when, upon her arrival at Boston, it was sold.

Had the owner taken a little trouble to have this bread baked over, all this abomination would have been destroyed.

In 1834, while waiting for a voyage, I witnessed some remarkable trials in Boston. The first was in the old Court House, which stood where the City Hall stands now. It was the trial of a colored man named Joseph, and of a white man named Otis, for the murder of Captain Crosby of the brig Juniper, which belonged to Winsor Fay. She was bound for Surinam. The mate's name was Eldridge, and the second mate's, James H. Peterson.

When about ten days out Peterson, who had his watch on deck, while sitting on the hencoop, was startled by a continued rapping below. This he afterwards accounted for as the noise made by one end of the bayonet with which Joseph was stabbing the mate, hitting the deck. Then, hearing a scream, he ran towards the cabin and caught the captain as he fell and died. The mate ran up the companion way with Joseph behind, stabbing him with the bayonet. Peterson, grasping the first thing within his reach, which happened to be a piece of a royal yard, struck Joseph some blows over the head, that,

however, had no effect. He then grappled with him. Meanwhile, the man at the wheel left the helm and jumped into the longboat which was hanging at the stern. Otis ran up the forerigging, leaving Joseph and Peterson to fight it out.

Being under no steerage way, the brig rolled heavily, while they were fighting for their lives. Peterson told me afterwards that it seemed to him as though it was an hour, but in all probability it was only a few minutes. First one would be on top, then the other. At last, Peterson fastened his teeth in his opponent's throat, and getting the clew garnet round his neck, he hauled him to the belaying pins, made the rope fast, called the man from the boat to take the helm again, brought a pistol, and ordered Otis to come down; he then put them both in irons, went to the forecastle hatch, got the other two men up, and turned the brig for Boston. Otis and Joseph were convicted, and Joseph was hanged; but by reason of certain affidavits procured by Father Taylor, together with his own, Otis was pardoned by President Jackson. I talked with the mate Eldridge, and at the trial he testified, as he told me, that he had eighteen stabs. I talked with Peterson about it quite freely, and he narrated the circumstances to me rather more graphically than he did upon the witness stand.

The other trial was at the old Masonic Temple, the building now occupied by R. H. Stearns & Co., on the corner of Tremont Street and Temple Place. This was a trial of twelve persons for piracy on the high seas, and robbing and setting fire to the brig Mexican of Salem. Judge Story presided at the trial, and Andrew Dunlap was the United States Attorney. David Lee Child and George S. Hillard were the counsel for the prisoners. At the first part of the trial Mr. Stephen Badlam was sworn as interpreter, but as Mr. Child found some fault with him, Captain William N. Peyton and Mr. Traveres, who I believe was the Spanish consul, were sworn as assistant interpreters.

The testimony in substance showed that the Pinda or Panda had sailed from Havana on a slaving expedition.

She overhauled the Mexican, fired when within gunshot, and the Mexican hove to. Then certain of the crew of the Panda boarded the Mexican, took from her all the money they could find, fastened the crew below, and set fire to her.

The pirates had neglected to fasten the cabin skylight, so that the crew of the brig raised it, and when they saw that the slaver was at a sufficient distance, they put the fire out and returned home.

The slaver proceeded to the coast of Africa,

and while there the officers of H. B. M.'s man-of-war Curlew heard of the capture of the Mexican, and as the Panda answered the description of the vessel that captured her, they took her and these men who were on trial (but not the entire crew) to England, and then brought them to Salem.

Delgardo committed suicide in Salem jail; twelve were tried, seven convicted, and five acquitted.

After the conviction, De Soto, the first mate, through the intercession of Mrs. David Lee Child, the wife of the counsel, was pardoned. A strong point in his favor was his bravery in rescuing a vessel in circumstances of great peril, with her crew and passengers of women and children, as she lay aground on the Bahama Banks.

The others were hanged at the Leverett Street jail, and many people came in boats to witness the execution, which I also saw.

I give the names of these pirates: Pedro Gibert, captain, convicted and hanged. Bernardo de Soto, mate, pardoned. Francisco Ruiz, carpenter, hanged. Manuel Boyga, sailor, convicted and hanged. Manuel Castillo, sailor, convicted and hanged. Angel Garcia, sailor, convicted and hanged. Juan Montenegro, sailor, convicted and hanged. Nicola Costa,

cabin boy, acquitted. Antonio Ferrer, cook, acquitted. Domingo Guzman, sailor, acquitted. Juan Antonio Portana, sailor, acquitted. Jose Velasques, sailor, acquitted.

Boyga cut his throat, and was hanged sitting in a chair; Ruiz pretended to be insane, but soon it was decided that he was shamming, and he was accordingly executed.

While I was on shore, after returning from one of my voyages, the ship lay at the wharf waiting for a cargo, and the mate was ship-keeper. He was a bluff, frank fellow, but polite when spoken to in a proper manner.

It was the summer in which Lord Beresford and the Marquis of Waterford came over from Europe to visit this country. Their yacht lay in the stream, and their sailors pulled their boat with those two gentlemen in it alongside of our ship from which they were to land. I was talking with the mate as they came on board, and one of them, whom we afterwards learned was the Marquis of Waterford, stepped up to the mate and said with the usual authoritative manner of a lordly John Bull, "I want to find out where the English consul lives."

"The devil you do," said the mate.

"Yes," said the Marquis.

"Then why in h—l don't you find out?"

"Do you know who I am?" said the Marquis.

"No," said the mate, "and I don't care a d—."

Said the Marquis, "I am the Marquis of Waterford, and this is my companion, Lord Beresford."

Said the mate, "I don't care a d— if you are the Duke of Wellington."

Then Lord Beresford said, in conciliatory tones, at last recognizing the American spirit of equality, "Will you be kind enough to tell me where the English consul lives?"

"Yes, sir," said the mate, "with the greatest pleasure;" and he gave him the address.

When I returned from my first voyage, I found John J. Sawyer, late assistant clerk of the court in Middlesex County, and Richard H. Dana, jr., father of the present Richard H. Dana, getting ready to go to sea. Sawyer went many years, and, if I remember correctly, made many voyages after I became a landsman.

Dana went "Two Years before the Mast," which was sufficient for him. From my experience I think his work somewhat exaggerated; and from my acquaintance with him and his surroundings in boyhood, I am not surprised, for there could not have been any greater contrast than existed between his life, up to the time he shipped, and the two years he had

spent in the forecastle. I admit his great ability as an orator, but I think that his manners were rather frigid, and he could not let himself down to the level even of some of those of his own rank in life.

I do not know the ability or character of his associates on his voyage, as to their seamanship, morality, education, or otherwise, but this I do know, that about that time, during eight years' service on the ocean, I made one voyage up the Mediterranean, and one to India (the crew on each voyage consisting of twelve men, besides boys), and that out of those twelve sailors only one was a foreigner, he being the only man who was not perfectly competent to navigate a ship to any part of the globe.

They were more or less educated men; some of them had lost their positions by dissipation, and others liked the spirit of adventure more than the responsibility of command. In subsequent years I knew of many who became captains, resuming their former stations. When I mention the names of Phillips and Jeffries, of Rhode Island, Morrill, of Vermont, Dunning, a graduate of Bowdoin College, Maine, Chadwick, a graduate of Exeter Academy, N. H., Mugford and Gerry, of Marblehead, and Bemis and Bates, of Boston, it will be seen what class of men I sailed with in the forecastle.

In 18—, there was at the Bar a very bright and talented man by the name of William J. Snelling, and as dissipated as he was talented. He was sent to the house of correction, and when he came out he published a book entitled "Six Months in the House of Correction," to parody "Six Months in a Convent," by Miss Read, an inmate of the Charlestown Convent at the time it was burnt.

Snelling also wrote an imitation of Pope's "Dunciad," a book called "Truth, a Gift to Scribblers" (which I own). That amongst much sarcasm there were many truths in it there is no doubt, but many persons were much aggrieved. His preface opens with a dialogue between himself and a friend, in which his friend tells him to beware the law of libel. He replies: —

"Faith not I,
The law and Mr. Badlam [1] I defy.
Our courts admit the truth in evidence,
And such an action will be deemed a sham,
See J. N. Maffit [2] versus Buckingham." [3]

He prophesied very truly with regard to Oliver Wendell Holmes. He says: —

"Give Holmes a ride, the Muse's youngest son,
Equaled by few, surpassed by none, not one;
A dawn of worth, in whose meridian days
Bryant with effort shall retain his bays."

[1] A jailer. [2] A minister. [3] Editor of *Galaxy*.

In 18—, my father became the editor of the "American Monthly Review," which was very fearless, "and," says Rev. Andrew P. Peabody, "superior in merit to any literary review that has ever been published in this country, its purpose being without fear or favor to tell the precise truth about new books, as they appeared." It survived about two years. Among the contributors were Professors Felton and Peirce, Messrs. George S. Hillard, Wendell Phillips, and Charles Sumner.

I remember one criticism, written by Professor C. C. Felton, of a book of poems, by the *soi-disant* Lynn bard, Mr. Alonzo Lewis.

One couplet ran thus: —

> "The moon is rising o'er the sea,
> Round as the fruit of orange-tree."

Mr. Felton said it might be as well, or better, thus: —

> "The moon is rising o'er the brine,
> Round as the fruit of pumpkin vine."

Another couplet: —

> "Great Washington and Chatham bold,
> Whose hands the reins of state could hold."

Mr. Felton said it was clearly a case of "ὕστερον πρότερον," or the cart before the horse, and it would be more properly, —

> "Bold Washington and Chatham great,
> Whose hands could hold the reins of state."

In 1839, there came to Cambridge a rather eccentric person, named John Lee, a graduate of Dublin University.

He expected and endeavored to get a professorship in Harvard, but failed, and on account of his singular habits and eccentricities was somewhat derided.

My father was the only one who seemed to tolerate him, and to whom he confided all his expectations and troubles. My father told me that he was a very learned man. One night in the latter part of 1839, our doorbell was rung violently.

I went to the door and picked up a paper upon which was written the following: —

"Though final fate
And Ruin's weight
Be fixed on Harvard College!
Yet, Willard! we
Will honor thee
For moral worth, for knowledge."

And eight other verses, in one of which he prophesied an explosion in Harvard: —

"And therefore when
Young 'Etna Men'
Shall do as they have planned, sir!
To 'fire the walls
Of Harvard halls,
And blow her off the land, sir!'

"May Mercy there
Sustain thy prayer,

And Arms Almighty shield thee!
And well worn days
In virtue's ways,
Exempt from Sorrow seal thee!"

We all supposed this was from Lee. There was a number of other verses, but I mention only these as a coincidence, for shortly after there was an explosion at Harvard, which broke the windows and shattered the organ; and painted on a wall with grease and lampblack were the words: "A bone for old Quin. to pick." The guilty party was never discovered.

In 1839, my father had some large tracts of land which he wished to get into the market, and offered me such inducements to remain on shore and improve the land, and also to resume my studies with him, that I gave up my seafaring career. This determined my course of life for several years.

In 1841, I married Penelope Cochran, a descendant in the fourth generation from Mary Faneuil, daughter of Benjamin, and niece of Peter Faneuil. Our bridal trip was taken to the White Mountains, at that time more than a two days' journey by sea and land; first the day's sail to Portsmouth and Portland by two steamers, and a stage drive to Fryeburg, followed by a second stage to Fabyan's the third

day. The Fabyan House was then a small affair in comparison with its present huge proportions. The driver of the Fryeburg stage, John Smith by name, a noted whip, was a friendly *compagnon de voyage*, always remembered by us; and some fifty years later, I made a special journey to Fryeburg, Maine, to call upon him; at the age of ninety, he still retained his memories of the past.

In 1838, or 1839, I made the acquaintance of a remarkable young man named Robert O. Cooke, who, had he lived, would have made his mark by his great artistic talent. He made several sketches of me which were excellent likenesses, and I showed them to Mr. Allston the painter, who afterwards assisted Cooke with his advice. In this connection it may be interesting to mention the tradition that Mr. Allston found his model for the figure of Daniel, in Belshazzar's Feast, in the apparently unpromising person of a fashionable draper and tailor, Cornelius Driscoll by name, whose shop stood near the corner of Tudor's Buildings, which stood where Young's does now. As another instance of Cooke's talent for portraiture may be mentioned my recognition of the likeness of Governor Morton, whose face I had only once seen, at the time of his inauguration in Representatives Hall, the day being dark, and the distance

across the hall seventy feet or more. Calling at Cooke's studio some time after, I recognized at once the portrait of Governor Morton, which was considered so perfect a likeness that an engraving of it was afterwards made for a magazine called the "Democratic Review."

Later, Cooke went to Paris for study, but only lived for a short time, thus ending too early a most promising career.

In 1839 and 1840, when I was living on the west side of the Back Bay in Cambridgeport near the water, large flocks of black ducks, during the month of October, alighted in the bay early in the evening to feed and rest for the night, and resume their passage south in the morning.

I bought a lapstreak boat which two could handle, dug a hole in the marsh so that the boat sat half way down into it, then from about amidships on each side of the bows I placed small branches of pine and cedar, and covered them with seaweed. I also bought an old Queen's Arm gun of about one inch and a half bore, had it stocked, and a percussion lock put on in the place of the flint-lock.

I then had a white oak block with a dovetail which entered the keelson. The block was strapped with iron and had an iron cylinder in the middle. The gun was then arranged so

that it entered into the cylinder, and acted like a swivel.

I had a tackle of a double and single block, which hooked into a ring in the gun and in the stem of the boat, to hold the recoil. It was loaded with quarter of a pound of powder and three quarters of a pound of duck shot.

I anchored three live decoys in front in the water within gunshot, and kept one in the boat with her legs and wings tied so that I could pinch her and make her "quack," when my decoys in the water would answer.

There was plenty of hay in the boat to lie on, and buffalo robes to cover me, and on a still moonlight night when the water was smooth I often caused great slaughter, one evening killing sixteen with one shot.

William Sohier, Esq., was a frequent companion with me in these nocturnal excursions, and after shooting we would launch the boat and pick up the ducks.

In 1840, I voted for General Harrison for President, and for John Tyler for Vice-President. The watchwords of the Whig Party were "Tippecanoe and Tyler too." Log cabins were built in various localities, and hard cider kept in them, and they were open day and night. I remember one large one built of spruce logs on Charles Street. On a certain

day there was a large gathering of persons at Lexington and Concord. A huge ball twenty feet high was hauled to Lexington by two hundred men. The ball was painted with stars and stripes, and the motto was, "Keep the ball rolling."

Addresses were made at Concord by George Evans, of Maine, General Wilson, of Keene, who had been much in the West, and others. After the election of Harrison, the campaign at Cambridge was celebrated. A large number of persons gathered at Porter's tavern, where it still stands, at North Cambridge; Daniel Webster and William J. Graves were present. Mr. Graves was the representative in Congress from Kentucky, who shot Representative Cilley from Maine, in a duel with rifles at Washington. They were all merry with champagne, which flowed freely during the meeting.

I was always fond of any theatre where there was good acting; and in the palmy days of the old Tremont, when I was deputy sheriff, I had free entrance. A friend passed me into the National, where Mr. Pelby was manager, and also into Bland's, on Sudbury Street. I am of the opinion that each member of the stock company at those theatres then would be a star to-day. At the Tremont were William H. Smith, Murdock, George Barrett and wife,

Henry J. Finn, George H. Andrews, Kline, Hield, William F. Johnson, an inimitable old gentleman, Thomas Barry the manager, his first wife, and John Gilbert and Mrs. Campbell, who afterwards became Mrs. Gilbert. William H. Smith was the best general stock actor and the most useful one, I think, who was ever on the Boston stage. Later he was at the Boston Museum. His parts were always the second parts, exceedingly well done, and it may well be said of him, "*Nil tetigit, quod non ornavit.*"

The elder Booth and Forrest frequently played then, and the rarest treat I ever had was to see Forrest as Othello, and Booth as Iago, the characters reversed the next night.

Forrest's Richelieu was sublime, and I was told by Mr. Dixon, who was a leading actor at the old Federal Street theatre, that it was the most striking performance of this part which he ever witnessed.

At the National were William Rufus Blake, Fred. S. Hill, Joseph S. Jones (afterwards Dr. J. S. Jones), Palmer, William Pelby and daughter, and Williams, an excellent old man.

After Blake went to New York, he visited Boston occasionally, and played Sir Harcourt, in "London Assurance." John Gilbert attempted it after him; and although Gilbert was unsurpassed in certain parts, his playing Sir

Harcourt so soon after Blake was injudicious, and called forth strong marks of disapproval.

One evening at the National, Blake, who was cast for Roderick Dhu, was late; the curtain went up and down every few minutes, and Mr. Pelby came forward to excuse Blake. The cat-calls, whistles, etc., were loud and persistent. After half an hour, Blake came forward. He was greeted with hisses. He folded his arms, and stood silent until the noise subsided; then said in his most impressive manner, "Ladies and gentlemen, whom have I offended?" "Hurrah for Blake," was the cry, and, the excuse being given, the play proceeded. Edward and James Riddle, auctioneers, brothers of Mrs. William H. Smith, occasionally appeared at her benefit and played the flute. At the time of the performance by Ellen Tree of Julia, in "The Hunchback," there were certain marked phrases which every one knew. Riddle was once selling at auction, when a person bid off an article. "Whose is it?" said Riddle. "Clifford's," said the purchaser. Riddle, striking an attitude, "Ah, Clifford, is it you?" Clifford, being a bashful man, retreated, but Riddle saw him, and in piteous tones said, "Clifford, Clifford, why don't you *speak* to me?" The audience shouted, and it was some minutes before the sale went on.

I was present one night at the performance of "Richard the Third" when J. B. Booth was so excited in the contest between Richard and Richmond that he pursued Smith with great fury, and had not Smith been an excellent fencer Booth would have killed him. The audience in the pit rose *en masse*, standing on the seats, and there was great excitement. Smith called to him, "Booth, Booth." He paid no attention. So Smith fought for his life, and during a pause, both being quiet, and on their guard, Smith ran his sword against that of Booth, seized the latter's sword arm with his left hand, and recalled him to his senses, Booth playing the dying scene with astonishing effect. I have seen it stated that he drove Smith out of the theatre; while on the other hand I remember hearing Smith, when relating the occurrence some time afterwards at Bascom's, a well-known resort of actors in School Street where Parker's Hotel now stands, assert that he had disarmed Booth. But the above is the true account.

A friend of mine once appeared on the stage when George Barrett was manager. He came from the country, but was a fair reader, although not an educated man. At rehearsal the question was asked him, "How far is it to ——?" Answer, "About as far as yonder housen;" the manner in the country at that time of call-

ing a number of houses. He told me that Barrett drew himself up to his full height (and his height was six feet), and shouted to him: "Housen? Houses, you mean."

In the early days of the old Tremont figured Henry J. Finn and George H. Andrews, both comedians. Finn's best performances were Philip Garbois, in "101," and Maw-worm, in the "Hypocrite." Andrews's best was "Luke the Laborer."

Occasionally I attended amateur performances in Flagg Alley, now called by its modernized name of 'Change Avenue. Finn was a great punster, and was in the habit of making puns every time he appeared. When he had a benefit they came out by the dozen, and the newspapers used to publish Finn's last. He also wrote comic Annuals. Snelling says, in speaking of him: —

> "Puns premeditated, set to time,
> And strung like onions on a rope in rhyme,
> Though puffed by all the editorial crew,
> And sung by Harry Finn will never do;
> Straight in the fire, good Finn, thine Annual cast,
> Let this emphatically be thy 'Last.'"

At his benefit, I remember this one in particular: —

> "If I were *pun*ished for every *pun* I shed,
> I should n't have a *pun*y shed
> Wherein to hide my *pun*ished head."

Some time in the forties, the old Federal Street theatre was temporarily occupied by Abner Kneeland, a celebrated preacher, who would now be called an agnostic. I went to hear him one night, and I well recollect the motto he had placed over the stage: "He who *cannot* reason is a fool. He who *will* not reason is a bigot. He who *dares* not reason is a slave." This theatre was opened again as a theatre between 1846 and 1850.

On Saturday evenings during these years, I was accustomed to go with my father to the house of Mr. Edmund T. Dana. Mr. Allston, the artist and poet, Mr. Knapp, a Boston lawyer, and Mr. Horatio Greenough, the sculptor, were often there, and it was a great pleasure to listen to Mr. Allston relating in his dreamy way his experiences abroad; and I have often wished since that I had kept a diary.

They were all smokers, and each took his glass of wine with crackers and cheese. Conversation lasted till ten, and then the party broke up.

In the autumn of 1852 occurred the death of Daniel Webster. I well remember hearing many of his speeches in Faneuil Hall, being often taken off my feet in the great crowd that

surged in to listen. On one occasion he spoke from a barouche in front of the United States Hotel, where I listened from a prominent but insecure position on the forward wheel.

His funeral in Marshfield brought a multitude from far and near. My friend Mr. George C. Wilde, clerk of the Supreme Court, and myself, went together to pay our last tribute of respect to the great man.

Starting on the day previous to the funeral, a five hours' drive brought us to the pleasant old town of Marshfield, where we passed the night at the house of a hospitable citizen, Mr. Packard, a selectman of the town, and most kind in receiving us who were total strangers "without money and without price."

Many of our fellow-travelers were less fortunate, and passed the night where they could in barns, wagons, and on beds of hay; but the mild weather made it all possible. The next morning we walked over to Mr. Webster's house, where the crowd was gathering, and in the house were many noted men, — George T. Curtis, William Dehon, Francis Tukey, chief of police, etc. Mr. Webster lay at rest in the great library; his dress a blue coat with brass buttons, black trousers, and patent leather shoes.

Before the services, we walked over to the family tomb, and when we returned the crowd

of people had become so great that passage through was almost impossible.

Several hundred people who had come by boat to attend the funeral were unable to land, the steamer having grounded on the flats, and they were obliged to return to town without having had any part in the ceremonies. Our own time was too limited to allow us to stay through the services, and we were forced to come away early. On our way back, we met our kind host, Mr. Packard, on his way to the funeral, who again offered us his hospitality, giving us the key of his house, and the liberty of entering and making ourselves comfortable ere we started on our homeward way.

About the year 1856, finding my health somewhat impaired, I decided to renew my old exercise of horseback riding, and while debating where to buy a horse, a friend unexpectedly offered me the use of his for a year.

The following year, I again enjoyed the use of a horse for a mountain tour through the friendly offer of Asa T. Barron, proprietor of the White River Junction Hotel; a man under obligations to me for some past services. He invited my friend Francis M. Adams and myself to his house, and provided us with two good saddle-horses, for our unlimited use. Mr. Adams and I made a tour of the surrounding country, lasting

a week or ten days, visiting Royalton, Barre, Waterbury, and Burlington by the way of Mt. Mansfield. Our passage over the mountain was very rough and dangerous, and but for the compass that Mr. Adams happened to have in his pocket, I think we should have been lost. As it was, we arrived at night at Underhill, much exhausted, very muddy and hungry, having fasted all day.

The first person we met, a man chopping wood, hailed us with "Where in —— did you come from?"

Hearing that we had come over Mt. Mansfield, he added in the same emphatic language: "The devil you did; I would not do it for the best horse in Vermont."

We were kindly cared for that night by the clergyman at Underhill, and the next day reached Burlington, returning to White River Junction by Whitehall and the lake.

Soon after my return, I bought a horse, and have never since been without one.

On the 25th of August, 1867, I left Portland, Maine, with my son, each of us on horseback. We were gone sixteen days and a half, traveled 486 miles, went through and across four States, and through sixty-nine towns. When we arrived opposite White River Junction, as there was no bridge over the river at that time, we forded

the stream, the water being up to our horses' knees.

After dinner, we thought we would look over the grounds of Dartmouth College. Just below the place where we forded, where the White River and the Connecticut join, there was a bridge over the Connecticut. We entered the ford at the same time, and very quickly I found that my horse was swimming.

I called to my son, who was below me, and said, "Our horses are swimming; head your horse up-stream, or you 'll be swept into the Connecticut." He did so, but the current was so strong that he was carried down some yards, and just saved himself by bringing up against the abutments of the bridge.

When we were safe on the other side, the toll-man shouted to us, "How dare you attempt to cross the river?" I replied, "When we came over this morning the water was only up to our horses' knees." He said, "Don't you know how rapidly the river rises, when there are rains above? This river has risen four feet since morning." We continued our journey, and on arriving at Waterbury, Vermont, I found my wife there, and the next day we started to ascend Mt. Mansfield. My son and I went on horseback, and a farmer took my wife in a wagon as far as the half-way house. There she mounted my horse, and I walked by her side.

After proceeding a few minutes, we came to what I thought was rather a dangerous place, and we stopped to take an observation.

Within hailing distance we saw a man coming down the mountain with a dozen or more mules, returning from having taken a party up. Seeing us there he called out, "Do you wish any help?" I replied, "I don't know. If you say so, I'll take it; if not, I'll go on." "I think you have got over the worst of it," he said. We started on. My wife's horse had got a footing with her fore foot, but in attempting to get a footing with her hind foot, she slipped back on her haunches; my wife fell off, and the horse rolled over her, bringing up against a big log. We picked her up insensible, carried her to a bright, sunny spot, and laid her down. We then secured the horses, and I told the farmer who had offered us his assistance to go up to the top of the mountain and bring us some brandy as quickly as he could. While he was gone I stayed with my wife, who had become delirious, and had a very bad cut underneath her chin, from which the blood flowed freely. By the time the farmer returned I had stanched the wound with my handkerchief; I gave her the brandy, which revived her somewhat, and we carried her down the mountain to the half-way house where the farmer's wagon was waiting,

and thus proceeded to his house. I telegraphed to my son-in-law to come up and take my wife home, and finding that he could do so, my son and I returned with the horses.

After our arrival our family physician, Dr. Wyman, being absent, we called in another doctor, who found that two ribs had been broken. Later, when Dr. Wyman returned, he discovered a dislocated shoulder also; fortunately, no more serious result ensued from this careless oversight and delay. As the blood of the martyrs is the seed of the church, so in this case a good road was built to the summit the next year.

In 1869, my son and I took another horseback ride in which we went through forty-eight towns in Massachusetts, Vermont, and New Hampshire. We were out seventeen days, and traveled 448 miles.

At many places where we stopped there was no hotel, and we had to resort to farmhouses. I remember one day, as we arrived about noon at Corinth, Vermont, we found no tavern. We came to a well-to-do farmhouse, and saw a pleasant-looking farmer sitting on the doorstep. I asked him if he could give us some dinner. "No, I can't give you any dinner," he said. I said, "Can you give us something to eat?" "Oh, yes," he said, "plenty of it; put your

horses in the barn, help yourselves, and if you don't give them enough it won't be my fault." He showed us about the farm, and then said, "Let 's go in, and get a bite." The table was set in perfect order, and we had an excellent dinner, consisting of a roast leg of mutton and all the vegetables of the season. When we finished, he whispered in my ear, "Now I want you to go down with me in my cellar, and taste a little of my cider brandy."

I found it so potent that I only took a small quantity, and returning upstairs asked him how much there was to pay. "Nothing," he said. I told him we were riding for pleasure, and did n't go about begging dinners, and insisted that he should take something. To which he replied that if he must take something, it would be only a dollar. When I asked him where we should stop for the night, he named the place, and told me that I should find a very singular person there who was the postmaster. When we arrived I found the postmaster, and asked him if he would take us in for the night. He looked us over and said, "Have you got any money?" I said, "A little." "Where do you come from?" "From Boston, and traveling through the country." After taking another view of us he said, "I am afraid of horses; will you take care of your own?" "Oh, yes," I

said; "and now I want to ask you one or two questions. Have you any oats?" This was always my first inquiry on arriving at any place. "Yes," he said, "help yourselves." So we stayed, and the charge for two horses and two men was one dollar for supper, breakfast, and lodging.

II.

CURIA.

In the year 1846 I began my duties in the Court of Common Pleas as an assistant to Joseph Willard, Esq., Clerk of the Court, also my uncle and good friend. My position, taken at first for a week only as temporary clerk, soon became permanent through the resignation of Mr. McLellan, one of the older clerks, and from then began my long service, now rapidly rounding to fifty years.

The judges of the Supreme Court at that time were Lemuel Shaw, Chief Justice; Samuel S. Wilde, Samuel Hubbard, and Charles A. Dewey, Associate Justices.

The justices of the Court of Common Pleas, just previous to my entering the office, had resigned because of insufficient salary. They were John M. Williams, Chief Justice, and Associate Justices, Charles H. Warren, —— Cummins, and others whose names I do not recall.

A number of other justices were appointed to the Court of Common Pleas while I was connected with it; Edward Mellen, Chief Justice, and Horatio Byington, Jonathan C. Perkins,

George N. Briggs, E. Rockwood Hoar, and Henry W. Bishop, Associate Justices.

The new bench had been appointed, consisting of Daniel Wells, Chief Justice; Pliny Merrick, Emory Washburn, Joshua H. Ward, Luther S. Cushing, and H. G. O. Colby, Associate Justices.

Three persons did all the work of the clerk's office at that time, where there are now seventeen. In a short time I became familiar with the rules of the Court, and made the acquaintance of the elder lawyers. The principal practicing lawyers then were Sidney Bartlett, J. L. English, Sohier and Welch, Hutchins and Wheeler, Augustus H. Fiske, Charles H. Warren, Benjamin Rand, — these last three comprising the firm of Rand, Warren, and Fiske, — John C. Park, Tolman Willey, William B. Dorr, David S. Greenough, Benjamin R., Charles P., and George T. Curtis, Charles G. Loring, George William Phillips, Theophilus P. and Peleg W. Chandler, Whiting and Russell, Charles T. and Thomas H. Russell, and many others. In 1894, at the time of writing this, the only surviving members of the bar who were in practice when I entered the clerk's office in 1846 are the following: Alexander S. Wheeler, Charles A. Welch, William G. Russell, Charles T. Russell, Thomas H. Russell, Thomas S. Harlow, Caleb William Loring,

Alexander C. Washburn, and Fred. O Prince. Benjamin H. Currier, just deceased at ninety-five years of age, the oldest member of the bar, was admitted in 1853, and at the time I entered the clerk's office was head clerk for Mr. George C. Wilde, Clerk of the Supreme Judicial Court. I was admitted in 1854.

Thomas W. Phillips, brother of Wendell and of George W., was Clerk of the Criminal Court, and Thomas Power, Clerk of what was then called the Justices' Court. Isaac O. Barnes was United States Marshal. John G. Rogers was Chief Justice of the Police Court, now called the Municipal Court of the City of Boston, when I first went into the office. One day an Indian was brought up before him and fined for being drunk. After he had paid the fine, Mr. Power, the clerk, told him to go, as he was discharged; but the Indian said he wanted a receipt. Mr. Power repeated to him that there was nothing to do but to go, and still he persisted that he must have a receipt. Then Judge Rogers asked him why he was so anxious for a receipt when he was discharged. And this was his reply: "By and by Indian die; go to Great Spirit; he say, 'What you come here for? Can't come in, been drunk.' 'Yes,' say Indian, 'but I pay fine.' Great Spirit say, 'Where 's your receipt?' Then Indian have to

go all over hell to hunt up Judge Rogers to get receipt."

At or about 1851, the Legislature enacted a law allowing parties to be witnesses. At the present time, 1894, it seems strange to look back, and see how well cases were tried without the testimony of either party.

One of the first actions brought to my attention, and which my familiarity with the rules helped to settle, was this: A certain rule of the Court of Common Pleas (and which now exists) provided, that when a party had neglected, after six months, to complete a judgment, rendered in an action, on petition to complete the record (if the adverse party intended to answer thereto), the petitioner was to pay the respondent costs. At that time the costs of attendance (which are now termed fees) were thirty-three cents a day for every day the action remained open. A petition was brought by Mr. P—— to complete the record against a certain party. Samuel D. Parker, Esq., appeared for the respondent. The case had been pending a number of years. Mr. P—— came and asked me to tax the costs for him in the case.

He said, "Mr. Parker has offered me $125 as costs, but I think the costs must be very much more." I said, "Mr. P——, the rule provides that the adverse party shall recover costs;

that is, that you shall pay him his costs if he attends, and Mr. Parker has attended all the time, so that he will be entitled under the rule to his costs, and you will have none." "Knowledge is power," said Mr. P——, "and I will take the $125." This was my first advice as a layman to a practicing lawyer, which he followed.

Talking with Mr. Thomas W. Phillips, I was told this excellent story of John Sullivan, a former member of the bar. He was known to be an excellent singer and mimic, and on account of these talents was invited to a great many parties. However, his friends, believing he was getting too convivial and spending too much money, had a guardian appointed. The guardian tried to get an interview with him, but every time that Sullivan saw him, he would dodge away from him; at last they met where Sullivan could not get away. "Now, John," said the guardian, "I am in earnest; I shall not cut down your allowance. Your friends think that you are getting rid of your money a little too fast, but I shall be liberal with you; you may sing as much as you wish; there is one thing, however, you must stop, and that is this mimicry, because it is making you a great many enemies; but [*sotto voce*] before you stop, John, give us my friend Parsons once more."

I learned one thing quite early concerning the production of original papers or dockets from the clerk's office to other courts, in this manner: after I had been in the office about a year, Sidney Bartlett, Esq., came in one day, and said, "Mr. Willard, I should like to have you take the writ and papers in the case of —— *vs.* —— into the Supreme Court this morning." I took the papers into the Supreme Court, went on to the witness stand, and read from them such portions as Mr. Bartlett desired. Mr. Bartlett then said, "You will leave these papers with the clerk of this court, and I will see them returned." I was not at all sure about that, and looked around inquiringly to Chief Justice Shaw, who was on the bench.

The chief justice remarked, "No, sir, he has done wrong to bring them in here; you should have had copies, Mr. Bartlett."

In later days, when I have been summoned to different courts to produce original papers, I have always refused, and have always been sustained by the court. I am often surprised at this day to see original deeds and records from registries brought into the courts, and I regard it as a very dangerous practice. I remember being summoned before Judge Lowell at the United States Court, to produce original papers from the Superior Court. I went and said to

the judge that I had come to obey his summons, but that I declined to produce the papers; and he said to the counsel, "I cannot compel Mr. Willard to produce original papers here."

During the remainder of the year 1846, and the beginning of 1847, my salary was very small, and in my extra hours out of the office I wrote for many lawyers. Generally I was well paid. Once, however, I was asked by Mr. B. F. Hallett to make a copy of a deed conveying some property to a church, and Mr. Hallett said he wanted it written in a plain, clear, round hand, space being no object. The person for whom I was to make it was supposed to be the richest man in Boston at that time. When it was done, I carried it to Mr. Hallett, and his client was present.

The client examined it and said he thought I had extended it too far in order to make a long job of it, and asked me how much it was. I named the price. He offered me about half. I told him he might have it for nothing. Then Mr. Hallett told him that he had instructed me to write it in that manner, and that I ought to be paid for it accordingly; this brought him somewhat to his senses, and he paid it, apparently very unwillingly.

This same person was in the clerk's office one

day talking with the clerk (my predecessor), when some young ladies came in and asked him to subscribe to an entertainment. "What kind of an entertainment?" he inquired. "A musical entertainment," replied one of the young ladies. He put his hand in his pocket, and jingling some silver coins he had in it said, "Ah, my dear, that's the sweetest music I know of."

In the spring of 1848, Mr. George C. Wilde, who with my predecessor was a joint clerk of the Court of Common Pleas and of the Supreme Judicial Court, came into the office one day and said to me, "Currier [his clerk] is going to leave; if you will come into my office I will give you three hundred dollars in addition to what you are getting now." I told him I would think of it for a day or two. By a curious coincidence the same day, Mr. Eveleth, who was then sheriff of Suffolk County, came into the office and said, "Mr. Willard, Mr. Pratt, my deputy in the court room, is so busy serving writs that he does not have time to attend to the duties of the court. I should like to appoint you deputy to serve as few writs as you possibly can, and sit in the court to keep order, and that will give you four hundred dollars a year more." I went to Mr. Edward D. Sohier who had been very kind to me. He said, "You

have become somewhat familiar now with the practice of the court and clerk's office, and if Mr. Willard will consent, you can make both situations work together; I advise you to accept Mr. Eveleth's proposition." I stated the case to Mr. Willard, and he saw no difficulty in my carrying on the business of the office, and being in the court room; thereupon, I accepted the position offered me, and held it during the remainder of Mr. Eveleth's term. I was reappointed by Henry Crocker, and again by John M. Clark, retaining it up to 1855.

While I was holding my commission as deputy sheriff, and before I was appointed assistant clerk, I had this affair with Mr. ——, who was the chief of police.

By order of Chief Justice Daniel Wells, I took the jury to view some premises on the corner of Bulfinch and Court streets, where there had been a fire. While the jury went down into a cellar, and as I stood on the second or third step down, a stout, rugged man came along and was about to pass me. I said, "You can't go down here, sir; this is a jury viewing the premises." He said, "I'll show you that the chief of police can go anywhere." The steps were covered with ice, and I did not have much of a foothold; before I could remonstrate any further he seized me, threw me one

side, and went down. After I returned the jury to the court, a reporter of one of the daily papers was present, to whom I related the facts.

"Oh, there 's some mistake," he said; "Mr. —— would not do such a thing; let 's go over to the City Hall, and if he is in I will point him out to you." We went, and as he opened a door I looked through the aperture; he pointed him out, and I said, "Yes, that 's the man." I went back to the court room and reported the affair to Chief Justice Wells. He was very indignant (I never saw him angry), and sent an officer to the chief of police to notify him to be in court the next morning at nine o'clock.

He appeared, and the chief justice told him that he had learned that he, the chief of police, had assaulted one of his officers, and asked him what excuse he had.

His reply was, that he thought he could go where he pleased. "Were you not warned, sir?" said the chief justice. "I was," replied the chief. "Then why did you assault one of my officers?" He made no further reply, but the chief justice said, "I shall require you to make an apology to the Court, also to Mr. Willard." He did so, after which we were the best of friends.

After I was appointed deputy sheriff, I caused

what I believed to be several improvements made in the old court room. I found jurors putting their feet on the top bar in front of them, so I had an iron rod inserted through the posts, to rest their feet on; and this was soon followed in the other court rooms. I found that the spectators frequently rested their feet on the back of the settees in the rear of the bar. These were boarded up and neatly painted. There was a gallery in which tramps and dirty loafers lounged, and if it was not carefully examined every evening, some were found sleeping there. I recommended to the authorities its removal, and this was done.

Charles Devens, late one of the Justices of the Supreme Judicial Court, was at one time U. S. Marshal. While the marshal was out of town in April, 1851, Deputy Marshal Burns, with the connivance of Francis Tukey, City Marshal of Boston, arrested Thomas Sims, an escaped slave, and there was great excitement, especially among crowds of people who gathered in Court Square. Charles G. Davis sued out a writ, *de homine replegiando*, which was signed by my predecessor, and a bond given, signed by Thomas Sims as principal, and Charles G. Davis, Timothy Gilbert, Samuel E. Sewall, Wendell Phillips, Ellis Gray Loring, and Francis Jack-

son, as sureties, which writ and bond were put into the hands of Daniel J. Coburn, then a deputy sheriff of Suffolk County, for service. He made the following return upon the writ: —

OFFICER'S RETURN.

SUFFOLK s. s. April 5, 1851.

By virtue of the within writ, I have at two different times on this day demanded of the within named Charles Devens, Esquire, U. S. Marshal, the surrender to me and the delivery of the within named Thomas, from duress and imprisonment, at the same time presenting to the said Devens this writ with the annexed bond of the said Sims, with sureties in the sum of three thousand dollars; but the said Devens refused to deliver the said Sims from duress and imprisonment, claiming to hold him, the said Sims, by virtue of legal process to him directed as the U. S. Marshal for the district of Massachusetts; and the said Devens at the time of the last above mentioned demand by me made upon him for the delivery of the said Sims from duress, said that he had him, the said Sims, in his custody; and if I in the service of this writ should attempt to take the said Sims from him the said Devens, he the said Devens should interpose such and so much forcible resistance as would enable him to retain the said Sims in

his custody: and I further return, that at the time of said demands, the said Devens had, as he informed me, under his control, a large number of men placed in and about the Court House of Boston, where I understood the said Sims to be confined, as his assistants, and, as I was informed, to prevent the said Sims from being taken from his custody: I therefore, for the reasons hereinbefore stated, return this writ without delivering the said Sims from duress and imprisonment, and without service.

DANIEL J. COBURN, *D. Sheriff.*

The original writ was given to me after it was found valueless. Mr. Devens was firm, and the writ was not served.

I recall particularly the rendition of Burns, a slave, who was ordered to be returned by Judge Edward G. Loring. On the memorable evening of May 27, 1854, after the meeting in Faneuil Hall, now become historic, a large crowd of persons assembled round the middle door of the Court House on the west side. All sorts of violence were suggested, — battering rams, etc. Some pistol shots were fired, one of which killed a police officer named Batchelder, and some marks of the bullet holes remained in the ceiling over the door for many years. To

quote from the "Post": "T. W. Higginson was one of the men who attempted to rescue Anthony Burns, the fugitive slave, from his confinement in the Court House in Boston, and was wounded in that ill-starred undertaking. The honor of being indicted for murder with Theodore Parker and Wendell Phillips was next thrust upon him, but a flaw in the indictment secured his discharge."

Cannon were placed on the southerly end of Court Square, pointing toward Court Street, and huge chains encircled the Court House.

On the second day of June, 1854, a section of U. S. Artillery with a brass cannon marched into Court Square in the rear of the City Hall and commanded its east side. The Boston military guarded the avenues through which the parties who had the custody of Burns were to proceed. At two P. M., a body of Lancers led off; next, two sections of U. S. Marines; then a hollow square, two files deep, composed of persons in the employ of U. S. Marshal Watson Freeman, his deputy marshals, etc.; each person armed with a sabre and a pair of pistols. In the middle of the square were Burns and Marshal Freeman.

In the rear of the square were two more sections of marines and the artillery in the rear of them; and thus Burns was marched off.

I sat in the lobby with Judge Henry W. Bishop, of the Court of Common Pleas, looking out on all these paraphernalia and marks of slavery, disgusted and indignant.

Judge Bishop suggested that he would like some dinner, and I said, "Order it, and you shall have it." "But we are in chains," he said, "and sentries are parading in front." "Give your orders, sir, if you please," I responded, and he said, "I order." I ran down, and as a sentry took hold of me, I broke away and told him at his peril not to interfere with a messenger from the Court. I then went to Parker's Hotel, now Young's, ordered the dinner, and returned with the waiter, and reached the court without further molestation.

A court called the Superior Court of the County of Suffolk, a local tribunal for this county, was established by an act of the Legislature of 1855.

The act was approved May 21, to take effect the first Tuesday of October of that year.

This was during the administration of Governor Gardner, and the terms of the Court of Common Pleas, required by law to be held in Suffolk County, were then abolished.

The salaries and all the expenses of this court were paid by the city of Boston.

Six terms were held each year, and the justices were *ex officio* the justices of the Municipal Court of the city of Boston, then, so called, a Court of Criminal Jurisdiction, but being a part of the Superior Court. Four justices were appointed as follows: Albert H. Nelson, Chief Justice; Josiah G. Abbott; Charles P. Huntington; Stephen G. Nash — all deceased.

Shortly after the resignation of Chief Justice Nelson, who died in June, 1858, Judge Abbott having resigned, Charles Allen, of Worcester, was appointed Chief Justice of the Superior Court of the County of Suffolk, and Marcus Morton, jr., late Chief Justice of the Supreme Court, Associate Justice.

I make the following extract from the resolutions submitted to the Court, relative to Chief Justice Nelson; Chief Justice Allen, Justices Huntington, Nash, and Morton on the bench: "That he is entitled to the respectful recollection of all who can appreciate that rare combination of talent and learning with personal and official integrity, kindness of heart, sweetness of temper, and an unfailing courtesy of demeanor at the bar, and on the bench, of which he furnished so signal an example." And in this connection I would like to add that my father told me that Caleb Cushing and Albert H. Nelson were men of the best natural ability that he ever had among all his pupils at college.

After Chief Justice Nelson resigned, it was mooted whether or not his resignation was valid, and it was doubtful whose *teste* the writs should properly bear. Henry W. Paine said he made a writ on the day when it was talked of, and inserted all the three justices, and said if it was pleaded to, they might strike out whichever they pleased. The bench had previously consisted of four judges. The entries were then made every two months, the fees for attendance were abolished, and in place thereof five dollars were allowed as term fees.

Augustus H. Fiske wrote the following recommendation for me to be appointed assistant clerk of that court: —

"The undersigned respectfully represent that they have known Joseph A. Willard, who has been for many years an assistant in the office of the Clerk of the Court of Common Pleas for the County of Suffolk; and also an officer of said Court; we believe him to be well qualified to fill the office of assistant clerk of the Superior Court of the County of Suffolk, and most cheerfully recommend and request his appointment thereto. His manners and temper are such as we believe render him fit for an office which requires the exercise of great patience and great equanimity of temper."

This was signed by Rufus Choate, A. H.

Fiske, Edward D. Sohier, Seth J. Thomas, John C. Park, Hutchins and Wheeler, William Gaston, and two hundred others. There was another applicant, who was recommended by Governor Gardner, but I was appointed. Prior to my appointment, the clerk of the court in this county, and, so far as I am informed, in all other counties, had not been in the practice of preparing daily lists of cases to be tried; and the only manner in which the bar could ascertain the order of the cases was to get them in the best way they could from the main trial list.

When I first went into court as assistant clerk, I found it very troublesome and annoying even for me to keep the run of the trials in the old manner, and therefore, not only for the convenience of the bar, but for myself as well, I began making regular daily lists which have been kept ever since; these are called by some the short lists.

There are so many talented young men who have made their début at the Suffolk bar since I was admitted, that it would be invidious to select any one or any number of them by name as lawyers or advocates.

The act establishing "The Superior Court" was passed in 1859, and went into full effect on July 1 of that year.

This act abolished the old Court of Common Pleas, the Superior Court of the County of Suffolk, and the old Municipal Court of the city of Boston; and it required the appointment of ten justices. The following ten were appointed: —

Charles Allen, Chief Justice, who resigned in 1867, and died in 1869.

Seth Ames, appointed Chief Justice in 1867, promoted to the Supreme Judicial Court, January 19, 1869, resigned in 1881, and deceased in that year.

Lincoln F. Brigham, appointed Chief Justice in 1869, who resigned in 1890, the sole surviving member of that bench, is now living in Salem, respected and loved by every one who ever came in contact with him.

Otis P. Lord, appointed to the Supreme Judicial Court in 1875, and deceased in 1884.

Marcus Morton, jr., appointed to the Supreme Judicial Court, April 15, 1869, became its Chief Justice in 1882, and died in 1891.

John P. Putnam, died in 1882.

Julius Rockwell, resigned in 1886.

Thomas Russell, resigned in 1867, and died in 1887.

Henry Vose, died in 1869, and Ezra Wilkinson in 1882.

Chief Justice Allen one day said to me,

"Mr. Willard, I don't like this idea of holding a peripatetic court. I want you to take a walk with me." We went into a large number of halls, and finally into the Meionaon, which was then quite a large room in the rear of Tremont Temple. He called the janitor, made several inquiries about the rent and heating, and how long it would take to arrange seats for the jurors, judges, and clerk. There were sufficient benches for spectators and witnesses already. After receiving satisfactory replies, he said: "Mr. Willard, have the kindness to inform the mayor and aldermen that I have taken this for the court room." We sat there some years. In 1861 the new addition to the old Court House where the sheriff's office, the record room, the law library, and the second session are now (January, 1892) situated, was completed. The old Court House in Boston was finished in December, 1836, and the new part, the southerly addition, was finished in December, 1861. The architect of the old Court House was Solomon Willard, a cousin of my father.

One morning in 1861 I was sent for by Governor Andrew to assist him and his secretary, Albert Gallatin Browne, jr., who was afterwards our Supreme Judicial Court Reporter. This was at the time of the excitement caused by the signs of civil war. After having cleared the

business of the Court, I went to the State House and told the messenger who came to the door that I wanted to see Governor Andrew. He gave me a seat in the corridor and told me to wait there.

In about ten minutes the Governor appeared. He said: "Joe Willard, what are you doing here?" "In the language of Metamora, 'I have come,' and if you don't want me, I 'll go home." He laughed and said: "I did n't mean that. I meant, what are you doing, sitting out here? Browne and I are nearly smothered in the casements with correspondence, and I want you to help us out of it; come in and take hold." I was there three days with them, and worked constantly, as did the Governor and Browne. After that the courts resumed their sessions regularly, and I attended to my duties there.

On hearing of the illness of my son, who was at the front in Major Jones's 11th Battery, and having obtained a pass through the lines from General Butler, I left Boston in 1864 and proceeded via New York and Baltimore to Fortress Monroe, where unexpectedly I met Nicholas St. John Green, one of the general's aids, who was so kind as to take me in charge up the James River to Bermuda Hundreds.

In the evening we went in an ambulance to General Butler's headquarters, where I had a short interview with him; and after Colonel Green had transacted some business matters we went on board a steamboat, and Colonel Green asked for two staterooms. "We have none to spare," was the reply. "Open two at once by order of General Butler," said Colonel Green, and the order was instantly complied with. Next morning on our arrival, General Grant's headquarters and dispatch boat were shown me. The general himself was in the house, and though many people were introduced, and Colonel Green offered to introduce me, I declined through sheer bashfulness. Thence I proceeded by rail to the camping ground of the 11th Massachusetts Battery (9th Corps) in the rear, where my son was. In the afternoon of the same day my son and myself went to the front to Fort Steadman, and while there I mounted a bomb-proof, to see the battery shell a train of cars running to Petersburg. Soon I heard some sharp, whistling sounds near my head. I said, "What is that, Major Jones?" "Those are minies, and you had better step down into the bomb-proof, or kneel behind the fortification," he said, — and I followed his advice. That night I slept at the fort and the next morning, with my son, started for the rear. A

light snow had fallen in the night and the appearance of the scenery and surroundings was much changed, so that my son was at a loss which way to proceed. In a few moments we met a soldier in United States uniform, of whom we inquired the way to the 9th Corps. As he directed us, he remarked: "You are now walking towards the rebel pickets." We turned about at once and reached our destination in safety. A week later Fort Steadman was taken by the Confederates in the night, but retaken the next morning by the United States 11th Battery and a portion of the infantry of the 9th Corps.

On the 12th of May, 1865, my predecessor, Joseph Willard, Esq., died, having been Clerk of the Court of Common Pleas, of the Superior Court of the County of Suffolk, and of the present Superior Court; in all, twenty-five years.

In a work like this, which only aims to present some of the lighter phases of court or clerical life, any extended sketch of him would be out of place. But there are none who came in contact with him during his long term of service, though their number is rapidly lessening, but will recall his dignified courtesy, his clear and judicial mind and habits of exact method that simplified the routine of the office and brought its multifarious details into sound work-

ing order. His services as auditor, master, and referee were constantly sought. Upon his decease I was appointed, on the 20th of May of the same year, Clerk of the Superior Court for the vacancy existing until the annual election.

On the 7th day of November, 1865, I was elected without opposition to be Clerk of the Superior Court for the unexpired term of my predecessor, to wit, one year. In November, 1866, I was elected for five years from the first Wednesday in January, 1867.

In 1871 I received the Republican and Democratic nominations for Clerk, and was again elected without opposition.

In 1872, although residing in Boston, I passed my summers and much of the autumn in Cambridgeport. On the 9th of November of that year, having a good view of Boston across the Charles River, I saw a fire which appeared to be spreading rapidly. I harnessed my horse and drove to the Court House, got out the dockets and the pleadings in suits then pending in court, put them into my wagon, and took them to my home at two o'clock on Sunday morning. After having put them in a safe place, I went in again on foot, and, having satisfied myself that the Court House was in no danger, I returned home. This was the "Great Boston Fire."

For some time prior to 1876 I had been strongly impressed with the feeling that there should be formed in this county a Bar Association, to elevate the tone of the bar and to look after cases of malfeasance. After conversing with several members of the bar relative to it, at my request the following paper was delivered to me addressed and ready for signatures. These I procured, and called the meeting there suggested.

To JOSEPH A. WILLARD, ESQ.,
Clerk of the Superior Court of Suffolk County.

We the undersigned, members of the Suffolk Bar, respectfully request that you would call a meeting of the undersigned at such time and place as you may designate, to consider the formation of a Bar Association in this county.

Sidney Bartlett,	*Josiah G. Abbott,*
William Gaston,	E. Rockwood Hoar,
Henry W. Paine,	Alex. S. Wheeler,
Edward D. Sohier,	Jas. B. Richardson,
Henry C. Hutchins,	*Sumner Albee,*
Chas. B. Goodrich,	Hales W. Suter,
Alonzo W. Boardman,	Baxter E. Perry,
Daniel C. Linscott,	Richard H. Dana, Jr.,
Jas. M. Keith,	George S. Hale,
Charles A. Welch,	*Augustus Russ,*
Charles Theo. Russell,	Seth J. Thomas,

Horace G. Hutchins,	John H. Hardy,
Nathan Morse,	Moorfield Storey,
Lewis W. Howes,	Walbridge A. Field,
Napoleon B. Bryant,	Albert E. Pillsbury,
John D. Long,	George O. Shattuck,
Lemuel Shaw,	William G. Russell,
John C. Dodge,	*David Thaxter,*

Robert D. Smith.

[Those in italic are deceased; those in roman still living.]

BOSTON, Oct. 20, 1875.

In accordance herewith, a meeting of the above-named persons is called at the First Session Superior Court Room, on Saturday, 26th February, at 11 o'clock A. M.

Mr. Bartlett was called to preside, and a committee was appointed to submit some plans of organization. After the organization was effected, at some early period, at a meeting held by the association, I moved that a committee be appointed to procure a room where they might meet, and to begin the nucleus for a library. A judge who is now on the bench, and who was seated not far distant from me, whispered to some of the other members so that I heard it: "Let 's oppose it." It was for the time voted down, but carried at a subsequent meeting.

Up to 1881, the jurors summoned were called alphabetically, the first part of the alphabet being called the first jury, the next the second jury, the remainder, supernumeraries. In Suffolk County the names are now all put into a box and shaken up, and twelve names are drawn out which constitute a jury. Prior to that time, the twelve men composing each jury sat through the whole term; excepting, if one was sick or temporarily excused, his place was filled by a supernumerary; and when the excused juror returned he resumed his seat. Complaints were rife among the bar that the juries were apt to become clannish and get into ruts; that they had their friends, and that in a hotly contested case in the jury-room, which might end in a disagreement, the same fight would be carried on there in the next case; that the jury remaining the same body through the term, they could be more easily influenced; and a bill was drawn which was submitted to me. I made one or two suggestions, and the bill was passed by the Legislature and is in force in Suffolk County at this time. It is sometimes said that there is less unanimity in a jury so formed, but I do not think so; and recently a session was held by Mr. Justice Barker, in which fifty-five verdicts were returned in as many days without a single disagreement.

In the autumn of 1881 the following resolution was passed unanimously by the Democratic County Convention : —

"*Resolved*, that all officers connected with the administration of justice should be as far as possible removed from partisan assaults or control, and that honesty and efficiency alone should be the qualities looked for in such officers."

In 1881 was the first time that a candidate was nominated in opposition to me. I was elected by five thousand majority, again in 1886 by about seventeen hundred majority, and in 1891 I was nominated by both parties.

Since the organization of the Superior Court, the following additional appointments and promotions have been made : —

Lincoln F. Brigham, appointed in 1859, made Chief Justice in 1869, and resigned in 1890.

Chester I. Reed, appointed in 1867, resigned in 1871, and died in 1872.

Charles Devens, appointed in 1867, promoted to the Supreme Judicial Court in 1873, resigned to become Attorney General of the United States, March 12, 1877, and reappointed to the Supreme Judicial Court in 1881; he died in 1892.

Francis H. Dewey, appointed in 1869, resigned in 1881, and died in 1887.

Robert C. Pitman, appointed in 1869, and died in 1891.

Henry E. Scudder, appointed in 1869, resigned in 1872, and died in 1892.

John W. Bacon, appointed in 1871, and died in 1888.

William Allen, appointed in 1872, promoted to the Supreme Judical Court in 1881, and died in 1891.

P. Emory Aldrich, appointed in 1873.

Waldo Colburn, appointed in 1875, promoted to the Supreme Judicial Court in 1882, and died in 1885.

William S. Gardner, appointed in 1875, promoted to the Supreme Judicial Court in 1885, and died in 1888.

Hamilton B. Staples, appointed in 1881, and died in 1891.

James M. Barker, appointed in 1882, and promoted to the Supreme Judicial Court in 1891.

Caleb Blodgett, appointed in 1882.

Albert Mason, appointed in 1882, and made Chief Justice in 1890.

Charles P. Thompson, appointed in 1885, died in 1894.

Justin Dewey, appointed in 1886.

John W. Hammond, appointed in 1886.

Edgar J. Sherman, appointed in 1887.

Robert R. Bishop, appointed in 1888.

James R. Dunbar, appointed in 1888.

John Lathrop, appointed in 1888, and promoted to the Supreme Judicial Court in 1891.

Daniel W. Bond, appointed in 1890.

Henry K. Braley, appointed in 1891.

John Hopkins, appointed in 1891.

Elisha B. Maynard, appointed in 1891.

Franklin G. Fessenden, appointed in 1891.

John W. Corcoran, appointed in 1892, and resigned in 1893.

James B. Richardson, appointed in 1892.

Charles S. Lilley, appointed in 1893.

Henry N. Sheldon, appointed in 1894.

III.

RES JUDICATÆ.

RELATIVE to certain incisive remarks to jurors on account of their verdicts, and to counsel who are endeavoring to get a verdict against the evidence, I give the following instances; on a previous page I have stated how the juries were impaneled and served.

In the spring of 1881 Joseph H. Bradley, William Whitten Dwyer, and myself were instrumental in having enacted the present jury law, in which the panel is made up or completed by names drawn from a box, so that it is impossible for any one to know, until the draft is completed, how the jury is to be made up. I remember, under the old system, Mr. Henry F. Durant trying a cause which he brought on a policy of insurance. After the evidence was all in, Judge Abbott, who was presiding, asked him if he wished to go to the jury; Mr. Durant replied that he did. Judge Abbott remarked: "If you get a verdict, I shall set it aside." The case was submitted to the jury and they returned a verdict for Mr. Durant.

After I had taken the verdict, Judge Abbott

said in the presence of both counsel and jury, "I will hear you, Mr. Durant, at four o'clock, to show cause why the verdict should not be set aside." He was heard, and Judge Abbott set aside the verdict, but allowed Mr. Durant to put in an amendment to recover back the premiums which he had paid.

In a case which was tried before Judge Aldrich, — it was that of John L. Byrne, a citizen of New Orleans, who sought to recover damages of the Massasoit Packing Company, a Massachusetts corporation, for the alleged breach in not delivering to the plaintiff three thousand barrels of mackerel, — the defendant contended that the agent who made the contract with the plaintiff exceeded his authority.

In the course of the argument, counsel for the defendants appealed to the jury to find for them because the plaintiff was a Southerner, and contended that to give him a verdict would be sending Northern capital to the South.

Judge Aldrich, in closing his charge to the jury, said: "I make a single observation, gentlemen, upon this case. I 'm glad to know that here in Massachusetts justice is not determined by degrees of longitude or latitude. You are entire strangers to me, but I know that you are Massachusetts men, and a Boston jury; and

from the time when a Boston jury acquitted British soldiers for shooting Boston citizens, because they were not held personally responsible, down to the present day, I think that Boston juries have continued to render verdicts according to the law and the evidence, without regard to the location of the plaintiff or the defendant. Massachusetts never repudiates. She pays the last dollar in gold, if gold be worth 300 to 1. Gentlemen, in this case I am sure you will render a verdict as if the controversy was between A. and B., without regard to places of habitation, according to the law and the evidence given you, and upon no other consideration." The jury returned a verdict in favor of the plaintiff in the sum of $7813.75.

In an action of slander brought by G——d, he cited some ancient law to show that the greater the truth the greater the libel, as it was in days long gone by. Mr. Justice A——d then gave the law as it is, that the truth might be given in evidence, and proceeded at some length. At the conclusion Mr. G——d agreed that the law was as his honor had so lucidly stated it, when Judge A——d replied, "The Court is happy to be *confirmed* in its opinion of the law by a gentleman of your ability."

The plaintiff had amended his declaration

several times and then drawn an entire new declaration. He had much difficulty in putting in his evidence under his new declaration, and there was more amending. Judge: "You must amend properly, or I shall continue this action." Defendant's counsel, Clark: "We do not want a continuance, and plaintiff may amend as much as he chooses." Judge: "I shall continue, or non-suit him, or something else." Clark: "Your honor, I should rather have a non-suit." Judge: "I can't have an amendment every time a new witness is put on." Clark: "May I ask your honor if this shall be the last amendment?" Judge: "Yes, sir, *the last.* Gentlemen, take a recess till two P. M."

Thomas P. Briggs, of Cambridge, addressed two letters to Judge Aldrich, one signed and one anonymous, relative to the celebrated Downes case, and Mr. Briggs was brought before the judge. He admitted writing the letters, and was asked if he had any explanation to make, for having written to the judge in that way. Mr. Briggs said it was not to influence the Court in any way contrary to law; that he was a paid writer for some newspapers, and interested in public affairs. Upon being asked by the judge if he had no idea that such proceeding was highly improper, he said he had

not at the time of writing; he wanted to be a peaceable and law-abiding citizen, but was ignorant of the illegality of his proceeding as well as of the law.

The judge said that it was plain he was ignorant of the law, and what belonged to a law-abiding citizen.

After considerable evading to give a direct answer to the judge's questions, he finally said that he made a full and unqualified apology. Judge Aldrich said: "It is the first time that I ever had occasion to call a party before me, to be treated for the offense known as contempt of Court, and it is a matter wholly within the discretion of the Court; and although I regard this as a case so grossly offensive, I thought it was a public duty which I owed and which I could not avoid discharging, to bring you publicly before the Court, and publicly expose this transaction; but upon your present statement, and upon the apology which you have made, and the confession that you were wrong, I am not disposed to proceed with any severity; I shall not, therefore, impose any penalty; although, as I say, I have regarded it as a very gross proceeding on your part. It is an attempt to influence the Court, although it has not in the slightest degree affected my judgment. Notwithstanding I regard it in that light, yet,

in view of what you have now said, I shall order you to be discharged, and shall impose no fine or any other penalty upon you." Mr. Briggs attempted to say something more, and addressed the judge as Mr. Aldrich. "Don't call me Mr. Aldrich; you need not say anything more. It will not be safe for you to venture to repeat the offense."

In a certain case, Mr. Ely said: "Do you know what was being paid?" Witness: "I don't know as I do." Judge Aldrich: "Do you know or do you not know?" Witness hesitates some time. Judge: "You are not *obliged* to know *anything;* the question is, whether you *do.*"

Mr. S., who had been a Justice of the Supreme Judicial Court, was defending a cause brought against the Boston and Albany Railroad, and at the close of the evidence asked the Court (Judge Aldrich) to take the case from the jury. Judge Aldrich took up one of the Massachusetts Reports, read the facts, and said: "In that case the Supreme Court ruled that the case should not be taken from the jury." S.: "I think the facts in this case differ." Judge: "No, sir, this is a case precisely similar." S.: "That may have been the law in that case." Judge: "I think it should be the law here, as

the opinion in that case was given by a distinguished judge named S."

One J. F., a painter, who was arguing his own cause, mentioned something that was not in the evidence. The Court (Judge Aldrich) said that he could not argue that, as it was not in the evidence. Mr. F.: "It *ought* to have been." Judge: "I can't deal with what *ought* to have been; only with what *has* been."

A Mr. —— was very slow in trying a case, consuming three or four hours when he might have tried it in two. Judge Aldrich remarked: "Mr. ——, we have other cases to try this spring."

Upon discharging a jury at the end of a term, Judge Aldrich, after complimenting them upon their punctuality and unanimity, said, "I have heard it flippantly said by persons and stated in magazines that the trial by jury is worn out, but I say that jury trial is one of the foundations of self-government, and that when a community has not proper men to put in a jury-box their rights and respect are gone. You can get no more wisdom out of a jury-box than you put in, and if the city government will see to it that proper names are put in there, our rights and liberties will be preserved."

Judge Aldrich in charging a jury read from one of the Massachusetts Reports. Mr. Dudley

said: "I except to what your honor has said." Judge Aldrich: "You can if you like, but it is the opinion of the Supreme Judicial Court."

T. B. King offered evidence of his client to show that he had sold from the same collection other shoes which proved excellent, and no fault was found with them. The opposing counsel objected. King, to the Court: "If my client sells beer out of the same vat to another person, can't I show it to be good?" Judge Aldrich: "According to what I have heard at the other end of this Court House [criminal session] one can't tell whether it is beer or not; I think we had better confine ourselves to the shoe trade; your beer illustration is quite unfortunate." King: "Then I don't know as I ought to ask witness anything about this shoe." Judge: "Then I would n't."

Judge Aldrich signified how he *might* rule. T.: "I wish to note an exception." Judge: "Had n't you better wait until the ruling is made? We are not trying this case in order to get a bill of exceptions; be a little more deliberate." T.: "I have had so much trouble in getting a bill of exceptions correct, that I wish to be in season to preserve my rights." Judge: "You never had any trouble with me, sir." T.: "No, sir; I never tendered a bill of exceptions to your honor, nor had any trouble

with your honor." Judge: "And I trust you never will."

Seth J. Thomas, Esq., brought a suit against an administratrix of a deceased person for the services of a nurse, during the sickness. The answer was a general denial. Besides other evidence, some letters of the deceased were introduced in which he stated that "the nurse would receive her reward." The defendant's counsel said he wished to explain the letters as having reference to another world. Judge: "I don't think you can show that under a general denial; you should have set it up specially."

As my term of office expired with the abolishing of the Superior Court of the county of Suffolk, I asked Chief Justice Allen if I should not hand in a petition with recommendations to be appointed assistant clerk of "The Superior Court;" he replied, "Would it not be better, Mr. Willard, to be appointed without a petition?"

At that time the bar were accustomed to mark their cases "*not before*" a certain day, although there was then no statute allowing it as there is now.

One day before the term commenced, John S. Holmes and Munro Stevens brought me in a

paper agreeing to mark a certain case over. I told them that the Chief Justice had given orders not to mark any more over without a motion to the Court. "You can file the paper," said Stevens. I said, "No; I can't do that." And so the case came up in its order. When I called the case and said: "Mr. Stevens for plaintiff, and Mr. Holmes for defense," the Chief Justice asked them if they were ready. "I 'm ready, your honor," said Holmes. Stevens began walking backwards and forwards across the court room, saying, "I 'm *not* ready; the fact is, we took a paper in to Mr. Willard agreeing to mark this case over; he not only would not mark it over, but would not file the paper, and said he had received orders to change the practice. I am surprised; I think the Court should be as constant in their rules of practice as they are in their rules of law."

The Chief Justice leaned back, and looked over his glasses at him, and said: "What did you say, sir?" Stevens said something quite different. "Yes, sir; but what did you say about the Court being constant in its rules of practice?" Stevens, being caught, had to repeat it. There was a pause of a minute. The bar and the audience waited to see what came next. "Well, sir," said the Chief Justice, "the Court will take your admonition this time;

but next time, won't you be kind enough to give the Court notice; it might be convenient. Proceed with the case."

Stevens opened his case, and it appeared that a certain trader had failed, and sold out his accounts to this plaintiff for fifty cents on the dollar. The Chief Justice asked to see the papers, and, after having looked them over, put them in his pocket, and said: "It is a disreputable action, and I shan't try it; call the next case, Mr. Clerk." About a year after, he nonsuited the plaintiff.

John C. Park was once examining a witness on the *voir dire*, to see if he was competent to testify; after the witness had given his idea of falsehood and punishment, Mr. Park said: "I'll not object any further; he seems to know as much as any of us about it." "Speak for yourself, Mr. Park," replied Judge Allen.

Munro Stevens, after citing some law to Judge Allen, proceeded to give some opinions of his own. Said the judge, "Stop, sir, that is not authority; that is your judgment, for which I have great respect, but it is not authority."

"What is this name," Judge Allen once asked me, looking at the signature of Mr. T. "It is written so much better than the writing I am used to, I don't read it readily." Any one

who has seen Mr. T.'s writing will appreciate this.

There was at one time a gentleman practicing at our bar by the name of John C. A., a graduate of Harvard and a fine scholar.

He came to the Suffolk bar with brilliant prospects, acquired a good practice, was successful at the forum, was appointed a professor at Harvard, and afterwards went to New York. While there he became very unfortunate in his investments.

A friend of mine, another lawyer, who had left Boston and gone to New York, told me that he was walking one day on Broadway, when a shabby-looking person met him and said, "Let me have a dollar, I am starving."

My friend said, "Who are you?"

"Why, don't you know me? I'm John C. A."

"You John C. A.? It can't be."

"Yes, I am."

My friend said, "I shall not give you any money, but come with me." He took him to an eating-house, gave the proprietor a dollar, and told him to feed the man until it was gone.

Afterward A. frequented the block where my friend and other lawyers were, and at various times obtained small sums. My friend said he

was determined to follow him and see where he went. He did so, and one afternoon followed him all over the city, until after nine o'clock in the evening, when A. went into the park, and there went to sleep. About a week after, a man supposed to be, and finally identified as, John C. A., was found on a wharf, frozen to death.

When Chief Justice Charles Allen was judge, the law as to the juries was different from what it is now. They were known as the first and second jury, and were substantially the same men through the entire term. At the end of a term at which the Chief Justice had presided, he thanked the first jury for their punctuality, attendance, attention, and the generally satisfactory verdicts which they had rendered. When he had finished, he said to the other jury, "Gentlemen, I wish I could say the same to you; I think you could have done better."

Paul Willard to witness: "Do you call a horse that goes lame, all right?" Witness: "I don't understand that." Willard repeated the question, and got the same answer. Judge Ames, presiding then, said: "Do you call a horse *all right* that goes *lame?*" Witness: "Oh, no, sir."

George A. Torrey was defending a suit for "breach of promise of marriage." The letters of defendant (the man) were written on telegraph blanks, and when plaintiff's counsel began to read defendant's letters to his client, he commenced, "Dear Laura." Mr. Torrey objected, and contended that the whole of the letters must be read. Judge Bacon so ruled, when plaintiff's counsel read as follows:—

New England Telephone and Telegraph Company. Telephonic Message. The following message has been transmitted in whole or part by telephone, subject to conditions limiting the liabilities for errors, delays, and mistakes, which have been agreed to by the sender, and under which damages can in no case be recovered exceeding the tolls paid hereon, nor unless claimed in writing, within thirty days from sending the message.

The companies over whose lines it has been sent do not guarantee its authenticity.

T

Number	Sent by	Time	Received by	Check

Dated,..... Received at.....

To..... 188.....

My Darling Laura, etc.

Read the Notice at the Top.

Hon. George T. Bigelow, appointed Judge of Court of Common Pleas in 1846, liked to have quiet in the court room. A lawyer, Mr. A., somewhat of a theatrical and musical critic, who wrote for the papers, and withal something of a Bohemian, becoming once a little set up, came into the court in this condition, and, sitting at the table, talked loudly with another lawyer. Judge Bigelow rapped on his desk. Mr. A. paused, but soon began again, when Judge Bigelow said: "Mr. A., the Court notices you, sir." Mr. A., rising, and steadying himself by the rail: "Yes, may it please your honor, and Mr. A. notices the Court."

The late Chief Justice Bigelow told me of this mistake he made while traveling West. He always had a restless manner. On his arrival at a hotel in St. Louis, he saw walking around the office or bar-room a well-dressed man whom he took to be the landlord. He said to him, "I should like to be shown to my room." "Don't be in a hurry," replied the person addressed; "sit down and rest yourself a few moments." After a few moments the judge grew impatient, and said, "I must be shown to my room, sir, forthwith." "Oh, be patient," said the other; "it will all be ready in due season." In a few moments another person appeared. Taking him for the clerk, and thinking that perhaps he

might expedite matters, he addressed him saying: "I have been waiting here some time to be shown to my room according to your landlord's suggestion." "Why, I am the landlord," said the newcomer. The judge in a low voice said: "Who is this other gentleman?" "Why, that's General Meade; let me introduce you to him." Upon which he was introduced and apologized to the general, who said, "It is a matter of no consequence; I saw that you were impatient, and I thought you had better have time to cool off."

At the adjournment of one of the terms of the Court of Common Pleas, one of the juries presented Judge Henry W. Bishop with a beautiful gold-headed cane. He was very much affected; tears came to his eyes, and he said, "Gentlemen, all I can say is, that I bid each of you an affectionate farewell," and he shook hands with every juror. After they were gone he said to me, "Willard, I would rather have that cane than an inheritance of ten thousand a year."

During Judge Bishop's term of office a case was on trial in which the plaintiff sought to recover damages for the destruction of a portion of his house by the explosion of a gas-pipe. A watchman testified that he was in this house a few minutes before the explosion, and that

when he went out to get shaved, it occurred. Judge Bishop: "I call that a pretty close shave."

The volume of Public Statutes having been frequently taken from the judge's desk, Judge Lord ordered me to get it chained to the desk, which was done. Judge Rockwell came in with Chief Justice Brigham one day when the court was not in session, and said, "I tell you, Mr. Chief Justice, the statutes say so and so." Judge Rockwell picked up the statutes, but the chain brought him up before he could get away from the desk. "Mr. Chief Justice," said he, "what is that for?" The Chief Justice replied: "Lord ordered that to be done, so that when you come here to preside, you can't give it to the jury." Judge Rockwell had once done so, to which the counsel excepted and the exceptions were sustained.

The first time I was ever in court, and this was in what was then called the Justices' Court, in Boston, a man was brought in who was complained of for abusing his horse. There was no S. P. C. A. then. It was proved that he hit his horse on the head with the butt end of his whip, causing the blood to flow from his mouth and other places, and the judge called upon him for his defense. He arose and said:

"If I had time I could prove I am as good a teamster as there is in Boston, and also your honor has heard some evidence that the horse was contrary." The judge leaned his head on his hand for a moment, then rose, saying: "Prisoner, there is no mistake but what you flogged that horse severely, but the horse ought to *drawed*. Discharge him." I thought if that was law, I would like to stay and hear a little more of it, or at all events get some more opinions from this learned judge.

Another man was complained of for stealing a buffalo skin. It was proved that he took it, and wrapping himself up in it went into a shed and lay down to sleep. "Prisoner," said the judge, "why did you take that skin?" Prisoner (shivering): "I was very cold, sir." "Should n't you have taken it if you had not been cold?" "No–o, n–o, no, your honor." "Discharge him," said the judge; "the intent takes away the crime."

During that summer, to wit, the summer of 1846, I became acquainted with a man who took daguerreotypes. They were then just being introduced, and as it was a sort of experiment the artists were willing to take pictures of noted persons to hang outside of their doors as a sample of their work.

This man told me that this same judge walked

into his room one day and said, "Mr. ——, I am Mr. Justice ——, of the Justices' Court. I understand you take pictures of distinguished men to exhibit to the public." "Yes, sir; be kind enough to take a chair. How would you like to be taken?" "I should like to be taken as in my court room." "Assume your attitude, sir, and tell me when you are ready." He placed himself to his satisfaction, and looking very stern said, pointing his finger in the direction of the supposed criminal, "Prisoner, where— Take me *now*, sir." He was taken, and the artist then said, "How otherwise would you like to be taken?" "I should like to be taken in the bosom of my family; John, bring me the Bible." The artist gave him a Bible. He opened it and said: "We will now read the 92d Psalm. Take me *now*, sir." He was taken, and I afterwards saw both pictures hanging at the entrance door.

I lost no opportunity, when I had a little leisure, to go into the court of that judge and hear trials and opinions. On one occasion there was a dispute as to the ownership of a dog. The evidence was so conflicting that it puzzled the judge extremely. He leaned his head on the desk as usual for a few moments to cogitate. Then he said: "Mr. Knapp [the clerk], you hold the dog; plaintiff, you go over in that cor-

ner; defendant, you go over in the other corner; when I say the word, each of you call the dog." The word was given, and both parties called the dog. Mr. Knapp loosened his hold, but the dog, instead of going to either of the supposed owners, made a bee-line for the door. "Mr. Clerk," said the judge, "enter that case, neither party." To the uninitiated it may be explained that "neither party" means that neither party prevails, and each goes out of court as he came in.

A witness was giving his testimony in a very low voice. Mr. Ranney said, "Speak up, sir; don't be so modest." Judge Devens: "Mr. Ranney, we should be modest in all things."

Judge Huntington said he should receive no petition from any gentleman to be admitted to the bar, unless he stated that he was going to practice in this Commonwealth; that it had become quite a fashion to get a certificate of admission from a Massachusetts court and then go West and practice, imposing duties on the court which they ought not to.

Mr. B——w was once trying a case before Judge Huntington. The judge stepped out for a few moments, and Mr. B——w, in his argument, told the jury that the judge was unfriendly to him. The judge heard of it before the case was finished, and told Mr. B——w if

he had heard him he should have stopped him; that as he had made public remarks it required public apology; that he (Judge Huntington) had given and should give his judgments to the best of his ability. This brought tears to Mr. B——w's eyes, and he made his apology.

In the Superior Court of the County of Suffolk, when some witnesses were called to be sworn, Judge J. G. Abbott, who was presiding, was called to the other end of the bench to speak with a person. There were some Jews among the witnesses, and the opposing counsel wished them sworn in Jewish form. This was before the act allowing all witnesses to be sworn alike, unless they request to be sworn in a different manner. I told the Jews to get their hats and put them on. When I had partially administered the oath, Judge Abbott returned to his seat, and said: "Let the witnesses remove their hats." I said: "This is the Jewish form of administering the oath." "Oh, proceed, then," said the judge. One of the Jewish witnesses gave his testimony, and while he was being cross-examined the judge said to me, "Did you notice what I did just now?" I said, "No, sir." He said, "I asked that Jew what his christened name was." I told this to Judge Lord on a similar occasion, and he said

to me, "You see I did n't do it. I asked him what his *first* name was."

At one impaneling of the juries about half of them came forward with the excuse that they had some disease. The judge was much displeased, and in stentorian tones said: "Mr. Clerk, were these jurors drawn from the hospitals? Issue a new venire, and have a lot of healthy men drawn."

A case came up one afternoon before Judge Lord in which John H. Butler was for the plaintiff, and P. H. Hutchinson for the defendant. Mr. Butler challenged two jurors, according to the statutes. There were only two supernumerary jurors left in the court room. I called them and put them on to the panel, one of them being Butler's brother. Butler got a verdict, and Hutchinson moved for a new trial. Among other things he said he saw telegraphing going on between counsel and a juror. "I did n't know he was his brother until after the verdict." Judge: "You 've answered yourself. Now you said you saw telegraphing going on: suppose he was his brother, is there anything illegal in that?" Hutchinson: "Perhaps not, but it 's indecent." Judge: "Well, if I should set aside verdicts because the counsel were indecent, I should set aside a good many."

Judge Lord told me this: When he was at ———, hearing a cause, Judge C. was counsel for the defense. It was the last cause to be tried, and the jury were out some time, so that the judge called them in and gave them additional instructions. The jury agreed, and Judge C. took exceptions to the charge of Judge Lord. When the exceptions came on to be heard before the Supreme Court, Judge C. read his bill of exceptions, and the Chief Justice said: "Mr. C., why is n't this good law?" Judge C.: "Perhaps it is, your honors, but what I except to was the *manner* of that judge; for no pen can describe, and no Garrick can portray, the force and energy with which he *hurled* that to the jury." To which the Court replied: "We are afraid that no exception lies to that."

The foreman of a jury told Judge Lord that one of the jury was drunk, when the judge said in a stentorian voice, "Mr. B., stand up." Mr. B. rose, and grasped the rail in front of him to steady himself. Judge: "Are you laboring under a physical disability?" Juror (reeling): "Not if I knows myself." Judge: "It has been intimated to me that you have been indulging too freely in spirituous liquors." Juror: "I guess not." Judge: "Do you think you can try a case intelligently?" Juror: "I

guess I could under your honor's instructions in a liquor case." Judge: "Gentlemen of the jury, is Mr. B. intoxicated?" Jurors all: "Yes, sir." Judge: "Mr. B., take yourself off the panel, and be here to-morrow."

In a suit of a lawyer for services, J. W. R——s was very pertinacious in trying to get in certain evidence. Judge Lord said: "You want to put in some evidence that by and by the plaintiff *may* bring a suit, and that you 'll not be obliged to pay when he *does* bring it." In the same case, J. W. R——s was endeavoring to prove that the plaintiff ought not to have certain fees because he put a certain number of questions that were useless. Judge Lord: "I am afraid that few lawyers would get their fees if they were prohibited from putting useless questions."

In the same case Newton asked the defendant what his understanding of the contract was. Mr. Wakefield objected. "How is that competent?" asked Judge Lord. Newton: "The parties talked over the contract and then signed it, so that the contract was construed differently." Judge: "Is it competent?" Newton: "I think so." Judge: "As a lawyer?" Newton, coloring: "Well, as a matter of justice." Judge: "We are trying law cases here, and law is presumed to be justice."

The same judge remarked, when hearing a case one day in which both parties made requests for various rulings, from which it was perfectly evident that one or the other meant to take the case to the highest court in any event, "I will rule so and so [stating it], and you can take it up to that tribunal which makes *no* mistakes."

Mr. —— met him one day, and said: "I see, Judge Lord, that the Supreme Court has overruled you in the case of —— *vs.* ——, but you need feel no concern about your reputation." "No," he replied, "I don't; I'm only concerned about the reputation of the Supreme Court."

Judge Lord was once holding the Criminal Court, and at recess he came into the lobby, where I happened to be, and said, "Willard, what do you think of this? You know little D——? His client was indicted for an assault with intent to commit a rape. I said to him, 'If your client will plead guilty to an assault, I will nol. pros. the other, as I think he is non compos.' Little D. answered, 'I don't know about his being non compos, your honor, but perhaps he has not the intellect of your honor or myself.'"

During the arguments of counsel one day, Judge Lord pointed out to me a person in the

audience, and said, "He was one of a lot who came into my room to haze me while I was in College. I had thought of it beforehand, and when they came in, I gave them wine with ipecac in it, which made them all sick." I told him it reminded me of a certain rich merchant of Boston who missed his wine from the cellar, and thereupon put some ipecac into some of the bottles. Shortly after, one of his servants became very sick, and after recovering brought an action against the merchant, who settled it by paying one thousand dollars, upon the advice of distinguished counsel. Judge: "Why should n't he put ipecac into his own wine?" "Do you think," I said, "that you have a right to put what you choose into your own wine, even if you put it under lock and key?" Judge: "Why not?" I replied: "Don't you think if you were to put arsenic into your own wine and lock it up and it should be stolen, and a number of persons killed in consequence, that if it could be proved that you put it in you might be indicted for murder?" Judge: "I should like to think of that."

The following conversation took place between Mr. B. and Judge Lord: —

Mr. B. "And as to your honor's power to cut and slash this judgment just as you choose." Judge: "Is n't this the law?" (illustrating.)

Mr. B.: "That was a vague and floating idea in the minds of some judges." Judge (stating a case). Mr. B.: "Your honor has stated it correctly." Judge: "Is n't it so and so?" (again illustrating.) Mr. B.: "Oh no, I 'll show you you are mistaken in that too."

At the conclusion of it I said to the judge that I should not think he would like that style of address. Judge: "It rather amuses me than otherwise."

In 1867 the Legislature inquired as to the expediency of reducing the number of judges in the Superior Court. I mentioned it to Judge Lord, and asked him if he thought it would pass. "No," said he, "there are too many of them up there that want to be judges, to have that go."

Mr. Pearson got a client of Abiel Abbott's defaulted for not answering interrogatories. Abbott came before Judge Lord to have the default taken off, and said: "My client has filed an affidavit of defense, and an answer, and I think it hard that he should be defaulted for not answering interrogatories when he does not know what they are. He is out of the State, and I have endeavored to find him for three weeks." Pearson: "Mr. Abbott does not know where his client is and never will. I think the default ought to stand." Judge: "Mr.

Abbott, have you made search for your client?" "Yes, sir, for three weeks." Judge: "Well, if you can't find him, let the plaintiff search for him on the execution, and if he catches him he will be in here for a review, and then we can hear him."

John G. Locke was one of the alien commissioners. He was by some called "Shylock." In a suit which he had brought, a party was put upon the stand to testify who did not understand English. Mr. Locke produced an interpreter, to whom the opposite counsel (Mr. Paine) objected, on the ground that he was friendly to the plaintiff. Mr. Paine then produced one to whom Locke objected, on the ground that he was a relative of the defendant. Judge Lord: "Swear them both, and they will correct each other."

Mr. E. H. Abbott was arguing a case before Judge Lord, as to a return of an officer upon an execution. Judge: "I think this levy is wrong." Abbott: "It was made, your honor, by a deputy sheriff of twenty years' experience, who had always done so." Judge: "I have practiced law for twenty years, but I make a great many mistakes."

John McClellan was summoned as a juror, and when called offered as an excuse that he was a member of the Ancient and Honorable

Artillery, and produced his certificate of membership (that being a statutory excuse from serving on the jury). Judge Lord: "Did you ever turn out?" "Yes, sir," said McClellan. Judge: "When did you do duty last?" McClellan: "At Faneuil Hall last 17th of June, with a knife and fork." Judge: "You can go, sir."

Robert C. Apthorp was also summoned as juror. He said he was a member of the bar. "Did you ever practice?" asked Judge Lord. "When I had a chance, sir." While the judge was thinking of it, Mr. Apthorp said: "I am over sixty-five years of age." "Why did n't you say that first?" said the judge; "you can go."

A Mr. Converse was summoned as a juror. He said: "Judge, I think I ought to be excused. I have business here and there, am overwhelmed with it, and my physician says I ought to have a change." "Well, *this* will be a change, and will do you good."

Another able-looking man, I forget his name, when summoned as a juror, said: "Judge, if you keep me here as juror you will stop five hundred men from work." "What is your business?" "I am a contractor for driving piles, and am driving them in different parts of the city." "Well, sir," said Judge Lord, "suppose you had a pile-driving case against

you in this court, and I should summon in twelve loafers to try your case, how should you like it?" He took his seat.

A certain lawyer was cross-examining a witness at a tedious length, when Judge Lord remarked, "I think you have gone far enough." Said the lawyer, "I should like to go a little farther and show"— "Oh, well," said the judge, "go on." The judge walked forward and back with his hands behind him, patiently, for some minutes, and at last exclaimed, "There, you can stop, sir; you 've hurt your case more than the other side has."

Counsel was once very persistently following up a long and tiresome cross-examination, when the judge interfered, and said much of it was immaterial. The counsel replied that it was his right. "Oh, yes," said Judge Lord, "it *is* your right, but if every one insisted upon having his rights, what an unhappy world this would be."

S. T., who was quite deaf, was trying a case before Judge Lord. Judge (illustrating): "Suppose you had put your money under a stone?" T. (muttering): "I don't know what you do in Salem, but in Boston we don't put money under a stone." Judge (in a stentorian voice): "If your infirmity is so great that you cannot hear, you might at least have the grace to be civil."

T. (softly, with his hand to his ear): "What did your honor observe?"

Mr. John C. Park, in one case, said he thought on certain evidence that it was a mixed question of law and fact. Judge Lord: "I thought so too, until I was overruled by the Supreme Court; and though I think they are inclined to modify their ruling, the modification must come from that court and not from this."

Judge Lord was once hearing the excuses of jurymen, when the following occurred: Juryman: "If I am kept here my employer will discharge me." Judge: "If you have an employer who threatens to discharge you because you comply with the law, you ought to be thankful you are rid of such an employer. Send him here, and let us see if he will say that *to me*."

A. R. Brown called a witness to prove a paper to which he had subscribed his name as a witness. Witness: "I can't tell who signed it." Judge Lord: "Your paper was proved a little while ago, and now it is not proved." Brown: "Well, I guess I'll get along." Judge: "Yes, time will carry us all along."

I said once to Judge Lord: "It seems to me that the declaration in this case is very unskillfully drawn. I can see no consideration stated for the alleged promise of conveyance of the land, by the defendant to plaintiff." Judge:

"Probably the want of skill in that case is the highest skill." "That is to say, if the declaration was drawn by a skillful pleader, he would have had no case?" "Yes."

Judge Lord, while holding the Equity Court, became faint, so that he was obliged to leave the room. Sitting with his feet at the fire, having partially recovered, he looked around as was his wont, and, raising himself by his hands on the arm-chair, said: "I should like to know what all this means" (rising still higher), "whether I am Mr. Superfluous Lags?" (reflecting aloud), "Superfluous lags the veteran on the stage." (Rising to his feet and extending his hand.) "If I had more money, I would quit this stage and travel." No words can portray his manner. Nothing could, except an intimate acquaintance with him.

In the somewhat celebrated libel case of Dalton *vs.* Dalton, before Judge M. and a jury in the Supreme Court, Mr. G., the father of Dalton's wife, was in the court room, and I said to him, "Mr. G., will there be a divorce here?" "Oh, no," he said, "there 's been condiment here, and as for Nelly (Mrs. Dalton), she 's been the least licentious of all my daughters." During this trial Mrs. Dalton fainted, and the court adjourned to the next day. Mr. R. H.

Dana, who was counsel for Dalton, had one of his strongest points ruled out by Judge M. in this wise. Mr. Dana produced a letter which he said was a confession of Mrs. Dalton. There were some erasures in the letter. Mr. Dana asked a witness, "Did you see Mrs. D. write it?" "Yes, sir." "Did you give it to Dalton?" "Yes, sir." "Did you see Mrs. Dalton make the erasures?" "No, sir; but they were there when I gave it to Dalton." The witness then left the stand, and Mr. Dana offered to put the letter into the case. Mr. Choate objected, because, he said, in the way in which it was left, the inference was that the witness made the erasures, and he objected to have the witness recalled to say whether he made them or not. Judge M. sustained Mr. Choate, to the surprise of Mr. Dana, and, as Mr. Dana afterwards said to me, "to my consternation." On mentioning this to an ex-judge he said, "I am not surprised; I never would try a case before him, he is so —— dishonest." A gentleman said to me, if a stranger had stepped into the court room a few moments he would have thought that it was the counsel for respondent arguing his case from the bench.

Chief Justice Charles Allen told me this: A person once called at the office of Mr. Merrick in Worcester and asked him what the law was

in a certain case. This was before Judge Merrick came to the bench. Mr. Merrick told him. The client said: "Mr. Allen says it is so and so," which was quite different. Mr. Merrick said: "Come in again in an hour and I 'll look up the law." When the client returned, Merrick said: "I 've looked up all the law on this subject, and I don't see any reason to change my opinion, but if Charles Allen says" — "Oh no," exclaimed the client, "not Charles Allen, — Sam Allen." "D—— Sam Allen," said Merrick, and threw the book across the floor.

Mr. S., having argued his case to the jury, said that the law would be given them by the Court, and that the Court would rule so and so (stating it). When he had finished, Judge Morton said: "The Court will not rule as you have stated, Mr. S., but more favorably, as I think you have misapprehended the law against yourself."

A person carried off a very valuable dog belonging to Mr. ——, a client of Mr. Dabney. Mr. Dabney could not get at the dog to replevy him, so he brought a bill in equity in the Supreme Judicial Court to obtain him. After Mr. Dabney had read his bill and stated his case, Chief Justice Morton asked him if he did not think it was beneath the dignity of the Supreme

Judicial Court, and whether he thought it proper for them to hear a bill in equity about a dog. Mr. Dabney: "Yes, your honor, I do think it is proper in this case, for it is a very large dog." Judge: "Very well, proceed." And Mr. Dabney got his dog.

Judge Morton tried a cause in which a former member of the bar was defendant. I will call him Jones. It was a suit on a bond which Jones had drawn, and he was one of the sureties on it. He came into court and defended his own bond on the ground that the condition was not valid. Judge Morton told him that he (Jones) almost merited the contempt of the Court; for although he might not be compelled by law to pay it, there was no reason why he should not; and after some consideration the Court rendered judgment against him.

A juror, wishing to get excused before Judge Nash, brought in a certificate from a physician that the juror had a bilious diarrhœa, and bilious was spelled "billious." Judge Nash said: "Bilious with a double l, — many men are troubled with that; let him go a fortnight."

Judge Nash, after examining the certificate of character of an applicant for admission to the bar, said: "Let him sign the roll." In doing so, the young man was so agitated that he

dropped a penful of ink upon the record. Judge Nash called up Mr. Gooch, in whose office the young man had been a student, and said: "Mr. Gooch, you have certified that this young man was of good character, yet there is a very obvious blot upon his name."

Sidney Willard was occupying a chair in the court room, and, having left it for a moment, William E. Parmenter, now Chief Justice of the Municipal Court, came in and took the seat. Willard returned in a few minutes, and said to Parmenter: "*Cede loco.*" Parmenter, being an old-fashioned Democrat, who was called a loco-foco, replied: "This is too bad; I thought I came in here looking quite respectable, and here I am called a seedy loco."

An anecdote was told me by my predecessor in office, about Chief Justice Parsons. One day he was holding court, and his nephew was one of the jurors. The court took a regular intermission from one to two o'clock, and when the Court came in, the nephew did not appear for half an hour. Then he came in quite breathless. Judge Parsons said to him: "Mr. Juror, what is your excuse for keeping the Court and officers and twenty-three jurors waiting an hour?" The juror said, "May it please

your honor, after dinner I sat down and accidentally fell asleep, but as soon as I woke I came with all the speed I could." "Mr. Clerk," said the Chief Justice, "fine him ten dollars." "I did not *dream* of that," said the juror. "You may remit the fine," said the Chief Justice.

The Honorable Robert C. Pitman was an excellent judge. He was fair, impartial, and just, and if at first he took a different view, he had no such pride of opinion that he could not be convinced, and was ready to yield. No man had better command of the King's English, and no man was more choice and fluent in the use of it. His charges to the jury were models of graceful diction, clear illustrations, and pure unadulterated English. He was square and honest in his allowance of exceptions to his rulings, and I never heard it said that he dodged in the least. His one great foible in the course of trials was that of uttering his thoughts aloud, which were often exceedingly cutting, and like a bucket of cold water over a neophyte, not to mention those sinners more hardened. A messenger came in one morning to Judge Pitman and said, "Can your honor see Mr. B. L.?" The judge replied, "Yes; my eyesight is good; I think I can see him very well."

At a term in 1883, we had five disagreements of juries in a fortnight, more than I ever knew in a whole term of three months. Judge Pitman addressed the jurors, and said to them: "Gentlemen, if there are any men among you who think they are unfitted by temperament or otherwise to agree upon anything, I will hear application for excuse, for you stop the course of public business, and you are the most impracticable jurors I ever saw."

There was a major in the army during the war of the Rebellion, who was also commander of a battery commonly known as *light artillery.* After the war was over he became a lawyer. In an equity case before Judge Pitman, the judge asked the parties whom they were to have for a master in the case. One of the parties suggested the major. Judge: "I should think, gentlemen, that there should be a master in this case of larger *calibre.*"

A witness, speaking of a derrick, said, "She was down and broken up." Judge Pitman: "Who was She?" Witness: "The derrick, sir; we allus calls her She." Judge Pitman: "Very curious; it seems to me to be a masculine article."

Judge Pitman was asked to hear some motions one afternoon after four o'clock, and when the jury had been dismissed; he said, "No, I

am quite content with my day's work; I don't care to hear motions by way of dessert."

He was once hearing a case of conversion of goods in a liquor store, in which both parties were of foreign birth. Counsel: "What were the profits per day?" Plaintiff: "About seven dollars." Counsel: "What were the receipts?" Judge Pitman: "Probably there was n't much difference between the receipts and the profits."

Mr. M. F. Dickinson, defending a case of Brown against the West End Railroad, said to the jury: "Now, gentlemen, it is customary to put what is called an *ad damnum* into the writ; Mr. Stearns brought this writ and put his *ad damnum* at three thousand dollars, and it is generally supposed the *ad damnum* is double the amount which it is expected the plaintiff will recover." "Oh, no," said Stillman B. Allen. "Well, then," said Dickinson, "three times the amount. But," he continued, "when brother Allen got into this case, he got this amendment, [showing it to the jury,] increasing the *ad damnum* to six thousand dollars." When the case was finished, it was somewhat late in the afternoon, and Mr. Dickinson, wishing to close the arguments that day, said he would talk forty minutes and give Mr. Allen one hour; but Mr. Allen claimed to be tired, and wanted to come in the next day. Judge Pit-

man: "No, sir; you have chosen to be junior and senior, and with your great ability, and Mr. Dickinson only forty minutes, you ought to be satisfied with an hour." Mr. Allen: "After such a compliment, I have nothing to say." Judge: "I don't think I am entitled to any thanks."

In addressing a jury as to their general duties, Judge Pitman once told them: "Gentlemen, there may be large cases, and there may be small; some five dollars, and some five thousand dollars, and the law does not presume that, however difficult a case may be, a jury is not to agree, and keep the parties in misery, and support an army of lawyers during their natural lives; but you come here to agree and settle the cases in which the parties are in dispute."

Mr. T. M. Babson, in an action against the city of Boston brought by Mr. Gargan, called as witnesses for the city a number of policemen. Mr. B. said, "As they are not under city influence or control, they should be believed. Brother Gargan has more influence over them than I, as he is in political life, and I am not." "Oh, no," said Gargan, "I am out of it." Mr. Babson was going to comment on that, when Judge Pitman remarked, "Oh, Mr. Babson, forgive him for his past sins, as long as there is repentance."

Mr. —— brought an action against the Old Colony Railroad, and this is his declaration: "The plaintiff says that on the —— day of ——, 18—, he was a passenger on one of the defendant's trains from Boston, which reached Quincy about two o'clock in the afternoon; and that while in the exercise of due care he received severe personal injuries by reason of the defendant's negligence and the gross negligence of its employees upon said train, and at said station after alighting from said train, and while in the act of leaving defendant's station and premises at said Quincy." Before the trial I read it and said to Mr. Benton, "Why did n't you demur?" He said he had rather object to the evidence. Mr. —— read his declaration to the jury, and Judge Pitman asked, "What sort of a declaration is this?" Mr. —— said, "I think it is sufficient." "I think not," said the judge, and read the Practice Act, which states that the cause shall be set forth according to the circumstances in each case. "Why did n't he demur?" said Mr. ——. Judge: "He had rather lie in wait and spring upon you, not in a tiger-like fashion, but demolish you all the same. You may amend, but I shall not try it under that declaration, for I never saw one like that before."

Mr. W. E. Russell to a physician: "Sup-

pose" (stating the accident), "would that be sufficient to cause physical and mental derangement?" Doctor: "It might be." Mr. Russell: "And if so, how long would it continue?" Doctor: "No man can tell." Mr. Russell: "Would it be likely to follow him to his grave?" Judge Pitman: "He might die to-morrow."

Mr. Donnelly had a case marked for a certain day, and when it was reached the young man in his employ came in and said, "Mr. D. would like this case postponed a day or two, as he has a severe bilious attack." Mr. Swasey: "I will consent, though I have had my witness here two days." Judge Pitman: "Seems to me I have heard of this before; is Mr. Donnelly going to be bilious all the spring?"

A case was on trial in which a druggist was sued for giving wrong medicine, whereby a child was made dangerously ill. The defendant testified that he had two places of business, and the store where this recipe was put up was carried on by his clerk. G.: "How long had he been in your employ?" Witness: "About four years." G.: "He managed this store for you?" Witness: "Yes." G.: "How often did you visit the store?" Witness: "Two or three times a day." G.: "You held out this clerk as your agent, did n't you?" The witness hesitated. G. repeated his question. Judge Pitman: "Of

course he held him out if he put him there; no need of asking that; he was n't obliged to put a *sign* on him."

In giving instructions to a jury as to one who might or might not be liable, and as to an implied contract, Judge Pitman remarked: "I suppose if a physician comes to your house to visit a sick person, he need not hang out his banner that he expects pay, for we all know that to be 'an implied contract;' but when a *nurse* comes, if you don't wish to have your pocket-book all gone, it would be well to ascertain how much she expects to be paid."

In calling the list once, I called —— against ——, Mr. A. for the plaintiff, Mr. B. for the defendant. Mr. A. answered, "I am ready." I said, "Mr. B. has been sent for and the officer can't find his office." A member of the bar: "He has no office." Judge Pitman: "A lawyer without an office? He might as well be 'A man without a country.'"

A number of cases were called in which all the lawyers were present, but no clients or witnesses. Judge Pitman: "It is strange how lawyers neglect to have their clients and witnesses; they are so much better off here than anywhere else."

A party keeping a restaurant was sued for a milk bill. He complained that the plaintiff left

him sour milk, and that one day the chowder and puddings were all spoiled; he said he *felt* like shutting up the concern. Judge Pitman: "Your internal emotions we don't care about; what did you say to the plaintiff?"

O'Laughlin brought a suit, for a woman, against the city, for damages by reason of injuries from a fall on the ice. He asked, "What is your name?" "Margaret McFall." "Where do you live?" "Sixty, North Street." "How many children have you?" Judge Pitman (quickly): "What has that to do with the case, whether she has one or fifteen? Ask her as well, what is the natural history of Ireland."

A person summoned as a juror asked to be excused, as he was an "officer in college," and the statute exempts people who come under that description. Judge Pitman: "Officer in a college? what college?" Juror: "Harvard College, sir; the Arnold Arboretum, or Bussey Institute, which is a part of Harvard." Judge: "Ah, let us see; I should like to hold on to you; you are the men who shirk your duty." Juror: "I don't wish to shirk any duty, but I have a duty towards the college and my pupils, and it will be hard for me and my pupils if kept here." Judge: "No harder than for a peanut vender."

Mr. Bryant made a motion for continuance, as a case was about to be reached for trial, on

the ground that Dr. ——, one of the witnesses, was sick. Mr. Shea, for the defense: "I thought this motion might be made, and yesterday afternoon (Sunday) I sent a messenger to the Metropolitan Hotel, and was informed that Dr. —— was in the bar-room all the afternoon." Judge Pitman: "Probably that 's the reason he is worse to-day."

In the spring of 1861, Judge ——, after the adjournment of the court, sent for me, and wanted me to bring the bar book into the lobby, and I did so. "Mr. Willard, I want you to admit two gentlemen whom I know well, though there is no petition or motion." They signed the bar book, and I administered to them the oath. They were the late Isaac F. Redfield, formerly Chief Justice of Vermont, and Redfield Proctor, the Secretary of War in 1890.

A story was told me of the late Judge Redfield by the late William A. Herrick, who was in the judge's office. A young friend of Herrick's wanted to see a book which he said was to be found only in the library of Judge Isaac Redfield. Herrick told him to go into the judge's office, take the book, and read it there. He did so, and taking the book sat down to read, resting his feet on the mantel, when the door opened and a tall lank person came in, with an aston-

ished look in his face. Mr. Herrick's friend said to him, "Want to see *Isaac*, sir?" "Young man, *I 'm* Isaac," exclaimed the tall individual.

Chester I. Reed was appointed a judge of our Superior Court in 1867; he resigned in 1871, died in 1873, and before he was judge was attorney general.

Sometimes when he grew impatient he spoke with great frankness. When he was at the bar, one of the judges was about to leave the bench, so the bar bought a handsome gold-headed cane, and deputed Judge Reed to make the speech and presentation. The judge headed the procession, holding the cane tucked away under his coat behind with one hand. He said: "May it please your honor, on the — er — er — eve of your — er — er — departure, we all — er — er — having the utmost feelings of kindness for you, it has fallen to my lot — er [then hauling out the cane] — here, take your darned old cane."

A cause was being tried before Judge Rockwell, when counsel offered to prove certain facts, to which the other counsel objected. "What do you expect to show?" asked the judge. The judge heard his statement, and the opposite counsel's reply, and then said, "If you can prove *that*, I think you may, for that will prove a sockdologer."

Chief Justice Shaw, though sometimes severe upon the bench, had a very tender heart. We formerly sent one bill of exceptions to the Supreme Court, with the remainder of the original papers, and copies for the full Court were made in that court. The statutes enacted that a judgment should be entered notwithstanding the exceptions. Mr. Durant made a complaint for the non-entry of a bill of exceptions. He called me in to testify as to when judgment was entered. I gave the date. The Chief Justice said, "What, sir, judgment entered?" I said, "Yes, your honor." "Very wrong, sir, very wrong; it should not have been entered." Many lawyers were present, and I felt hurt, because I was sure I was right, and told Mr. Wilde, the clerk, when I went downstairs, and he said: "Call on the Chief Justice when he goes to dinner and remind him of the statute;" which I did. The next day he came into the office and said: "Mr. Willard, I 'm sorry to say I overlooked that statute, and you are correct." This I thought was the *amende honorable.*

The Chief Justice upon the opening of the court liked to have quiet reign, and everybody seated, when he would proceed to business, always calling the docket himself. The crier had a mumbling voice, so that a person could scarcely tell when he ended his proclamation. Mr. D. A.

Simmons, a lawyer, who was a very impulsive man, rushed up one morning, rather short of breath, before the crier had finished his proclamation, and said: "Please your honor, I wish — to — make — a motion — er — er — to amend — er — er — the case of — er — er" — "There is one amendment you can make without a motion," said the Chief Justice; "your *manners*, sir." I told this to Henry W. Paine when he came to the bar, and he said, "Yes, Mr. Willard, I was on my way to New York, and stopped in court a moment and heard it, and I pitied poor Simmons from the bottom of my heart."

The Chief Justice was calling the docket one day, and came to a case in which Major Cobb appeared. The major was busy talking with some one, and the Chief Justice said, "Mr. Cobb, what shall be done with your case?" Cobb: "I beg your honor's pardon, but the name of the case escaped me." The Chief Justice called the name of the case again. Cobb: "My name may appear there, your honor, but I really don't know anything about the case." Chief Justice: "I did n't *suppose* you knew anything about the case; I only asked you what you would have done with it."

Another case was called by him in which General Butler appeared for the plaintiff. "Does any one answer for the plaintiff?" said

the Chief Justice. No one answered. "Call the plaintiff," said the Chief Justice. As the crier began calling, Mr. Butler, who had been quietly sitting in the court room, said: "May it please your honor, I think that this case is not in a condition to be thus summarily disposed of." "Why not, sir?" said the Chief Justice. Mr. Butler: "I argued the case a year and a half ago before your honor, and have been waiting for an opinion." Chief Justice: "Pass it, Mr. Clerk."

When Judge Shaw on behalf of Harvard College took possession of Mr. Dowse's library at Cambridgeport, which was presented by Mr. Dowse, the latter handed him a book which happened to be Purchas's "Pilgrims." "Ah," said the Chief Justice, "now, Mr. Dowse, we have this by *gift*, and by purchase."

Major Cobb and Paul Willard were arguing a case before the Chief Justice as to the law of forcible detainer. Willard argued that, besides the forcible seizure of the person, there must be force of arms, to wit, weapons. Major Cobb said he should cite the well-known case of —— *vs.* ——, where it was held that violence to the person by laying hands on him was sufficient, *molliter manus imposuit.* "In other words, Mr. Cobb, that it does n't require a six-pounder," said the Chief Justice. This allusion to Cobb's

military propensities, he being commander of a battery, created a smile, which was all that was admissible in the presence of the Chief Justice.

I was once on the jury at East Cambridge, when I lived in Middlesex County, and George F. Farley had his feet on the table, immediately in front of the Chief Justice. After some time the Chief Justice said: "Mr. Farley, the Court has indulged in the sight of your posteriors long enough, sir." At which Mr. Farley took his feet down.

The Chief Justice seemed to be armed, *cap-à pie*, in the knowledge of everything outside of the law. Henry M. Parker once made a long opening, and the Chief Justice said to him, "Mr. Parker, you are opening your case quite widely, sir." Said Mr. Parker: "We have quite a broad sea before us, your honor." "So much the more need of keeping close-hauled on the wind then," said the Chief Justice. In the strict sense of the nautical expression "broad sea," it is supposed that a ship may go anywhere, but I suppose that *he* meant, with such a broad sea, he had better confine himself to a straighter course; in other words, to have a care where he went.

Mr. Hoar was once opening an insurance case to recover for the loss of a ship which was burned, and the Chief Justice said: "What did you say her name was, Mr. Hoar?" "The

John Gilpin," replied Mr. Hoar. "Now," said the Chief Justice, "were you not satisfied with the name and performance of the ship, Mr. Hoar?" "Yes," said Mr. Hoar, "it is a name of credit and renown."

Judge Shaw was very fond of Moses G. Cobb; Mr. Cobb was at the time I am speaking of commander of the battery called, as I have stated previously, the flying artillery. One morning as the Chief Justice was calling the docket, he called blank against blank, Mr. Smith for the plaintiff, Mr. Cobb for the defendant. "Is Mr. Cobb in court?" A friend of Mr. Cobb's arose and said, "Your honor, Mr. Cobb is at this time on the Common performing his" — At that moment, bang, bang, went a cannon on the Common. "*I* hear him, sir," said the Chief Justice.

John P. Healy told me that Daniel Webster said of Chief Justice Shaw, "Judge Shaw can do the work of ten men, and at night eat ham enough to raise the market price in Cincinnati."

In a private letter to me written December, 1889, Major Cobb, now of San Francisco, speaks of Chief Justice Shaw thus: "One of the proudest and most agreeable recollections of my experience at the bars of Suffolk and Middlesex is the regard and kindness Chief Justice Shaw always extended to me; he put Samuel, his youngest

son, to study law with me. The members of the bar, especially in Middlesex, would get me to move the Court when the Chief Justice was presiding, for any desired favor, such as an adjournment or the modification of some rule, saying that the Chief Justice always granted what I asked, and he did. It must be strange to an old Bostonian to see the augmented force in your office; I really believe one clerk with you could and can do the work of ten with us; our clerk has fifty-eight deputies and assistants. We have twelve departments of our Superior Court; eight confined to civil business, and four to criminal. I fear that I should feel like a cat in a strange garret, as the homely saying is, to appear now in your courts; nearly all of my contemporaries gone."

On one occasion after a jury was impaneled in the Supreme Judicial Court, Judge Shaw cast his eye around and found there were only eleven men. He said: "Mr. Officer, find the twelfth man." Some time elapsed, when the officer came in, and the judge said, "Have you found him, Mr. Officer?" "No, your honor." "Where is he?" said the judge. "I don't know, sir; he 's dead."

At another time some distinguished man died, and the adjutant-general ordered out a certain regiment. The colonel called the men to their

quarters to parade on the occasion, and procured a band. The leader could not get his pay, and Mr. Cobb brought suit against the colonel. After Major Cobb had opened the case, the Chief Justice said: "How can this action be maintained?" "On the ground," said Mr. Cobb, "that he who danced must pay the fiddler." "Who danced here, sir?" said the Chief Justice. "Colonel ——," said Mr. Cobb. "Oh no, sir," said the Chief Justice, "he only called."

Many years ago a young man (now deceased) who was quite ambitious to display his rhetorical powers and endeavored to imitate Choate, argued a case before Chief Justice Shaw. He had in one hand the statutes, while the other was behind his back, underneath the skirts of his coat. In this position he shouted among other bursts of eloquence, "Look at the statutes, your honor, look at the statutes." "Look at them yourself, sir," was the gruff reply of the Chief Justice.

Chief Justice Wells was appointed in 1844, and died in 1854. He was considered a very good lawyer, industrious and patient, but not a man of much executive ability. At the end of the day's trial he would always look around, and inquire, "Is there any gentleman who wishes to make a motion?" And he would sit till six or seven o'clock if he could find any one to be

heard. I never remember him to have made a remark of a humorous nature but once. It was on an occasion when a person had brought suit to recover for medical services and medicines. He testified that he was an eclectic physician. After the plaintiff's testimony was in, the defendant asked the Court to rule that he could not recover because he was not a member of the Massachusetts Medical Society. "Oh no, Mr. Attorney," said Judge Wells, "I can't rule that; I think that if a man employs a horse doctor, he must pay for horse medicine."

I never saw him more astonished than when J. H. Bradley asked him to make a certain ruling. The case was this: One J. B. Hoogs after bank hours met a man named Chamberlain and said, "Chamberlain, lend me two hundred dollars, and I will give you my check payable to-morrow." Chamberlain lent him two hundred dollars, took the check, and presented it the next morning at the bank, and it was found that Hoogs had no funds in the bank wherewith to pay the check. Chamberlain, by his attorney, William Brigham, Esq., brought an action against Hoogs, got judgment for his two hundred dollars, and arrested Hoogs, who undertook to take the Poor Debtor's oath.

Chamberlain alleged fraud before the justices in the lower court, and the case was appealed to

the Court of Common Pleas. The jury found Hoogs guilty, and Bradley moved an arrest of judgment on the ground that the allegations were not in proper form; that they alleged a negative in this, to wit, that he contracted the debt *not* intending to pay it. Judge Wells said, "Mr. Bradley, is this for the purpose of delay?" "Oh, no, your honor," replied Mr. Bradley, "I never raised a point in which I had more confidence than in this." "Oh well," said the judge, "I will overrule your motion, and you can have your exceptions." The Supreme Court sustained Mr. Bradley, and said in their decision, that by the allegation, "not intending," he had no intention at all, and that the allegation should have been in the affirmative, to wit, that he "intended *not*;" and so Hoogs got clear.

One day Judge Wells was trying a case when there was upon the witness stand a tall, stout teamster with a very small voice. The judge complained to him several times that he could not hear him. At last he laid down his pen and said, "Mr. Teamster, there is a great deal of noise about the Court House, express wagons rattling round, a parrot hanging on the wall on the other side of the street talking, and silversmiths' hammers pounding; you must talk louder, sir, and talk as if you were talking to your horses."

He was very sensitive as to noises, and said one day to the officer, when he was hearing motions, "Mr. Officer, I cannot be so disturbed; I hear a man cracking peanuts over in the corner."

A little episode occurred between Judge Wells and a boy, wherein the answers of the boy were so logical that I will relate it. He was a very small boy, and the opposite counsel wished to examine him on the *voir dire* before his examination in chief, so the judge took it into his own hands.

"Little boy, do you go to school?" "Yes, sir." "Do you go to Sunday-school?" "Yes, sir." "Who is all good?" "God." "Who is bad?" "The devil." "Where do good boys go?" "Go to God." "Where do bad ones go?" With perfect innocence he replied, "Go to the devil." Logic is logic!

A horse case was being tried before Judge Wells when he was Chief Justice of the Court of Common Pleas, and a colored man upon the stand testified that the horse was kept in a box stall. "What is a box stall?" asked the judge. "Why, you be in a box stall," said the witness.

Ira Gibbs had a case in the municipal court, now called the Superior Court Criminal, and District Attorney Samuel D. Parker said to Chief Justice Wells that he did not wish to

argue the case, and asked him to charge in his absence, which was done. After the charge was given, and when the officer was about to take the jury out, Gibbs said, "As your honor has made so good an argument for the Commonwealth, I hope you will say a few words in favor of my client." Judge Wells looked over his spectacles at Gibbs, and said, "Mr. Gibbs, this is very insulting language, and you must retract the words." Gibbs: "I did not mean to insult the Court. I only said that as you had done so well for the Commonwealth, I hoped you would do a little for my client." Judge: "Why, Mr. Gibbs, you are repeating the language; the Court will not tolerate such remarks, and will deem it its duty to commit you for contempt." Gibbs: "I did n't mean any contempt, your honor; I only said I hoped you would do something for my client." Wells: "What, sir, again! Ah, Mr. Officer, take the jury out; he evidently does n't see the point."

My father told me an anecdote of Judge Samuel S. Wilde, appointed in 1815, resigned in 1850, and deceased in 1855. Formerly, Maine and Massachusetts were one State, and in going from the far East people often went in sailing packets. A case was before him for divorce, and all the evidence in the case was,

that the libellee, or respondent, was on the outside of a berth, and the man inside, with his feet at the other's head. "Pooh!" said Judge Wilde, "dismiss the complaint; nothing but heads and points; I've done it a thousand times."

I was present when an attorney used some new recondite word. Judge Wilde said: "What is that word, what does that mean? I have n't heard it before." Counsel: "Please your honor, Mr. Webster has got out a new dictionary with ten thousand new words in it." Judge Wilde: "Mercy on us! I hope Choate won't get hold of it."

One day I signed an execution and made a mistake of one hundred dollars. The mistake was not discovered until more than a year afterward, when a woman (the defendant in the case) came into the office and wanted to know how the damages in the execution were so high. I asked her for her address, told her to go home, and if the attorney who collected the money refused to pay it, I would. I wrote to the attorney (who shall be nameless) and he called at my office and justified, stating that whatever mistake the clerk made inured to his benefit. I was quite indignant and told him that I should bring a petition to disbar him. This had no

effect. I drew up the petition, presented it to Judge Wilkinson, who read it, and told me to give the attorney notice forthwith to appear the following Monday at nine o'clock, A. M., and he would hear the parties in the presence of the bar, juries, and witnesses in all cases, who might be present. Mr. Elias Merwin was my counsel. The case was heard, and at the close of it, the judge remarked to the attorney: "You have been guilty of great forgetfulness, at least, and apparently unmindful of your oath as an attorney. I will give you until two o'clock this afternoon to repay the money." It was repaid.

The following occurred between Judge Wilkinson and a witness who refused to obey the subpœna of the Court, and who was brought in on a *capias*. He had a wretched, dirty appearance, and his hair was very long.

Judge: "What is your name?"

Witness (with his eyes half shut, and looking dreamily into space): "Charles Augustus Smith."

"How old are you?"

"Fifty-seven years."

"You were summoned as a witness in this case."

Witness (sleepily): "I s'pose I was."

Judge: "Don't you know you were?"

Witness (*sotto voce*): "I s'pose I was."

Judge: "Why did n't you come?"

Witness: "I had so many summons about that time I thought it was n't my duty."

Judge: "Don't you know you were summoned to testify here, and that there is a penalty for disobeying?"

Witness (suppliantly): "I was content to leave it with God, and I hope you will do justice and leave it with Him, and you will do just what I want to have you."

Judge: "Are you willing to testify in this case?"

Witness (looking up for the first time): "As to what?"

Judge: "To answer such questions as shall be put to you."

Witness: "I want to do what is right, what God wants me to."

Judge: "Be seated."

Formerly, when a person presented a petition to the Superior Court for admission to the bar, it was customary to examine him either upon written questions, or by oral questions by the judge. It was found that the applicants copied the written interrogatories, and gave them to other candidates, so that method was abandoned; and prior to the appointment of commissioners,

the judge examined them orally. One afternoon, while Judge Wilkinson was presiding, a fine-looking young man presented his petition for admission to the bar. The judge asked me to see if he had good recommendations as to character, and to ask him where and how long he had studied. I looked at the recommendation, and made the inquiry. I told the judge that his recommendations were good, coming from an honorable member of our bar, and that he had studied law during a three years' cruise on board a United States man-of-war. Judge Wilkinson said: "Tell him I will examine him after four o'clock, and it will be an extraordinary examination." The next morning, Judge Wilkinson, with a grim smile (I never knew him to laugh), said to me: "I examined that young man, and I am surprised; he passed one of the best examinations I ever knew. You may admit him this afternoon."

IV.

PAR HORRIDUM.

On the morning of the 7th of April, 1830, Joseph White, of Salem, was found murdered in his bed. In the memorable trial which followed, I took a strong interest. Mr. White was a wealthy Salem merchant. No one slept in the house that night but his man servant, and maid servant. His niece, Mrs. Beckford, who was usually there, was that night away on a visit to her daughter at Wenham. Thirteen stabs were found on Mr. White's body, done probably by a dirk, and a blow on his left temple, which fractured his skull. Nothing appeared to have been taken from the house, which made the murder all the more mysterious, as he had no enemy. Rewards were offered for the perpetrators by his heirs, the selectmen, and Governor Levi Lincoln; and a vigilance committee was chosen, consisting of twenty-seven members.

Captain Joseph J. Knapp, a Salem merchant and shipmaster, had two sons, Joseph J., jr., and John Francis Knapp. They said that while they were riding in a chaise from Salem

to Wenham, on the night of the 27th of April, a highway robbery was committed upon them, near Wenham Pond. This robbery was made public the next morning, and one newspaper announced that "These gentlemen were well known in town, and their respectability and veracity are not questioned by any of our citizens."

No clue could be found to the murderer until about the last of April, when a prisoner in the New Bedford jail said that he knew something about it, although he had been a prisoner there some time before, and was still one at the time of the commission of the murder. His name was Hatch, and he was brought from New Bedford by Attorney-General Perez Morton before the Grand Jury, then sitting at Ipswich, to testify. The result was that Richard and George Crowninshield, Selman, and Chase, of Lynn, were all arrested on the second day of May, and committed to prison.

On the 15th of May, Joseph J. Knapp, the father, received a letter from Belfast, Me., purporting to be written by Charles Grant, jr., of Prospect, Me. This letter was intended for Joseph J., jr., but it fell into the hands of the father; as it was Greek to him, he handed it to his other son, Nathaniel Phippen Knapp, a lawyer, who found it equally unintelligible.

The letter was a threatening one to Joseph J., jr., written on the 12th of May, demanding money, and threatening disclosures if it did not come. Knapp and his son, the lawyer, took the letter to Wenham, where Joseph and Frank were living, and showed it to them.

Joseph told his father that it was "a lot of trash," and wished him to give it to the vigilance committee, which he did.

The next day, Sunday, May 16, two pseudonymous letters were dropped into the Salem post-office, one addressed to Stephen White, the other to Gideon Barstow.

The committee answered the Grant letter, not by mail from Salem, but by a man who went to Prospect, Me., deposited this letter addressed to Grant in the post-office there, and waited to see him come and get it. He did not have to wait long, and when Grant called for the letter he was immediately arrested. His name was Palmer, and although he had no hand in it, he disclosed the whole plan of the murder. The night of the murder he spent at the Half Way House in Lynn, on the old turnpike. He said the purpose of the murder was to destroy the will of Joseph White, and that Richard Crowninshield was to be paid $1000 for doing the deed. The two young Knapps were arrested on the 26th of May. Richard

Crowninshield had laid his plans to kill White on the evening of the 4th of April, on the latter's return from tea at a neighbor's, but White returning before it was dark, the plan was thwarted. The robbery was simply an invention of Joseph's, and it was he who wrote the two pseudonymous letters.

On the 3d of June, Palmer was brought to Salem and committed to jail. On the 15th of June, Richard Crowninshield committed suicide by hanging himself with his handkerchief, in his cell. An indictment was found against Frank Knapp, as principal, and Joseph J. Knapp, jr., and George Crowninshield, as accessories. The law then was, that an accessory could not be tried till the principal had been convicted, and as Richard Crowninshield was dead, Frank Knapp was converted into a principal, tried first, convicted and hanged, and I was present at the execution. Joseph, tried as an accessory afterwards, was also convicted and hanged. George Crowninshield was acquitted, on an alibi, and lived many years. Selman and Chase were released by Attorney-General Perez Morton, and Palmer was discharged because of his services to the government.

Chief Justice Isaac Parker died on the 26th of July, 1830, and the Court was obliged to adjourn to the 3d of August, for the trial of Frank

Knapp. The counsel for the prisoners were Franklin Dexter and William H. Gardiner. Robert Rantoul also acted for the defense, to which objection was made on account of his youth, he having then but recently been admitted to the bar. Daniel Webster aided the government, and made in this case one of his greatest arguments.

Many years later, and after I had entered into the business of the Courts, I saw George Crowninshield one day in court, where he appeared as a witness for the plaintiff, in a case there on trial. I told Mr. Hodges, who was counsel for the defendant in the case, that he was the George Crowninshield who was indicted with the Knapps at Salem. He asked me if I was sure. I said I was. In the cross-examination he asked him where he lived. The witness answered, Roxbury. Hodges then asked him where he lived before that, and so on until he had asked him five or six questions, Crowninshield carefully avoiding Salem till Hodges asked, "Did you ever live at Salem?"

"Y-e-s," he answered.

"Were you any relation to Richard Crowninshield?"

"Yes."

"What relation?"

"Brother."

"That will do, sir."

On November 23, 1849, Dr. George Parkman was murdered in Boston, at the old Medical College, now the Harvard Dental School, on North Grove Street. He was seen going into the College at a little before two, in the afternoon of that day, and was never after seen alive. On Friday, November 30, the day after Thanksgiving, a portion of his remains were discovered in a vault under the College by Ephraim Littlefield, the janitor, and it was interesting to hear him give an account of his first suspicion of Dr. Webster, — the locked doors, the constant fires, and the late hours at which the Doctor worked in his laboratory; and still more so to hear him tell about his crawling a long distance under the building with his tools to drill with, — the distance from the underpinning of the building to the ground being so short as hardly to admit his body, — of his drilling through several thicknesses of the brick vault, taking his chance when Dr. Webster was not at the College, and of putting his wife on guard to let him know if she saw the Doctor coming. After long and persistent drilling, that day, through three courses and a half of brick, he made a hole through the vault, and putting a light in, he saw the pelvis of a man, and two pieces of legs. He immediately crawled out and ran to the houses of Dr. Jacob

Bigelow and Robert G. Shaw, jr., and then to Dr. J. B. S. Jackson's, who lived in what was then called Bedford Place, and informed them of what he had found.

In the afternoon of that day, not then knowing of any discovery, I was talking with David Morgan, a lawyer, who was then practicing in Boston. I said to him, "If the body of Dr. Parkman is found in or about the Medical College, I believe Dr. Webster had a hand in the murder."

He said, "Don't you breathe such a word outside this Court House."

I had known Dr. Webster from my boyhood up, and had been to school with some of his children. Possibly I was prejudiced against him, because I thought he had been cruel to dogs, of which, when a boy, I was very fond. On one occasion, he obtained a large, good-natured pup, about ten months old, a pet of all the boys in town, took him to his laboratory in Cambridge, gave him some blows on the head, and set the galvanic battery in operation upon him. The dog, not being sufficiently stunned, jumped up, knocked down some students, and ran out of the door; the next day we found him in an old dried-up well.

On Sunday afternoon, two days after the murder, my father told me that he was at the

City Clerk's Office at Cambridge, and Dr. Webster called there to see if Dr. Parkman had been there to discharge a mortgage. On Saturday morning, the 1st of December, I met Mr. Edward Blake and Mr. Samuel D. Parker, who told me of the discovery that had been made the afternoon before. The same forenoon the "Boston Times" published a short item of fifteen or twenty lines, giving a general account. I showed it to my father, who had been an associate professor with Dr. Webster for a number of years. After having read it he said, "This is atrocious." I said, "No, sir, this is true, and when you have read the evidence, you will think it was deliberate." He said, "I always knew Dr. Webster to be a very frivolous man, but I never thought he was a wicked one." But in the end he came to the conclusion that it was premeditated.

The trial began on the 19th of March, 1850, in the old Court House in Boston. The closing argument of Attorney-General Clifford (who was afterwards governor) was made on Saturday, the 30th of March. The charge to the jury was given by Chief Justice Shaw, the prisoner himself having just addressed them, and the verdict of guilty was rendered on that day about eleven o'clock P. M. Sentence of death was imposed by the Chief Justice, on the Monday following,

and Dr. Webster was hanged in the yard of the old Leverett Street Jail, on Friday, August 30, 1850.

The justices who presided at the trial, Shaw, Wilde, Dewey, and Metcalf; Attorney-General Clifford and George Bemis, counsel for the government; Pliny Merrick and Edward D. Sohier, the prisoner's counsel (an effort had been made to retain Franklin Dexter, Esq,, but he refused); Governor Briggs, — to whom Dr. Webster after the verdict applied, first for pardon, afterwards for commutation of sentence, — and the Rev. Dr. George Putnam, his spiritual adviser, have all died. Of the jury, Stephen A. Stackpole, of Boston, is, I understand, the only survivor. Seventy-one witnesses were called for the government, and fifty for the prisoner. The secret of the murder Dr. Webster disclosed to no one for about six months. On the 23d of May, 1850, he revealed it, or so much of it as he thought best, to the Rev. Dr. Putnam.

At the time of the trial, the excitement was very great, as much, about the Court House particularly, as at the time of the rendition of the slaves. Sheriff Eveleth had taken great precaution to close up that part of the corridor which led from the north end of the Court House to the Supreme Court, and also the back passage which led from the rear of the Court of

Common Pleas to the rear of the Supreme Court, so that there were only two entrances to the Supreme Court room. As I have said before, the south end of the Court House was the same as the front is now, and there were two doors at the south end, between two and three inches thick. Two stalwart officers were stationed at these doors; one door was entirely closed, and when it became necessary, the other door just sufficiently to allow one person at a time to pass in. Twenty or thirty persons were allowed to go in, one at a time, to the gallery; after they had been there long enough to hear a portion of the evidence, the gallery was cleared and those persons were sent downstairs to pass out through the cellar into the street, and a new bevy was allowed to enter. One of these officers was a remarkably stout man, and wore number twelve rubber shoes. At the conclusion of the trial, he showed me one of his rubber shoes, full of various buttons which had been taken off the coats of the persons in the crowd.

Littlefield, the janitor of the Medical College where Dr. Parkman's remains were found, stated in his evidence that a small sledge-hammer which was behind the door was missing, and he did not know what had become of it. A person told me this at the time: that as he was walking over Cambridge bridge quite late one evening,

he heard a splash in the water. He quickened his steps, and passed Dr. Webster. He said if it became material, he would testify to it; otherwise I was not to mention it. He and I always thought that this hammer possibly had a part in the tragedy.

I am the only surviving deputy sheriff who officiated at the execution. On the morning of the execution, the Doctor was calm and collected, and told us of experiments which he had made with the galvanic battery some years previous, on a man who had been executed. He objected to having his limbs confined by cords, and wanted leather straps, and his wish was complied with. I have still a very handsome shell in my possession, which he cleaned and polished the night before his execution.

It has remained a secret where Dr. Webster was buried. Some years ago, a dentist, who was a pupil of Dr. Keep, told me that on the night of the fire in 1872, he was in the vaults of Trinity Church on Summer Street, in company with an official of the church. He gave me his name, but I do not feel sure enough about it to state it. The official said: "Doctor, if you will not tell anybody, until I am dead, I will tell you a secret." The Doctor said he would not. "There," said the official, "lies the body of Dr. Webster."

On an excursion steamer down Boston Harbor, in the summer of 1882, I met Mr. Charles W. Kingsley, who was the agent of Dr. Parkman at the time of the murder, and afterwards agent for the family at the time I speak of. He was the first who suspected Dr. Webster as the murderer, and directed search in that way. He said he was riding with John L. Andrews in the cars one day, after the arrest of Dr. Webster, when a clergyman, entering into conversation with Andrews, said among other things: "You have the wrong man arrested as the murderer of Dr. Parkman." "Ah, indeed," said Andrews. "Yes, sir," said the clergyman. Andrews was quite angry, and was about to retort, but Kingsley whispered, "Let him go on." Said Andrews: "Who do you think killed the Doctor?" The clergyman: "That agent of Parkman, to be sure" (meaning Kingsley, who, by the way, was a fine-looking man). Andrews: "Why do you think so?" The clergyman: "I was introduced to him one day in Boston, and talked with him, and I never saw greater marks of guilt; he seems to have the most villainous countenance you ever saw." Said Andrews (pointing to Mr. Kingsley): "Allow me to introduce to you Mr. Charles M. Kingsley, the agent of the late Dr. Parkman and of his family now." The clergyman began to apologize, but Andrews said, "There is no need of it."

V.

OBITER DICTA. — PART I.

A LAWYER once set up this defense: A young man hired a horse and buggy of a stable-keeper, and invited a companion to ride with him. The person who hired the horse drove him so immoderately that the horse died. John P. Healy very properly brought a suit in trover against both of them. After the evidence was in, D., for defendants, asked the Court to rule that the verdict must be given for the party who was invited, as he had nothing to do with the hiring. The Court asked D. to give him an authority. D. replied: "It is always so considered among stable-keepers." This was, I think, the first and the last time that I ever heard stable law cited in court.

The same counsel, D., asked for delay one morning because of the absence of his witnesses. On being asked by the Court if they had been duly summoned, "No, your honor, if they had been, I should have got them in by *habeas corpus*."

In the course of an argument to the jury, the same lawyer said: "The trouble is, gentlemen,

you see my client didn't *git*, as we lawyers say, his *quid per quod*."

On the first Tuesday of 18—, the Superior Court was opened with prayer by Rev. Dr. ——, who among other things prayed that litigants might have their cases tried fully and fairly, so that the same cause should not come up again. At the close of the week, the Rev. Dr. —— received a letter from a person who said that he had a cause which had been undetermined after one or two attempts, but this time it had been determined finally and properly, and he (the writer) believed it was entirely owing to the Rev. Doctor's prayers.

A witness was asked in a case against the West End Railroad: "What seat did you sit on?" Witness: "The fourth." Counsel: "Who was the person who sat next to you?" Witness: "The one who is now my wife." Counsel: "Were you engaged to her?" Witness: "No, I was not, but was trying to be."

In a suit brought by a lawyer to recover damages for his client who was thrown from a horse, I take the following extract from the declaration: "Said horse was unsafe, unsuitable, improper, unkind, vicious, disordered, and diseased."

Benjamin F. Cooke, in speaking to the Court in a case that he was trying in which his client's horse ran over a little girl, called it "caus-al-ity."

A petition for review was being heard and a witness was asked: "Was this petition brought before you gave notice to take the poor debtor's oath in the original suit?" Witness (to his counsel): "What shall I say to that, Mr. B.?" B. (quickly): "Say you don't know." Witness: "I don't know."

A lawyer's versatility was once shown when I was present in the Supreme Court room, in this manner: Mr. —— was arguing a case, and the Chief Justice said: "Brother ——, did n't you argue a case before us some months since, when you took precisely the opposite ground from that you take to-day, and the Court sustained you?" "Yes, may it please your honors," said Mr. ——, "but if I was wrong yesterday, I am right to-day."

Dr. J., testifying. Counsel: "Did you say the humerus?" Dr. J.: "I said the femur; if I said humerus, it was a lapsus linguæ." Counsel: "What is that?" Dr. J.: "As the waiter said when he dropped the cold tongue, 'That is a lapsus linguæ.'"

Mr. F. was telling me, and another man who

stood by, of some remarkable petrified substances he had seen. The man said: "It is nothing to what I have seen in the northern part of Maine; I saw a rock split, in which there was a *putrefied* frog, which had been there *dominant* for years."

P. Henry Hutchinson, being in the office of the Clerk of the Municipal Court, the latter, who was a very cautious and non-committal man, said, "Mr. Connelly, who is going to be elected President of the United States?" Mr. Connelly: "Mr. Hutchinson, I don't talk politics or religion, but, contrary to my usual custom, I will say to you that I don't think Belva Lockwood will be elected."

In a case where one Dr. Fitch sued to recover for his services, he was asked what the principal medicine was he gave to his patients. He replied: "Alterative medicines." "What do you consider an alterative medicine?" said the counsel. The doctor said he considered it "a medicine that altered his patient from what he was to what he is."

Many people, especially Americans, go into private offices with their hats on, and keep them on. Mr. Samuel F. McCleary, the late City Clerk, insisted that persons who visited his private office should remove their hats. A person came into his office one day with his hat on,

and said: "Mr. McCleary, I want my license." "What are you licensed for?" said McCleary, looking up at him. "To lecture on mind reading," said he. "Mind reading," said McCleary, "what 's that?" "Why, I lecture and tell what is going on in people's minds." "You don't seem to know what is going on in mine," said McCleary. "Why?" said the other. Said McCleary, "I 've been wondering why you did n't take your hat off."

One morning on motion day, Mr. Tompson stood on my right, and Mr. Kingsbury on my left, each with a hand behind his ear, both being very hard of hearing, and I was calling the list. One of them began to speak. Said I, "Gentlemen, is there to be any hearing in this matter?" They both laughed so they were obliged to retire.

I went into S. S. Pierce's one day to buy some cigars, and I met Dr. Oliver Wendell Holmes doing the same thing. I said, "Doctor, I am surprised to learn that you are a smoker." "Oh, very moderate," said he. "How moderate?" "One a day, the last thing at night; that is the reward of virtue."

There was once a colored man on the jury, who had at some time previous meddled a little in the law. The jury he was on was out on a case. As I was standing in the corridor talking with the officer who had them in charge,

there was a loud knocking from the inside of the jury room. The officer stepped to the door, opened it an inch or two, and said, "What 's wanted?" This juryman answered, "Mr. Ossifer, fetch us Hilliard on Torts;" but the officer did n't fetch him.

In an action of slander, among the witnesses called was Melvin O. Adams; the following questions were put to him, and his answers followed: "What 's your name?" "Melvin O. Adams." "What 's your business?" "I 'm trying to practice law." In the same case the plaintiff gave the following testimony: "What 's your name?" "Wilson M. Fay." "Your business?" "Broker." "How long?" "Twenty-five years." Cross-examination: "You publish a paper called 'Miscellaneous Stock Exchange'?" "Yes." "Who composes it?" "Me and my customers." "Are the seats very valuable?" "No; free to all." "Were you elected a member to the regular Stock Exchange?" "No, they had a war dance, and I did not get in." "Were you not rejected?" "Yes, I got every black-ball there was, and one piece of paper with 'No,' written on it." "You have some hard things said to you?" "Yes." "Come to you with a good deal of feeling and call you names?" "Yes; keep a loaded revolver on my desk all the time."

Judge Morton was once examining a boy who was offered as a witness, and asked, "Do you go to Sunday-school?" "Yes, sir." "What do you learn?" "To speak the truth." "Are you not taught about God?" "Yes, sir." "What was the oath for, that you heard given to the others?" "To speak the truth." "Suppose you do not?" "I shall be burned up with fire and brimstone."

Another boy who was examined at the same time answered the question, "Suppose you do not tell the truth?" "I shall be punished hereafter."

Stephen B. Ives (examining a witness): "Did you see Mr. Keith there?" Witness: "Yes, sir." Ives: "What did you say to him?" Witness: "I do not remember." Ives: "Did you speak jocosely?" Witness: "I don't know him." Ives (not exactly comprehending): "Did you speak jocosely?" Witness (angrily): "I tell you I don't know Jo Cosely."

Mr. Ives was very severe in his examination of witnesses, and especially in his cross-examinations. They were literally *cross* examinations. Mentioning this one day to the late Judge Charles P. Thompson, of the Superior Court, "Yes," he said, "brother Ives's examinations are very much like the dews of heaven, which fall alike on the just and unjust."

The following colloquy occurred between Mr. R. and Mr. S., Dr. Walker on the stand. Mr. R.: "Now, Doctor, you are an expert, and have attended the whole trial?" Doctor: "Yes, sir." Mr. R.: "You get fifty dollars a day?" Doctor: "That is the rule; I don't always get it." Mr. R.: "Well, I don't say it in a discouraging way." Mr. S.: "What did you ask it for, then?" Mr. R. (to the Court): "Am I to answer, or are remarks to be made thus to me?" The Court: "I don't know why counsel may not speak to each other. Counsel always do, when they think they can make a telling remark; that was a very pertinent question, but I suppose the proper place to answer it is in the argument." Mr. S.: "I asked him what he asked him such a question for, if it was not to hit him?" Mr. R.: "I am always ready to answer questions when they are put civilly and in a gentlemanly way." Mr. S.: "Oh Lord, you don't know what is civil and gentlemanly, and never did."

In a suit to recover damages for negligence in the case of a horse, the following occurred: "Did you see some trotters there?" Witness: "They called them trotters, I don't know whether they were or not." Counsel: "Did you see Smith wash the noses of any horses besides the one on trial?" Witness: "Yes."

Counsel: "Whose?" Witness: "The mare of Cobb's." Counsel: "Oh, Mayor Cobb's?" Witness: "Not Mayor Cobb's, but Cobb's mare."

The assumption of knowledge on the part of some young lawyers fresh from college and the Law School defies description. After having been in practice some years, they are perfectly willing to admit that they do not know as much as they thought they did at the start. Often if the clerk presumes to show them that they are wrong, they complain that the clerk is cross, but after a few years they take a different view, and come to him to learn matters of practice, which before they thought they knew all about. I give an instance: A number of years ago a lawyer, Mr. Cole (this is not his name), was trying a case for some railroad which ran into the northern part of Vermont. I had a mare there, and wanted to go to see her. It was quite an expensive trip, and I asked Cole if he could not give me a pass up and back, so I could see my colt. He said: "Yes, with great pleasure," and did so, and I went. When I came back, I informed Mr. B., from whose office Cole had graduated some years before, of the kindness of Mr. Cole. "Now," said Mr. B., "I'll tell you something. Shortly after Cole commenced studying in my office, I sent

him to your office to get something, and he came back with his face as red as a turkey-cock's and said, 'Mr. B., you never need send me to that office again, sir, for I won't go there.' 'What 's the matter?' I said. 'Oh,' said Cole, 'that darned Willard, he 's as cross as a bear.' 'Pooh,' said I, 'you don't know Willard; you probably went in there thinking you knew more than all the rest; you keep on going there, and when you want to know anything, ask Willard to show you, and if he does n't I 'm very much mistaken.'" This was the first I had known of any trouble with Cole, and he and I were afterwards the best of friends.

It is related that some one said to Judge ——, "Judge, Mr. C. has been offered a seat as Judge on the Supreme Judicial Court." "Has he, indeed?" Visitor: "Yes, sir." Judge: "Well, what does he say?" Visitor: "He has declined it." Judge: "Ah, has he?" Visitor: "Yes, sir." Judge: "Well, sir, he shows better judgment than the one who offered it to him."

The following facts appeared in court one day: Deacon —— was a director in the —— Bank. A person who was owing the deacon applied to the bank to have his note discounted;

the deacon recommended it, and it was done. The deacon thereupon brought a suit against the man who had his note discounted, and summoned the bank as trustee.

In a case Mr. Park asked a witness: "What did Smith say to you at the time of the collision?" Witness: "He told me to go to h—l." Park: "And so you went to a lawyer."

A woman plantiff who had testified in chief about a bargain she had made was asked on cross-examination: "Now, who was present when this bargain was made?" "Now, on me honor, nobody but God, Mrs. O'Toole, and meself."

A witness was testifying about being bitten by a dog a year before. The counsel asked him to tell about it, when he went out of the way to say: "I don't sleep much nights." Counsel: "I did n't ask you about your sleeping; *I* don't sleep very well, but I try to bear up under it. What did the owner say, when you asked him to kill the dog?" Witness: "'Faith,' says he, 'I 'd sooner kill you, than the dog.'" Counsel: "How did he appear?" Witness: "He was kind o' frothing in his mouth, and kind o' oneasy in his mind."

Mr. M. asked a female witness if she knew anything against the character of a certain person. Witness: "No, not much." Mr. M.:

"What have you heard?" Witness: "I have heard he was somewhat intemperate, and went with other women, but I never heard anything against his *moral* character."

A case was committed to the jury one Friday afternoon, and they deliberated upon it until ten P. M., when they were discharged by order of court because they could not agree. They separated, and came into court the next Monday morning after a period of two and a half days. Upon being asked by me if they had agreed upon a verdict, the foreman answered no, but that they wished to deliberate further. The court of course said it would be irregular, but if counsel would consent they might do so. The counsel consented; the jury went out, and in about half an hour agreed upon a verdict for the plaintiff. The joke of the matter, which did not then appear, was this: the counsel for the plaintiff and the counsel for the defendant each felt sure, when the jury went out, that he had ten jurors in his favor.

A large woman was libellee in a libel for divorce. The deputy who served the libel wrote to the counsel for the libellant that she was a very large woman, but that he had served the libel on as much of her as he could that day, and had strong hopes of being able to finish it the next.

In a case of Dows *vs.* some insurance company to recover damages for the loss of his stock, the plaintiff said: "I saved a few bottles of Epicurean sauce." General Butler: "What kind of sauce is that, pray? I might like some." Plaintiff: "I will send you a bottle." Mr. Train: "Oh, don't, he has enough." General Butler: "You said the soda fountain was broken; how broken?" Plaintiff: "It was *disintergated.*"

In an action pending, Mr. A——s appeared as senior counsel; in moving for a postponement, as he had newly appeared and was not quite familiar with the case, he said (with a slight flourish): "I appear in this case, and I hope it will not disturb my brother A——y, who is opposed to me." Mr. A——y: "Oh no, I am not at all disturbed; on the contrary, I am highly gratified, for I shall now move to increase the *ad damnum.*"

Mr. G. was trying an action of tort, in which he sought to recover damages for injuries to his client, and said, "He was *participated* over the cliff into a hole." His senior counsel nudged him and said, "Precipitated." "Yes," said G., "*preparticipated* over."

A witness, a member of the Suffolk bar, was testifying, and, upon being asked what were the terms of the agreement, answered, "I did not learn the precise *verbiage.*"

In an accident case, after the witness had testified to the facts, Colonel George said to him: "What did you do then?" To which witness replied: "I went to the rescue, as a lawyer goes for a man's pocket-book."

In a suit to recover the price of some barrels, a Mr. Hale of New Hampshire (not John P.) was a witness. Mr. O'Brien: "Where did you buy your barrels?" Witness: "Of Doherty Brothers." O'Brien: "Are they barrel dealers?" Witness: "No, liquor dealers, shame to them." O'Brien: "Are they dealers in cider?" Witness: "That is one of God's blessings."

Mr. H. was arguing as to the testimony of various witnesses, and the absence of some of them in a case; among the latter was a well-known man named Richardson, whose death was generally reported; Mr. H. said: "Mr. Foreman and gentlemen, Richardson is dead, and he can't tell you what passed." Mr. C.: "There is no *evidence* that he is dead." Mr. H.: "Then he *is n't* dead." Mr. C.: "Then why don't you produce him?" As Dr. Holmes says, "Logic is logic, that 's all I say."

In a suit of *trover*, to recover for some articles taken from a hotel, Mr. Hutchinson said: "Whose knives are these?" (showing them to the witness). Witness (examining them): "These are Rogers knives." Mr. H: "How

do you know?" Witness: "General feel, mark, and look." Mr. H: "Is that all?" Witness: "No." Mr. H: "How else do you know?" Witness: "Dealt in 'em." Mr. H: "How else do you know? Did you see these made?" Witness: "No." Mr. H: "How do you *know* then?" Witness: "Give it up."

Lawyer ——: "I have summoned a witness to appear in this case, and paid him his fees, and he has not appeared. I move for a *capias* to bring him into court." Court (reading the return of the officer): "It appears that he was paid for yesterday; have you paid him for to-day?" "No, your honor." Judge B——: "I have sat on this bench too long" — "Yes, your honor." Judge, continuing, — "to grant such a motion."

In an accident case in which a woman was knocked down upon the sidewalk by a horse, and injured very much, she said, "I *think* somebody helped me up." Mr. D: "Not what you think, what you know." Witness: "I guess *you* would n't have *known* much under the circumstances."

Mr. C. sat writing one day, and a person who interrupted him said, "What are you writing?" Receiving no answer, he repeated the question. Mr. C. replied somewhat hastily: "The life of

a jackass." "Autobiography, by ——," replied the other.

About the years 1847 and 1848, William Hilliard got into the habit of taking cases up to the Supreme Judicial Court on sham and special demurrer. He was riding one day through Broadway in Cambridgeport, when the horse shied at a pile of boards, and threw him and his companion out of the vehicle. Mr. Hilliard was badly hurt. Some carpenters who were engaged at work on a building near by rushed out, and, seeing that he was injured, one of them exclaimed: "How shall we take him up?" The other lawyer, who was not hurt, perhaps because he was a little "set up," answered: "Take him up on a sh-sham demurrer."

In an action by a woman against the proprietors of India Wharf to recover damages for falling through a hole in the sidewalk or a part of the wharf, a number of witnesses were introduced who testified that their ages were respectively from eighty-five to eighty-seven years. Mr. C. said: "This hole was covered by boards as old as the witnesses who have been called for the defense." Mr. R. in closing said: "My young friend does this," etc.; and, "my young friend, when he has more experience," etc., and, "now I 'll sit down and let my young friend make a speech." Mr. C.: "I am young, I 'll

acknowledge, but I know of one phrase applicable to my brother, which is, 'Superfluous lags the veteran on the stage.'"

A gentleman who lived in the Back Bay precinct, whom I knew very well some years ago, and who had also known me but had probably forgotten me, came into my office, when the following conversation ensued: —

He: "I am drawn as a juror for the October term."

I: "Yes, sir."

He: "I am living out of town."

I: "Do you mean that you are not a citizen of Boston?" (knowing that he was.)

He: "No, but I am living out of town, and shall not return until November."

I: "That is no excuse."

He: "I am sick."

I: "You look very well, and ought to do your duty as a juror; look at Mr. Randall, the late Speaker of the House of Representatives at Washington, who, when drawn, served as a juror in his State of Pennsylvania, and would not be excused."

He: "Randall is an ass, sir; do talk a little common sense."

I: "I can't; you monopolize it all."

This checked him for a moment, but he went

on in the same strain, intimating that he should not come.

I: "The Court will send an officer for you."

He: "Hang the officer."

I: "He would not like that."

He (emphatically): "Good-day, sir."

In the afternoon he came in and said, "Mr. Willard, I have come to apologize for my hastiness this morning." I accepted it, and told him I had all kinds of people to deal with and tried generally to adapt myself to them.

Said a certain lawyer: "Mr. Thomas, I am surprised that you should bring this action; you have n't a single *predicate* to stand on."

The same lawyer, who was trying a cause for a plaintiff who had fallen downstairs and hurt his knee, asked a physician this question: "Was the concomitant cause of the contusion the fluctuation of fluid from the knee-joint of this plaintiff?" In closing his argument he said: "And now I will close this case, gentlemen, as I think I have been over it from frontispiece to furnis."

Mr. Murdock, of the Liquid Food Company, brought a suit against the Boston and Albany Railroad for being forcibly put off the cars. He was arrested at some town on complaint of the railroad authorities and kept in confinement overnight, but the accusation turned out later to be

a mistake, and he was released. During the time of his arrest, when offered some food, he drew from his pocket a half-pint bottle of the Liquid Food, upon which he said he could live for a week, but the experiment was not tried. He said he went on the "*owl train*," sometimes called the "*Modoc train.*" Mr. M.: "It might well be called the 'Murdock train.'" Mr. Murdock: "'*Twas*, that night."

In the same case Mr. H., counsel for the road, challenged two jurors, and Mr. M. challenged two. There were not enough jurors in court to fill their places, of which I informed counsel. Then Mr. M. said: "I 'll go on with eight, or, if Mr. H. will withdraw his challenges, I will mine."

An action was brought against Corbett the pugilist for breach of contract in not appearing to perform at a certain exhibition; Judge S. presiding. Counsel objected to a certain piece of evidence. Judge S.: "As referee in this case I think it is rather broad." (Shouts of laughter.)

"May it please your honor," said a lawyer, when his case was called for trial, "I am not ready; my client is one of the steeple-climbers, and he is now on the top of the Old South Church, out of reach and sound." "Well, Mr.

G.," said the Court, "I presume the Court has not the power to get him down."

In 1887, a case was tried in which a woman sued the City of Boston for $10,000 for injuries received from falling on an icy sidewalk and breaking her leg. After the case had gone to the jury, I was shown a letter written to the presiding justice, which stated that she and her husband were disreputable people, that her pseudonym was ——, that her husband and herself had a fight, that he had pushed her downstairs, causing her to break her leg, and that in order to recover damages he carried her out to the sidewalk to make it appear that she did it there.

A case was tried in which one Casson sued Myrick to recover damages by reason of a stallion of Myrick, or, as counsel said, "chawing up a pony of Casson." The pony died and Casson wanted fifty dollars for him. Many witnesses, who had formerly owned the pony, were examined for the defendant. One witness testified that he gave $1.50 for him. "How long did you keep him?" "No longer than I could help." "Did he eat well?" "I kept him alive by giving him gruel." "What did you do with him?" "I put him in a raffle for ten dollars at twenty-five cents a ticket." The defendant testified that he had a knowledge of horses, and

thought that this pony was about forty years old. "Why do you think he was forty?" "There is a horse near me thirty-five years old, owned by my neighbor, and the pony looks the oldest." "Did you lend your whiffletree to the boy who drove the pony?" "Yes; but he could n't draw the whiffletree." "Did you see the pony hitched to the whiffletree and the boy driving?" "Yes; and he could n't draw it." "Was that the time you looked him over and made up your mind as to his age?" "Well, somewhat." "Was n't you thinking more of your whiffletree than you were of the pony?" "Yes; I thought my whiffletree was worth the most." On reading the first clause of this, as to the stallion "chawing up the boy," to my kinsman, Joseph Willard, he observed that, as all flesh is grass, the horse was n't so far out of the way.

A man who sued for damages for injuries sustained by a fall, while testifying, was asked, "You were in the Custom House?" "Yes." "Did you leave?" "I got my ticket-of-leave from Collector Saltonstall." "Was you at all set up when you fell in?" "No; sober men fall in sometimes." "Do they?" "Yes; *I* did."

I heard an expression by a witness lately, which I had never heard before. He said, "——'s brother wanted to take him into part-

nership, and I told him that that ship is the worst ship a person can sail in."

A man of sixty, but appearing much older, sued a woman of twenty-five to recover $200, when the following took place. Cross-examination of the plaintiff: "You loaned the money because you thought she was going to marry you, did n't you?" "Yes." "She is about twenty-three years old, is n't she?" "I don't know." "She sits up there; look at her." "You can't tell anything about the age of 'em." "Why did n't you marry her?" "Marry her? everything was ready for the marriage, and then she backed out." "You gave her a cloak, did n't you?" "No; I paid for it, but I did n't give it to her." "You took her to Jordan & Marsh's, did n't you?" "No; she took *me* there." "If she had married you, you would n't have asked her to pay you back, would you?" "She promised to pay me for everything, dresses and all."

Mr. B. was a lawyer of no great abilities, but he had quite a large practice, and when he died he left a large property. He was impulsive, always committing some *faux pas*. There was a firm doing business under the name of Tinkham, Adams & Co. On the eve of their failure, John Q. Adams, the principal member of the firm, bought on credit a lot of cigars of Deshon & Co., Clark & Co., and others, and

pledged them to raise some money to a firm engaged in the shoe business, named Bigelow Brothers. Deshon and Clark, learning of this transaction, replevied the cigars, and the action came on for trial. Edward D. Sohier appeared for the plaintiffs, and Mr. B. for the defense. Mr. Sohier had the close. Adams was not in court, but Tinkham was; yet neither of them was called. Mr. Sohier in his argument said: "Now, gentlemen of the jury, perhaps you will ask why we did n't call John Q. Adams? We say he is a rascal; the other side will tell you he is an honest man." Up jumped Mr. B. and said: "No, we say he is a rascal, too." "Ah, *do* they, gentlemen," said Mr. Sohier quickly; "what did they *deal* with him for, then?" The jurymen looked at each other, and I saw by their looks that Mr. Sohier had gained his cause.

Mr. B. had gray hair, but came into court one morning with it dyed dark. Some one called the attention of Mr. Sohier to it. "Oh," said he, "I believe brother B. is trying to get over his light-headedness." Mr. B. had a client who owned a savage dog. He bit a person, and the owner was mulcted in damages. He went to Mr. B. and asked what he should do. Mr. B. said: "Take off his collar, turn him loose, and we 'll call him *fera naturæ*." He did so, and the dog bit another man. The man who was

bitten traced him to his owner and brought a suit against him. Mr. B. set up the above defense. The judge said: "Do you actually rely on that defense, Mr. B.?" "Yes, your honor," said Mr. B. "Well, sir," said the judge, "then I shall instruct the jury to return treble damages." So Mr. B. had to amend. He was not a very successful lawyer in getting verdicts, and at one time the bar bestowed upon him the sobriquet of the anvil, he was beaten so often; but he was very successful financially.

Mr. R. and Mr. T. were opposing counsel in the trial of a case. R. said to T.: "Don't insist on putting questions which the Court have ruled incompetent; it is n't professional or honorable." T.: "The professional part I 'll take care of, and as for honor, it is n't for you, who have so little of it, to talk about."

When I first went into the office, policies of insurance contained the clause, "insuring against loss by fire, etc., excepting loss caused by riot, foreign invasion, or the act of God." One J. G., who brought suit upon such a policy, in order of course to avoid the excepting part of the policy, after declaring on it, set out further in his declaration that the loss occurred by a peril insured against; not by riot, foreign invasion, or by the act of the *aforesaid* God. I dislike to make comments and want to state facts only;

but — possibly there might have been some other God that J. G. worshiped.

A certain person was nominated for the office of Judge of the Court of Common Pleas. A lawyer to whom the fact was mentioned said: "I did n't see it in the morning papers." "Oh," was the reply; "did you look under the head of accidents?"

The judges having agreed that one might leave the bench while the other would take his place for a week, the judge on vacation stayed away a fortnight. On returning he said to his somewhat irate brother: "I got away, and was tempted by a good time to stay away a week longer than I intended." "May God forgive you," said the judge. "Never mind that, if you 'll forgive me," said the other.

James Boyle was crier of the court for many years; he was a thick-set man, with a very bald head. The Court, Chief Justice Wells, sat a long time after the usual hour, in order to finish the testimony of a witness who was captain of a vessel, and who said he must sail the next morning. Mr. Boyle adjourned the court in the usual form: "All persons having anything further to do, etc., may depart hence, and give their attendance at this place to-morrow morning at nine o'clock." Mr. Henry F. Durant was

for the plaintiff; Mr. R. H. Dana for the defense. The next morning, to the astonishment of Mr. Dana, Mr. Durant asked leave to have Captain —— take the witness stand and testify to a matter of great importance. After some discussion, the motion was allowed, and the captain testified. Then Mr. Dana cross-examined: "Captain ——, how came you here?" "I was summoned here." "Who summoned you?" "The Court." "What do you mean? Did his honor on the bench summon you?" "I don't know what you call him," said Captain ——, "but that fat, bald-headed fellow out there told us to depart hence and give our attendance here to-morrow morning, and so I come."

An Irish witness was asked: "What do you know of the defendant's reputation?" "Faith, I know this, that, rather than live with her, I'd marry the devil's daughter and go home and live with the old folks."

The identity of a cow was curiously proved, to establish the ownership of the animal. A witness for the plaintiff testified that as the beast was in the habit of straying he inserted under a little slip in the skin of her right fore shoulder a five-cent piece of the date of the year 1845. The jury and a surgeon were sent to view

the cow, and there found the coin, perfectly identifying the animal. The same witness, being asked whether he was interested in the case, replied: "I am not interested, and I am not disinterested."

An action was brought by a party to recover damages for being run into by a sleigh from behind, overturning the plaintiff's sleigh and throwing him over the dasher. The defendant controverted the fact, and put on a witness, saying to him: "Now show the jury how far the plaintiff went over the dasher." The witness, leaning over the bar of the witness stand, tipped it over and fell his whole length upon the floor. Said the counsel for plaintiff: "I believe that 's the truth of our case."

W. had a curious case with the Boston and Albany Railroad, which brought out the ingenuity of Mr. Charles A. Welch. W., his sister, and another young lady who was visiting them at Cambridge, went to the Boston Theatre one night. After the performance they reached the Albany station to take the train just as it was starting, having no time to purchase tickets. They were going as far as Cottage Farm. The fare was ten cents with a ticket, and fifteen cents without. After the train passed the Know-Nothing Station, the conductor came for the fares, and was offered thirty cents, which he

refused, saying that he must have forty-five. W. told him he had no time to purchase tickets, and that this was all he should give him. The conductor said the station was so near it would not pay to stop the train to put him off, but that he would take his name. They got off at Cottage Farm. The next morning the attorney of the railroad went to W. and asked him if he would pay the forty-five cents. He told him no, and thereupon the attorney of the road brought a suit against him to recover the forty-five cents. In the lower court judgment was rendered against him, and he appealed to the Superior Court. When the case was entered in the Superior Court, a tender was made of thirty cents. The case came on for trial, and the conductor testified to the facts stated above, and the plaintiff rested. Mr. Welch then asked the Court to rule that there must be a verdict for the defendant, as he had tendered thirty cents, which was double the fare that the plaintiff could recover, as the defendant was liable for only *one* fare, which was fifteen cents at the most, and that he was not responsible for the other fares. The Court so ruled, and a verdict was taken for the defendant.

A man by the name of Freeman, who was employed in the office by my predecessor, Mr. Willard, had agreed to meet him at the office at

8.30 A. M., half an hour before the usual time of opening it. Precisely at that hour there came an imperative rap at the door. I took no notice of it. In a few moments it was repeated. I said to Freeman that it must be some one who ought to be admitted. Then Freeman thought of his agreement and hastened to open the door. Mr. Willard said: "Mr. Freeman, you agreed to meet me at 8.30 A. M., sir, and now it is fifteen minutes to nine; I am ashamed of you." "Are you?" replied Mr. Freeman; "that saves me the trouble of being ashamed of myself."

A man was being sentenced by Judge Cushing of the Police Court, for being a common drunkard. The judge remarked: "You ought to be ashamed of yourself; you might be a respectable man if you would n't go about drinking like a sponge." The prisoner answered: "Your honor has a right to sentence me and perhaps lecture me; but you can't sentence me when you say I drink like a sponge, for a sponge only drinks water."

"Indorse this petition," I said to a young student who presented his petition for admission to the bar. "How shall I do it?" said he. "Oh, simply say, John Doe, petitioner," and he indorsed it so.

"What in the world is this word," said the

judge to me one day. "I can't make it out." "Why, that word is demand," said I, "and very plainly written for Mr. ——." "Plainly written!" said the judge; "that declaration is demurrable for its obscurity; why does n't he go to Egypt, and establish a hieroglyphic office; he writes worse than Choate, which I thought until now would be impossible."

In an action for ill treatment of a horse, which caused his death, an Irish hostler testified that when the horse came into the stable, he was in a "cowld sweat." "When did he get into a hot one?" asked the counsel. "Never, your honor," said the witness; "he died before he got out of the cowld one."

The following was done by a young man who had been only a couple of years at the bar. He was the youngest of a firm of three. The firm had an execution of $1000 and costs against the city of Boston. Mr. —— presented the execution to Mr. Turner, the city treasurer, and Mr. Turner replied that he did not know him and wanted him to get either of the two other members to come and discharge the execution, as he knew both of them well. Mr. —— said: "I am a member of the firm." Mr. Turner said: "May be so, but I don't know you, and here 's a thousand dollars or so to pass, and I don't want to lose it." While Mr.

Turner was looking about, Mr. —— disappeared, and in a few moments a deputy sheriff came in with the execution, and the treasurer had to pay, not only the thousand dollars and costs, but seventeen dollars more as officer's fees.

In an action for a collision between one of the East Boston ferry-boats and a sloop, the following dialogue occurred between one of the learned counsel and a witness: —

"You own the sloop?"

"I do, your honor."

"What was her crew?"

"Oh, bedad, meself was her captain, and another man was her crew."

"When the steamboat struck you, what was the crew doing?"

"Begorra, your honor, he was standing foreninst the bowsprit, screeching, 'Stameboat ahoy! Stameboat ahoy!' and I told him to lave off screeching like that, and to scrame 'Murder.'"

Something more than a smile went over the court room, bench and all. The counsel returned to the charge.

"When the steamer passed you after the collision occurred, did she pass ahead of you or astern?"

"Well now, upon me oath and conscience, yer honor, I could n't say as to that; meself had

enough to do to look out for me life, those times."

Counsel (insinuatingly): "Well now, sir, how old is your sloop?"

"Shure, sir, 't is more than meself that knows."

"Well, about how old is she?"

"Be me sowl, yer honor, she might be twenty years jist about."

"She grows better, I suppose, as she grows older, eh?"

"Well now, yer honor, I could n't say; some things does and more things don't. I know I 'm better these times, and I hope yer honor is, than I was twenty years ago."

Here the laugh got in all around, and the counsel, coming to the conclusion that Captain Muldoon was wide awake, dropped the examination, and the witness was allowed to stand down.

Matthew Wells Smith and Phineas Ayer were trying a case, each having his client for a witness, and no other. Mr. Callahan testified; then Mr. Flanagan testified, and contradicted Mr. Callahan on almost every point. Then Ayer recalled Callahan and said: "Callahan, you heard the testimony of Flanagan?" "Yes, sor." "In consequence of what he said, do you

want to change your testimony?" "Faix, just as you loike, sor." "You can step down, sir," said Ayer; "you are too willing." This was before the Supreme Court ruled that this question need not be asked a witness, but that he may ask to change it himself.

P. Henry Hutchinson was arguing before a judge for damages for assault on his client by a blow on his face. Said Hutchinson: "There are some cases in which the iron enters the soul, and one feels it more than the blow. Your honor knows how it is." Judge: "Fifty dollars and costs." This judge had been assaulted by a person who was sent to jail for the offense.

Mr. P., wanting to plead the discharge of his client in insolvency, asked John J. King, who was clerk to the master in chancery, to lend him the discharge. King said it was usual for the party to call for it and pay for it. P. said, "I 'll be responsible for the fees." "Very well," said King, "as your word is good, take it." P. pleaded it, and, not paying for it, King asked him for the pay as promised. Said P., "Have you any written promise?"

A vessel arrived from sea and hauled into the dock, and between daylight and evening the captain went below for supper. While eating, he heard a splashing in the water by the side of

his vessel, and, coming on deck, he found a man struggling in the water. He threw him a rope and hauled him on board. After wringing out his clothes and getting composed, the man took a writ from his pocket and attached the vessel. It was Deputy Sheriff Neale, who had attempted to walk aboard on a plank, and when halfway over, the plank broke and let him overboard.

Senator Jones of Nevada was once a witness, and, while waiting for his turn to testify, went down into the jury-room with a number of the court officers, and entertained us with stories of General Grant. The best one I remember is this: General Grant was accustomed to take long walks, and almost every day he met a butcher driving a horse to which he took a great fancy. After considerable negotiation, he bought him, took him to his stable, had him well groomed, and then called Senators Conkling and Jones, and one or two others, to look at his new purchase. His hostler brought him out on the stable floor, took off his blanket, and General Grant asked the senators how they liked him. Conkling shook his head. "What is the matter, Mr. Senator?" said Grant. Conkling looked him all over again and said: "What did you give for him, Mr. President?" "Four hundred dollars," said the general. Said Conkling: "I 'd rather have the four hundred dollars than the horse."

Grant, puffing out a cloud of smoke, coolly remarked: "That 's what the butcher thought; put him back into the stall, John."

George Sennott was in the clerk's office one day when his office boy came running in, and said to Sennott: "There 's a man wants to see you at the office." "Ask him what he wants," said Sennott, "and if he won't tell you, say I can't see him unless he leaves ten dollars." "Oh," said the boy, "he is n't an Irishman."

A witness testified before Judge Cushing in the Municipal Court that the opposing party told him he should n't have his property till he got it at the tail end of the law; "and so," said the witness, "I came immediately before your honor."

There was a jury out some time, one of the members of which was Daniel Deshon. Chief Justice Nelson said to the jury: "I learn, gentlemen, that you cannot agree; what is the trouble?" "No trouble, your honor, except with Deshon, here." And as the result proved Deshon was the one who was right.

Under the old law, witnesses were required to take the oath differently according to their respective beliefs; some on the Evangelists, some on the Pentateuch, and so on. Mr. Morse called a number of witnesses, and having only a small

copy of the Evangelists to swear them upon, I told Mr. Morse that the witnesses could n't all take hold of the book at the same time. Morse (*sotto voce*): "Let one take hold of the book, and the next one take hold of him, and so on, and let it go through them like an electric shock."

Two boys were brought up to be sworn. The first was thirteen years of age. The judge put to them the following questions: "How old are you?" "Thirteen." "Do you know the commandments?" "No." "Do you go to Sunday-school?" "No." "Did you hear the clerk swear the others to tell the truth?" "Yes." "What was it for?" "To tell the truth." "Suppose you don't tell the truth?" "I don't know."

The second boy to the first question answered "Ten;" to the second, "Yes, sir;" to the third, "Yes, sir;" to the fourth, "Yes, sir;" to the fifth, "To tell the truth;" to the sixth, "God will be offended." Counsel: "Who told you that?" "Nobody; I learned it at Sunday-school."

A third boy was brought up, who said that he was eight years old, and answered the first five questions in the affirmative. To the sixth, "Suppose you don't tell the truth," he answered, "Then he won't win his case."

William L. Burt, once postmaster of Boston,

in closing his argument after Mr. S. C. Maine had closed on the other side, said: "Gentlemen of the jury, the Lord made me some time after that gentleman, but after He got his hand in."

Samuel D. Parker told me that when party spirit ran high in this State as to masonry and anti-masonry, Leverett Saltonstall, who was a candidate for Congress, was asked by a gentleman his opinion of masonry, and whether he did n't consider it silly. "Yes," said Mr. S.; "there is only one thing sillier — anti-masonry."

Mr. R., formerly attorney-general, who was rather convivial at the time I speak of, shortly after he was elected to Congress thought he would go West, and get a little acquainted with the people. He found some other Congressmen-elect where he went and they traveled for about a week. As he started for home the most familiar of his associates asked one of the others: "You 've always called your friend Bob; what 's his surname?" "R——," said the other. "And elected Congressman from Massachusetts?" "Yes." "What 's his politics?" "Republican." "H—l, he drinks like a Democrat."

A witness who was asked what was his condition that morning replied: "Sober as a judge."

Walter H. Judson was once talking with a

dentist who asked him where lawyers would go when they died. "I don't know," said Judson; "but I know where dentists ought to go." "Where?" said the doctor. "Where there 's 'gnashing of teeth,'" said Judson.

Mr. Freeman, who was employed in the office of the Superior Court, was copying the list of cases handed in by the lawyers, to be entered on the new docket. Many of them were badly written, and he applied to me frequently to learn the names of parties. But at last, his patience about gone, he said to me: "You would be a d—— good fellow to go to Egypt, and read the hieroglyphics. If I was a merchant and they sent me such writing, I would send it back and ask them if they meant to insult me; and as for that T., he 's my *bête noire*, and if I catch him on the Common, I 'll lick him." I told Mr. T. of it, and he repeated the story in court to the members of the bar, to their great amusement.

When I first entered the office there was a large stable on Endicott Street called the "Massachusetts Stable," and it was the only large one then in Boston where horses were brought in from the country for sale. James L. English, David S. Greenough, and Edward D. Sohier, who at that time wore the drab English cloth

coat, were accustomed to go every spring to this stable to look over horses. On a certain spring day, they went down as usual, and a new hostler was there. As they were going out, the new hostler said to one of his companions, "Who 's them, John?"

"Ah! bless your soul, don't ye know them? them 's the legle jockeys."

VI.

OBITER DICTA. — PART II.

Mr. R., in addressing a jury, in a case where the owner of a cow sued the pound-keeper for damages to his cow, which was hurt while in pound, said: "Gentlemen, the pound should be a safe asylum, not only for the roaring bull, but for the gentle heifer."

Soon after the death of my predecessor Mr. Joseph Willard, Richard F. Fuller, a practicing lawyer, who had probably not heard of his death, brought a suit in which the writ was signed by Joseph Willard. After I was appointed by the Court to fill the vacancy till the next election, a motion having been made to dismiss the writ, Mr. Fuller asked leave to amend by striking out Joseph Willard, and inserting my name, Joseph A. Willard, which was refused. Then Mr. Fuller asked to amend by inserting "A." between Joseph and Willard; the Court smiled, and refused that also. Then he offered to paste my name over that of Joseph Willard, which was likewise refused, and the case dismissed.[1]

[1] To the lay mind this is said to be pointless; therefore I

A lawyer practicing at the bar brought me a deed to copy in which was the following: "Beginning at a certain point and running forty rods to a stone, then turning at a right angle and running forty rods to a post, then turning at a *left* angle," etc.

The same lawyer was trying a case before Judge Lord in which there were two witnesses of the same name. One of them belonged in Boston, the other in France. In examining one, the answers were not according to his expectations, he having evidently mistaken the witness for another person. So to avoid confusion he asked him: "Where do you live?" The witness answered: "In Boston." "Oh," said the counsel, "I thought you was the Peer [Pierre] Dubois who lived in Bordux [Bordeaux]."

The same counsel in commenting on the testimony of a witness, said: "Gentlemen of the jury, I ask you not to believe a word he has said; look at him, where he comes from, the very *purloins* of North Street."

The same counsel, trying a case before Chief

state that the signature of the clerk is the foundation of the writ, and the writ became at the death of Joseph Willard, Esq., nothing but a blank piece of paper, being issued after his death, and this shows the devices of a lawyer to maintain his suit. A lawyer will appreciate it without this explanation.

Justice Brigham, insisted upon asking questions which the Chief Justice had repeatedly ruled out. The Chief Justice said, "Mr. ——, you don't seem to take any notice of my ruling." "I ask your honor's apology," was the reply.

An action of contract was tried in the Court of Common Pleas, before Mr. Justice Hoar. Mr. Edward Y. was for defendant, and Mr. M. S. C. for plaintiff, the defense minority. After the plaintiff's case was proved, the defendant's older brother took the stand and testified as to the age of the defendant. His testimony, if believed, proved the defendant to have been a minor at the time the debt was contracted.

Mr. C. was often somewhat under the influence — it is difficult to say of what — and, as counsel then sat while examining witnesses, C. was seated with one leg over the other, swinging it to and fro, and proceeded to cross-examine in this manner: —

C.: "Witness, where were you when your br'er was born?"

Witness: "I was about the farm."

C.: "But *where* were you?"

Witness: "I might have been hoeing potatoes or corn."

C.: "Yes, sir, I know you might have been

doing a good many things, but *where* were you?"

Judge Hoar: "Mr. C., what is the object of this minute examination?"

C., rising and holding on to the rail in front of the clerk's desk to steady himself: "May it please the Court, I wish to as'tain wheth' th' witness was merely 'bout there, or wheth' he was 'njoying the festivties o' th' 'casion."

Judge Hoar: "You can't ask that."

C. steadied himself for fully a minute, looked the judge straight in the face, and without saying a word more took his law books under both arms and staggered out of the court room. I never saw him afterwards.

A case was on trial in which several plaintiffs were suing the Allan line of steamships for furnishing bad food, dirty berths, and gruel which made them sick. For the defense a number of respectable witnesses were called, who said that they had plenty of good bread, tea, coffee, etc. An elderly lady said she had her grandson with her, ten years old, and that they had "a plenty of good bread, tea, coffee, and meat."

"Did you eat the gruel?"

"Yes."

"Did the boy also?"

"Yes."

"Was it good?"

"Yes."

"Had you enough?"

"Quite sufficient, and I'm going back in the same ship some day."

This testimony was so strong that the plaintiff's counsel thought he suspected something, so he cross-examined quite severely, and the more he interrogated the stronger her evidence became.

"You are going back some day?"

"Yes."

"By this line?"

"Yes."

"The Allan Company are going to give you a free passage?" (tentatively).

With the utmost *naïveté*, the old lady exclaimed very innocently, "Are they?"

The tone and inflection cannot be given, but it floored the plaintiff's counsel, and he cross-examined no more.

In closing an argument before a jury, and commenting on the testimony of a witness, a member of the bar once said: "Such testimony was never heard, posterior, anterior, or before."

The same gentleman, in introducing Mr. John E. Fitzgerald to an audience, said: "Ladies and gentlemen, allow me to introduce

to you the celebrated young orator, John E. Fitzgerald of Boston, whose voice has so often resounded through the archives of Faneuil Hall."

At the general calling of the docket at the April term of 1889, number one, an action which had been on the docket for thirty-one years was dismissed.

Some strange scenes occur on these occasions. The clerk called a case, —— *vs.* ——, K. for the defendant. Mr. K.: "I don't know anything about that." The clerk: "Your name is on the docket." Mr. K.: "Some mistake." The clerk got the writ and papers, and read from the files: "Enter my appearance for defendant. K." — in his own handwriting. (Fun among the bar, in which K. took no part.)

In a trial for damages against the West End Railroad, a witness, on his examination in chief, testified that it happened on a certain day. On the cross-examination, the following dialogue took place: "Are you sure when this accident occurred?" "Yes." "When?" "In the spring." "Might it have been in April?" "Yes." "In June?" "Yes." "In August?" "August ain't spring." "Should you be surprised if it was a year ago?" "No." "Two years?" "No." "Five years?" "No." "Sev-

enteen years?" "No." "And believe it?" "No; I might not be surprised, but I don't believe it." "When was it?" "In March." "Which March? first, second, or third?" "One of 'em." "Which?" "First March." And the fact was so.

An action was brought by the heirs of a deceased woman to recover $6000 which the defendant claimed as a gift of the deceased, who was his sister. The defendant's counsel in argument said his client claimed it under the motto of the Municipal Court of the city of Boston, to wit: "*Suum cuique.*" The plaintiff's counsel, in reply, said his clients claimed it under the motto of the Probate Court, to wit, "*Deo animam hæredibus bona.*"

In 1874, a leading member of the bar brought into the office a petition, stating in substance that a widow owned a policy of insurance on the life of her late husband, for $5000, payable to her at his death; that after the proof of his death she was informed by the company that it would be necessary to get the receipt of the executor; that the petitioner went to ——, a lawyer, and gave him a power of attorney, authorizing him to get the money; which power was shortly afterward, at her request, returned to her. She also requested the attorney to deliver

up the policy to her, which he refused; that the attorney paid her $100, and told her she could have more when she wished it; that shortly after, she went to the lawyer, who presented her with a bill of $703, — $269 for advice and services, and $434 for commission and collection. Considering this extortionate, she went to the member of the bar who presented this petition; the petition closed by stating that if it should appear that the party had been guilty of this alleged misconduct, he be removed from the bar. Knowing the respondent somewhat, and thinking well of him, I asked the counsel who brought in the petition to let me have it, and see if I could n't arrange it without bringing it to the attention of the Court, to which he assented. The respondent, being sent for, came in and justified. I said to him that if that was all he had to say, the petition might as well be entered. He asked me what I thought he ought to do. I told him it was not for me to advise him, but if I should give him any advice, it would be to cut down his bill certainly one half. He said he should not do that. I then asked him if he would refer it to such person as I might appoint. He said he would. I told him I would confer with the other side, which I did, and he agreed to do the same. I then selected Mr. ——, who heard the parties, and reduced the charges to about $300.

Some years after, in a case in which an acquaintance of mine was one of the parties, would not the following, by the same attorney, be considered an act of sharp practice? He recovered a judgment against a defendant who was defaulted by accident, and got an execution against him. The defendant came to me, and said it was a mistake, and determined to petition for review, and did so. The Court ordered the execution superseded, and a notice to be issued to the plaintiff. While the proceedings were going on, defendant's counsel wrote a letter to this attorney stating what was being done, and asked him, as a matter of courtesy, to hold the execution for a short time until he could get out the *supersedeas*, stating that the defendant was financially good, and had plenty of property to levy on. This letter was sent by the defendant, who, on arriving in the attorney's office with it, found there an officer. The attorney read the letter, and turning to the officer said: "Mr. Officer, levy this execution and collect immediately."

In an action against the Boston and Maine Railroad, to recover damages for a broken arm, the cross-examination of a physician was as follows: "How much is your bill?" "Two hundred dollars." "How much a visit?" "Two dollars, at his house." "How many visits?"

"One hundred and twenty." "How many at your house?" "Forty." "How much at your house?" "One dollar." "That is $240, and $40, $280; do you often get up as high as that for a broken arm? Have you sent your bill?" "No." "Are you waiting to see how this case comes out?" "Yes."

In an action of contract to recover $300, the parties were all Hebrews. Plaintiff's counsel, examining defendant B.: "Mr. B., was Mr. —— in your employ?" "No, sir." "Never?" "No, sir." "Did n't he work for you for a year?" "No, sir; he loaf about the shop." "Did you write that letter?" (showing it.) "Yes, sir." Counsel read the letter, in which it appeared that the witness recommended —— as a good man who had been in his employ a year. "Now, sir, did you write that letter?" "No, sir." "Did n't you say a minute ago that you did?" "I no compose him, I copy him."

I called a case and said, Mr. —— and Mr. Sanford. Sanford: "*Who* am I for?" I: "I think you ought to know your own client." Sanford: "I move for a default." I: "You are for defendant." Sanford: "Ah, then I move for dismissal."

A ship lien case was called. No response. I called, "Dismissed." Some one arose. "Please

the Court, I should like to have that case stand." The Court: "How long since anything has been done, Mr. Clerk?" Clerk: "About three years, your honor." Counsel: "The ship has been away, your honor, and if she returns, we will enforce our lien." Court: "What says the other side?" Counsel: "Oh, we control both sides, your honor." Court: "Oh, well, if that is the case, it may stand."

Gage wished a case continued, as one of the parties was guilty of embezzlement, forgery, perjury, or something of the kind, and he wished to ascertain which of these before he went to trial.

"Is that your son's signature?" "I don't know." "How long have you known him?" "About twenty years." "Did you ever see him write his name?" "Yes, sir." "Does this look like his signature?" "I don't know." "What is your impression?" "Have n't got any."

To son: "What is your business?" "Restaurant." "You ran one for yourself in 1885?" "Yes, sir." "Then for L. M. Wyman?" "Yes, sir." "What are you doing now?" "Managing a restaurant." "Who for?" "L. M. Wyman." "Who is he?" "He is L. M. Wyman." "Your aunt?" "No." "Cousin?"

"No." "Uncle?" "No." "Any relation?" "Don't know." "Then you don't know your relations?" "No."

A breach of promise case was on trial, and the defendant's counsel had his photograph, and asked the plaintiff's counsel if he wished to see it. He said: "Yes." The judge said: "Is it a part of the case for plaintiff to show that she lost a handsome man?" "When did you first like him?" "I always liked him." "But the second time he came your affections suddenly sprang into an ardent and vigorous growth?" "Yes."

A member of the bar was asked if epilepsy was n't a good ground for divorce. "Epilepsy? No; why should it be?" "Why, it 's lack of support, ain't it?"

William Gaston was governor of Massachusetts. His son, William A., was afterwards colonel on Governor Russell's staff. E. Rockwood Hoar was Judge of the Court of Common Pleas and afterwards of the Supreme Judicial Court. His son, Sherman Hoar, was a member of Congress. Samuel Hoar, another son of the judge, was trying a case opposed to young Mr. Gaston when the following occurred: —

Mr. Samuel Hoar to witness: "Have you talked over this matter?"

Witness: "Yes, sir."

Mr. Hoar: "Who with? Governor Gaston or Colonel Gaston?"

Witness: "Both."

When young Mr. Gaston was examining a hostile witness he asked: "Have *you* talked over this matter?"

Witness: "Yes."

Mr. Gaston: "Who with? Judge Hoar, member of Congress Hoar, or"—

Mr. Samuel Hoar (arising), "Plain practitioner of law."

An action was brought to recover $10,000 damages for carelessly dropping a bale of hay from a loft, ten or fifteen feet from the floor, whereby plaintiff was permanently injured. Defendant answered as to the merits, and in addition pleaded a release signed by the plaintiff, in the sum of $500, from all claims against the defendant. Plaintiff replied that he was ignorant of what he signed, and if he signed it he must have been intoxicated at the time. Evidence was put in as to the merits of the case, and also as to the release. As the defendant's counsel was about to argue the case, he handed to the Court prayers for instructions to the jury.

The judge looked them over and handed them to the plaintiff's counsel. He looked them over hastily and, was about to hand them back to the Court when he thought he would examine them a second time; he then found that the last prayer requested the Court to rule that the plaintiff could not recover, as he could not keep the $500 and proceed with the trial. Having read that, plaintiff arose, and taking a five hundred dollar bill from his pocket offered it to the defendant's counsel, who remarked that he thought it too late. Plaintiff's counsel then read to the Court from 112 and 145 Massachusetts, that it was within reasonable time, even while defendant was arguing. Whereupon plaintiff tendered the money again in open court, which defendant neither accepted nor refused, but proceeded with his argument. The plaintiff then argued his case, and the jury returned a verdict of $2500 for the plaintiff, the defendant forthwith filing a motion for a new trial.

An action was brought against the city of Boston for want of a railing on a narrow street, on each side of which was water. A horse with a wagon attached had backed over the bank into the water, throwing some of the occupants into the mud and damaging their dresses. A witness testified that he cut the traces and breeching, got the horse out, took a stick, and, to use

his own words, "Give it to him, got a meal-bag and put it on his back, and trotted him home as fast as he could." Counsel: "Why did you whip him, and trot him fast?" Witness: "I was afraid he would drop if he was n't kept goin'."

In a case in which Harvard College was a party, N. St. John Green was junior counsel with Mr. Butler; and E. R. Hoar was for the College. Mr. Hoar asked Green: "How is it that Butler knew the locations so well about Cambridge?" Green: "I went up to Lowell Sunday, and told him all about them." (Green was a native of Cambridge.) Mr. Hoar: "Was that fair, Mr. Green? Was not Harvard your Alma Mater?" "Yes," said Green, "but a d——d cruel one." Green was rusticated while there.

During the trial of a case brought against the master of a vessel for not providing anti-scorbutics, Mr. Mackie, counsel for the plaintiff, in addressing the jury, said that it was in evidence that scurvy was not now (1850) known in the merchant service or navy. A juror spoke up, saying: "I want you to know that I am a religious man, and you must speak the truth. I have been ashore two months and a half, and I have the scurvy in my legs now."

In a case against the Boston and Albany Rail-

road, Governor Long, appearing for the plaintiff, after his argument handed a number of prayers for instructions. Judge: "These prayers seem to be a repetition of your argument to the jury." Governor Long: "I don't think so, your honor." Judge: "I do." Governor Long: "A difference of opinion."

In the case of —— *vs.* the Allan Steamship Company, the following occurred: "You said there was a person very sick?" "Yes, sir." "Who was it?" "A woman." "Some one you had known in Galway?" "Yes, sir." "Who was she?" "My wife."

A wag named Holden, whom I knew in Cambridge, was met by a man who asked him: "Can you tell me where the Probate Court is held?" Holden replied: "You should have said, 'Can you tell me where the Probate Court is Holden?'"

A tailor was appointed a constable, and went to the book of forms and made a *verbatim* copy: "I this day attach, etc., etc., and I give him a summons in hand (or I arrested him and held him to bail, as the case may be)."

In the case against the Allan Steamship Company. "What did you have to eat?" "Irish stew." "Who called it Irish stew?" "The *steward*."

"What did you do when at home?" "Fishing and weeding." "Did you ever go to sea?" "Yes, sea all the time." "Did you go to sea to weed?" "Yes." "Seaweed?" "Yes."

Many lawyers after the evidence is in are in the habit of handing to the judge a number of written prayers for instruction to the jury. In some simple cases it was very annoying to Judge ——, and finally he said to two young men, both of whom had handed him a long list of prayers: "You can keep on handing me these prayers for instructions if you choose, but if I should give these instructions to the jury which you ask for, your verdict would n't be worth anything."

In quite a simple case, Thomas E. Barry handed to the Court some written prayers for instructions. Judge: "It has been the practice for some years in every simple case to hand the Court prayers for instructions; I think they are better honored in the breach than in the observance." Then W. H. H. Andrews, the opposing counsel, handed in a number more. This broke his heart. Judge: "I will let your requests lie on my desk, and after you have argued, proceed to charge the jury."

A case was on trial in which plaintiff claimed damages for being run into and having his back

broken. The defendant admitted the injury, but denied liability. The plaintiff's little boy, nine years of age, who sued by his *prochein ami*, was brought into court lying on his belly on a small frame which was placed on a table. He rested his breast and shoulders on his elbows, having no control of, and no feeling in, any portion of his body, below his shoulder blades, and the physicians testified that not only were his vertebræ broken, but that the spinal cord was severed. He was a bright colored boy, and could not, nor probably did he, realize his situation. He laughed and played with some toys that he had before him. One of the witnesses for plaintiff testified that an agent or detective of the West End Road induced him to go to the office of the West End Road, and stay there, telling him that he (the detective) would make it all right, but that he became tired of waiting and went and told plaintiff's father. On cross-examining the witness, Dickinson, attorney for the defendant, prodded him so that he provoked him. Dickinson asked him to come off the witness stand, to go into the room, to stand up alongside of him (Dickinson), and to push him around the way in which the boy was knocked. Witness did so, and gave Dickinson such a hard push that he was whirled almost into the middle of the room,

whereupon the witness retired to the stand. When Dickinson recovered, and as all were laughing, he exclaimed, "Now that did you good, did n't it? You would have liked to strike a little higher, would n't you?" "Yes," said the witness, "but you know I was representing a horse."

In a libel case against the "Boston Daily Advertiser," one of the counsel asked the witness to spell a certain word. Judge ——: "No, we don't keep a spelling-school here."

A teamster, who was testifying in a thin voice which could hardly be heard, was asked by the judge: "What did you say your business is?" Witness (very softly): "Teamster." Judge: "What do you do when you wish to stop your horses?" The obvious reply, and what the judge expected, was that he would say in a louder tone, "Whoa!" to which the judge would then say, "Then talk as you do to them." But the witness said, "Haul up my reins." The answer was so unexpected to all that the audience tittered and the judge wanted to.

In a case which was brought against the city of Boston by a conductor of the West End Road, for injuries received by striking against a post which was erected outside of a building as a barrier, the conductor standing on the

running-board of the horse-car, collecting fares, the defendant's counsel, Colonel Hopkins, contended that the conductor was not using due care; he ought to have looked as he rode along. Plaintiff's counsel contended that he was supposed to be safe without doing that, as he was collecting fares and could not be all the time looking out for his safety, and that the doctrine contended for by the defendant would be more than due care; he illustrated it in this way: "When Barnum's show was traveling through the State, one of his elephants fell through a bridge, which was afterward repaired. Two years afterward the same show was traveling on the same road and when that elephant came to the bridge he would not go over it, nor could he be induced nor compelled to do so, and they had to go round six miles to cross the river. That elephant used due care, and that is my brother's definition of due care."

A witness was asked, "Did you not say when asked about this accident that the hack was going like h—l?" Witness: "Like what?" Counsel: "Like h—l; don't you know what I mean?" Witness (bending his head and thinking for a few seconds): "Oh, yes, I know what you mean now." (Laughter.) Counsel: "Well, did you use that expression?" Wit-

ness: "Yes, I guess I did." (Loud laughter, in which the judge joined.)

A witness being called, I told counsel that he had not been sworn. Counsel: "Oh, yes, he was." Clerk, to witness: "Were you sworn, sir?" Witness: "What 's that?" Counsel: "Did you swear this morning?" Witness: "I do occasionally." Counsel: "Oh, no; did you hold up your hand this morning and take the oath?" Witness: "Oh, no, sir."

A suit was brought against Thomas Dana, a member of the Hollis Street Church, to recover payment for putting in a memorial window in the church. The late H. Bernard Carpenter was then pastor, and Dana claimed that Carpenter was to deliver lectures to pay for the window. Mr. Howes, cross-examining Mr. Dana: "Were you not advising with Mr. Carpenter about lectures?" Mr. Dana: "No, sir; the idea of my advising with Mr. H. Bernard Carpenter about Greek and Latin things is absurd. I should never do that with H. Bernard Carpenter." Mr. Howes: "Did he deliver Latin lectures?" Mr. Dana: "No, they were worse." (Mr. Carpenter sitting in the court room, smiling.)

An action of tort was brought against some contractors who were building a drain, the earth having fallen in and damaged the plaintiff. A

verdict was given for him, and the defendant's counsel, a late governor, an excellent lawyer but a very sensitive man, immediately filed a motion for a new trial. Judge William Allen said he would hear it at once, and it was heard very shortly afterwards. For two or three mornings after that, a gentleman representing the defendant's counsel came to me and asked me each time: "Has Judge Allen decided that motion yet?" I told him: "No." Finally he said, one day, "Mr. ——, the defendant's counsel, has gone home; he says the verdict has made him sick, and he will not come out until the motion is decided." At the opening of the court that morning I said to the judge: "I shall be obliged to call you doctor." He asked why. I said: "Mr. —— is at home suffering from the effects of that verdict, and will not come out until you have decided the motion." He said: "Set the verdict aside, and give him a new trial." I sent word to the counsel, and he was down in the afternoon.

In an action of Randolph *vs.* O'Riordan *et al.*, which was brought to recover damages for personal injuries, the defendants were represented by two different counsel, their liability claimed to be separate and distinct. After the evidence was all in, there was some contention between the counsel, carried on in an undertone,

as to which one should begin to close. The judge, noticing the delay, said: "What's the matter, gentlemen?" Mr. B.: "Your honor, we can't seem to decide which one shall go ahead." The judge: "Gentlemen, I don't think it makes any material difference; it is something I cannot determine or order. I think you must settle it between yourselves; at least I trust you will." Then the following conversation was carried on between the counsel, *sotto voce*. B., turning to H.: "I'll toss up a cent for choice." H.: "All right." B., producing a nickel from his pocket, put it between his hands, shook it, and said: "What 'll you have, H.?" H.: "Tail." B., opening his hand and disclosing tail, said: "I have lost and you have won, I 'll go ahead;" and he did. The judge, jury, and spectators all seemed interested in the game, and when the result was announced they seemed to know what had been going on and how it came about.

When it was customary to call the docket on the first day of every term there was much fun. I called an action, Smith *vs.* The Butchers' and Drovers' Bank. Judge —— remarked: "Rather a bloody affair, Mr. Clerk."

Mr. Hodges was trying an action before Judge Charles Allen, about a sale of cigars.

"I understand, Mr. Hodges, this is a case of cigars," said Judge Allen. "No, your honor," cried Mr. Hodges; "it is only a couple of boxes."

Judge ——y, meeting Mr. C., said: "Mr. C., have you seen my new book?" Mr. C.: "No, sir; who are the publishers?" Judge ——y: "Little & Brown." Mr. C.: "What is the title?" Judge: "Y——'s overruled cases."

In 1883, not long before his death, I rode up town with Wendell Phillips, and had a pleasant chat with him. We talked about old slavery times, and among other things he told me that while the hearing was going on in the court room relative to the rendition of Sims, Moncure D. Conway, a Virginian who was studying at Cambridge, presented himself at the door of the court room (where scarcely any of *our* people were admitted), saying: "From Virginia," and was instantly admitted. Conway circulated the story rather freely and it got into the newspapers, so that when he next presented himself the officer replied: "No use, sir, you can't go in, we know *you*."

In an action of tort to recover damages for injury to a boy run over some two years before the trial, Mr. ——, the defendant's counsel, of-

fered in evidence a letter written to him by his client two years before the trial, relative to the accident, stating what he would be willing to do for the boy. The plaintiff's counsel very properly objected. The Court said he was surprised at the offer and the objection, and plaintiff allowed it to go in, rather than have the comments of the defendant's counsel on his, the plaintiff's, objection. I think that if such evidence can be admitted there is no end to any hearsay testimony.

There was an action of tort brought by Stillman B. Allen, Esq., against Dr. Blaikie, the pastor of the —— Presbyterian Church, for the falling of a slate from some portion of the roof, and in the course of the trial it did not appear precisely that it came from the roof of Dr. Blaikie's church. The plaintiff got a large verdict. The presiding judge then said (counsel and jury being present): "Gentlemen, I want the stenographer's notes put into English as soon as possible, so that I can read them, for if I am not very much mistaken, there is not a particle of evidence upon which this verdict can stand for a moment." And afterward the verdict was set aside upon a hearing.

Among the judges of the Court of Common Pleas there was one, now deceased, famous for setting aside verdicts without any hearing. Mr.

—— brought an action of tort (I forget the case) to recover damages for a client. The jury returned a verdict for the plaintiff for $1000. Upon reading the verdict, Judge —— said: "Mr. Clerk, set aside this verdict, unless plaintiff remits all over $300." Mr. —— rose and said: "I decline to accept $300." Judge: "Mr. Clerk, set aside this verdict unless the plaintiff in five days remits in writing all over $300." At the next trial the plaintiff recovered a verdict for $1300.

I remember Mr. William J. Hubbard, in arguing the motion for another trial, said, "May it please your honor, I think this verdict should be set aside *toties quoties*, a doctrine which the Supreme Court has lately confirmed."

The immigrant suit for damages. An expert's opinion as to the origin of typhoid fever. The trial of the case of Gannon *vs.* The Allan Steamship Company was continued. The first officer testified as to the cleanliness of the ship on the voyage complained of, and several steerage passengers testified that their berths were clean and the quality of the food furnished was good. Dr. Draper said that the origin of typhoid was a germ entering the system and poisoning it, the poison producing fever. Counsel: "Is it necessary that each attack of typhoid shall have a pre-

vious germ to originate it?" Dr. Draper: "Yes." Judge Pitman: "How can you speak so positively when you don't know the origin of the germ? The first case could not have had a germ from a previous case." Dr. Draper: "Well, I don't know." Judge: "Then it's simply the dogmatism of science."

On cross-examination, Dr. Draper said he was a strong believer in the germ theory. He thought that no case of typhoid was contracted except by germs of a previous case. In other words it must be taken from a person already afflicted, the germs being passed into the system generally through the mouth by means of food or water. No matter how filthy the quarters were, or how rotten the food, if there were no typhoid patient aboard, there would be no typhoid contracted. That was his belief, though he could not be absolutely certain. Medical authorities differed on the subject.

When Mr. Dabney argued for the plaintiff, he made the following remarks relative to it. He said: "Suppose one of you gentlemen of the jury found a spear of wheat or a stalk of corn growing in your yard, and you should go to a farmer and tell him of the fact and ask him how it came there, he would say some one must have dropped a seed there. Then you would ask him where the seed came from. Could he answer?

Or if you found an egg in your shed, some one would say a hen laid it. Say you, Where did the hen come from? From some other egg. Yes, but where did the first egg come from? I don't know. And which came first, the hen or the egg?"

In the case of Levy *vs.* Bornstein, tried in the first session of the Superior Court in April, 1890, a witness called by the defendant in the course of his cross-examination testified as follows: —

"You have been a frequenter of gambling saloons, have you not?"

"I have not."

"Do you mean to tell me that you have not frequented gambling saloons in Boston?"

"I have been in a few times."

Defendant's counsel: "Wait a moment."

Witness: "I would just as lief answer the question. I have been a few times in a gambling house, not enough to call myself a frequenter."

"You have lost sums of money in gambling?"

"I have played cards, and won and lost."

"You have played faro?"

"A few times."

Defendant's counsel: "Wait a moment."

Witness: "I have not the slightest objection to answering. I have played cards with *you* in a club-room."

Plaintiff's counsel: "That is true."

"And you have played faro at a public table?"

"I have."

"And you were expelled from that club-room, when you played with me, were you not?"

"No, sir, I did n't consider that I was. I did n't like their society, and went."

"They would n't play cards with you?"

"They always did."

"Not at the time you left?"

"My last experience was playing cards where *you* were concerned. I lost my money, and I did n't like the company, and I left."

Plaintiff's counsel: "I know you were smart."

The witness: "Not as smart as you, for you got my money."

This is not to give the whole facts, but enough to show the tactics of the defendant's attorney.

Quite a celebrated case was Coyle *vs.* The Fitchburg Railroad. The plaintiff, when a passenger on the outward train from Boston to Cambridge, was holding a newspaper with both hands, his right elbow resting on the inner window shelf; the first thing he felt was a blow on the arm, and a man behind him said: "Mr. ——, your arm is off." He lifted his arm and found that the sleeve and one cord and a portion of

the skin held it, the bone being entirely severed about half-way between the elbow and the shoulder. A freight train had met this passenger train, and the plaintiff claimed that a door of the refrigerator car was loose, and as the car passed some portion of this door — the hasp or fastening — flew into the window and caused the injury.

The witness who testified that he discovered the arm was off said that there was a dent in the side of the window, appearing to have been made by some iron; that he saw the refrigerator door swinging, and that after the accident he called the attention of the brakeman on the freight car to it. One witness said that there was a rocking or a jolting of the car at the time when the injury occurred. The defendant contended that the plaintiff had his arm projected out of the window, and some evidence was introduced tending to show that the plaintiff's arm was resting at full length on the sill so that some portion projected outside. Defendant admitted the jolt, or jar, and the concussion. He also admitted that the door of the freight car was loose, and the swaying of the cars together. It did not appear that any mark was made inside the car. Surgical evidence was introduced to show that the arm could not have been taken off unless something solid was back

of it to strike against. The defendant argued that, as there was no dent inside, the injury was done outside. The case was tried four times. I was told that the plaintiff might have had a verdict for $5000 at one of the trials, but that one juror would not give any more, while the others wished to increase the amount. I was also told that the plaintiff had eleven jurors at each of the three trials. The fourth trial resulted in a verdict for plaintiff for $6000.

Willis *et al. vs.* The Merchants' and Miners' Transportation Company was an interesting case, in which H. E. B. appeared for the plaintiff, and R. S. for the defendant. On August 28, 1886, the defendant's steamship Chatham, going out through the Narrows, ran into the yacht Edith, which claimed to be becalmed.

The plaintiff's brother, who was sailing in the yacht, was thrown into the water by the collision, and, after swimming some distance after the drifting yacht, was drowned. The statute giving damages for death did not apply, and the action was for the common law damages sustained by the deceased in his lifetime. It was claimed that the deceased, in anticipating the collision and in swimming afterwards, suffered nine minutes. The jury at the first trial gave the plaintiff a verdict for $5500, which was

set aside by the Court, and a new trial granted as to damages only; and at the second trial a verdict was given for $9000. This was set aside by the Court, and an entry was ordered to be made on the docket that unless the plaintiff accepted $500 there should be a new trial.

On the trial of this case, many witnesses swore that there was a dead calm at the time. A young lady, daughter of the keeper of Long Island Light, said: "I left Long Island in a boat with a shoulder-of-mutton sail, to go to Rainsford; before I got there I was becalmed, and after waiting some time I was obliged to take my oars; the water was very smooth." "How smooth?" said the plaintiff's counsel. Witness: "The extreme of smooth." On cross-examination, Mr. Stone asked: "Was n't there a ripple on the water?" Witness: "No, sir." Mr. Stone: "Are you sure there was no ripple on the water?" Witness, with great *naïveté:* "That was what I was *waiting* for."

Correspondence between two lawyers, relative to the killing of a cow by a locomotive.

Letter of plaintiff's counsel to defendant's counsel: —

"DEAR SIR, — The cow is an animal intended by nature to provide man with a most

highly valued article of food during its lifetime, and at its death, when properly killed, and the carcass skillfully taken care of and divided, also furnishes an important element for man's sustenance.

"When, therefore, a railroad company throws its locomotive engine, running at a high rate of speed, recklessly against this unoffending and docile animal, it is a perversion of nature, and as such is highly reprehensible; so that when, on October 12 of the current year, one of your engines destroyed the life of Bridget Fitzgerald's valuable cow, your company was guilty of the unnatural act aforesaid. This cow cost her, only a few weeks before its decease, the sum of $94, and was worth that amount at that time, and I should be inclined to waive any additional value which might ordinarily be supposed to attach to it because of her ownership thereof. She has informed me of the acts of negligence on the part of your company upon which she relies for her case, and is of the opinion, with which I agree, that you are liable to her for the value aforesaid.

"Of course, acting in this matter as her attorney, any suggestion which I might make you would be entirely disinterested, and as such I have no doubt you would treat my advice that you pay the claim promptly.

"Trusting that the matter may be adjusted to our mutual satisfaction, I am," etc.

Answer of defendant's counsel: —

"DEAR SIR, — Your favor of the 9th inst., to the General Superintendent, has been handed to me for reply. I have no record of any cow having been killed on the 12th day of October, belonging to Bridget Fitzgerald, but I find a statement that on the 13th of October an animal of this species, supposed to belong to Margaret Fitzgerald, lost its life at Cambridge.

"As the date is immaterial, and as Margaret 'under any other name would' probably 'smell as sweet,' I shall take no advantage of these discrepancies.

"I agree with you fully as to the high character of the cow as a domestic animal, and as to the tenderness with which it should be treated, and the caresses which ought to be lavished upon it. If this kind treatment is due, as you allege and as I admit, from a railroad corporation which has no interest in the animal, except the benevolent interest which corporations always take in the property and rights of others, how much more is it incumbent upon the owner of the beast, to whom the Almighty has especially intrusted its care, to discharge that trust with fidelity.

"The cow, as you are aware, is not only gregarious, but is in the habit, when let loose, of wandering about in pursuit of food and the gratification of its desires. In a crowded locality like the city of Cambridge this propensity is not unattended with danger, and it is the duty of the owner to take all proper means to prevent it. This important duty was entirely neglected by your client Bridget (or Margaret, as the case may be). The cow escaped from the place provided for her in the kitchen of your client or elsewhere. After aimlessly wandering about, she trespassed upon the tracks of this company, an offense punishable in the case of a human being by fine, and often attended in the case of a cow with more serious consequences, viz. the loss of life itself. I understand that under these circumstances this company is not liable, and I have no doubt you will agree with me.

"You say that you are inclined to waive any additional value which may be supposed to attach to this cow on account of its ownership.

"Such liberality is a cause of suspicion, and upon investigation I find that the claim of your client was only $85, showing that in her judgment the cow had depreciated since it had come into her possession, in the sum of $9. Whether this was due to improper care, or to the moral effect of an intimate association with your client,

is immaterial. I think if you will inquire into the facts of the case, you will see that I am correct. If not, I should be happy to receive additional information in regard to the matter.

"Very truly yours."

VII.

IN RE-TORT. — PART I.

In trying a case against some corporation, Mr. John S. Abbott said: "I wish to know if any of the jury own stock in the defendant company." Judge Dewey: "If any juror has stock in this company he will signify it by rising." No one rose. Judge Dewey: "No juror is so fortunate." Mr. Abbott: "Perhaps they would be willing to take a little stock, so as to get off from the jury."

Stillman B. Allen, as it is well known, got remarkably large verdicts in actions of tort for injuries. Mr. Sohier once asked me who was in the next case. I said: "Stillman B. Allen." "Oh," said he, "*damnum absque injuria* Allen."

E. W. Hutchins was trying a case as opposing counsel to Mr. Allen, and exhibited to the jury a diagram he had drawn. Mr. Allen, looking it over, said: "Mr. Hutchins, you are a better lawyer than draughtsman." Mr. Hutchins replied: "Then I am unlike you, for you are a better draughtsman than lawyer."

There was some dispute or contention as to the weight of a derrick, and one of the contractors said he did n't get it down, because he had n't men enough. Allen in closing said to the jury (looking at one of the smallest on the panel, a man who could not have weighed over a hundred pounds), "Mr. Juror, you are the youngest and weakest-looking man on the jury, but I think that you and another like you could take that derrick up as easily as Samson did the gates of Gaza, and carry it on your shoulders to Charlestown Neck without stopping; and if you can't you had better go to the hills of New Hampshire and recruit."

William B. Gale, in an argument for the defendant in a suit for personal injuries in which Stillman B. Allen was counsel for plaintiff, warned the jury against the arts of Allen, who had no superior at the bar in crying and begging a verdict out of the jury. Allen in closing remarked that, tired as he was, he had listened to the argument of his brother Gale for an hour with the greatest interest. "I always like to hear my brother Gale, as he has such a big, strong, hearty, breezy voice; but I remember many years ago, when I stood as a boy on my father's farm, I heard a great strong *gale* blowing through the twelve sturdy oaks. It made a good deal of noise among the branches, but the

gale soon subsided, the oaks stood up as strong as before, and there was nothing of it left."

Stillman B. Allen and Thomas M. Babson were trying a case, opposed to each other. Allen said the street was so and so, stating it. Babson, taking a cent from his pocket, said: "I bet you a cent you have n't been there for two years." Allen said: "I was there yesterday afternoon," took the cent, and pocketed it.

After asking several questions, S. B. Allen, counsel for the defendant, continued: "Was a list of creditors read at the first meeting when young Carr was present?" The Court: "On what ground do you ask the question, to contradict the previous witness, or to show what indebtedness there was on the 15th of June?" Mr. Allen: "I offer it to contradict the witness." The Court: "Then it is immaterial." Mr. Allen: "Then I offer it on the other ground." The Court: "Then it is not competent."

Elbridge Gerry Austin was an aristocratic and somewhat irascible man. Shortly after I commenced duties in the office, he left Boston and went to California. Law prices ruled quite high then in California. A commission was sent out from our office to take the deposition of a witness in San Francisco. Austin took it, and the charge here would not be over $10.

He charged $50, and the Court cut him down to $15. He wrote back a letter to the office, stating that he supposed he should have to take it, but that it was another specimen of the d—— Boston meanness.

I have before spoken of Colonel Meacham, the horse-dealer. A little incident once took place between him and Charles P. Curtis, Esq. Mr. Curtis had a low two-wheeled chaise, and a roan mare which he had owned some time, and which stood quietly while he was getting in and out, and was also a good traveler. She became lame, and Mr. Curtis borrowed a horse of a friend of his, Mr. Lucius M. Sargent. Colonel Meacham then kept a stable in Haymarket Square, and was a striking figure in his blue coat with brass buttons, black trousers, buff vest, and very high collar. Mr. Curtis drove down in front of the stable, and Colonel Meacham appeared, and in his pompous way, pulling up his high collar with each hand, said: "What can I do for you, Mr. Curtis?" Mr. Curtis said: "Colonel, my roan mare is lame, and I borrowed this horse of my friend Mr. Sargent, and I like him very much. I wish you would look him over, see if he is all right, and tell me what I shall give for him, and I will pay you the same commission as though I bought the horse of you." The colonel looked

in the face of the horse (as it turned out, for identification), and shook his head very knowingly. Mr. Curtis exclaimed, "What is the matter, Colonel?" Colonel M—— looked him over again, and said, "Don't you buy him, Mr. Curtis." "I am sorry to hear you say that," said Mr. Curtis, "for I like him extremely; what is the trouble?" "He has fits, sir," said the colonel. "Why, Colonel, how is it possible that you can look a horse over in this way, and say he has fits?" The colonel straightened himself up, and again pulling up his collar replied, "It 's my profession, sir." The fact was that he had sold the same horse a short time before, because it *had* fits!

This reminds me of an incident which my father told me of the same Mr. Sargent, when he was in Harvard. He was caught, *flagrante delicto*, getting a horse up into the halls of an old building of the college, called Massachusetts. At the meeting of the faculty, Mr. Sargent, being present in answer to a summons, was asked by the President: "Mr. Sargent, what excuse have you to offer for getting a horse up into the halls of 'Massachusetts'?" Mr. Sargent replied: "I thought it no harm, Mr. President, to get a horse up where so many asses have been before."

Mr. A. and Mr. B. were opposed to each other in the trial of a cause. Mr. B. had a very red face, and Mr. A. a very white one. A witness testified that a certain measure was a dry measure. Mr. B. (to A.): "That is a measure with which *you* are not acquainted." A.: "Anybody looking at our faces can tell who knows what *wet* measure is."

Mr. Somerby was once cross-examining a witness, who kept looking at Mr. Avery, the counsel on the opposite side. Somerby: "Witness, look this way, and don't be looking at Mr. Avery all the time." Avery: "If he'd rather look at me and finds it pleasanter, I know of no reason why he should n't." Somerby: "No, let him look at *me;* I don't know what signs you may give him." Avery: "Ah, Mr. Somerby, I don't know how; you know I was not educated at *your* office."

Isaac O. Barnes was U. S. Marshal when I was in the clerk's office. He was a tall, stout man weighing two hundred pounds, with a small, thin voice, and the contrast between his voice and his size, which was heightened by his emphatic, not to say profane speech, made his remarks seem funnier, perhaps, than they really were.

There was a man named Noyes, who had been factotum many years in the U. S. Court, and, when Mr. Barnes was appointed, Noyes went to him to retain his situation. Barnes said to him: "What are you?" "I am under-bailiff," said Noyes. "What in h—l is under-bailiff?" "I sweep out the room, I make the fires, I raise and lower the curtains at the command of Judge Sprague, whose eyes trouble him, and when Mr. A—— or Mr. —— has a case coming on next, I notify them." "Say that last again," said Barnes. Noyes repeated it. "That is," said Barnes, "you go and tell the lawyers to attend to their business." "Well, I suppose it amounts to that," said Noyes. "That's a d—— good one," said Barnes; "I'll *hire* you."

I was going up the court house steps one day, when a colored man was washing them. Mr. Barnes was going up at the same time. "What is your name?" said Barnes. "Callahan," said the man. "How strange," said Barnes, "that you, a d—— nigger, should have an Irishman's name."

When Mr. Barnes was taken ill, it was related that the doctor who felt of his pulse and feet, in response to Mr. Barnes's question as to how he was getting along, said: "Oh, Mr. Barnes, you are doing very well; no person ever

died with such warm feet as you have." "Oh, yes, there was one," squeaked Barnes. "Who?" asked the doctor. "John Rogers," said Barnes.

At that time (slavery times) George Young, the hotel-keeper, had a great many colored men in his employ, and it was told of Barnes that he would go into Young's Hotel and say: "George, I shall be after some of your d—— niggers, so you had better look out;" and if there happened to be any runaway slaves there they would leave; but finally one named Shadrach was taken. He was arrested by one Sawin, who gave him into custody of Patrick Riley, a deputy marshal. Shadrach was taken up into the U. S. Court room, and in a very short time it was noised about, and a crowd of eager colored men, some forty or fifty in number, gathered in the room. When the officers were not particularly on their guard, his friends hustled him out of the court room and all of them ran, Shadrach leading, and the others following. I saw and followed them through Bowdoin Square, when I lost sight of them. He effected his escape, and this might be called the first chapter in Massachusetts under the then recent fugitive slave law. Charles G. Davis, Esq., was complained of for aiding in the escape; he was tried before U. S. Commissioner B. F. Hallett, but was discharged.

Mr. Cole, whom I have mentioned as the first clerk in the office, was of fine personal appearance, and dressed with elegance and care, and was very proud of it. Mr. Sidney Bartlett once gave a shock to his vanity in the following manner: Cole was a witness, and after he had given his testimony in chief, Mr. Bartlett upon cross-examination asked: "What did you say your name was, sir?" "Cole, sir." "Ah, yes, but your Christian name, sir?" "Raymond, sir." "Ah, a *very pretty* name; step down, sir."

Mr. B—— and Mr. L—— were once trying a case in which the Curtises were opposed. At the close of the day, one of the Curtises said: "Mr. B——, your conduct to-day has been very discourteous, and if you wish for any confirmation I will refer you to your colleague, Mr. L." The next morning, the Messrs. Curtis received a note from Mr. B—— which stated: "I have referred the matter to my colleague, and he entirely concurs with you in your opinion. Yours truly, B——."

When Mr. Bartlett was about eighty-eight years of age, he was trying a case in which Mr. Burgess was the principal witness. Mr. Burgess was about sixty years of age. In his closing argument Mr. Bartlett said: "I think your honor should take Mr. B.'s testimony with some grains of allowance, as his memory seems

to be afflicted by the inherent weakness of old age."

A near relative of Mr. Bartlett had the same characteristic *sang-froid.* A young man from the country who was studying law with Mr. Bartlett invited this person to go sleighing, and he spelt it "slaying." An answer was returned to the young man, stating that the person invited had no desire to go on any "such murderous expedition."

Joseph M. Bell, who was General Butler's judge-advocate at New Orleans, and a man of quick and ready wit, told me that he was riding in a horse-car, in Boston, when he met an old acquaintance whom he had not seen for some time. They talked about the war, its causes, etc., and the acquaintance asked Bell how long he thought it would continue. Bell said he differed from some, and that perhaps it might last two or three years. A woman sitting by said, "Are n't you a contractor, sir?" "No, ma'am; I 'm an expander."

Mr. E. M. B—— cited an authority, and after reading it said: "My case follows directly in point, legally, inferentially, consequentially, and parenthetically."

He had a slight altercation with Judge Lord

about the law, and, after some sharp remarks on both sides, they came to an understanding. Judge Lord said: "If you had not been so hasty, and had treated the Court with a little more respect, we should not have had this little misunderstanding." Mr. B—— put on his glasses, looked up to Judge Lord, and replied: "I trust that I have treated the Court with as much respect as it has treated me." The judge smiled, and said: "Proceed."

At the trial of Gordon *vs.* The New York and New England Railroad, for personal injuries received while driving under a bridge, over which a train was passing, the plaintiff claimed among other things that the space between the abutments was too narrow for the highway. Mr. G——, for the plaintiff, used at the trial a large wooden model of the premises made upon two different scales, so that the model made the bridge look four times as high, and the street four times as narrow, in proportion, as they really were. Mr. B——, for the defendant, commenting on the model in his argument, said: "Now, gentlemen, suppose in this case it was very important for you to know exactly how my brother G—— looked, and suppose you had never seen him and I presented you with a plaster model of his head; but suppose, instead of

making it exactly like him, I made his ears four times as long, in proportion to their width, as they *really are;* on his own theory, that would be the most accurate way of showing to you his true character."

Aaron A. Bradley was a mulatto who came from the South to practice law. In one case he had, he told Mr. Knapp, clerk of the Justices' Court, that he wished to be present at the taxation of costs. Mr. Knapp said he must file a *caveat.* He was gone a few moments and brought in a paper in which it was stated: "Now comes the defendant, and files his *Caveat emptor.*"

At another time he came into our office and handed me a paper, which he wished me to file. I read it, and it was substantially like this: "Now comes the defendant and files his *pluis darrina continuance.*" I said, "This is not in form; I cannot take that; what kind of a plea is that?" He said, "If you don't take that, here's another I want you to file." I said, "Let me see it." "And now comes the plaintiff and moves for a writ of *orditor querolous.*" "Well," I said, "I suppose you mean this for a writ of *audita querela*, and this I think you must move the Court for."

He once filed what he called a plea in abate-

ment; Robert Morris filed a replication; whereupon Bradley filed a paper to be used as an answer in the event of the overruling of the plea in abatement. It began: "And now comes the defendant and *nisi purious* says," etc.

Once in some warm controversy with Robert Morris he said: "Mr. Morris, you tink to elevate yourself by putting me down, but if you do, you will turn from a nigger to a white man, very quick."

He brought an action once on an account annexed. Robert Morris defended it. "Where are the credits you say you gave my client?" said Morris, none appearing in the declaration. "What 'll you have, my lord?" said Bradley. "Gosh," said Morris, "I wish I was your lord, I 'd make you step round; but where are the credits?" Bradley, being cornered, turned to the Court and said: "Dis is de way I gib de credit; de count am two hundred dollars, de *ab damnum* is one hundred dollars; dat is de way I gib him credit for de one hundred dollars."

After Bradley was expelled from the bar, by the Superior Court, he petitioned the latter court for a review, and the case went to the Commonwealth Court on questions of law. He undertook to go into facts. The Chief Justice told Mr. Bradley he did n't wish for any facts, but the law. Said Bradley: "His honor the Gov-

ernor of the Commonwealth [Governor Andrew], when he was connected with this case, told me to send up all the facts I could get, but it seems his honor the governor is of no validity in this court." "Confine yourself entirely to the law," said Judge Dewey. To this Bradley rejoined: "I now by order of Court fall back on de cold naked icy hand ob de law. There are grave accu-si-a-tions made against me."

After having been disbarrred he brought a petition to be re-admitted. He began to read his petition as follows: "Suffolk double s." He said Mr. Andrew had assisted him *ex gratio*, but he (Bradley) felt, "in de langwidge ob de immortal bard, dat whoever would be free hisself must strike de blow; and so, your honor, I have put myself in de eminent deadly breach."

Mr. Hallett said to a witness: "Have you that wall [referring to a certain stone wall] in your eye?" J. H. Bradley, standing by me, said, "If he has, he is wall-eyed."

Lewis S. Dabney was a son-in-law of the late Chief Justice Bigelow. While the Chief Justice was on the bench, the Court decided a case by the majority, and the Chief Justice gave a dissenting opinion. Afterwards a case was argued to the Supreme Court, in which Mr. Dabney

cited the opinion of the Supreme Judicial Court in the former case for his law. Mr. Richard Stone cited the dissenting opinion of the late Chief Justice. The Supreme Court overruled the former case, and adopted the former dissenting opinion. Mr. Stone told Mr. Dabney that he lost his case by not adhering to the opinion of his father —— in law.

Mr. N. B. B——t, a fine stalwart-looking man, accidentally got a black eye. A few days before, there had been a pugilistic combat between one Dempsey and a man called The Marine, and the latter got badly pounded. When Mr. B——t came into his office, Mr. Charles Bartlett was there, and a boy who had evidently been reading the newspapers drew near to Mr. Bartlett and asked, in a whisper: "Is that The Marine?"

Mr. N. B. B——t said as to a paper: "The date is 1874." Mr. I. W. Richardson: "No, it is 1873." B——t: "So much the worse for you." Richardson: "It may be, but give the devil his due." B——t: "Yes, sir; you shall be paid in full."

In a horse case, Mr. Swasey commenced a cross-examination of a witness: —

"What is your name, sir?"

"Patrick McSweeney."

"What is your business?"

"Weterinary sturgeon, sor."

"Where have you practiced?"

"In the Unoited States and elsewhere."

"Where?"

"On the loin of Cambridge and Somerville, sor."

In the same case Mr. Bryant offered some evidence, to which Mr. Swasey, in rather a low voice, objected. Mr. Bryant: "I don't quite hear the melodious utterances of my brother Swasey."

Before the war, I had a large collection of autographs of distinguished men. After General Butler went to Fortress Monroe, I wrote to him, asking him to send me one of his autographs to put in my collection. He answered my letter in this way: "Dear Willard, you will find my autograph on many of your old writs. Yours truly, BENJ. F. BUTLER."

General Butler was trying a case and Mr. G——g was opposed to him. The general was whispering audibly with Mr. Washburne, his junior. Mr. G——g said he thought it was not quite fair to whisper what was not intended for the jury so loud, that not only the jury must have heard it, but that he (G——g), who

was farther off, heard it also. Butler: "I am sorry you have such long ears."

Mr. Pelton and General Butler were trying a case in which they were opposed to each other. Pelton remarked: "In the magnificent wisdom of Mr. Butler, he has chosen to" — Butler: "I think the gentleman should not characterize my remarks to the Court as magnificent wisdom." Pelton: "I beg pardon if I exceeded the bounds of propriety." Butler, smilingly: "Ah, yes, I saw you lost your temper a little, and that is the precursor of another loss; to wit, your case."

A suit was on trial in which General Butler was sued by a person to recover for services on a ranch. The general asked a question of a witness which I don't remember, but which was in language somewhat nautical. The opposing counsel said: "General, that is a little too nautical; we are ashore now." Butler: "I suppose you think I 'm at sea."

General Butler tried a case before Judge Merrick, who was of counsel for Dr. Webster for the murder of Dr. Parkman. Professor Horsford was on the stand as witness. Butler treated the professor rather cavalierly, and Judge Merrick asked Butler if he was aware who was on the stand. Butler: "Yes, your honor; Mr. Horsford." Judge Merrick: "Pro-

fessor Horsford, professor in Harvard University." Butler: "Ah, yes, your honor; I never knew but one professor at Harvard, and he was hanged." (This was Dr. Webster.)

Mr. Lane claimed a trial. He said the case had been postponed a number of times for this same reason, the absence of Senator Jones of Nevada, and the gentleman on the other side (General Butler) had promised to have his deposition here. Butler: "It has been taken, but Senator Jones has lost it." Mr. Lane: "I don't know what business Senator Jones has with his own deposition." Butler (with a most droll expression): "I know of no statute which prevents Senator Jones bringing along his deposition with him."

General Butler, who had drooping eyelids and was nearsighted, was trying a cause in which John P. Treadwell was opposed to him. Treadwell, while reading law to the Court, inadvertently turned towards the jury. Butler said: "That will not do, brother Treadwell, reading law to the Court and looking at the jury." When the general rose to reply and read his citation of the law, Treadwell thought that Butler was doing the same thing, and said: "Ah, brother Butler, you are now doing what you rebuked me for, reading law to the Court and looking at the jury." The general, with

a most comical grimace, looking round to the bar and the audience, said: "You can't tell which way I *am* looking."

Richard M. Carroll, some time since, sued Messrs. Rich and Stetson of the Howard Athenæum for breach of contract. Mr. Carroll alleged that he was hired by the defendants to come on from New York, and to perform at their theatre for the entire season; that he began to carry out his part of the contract and performed for some time, when the defendants refused to carry out their agreement. The result of this was a lawsuit; and no doubt the contest would have been close to see who should win, but the morning when the case was reached I rose and read an agreement signed by the counsel on behalf of their clients, wherein it was agreed that the defendants should pay the sum of $280 to the General Relief Committee for the benefit of the sufferers by a late fire, and that such payment should be a final and amicable settlement of all mutual claims between the parties to the suit. On the bottom of the page in the handwriting of one of the counsel were these words, "Go thou and do likewise;" certainly as good advice as lawyer ever gave client.

Governor Andrew and P. W. Chandler were

trying a cause wherein a certain Polly Smith was often mentioned as being an important witness. She seemed to be a mysterious sort of a personage, and she did not appear. Mr. Chandler in his closing argument, after a few remarks, exclaimed, "Where is this Polly Smith?" Governor Andrew remarked rather quietly, "She's dead." Mr. Chandler, who was somewhat deaf, did not notice it, and in a short time exclaimed a little louder: "I ask you again, gentlemen of the jury, where is this Polly Smith?" Governor Andrew replied in a louder tone, "I tell you she's dead." Mr. Chandler did n't notice that. As he approached the close of his argument he said: "I ask you for the third and last time, gentlemen, where's this Polly Smith?" Governor Andrew rose and shouted in Mr. Chandler's ear, "I tell you she's *dead*." "Gentlemen of the jury," said Mr. Chandler, "she never was b-o-r-n."

Mr. Chandler, being somewhat deaf, as I stated, in trying a case with Mr. John P. Healy said to a witness who was testifying in a very low voice, "Speak louder; my brother Healy does not hear very well."

Charles H. C—— brought a suit in which he and some half-dozen others were plaintiffs against John Smith (a fictitious name) to

recover money lost in certain *quasi*-chance transactions; he prevailed, recovered the money, and told his clients he was obliged to take for the debt certain bonds which he was to hold for two months to ascertain whether they would be paid. When the two months expired, and the parties came for their money, he told them that another trouble had arisen, that a person in Worcester had brought a bill in equity against himself and Smith and the person who transferred the bonds, and that they might be obliged to wait years until the bill in equity was decided. A short time after, being at home one evening with his wife and her brother, he said he would have a cup of tea and then take a bath, and wash out all his sins. He went up to his bath-room, took a bath, came down to the sitting-room entirely nude, and said: "Am I not clean, and have n't I washed out all my sins? Now I am going out to show the people of Chelsea how I washed them out." With great difficulty they restrained him. At night he was a raging maniac, and in a few days he died. The pretended reception of the bonds was a fiction to gain time, and the bill in equity was brought by a fictitious plaintiff.

Linus M. Child: "Now the case of —— *vs.* —— must be familiar to your honor." Judge:

"I am supposed to be familiar with all cases." Child: "Yes, your honor, but if your honor *wants* to hear me"— Judge: "I don't want to hear you." Child: "Then [laughing] I don't want to be heard." Judge: "I don't mean it in that sense; you might lighten up the dull routine of the court room by some pertinent remarks."

Mr. Child trying a case for the plaintiff, Nathan Morse for the defendant, to almost every question Mr. Child asked, Mr. Morse said, "I object." Judge Bacon sustained the objection, and Mr. Child said, "I except." Soon Mr. Child became quite impatient, and to the next question he asked, Mr. Morse said: "I object." "Ruled out, and I except," said Mr. Child. Judge Bacon: "I don't say so." Child: "No, your honor, but I thought you would."

I was present one day at a trial in the United States Court, where a case of barratry was being tried, for criminally casting away a ship somewhere near the coast of Sumatra. Mr. Choate pressed the captain of the ship as to what another captain said about the plan of casting her away. The witness hesitated, but, on being more severely pressed, answered: "The captain said we should never be found out, and if we

were, there was a lawyer in Boston named Choate who would get us off if we had the money in our boots."

Joseph M. Bell told me that when Mr. Choate was in Augusta to defend Judge Davis from charges of impeachment, or removal by legislature, Mr. Choate was sick and a physician was sent for. Among other things the doctor remarked: "Mr. Choate, I think it a d—— shame that party politics should remove judges for no fault." Mr. Choate: "Doctor, I agree with you in your very pious remark."

Some one was standing in the corridor near the Supreme Court room talking with Mr. Choate, and asked him what was going on in the court room. Mr. Choate replied: "Mr. Bartlett has the ear of the Court now." "How is he?" asked the former. Mr. Choate, with a very graceful movement of his right arm, answered: "S-e-r-e-n-e." It is impossible to describe this answer, in any manner, because it is impossible to reproduce the rising inflection of his voice, on the latter syllable.

I remember two important cases which were tried in the Meionaon while the Superior Court of the County of Suffolk was held there. One was the case to recover some promissory notes, purporting to be signed by one Tufts. The action was brought by William L. Burt, after-

wards postmaster of Boston. G. A. Somerby defended. This was the first case in which photographs of the notes were introduced. The trial was before Mr. Justice Morton, late Chief Justice of the Supreme Court. Mr. Somerby objected to the introduction of the photographs, but they were admitted, and Judge Morton's decision was afterwards sustained by the Supreme Court. Mr. Somerby asked me what I thought of the signatures. I told him I thought they were genuine. "Pooh," he said, "when they get their case in I'll knock them to the devil in five minutes." But the jury returned a verdict against him in about thirty minutes.

The other case was Seccomb *et al. vs.* The Provincial Insurance Company, to recover for the loss of a ship which was insured to go to the port of ——, or ports in Europe. She went to Smyrna, took some troops to ——, and was lost. The principal point upon which the case turned was whether Smyrna was regarded by merchants and underwriters as a port in *Europe*. Testimony that Smyrna was regarded as a port in Europe was given by witnesses about equal in point of numbers to those who testified that it was regarded as a port in Asia. The trial was before Judge Huntington; Mr. Choate and Mr. Homer were for the plaintiff, Mr. C. W. Loring and Mr. R. H. Dana for the defense. Both

counsel were wary, and each on the *qui vive* to get in all sorts of testimony. At one time when Mr. Choate was a little off his guard, while conversing with his junior, Mr. Dana began reading from a book, and Mr. Choate's junior called his attention to it. "Stop, stop," said Mr. Choate; "what have you there, sir?" "Why, this is so and so" [stating the title of the book, which named the principal ports in Europe and Asia]. "Who are the publishers?" inquired Mr. Choate. "The celebrated firm of Longman, Hurst & Rees," replied Mr. Dana. "Is it a good book?" inquired Mr. Choate. "Yes," said Mr. Dana, "none better." "Well, Mr. Dana," said Mr. Choate, "if it is a *good* book, I 'll buy it. I object to it, your honor." And then in that indescribable manner of his he protruded his under lip, and winked at me. The book was ruled out.

Speaking of Mr. Choate reminds me that I once overtook him, on Washington Street, and when we reached Williams Court, I said: "Let 's go through here, Mr. Choate; it is a short cut to the court house." As we advanced a little way he looked at me and said: "Disreputable but convenient."

Mr. Choate was about to leave Boston on a trip to Europe in 18—. A few days before he sailed I wanted to see him, and, not wishing to

interrupt him in a trial, I waited at the bottom of the court house stairs. He came down looking very wan and weary, his circular cloak thrown over his shoulders, and his neck wrapped in a bandanna handkerchief. I said: "Mr. Choate, I learn you are going to Europe; I hope you will have a very pleasant voyage, and return much refreshed. Do you think you shall be about here this autumn, for I want to see you very much?" He put his arm around my neck in the most affectionate manner, and patting me softly said: "Mr. Willard, I expect to be about here a hundred years." He died in Halifax in about a week.

There was a long discussion on legal points before Judge Metcalf one day, between Mr. Charles G. Loring and Mr. Choate. As Mr. Choate was about to reply to some remarks of Mr. Loring, Judge Metcalf said: "I have been sitting with hammer in hand for the last two hours to knock this case on the head." Mr. Choate, who was for the defendant, said: "I hope your honor will not hit the defendant."

There was a man named Atkins, a trader, against whom one or two actions of slander were brought every term. John C. Park was his counsel, and though the amount sought to be recovered was sometimes large, Mr. Park would reduce the verdict to fifty or seventy-five

dollars. Once he retained Mr. Choate, and in this case the verdict against Atkins was for fifteen hundred dollars. Then he went to Mr. Park and said: "What *can* I call a man and not be sued?" "A number of things." "Can I call him a fool?" "Yes." "Can I call him a jackass?" "Yes." "Can I call him a nincompoop?" "Yes." A short time after, a person who happened to be Mr. Park's client came into his office, and brought him a letter addressed to the client which read: "Mr. ——. Dear Sir: You 're a d—— fool, a jackass, and a nincompoop. Yours, T. J. ATKINS." When Atkins came into Mr. Park's office, Mr. Park said: "I told you you could *call* a man those names; I did n't tell you you could *write* so to him."

Mr. Bell, son-in-law of Mr. Choate, told me that Mr. Choate was very careless as to his accounts. Mr. Bell was once in the outer office, when Mr. P. came in and said, "I want my bill, Mr. Bell; I want to pay it." "What case was that?" said Mr. Bell. "So and so," naming the case. Bell went into the inner office and told Mr. Choate the facts and asked him how much it was. He replied, "I 've forgotten all about it; I don't know what to charge." And that was all the information Mr. Bell could get. Mr. Bell made out a bill for $1000.

Mr. P. took it, looked at it, and said: "Bless my soul, I didn't think I should get off so cheap," and drew his check for the amount.

Colonel Edward G. Parker, who was rather pedantic, wrote a life of Mr. Choate. He was relating to some parties an incident which happened in the third century B. C., about the time of the death of Ptolemy III., and he appealed to John S. Holmes, who stood by, and said: "Didn't he die about that time, John?" "Who's that that's dead?" asked Holmes. "Ptolemy III.," said Parker. "Good Lord," said Holmes, stretching out his hands, "you don't say *he*'s dead!"

A Mr. E., who was practicing at the Suffolk bar in 1858, was very pertinacious. I said one day to Mr. Choate: "Mr. E. always seems to maintain his grip." "Yes," said Mr. Choate, "he's a bulldog with a confusion of ideas."

The wind was blowing a gale, large branches of trees were being snapped off, innumerable articles flying about through the air, when Mr. Choate, looking out of the back windows of the Athenæum, where Park Street Church and Granary Burying-Ground were in full sight, remarked to a friend: "I see amidst all this turmoil our old friend the steeple of Park Street Church stands unmoved, unterrified, and

undismayed; but all these [waving his hands over the graves] lie safest through all this hurly-burly."

Major Cobb having closed an argument, Mr. E. G. Dudley, his opponent, remarked among other things: "My brother Cobb has made some rare remarks to you, gentlemen." Major Cobb: "Some persons would say they were well done."

Moses G. Cobb was examining a witness in a cow case. The witness was asked how he could tell the age of a cow, and kept referring to the age of the cow about which the suit was brought. Cobb: "I don't refer to this particular one, sir; I refer to the abstract cow; the abstract cow in her normal condition." Witness: "I don't perceive any crisis for judgment."

Mr. Timothy Coffin of New Bedford, better known as Tim Coffin, was famous for his attempts to bluff the Court. One day with great appearance of surprise and anger he said to the Court: "Does your honor mean to say that the testimony is thus [stating it], and that you shall rule the law so and so?" "Yes, sir," said the judge. After a moment's pause, finding he could take nothing by his motion, he sat down, saying, "I think so, too."

Judge H. G. O. Colby, who was appointed in 1845, resigned in 1847, and died in 1853, was at one time prosecuting attorney in Bristol County. A man was complained of for being a common drunkard. Mr. Timothy Coffin defended. The evidence was that he drank six glasses of liquor a day. Mr. Coffin said he thought that the prisoner ought to be discharged, "for if drinking six glasses a day makes a man a common drunkard, may the Lord have mercy on brother Colby and myself."

Ex-Chief Justice Brigham told me this story about Mr. Coffin. He (Coffin) was very anxious to obtain a delay in a case which came up one morning, and, after several ineffectual appeals to the opposite counsel, made an affidavit as to the severe exhaustion he was in, having for many days and nights been in constant attendance on his mother, who was very ill. After he had read the affidavit, his mother, who happened to be attending court without his knowledge, and who was in the gallery, exclaimed so that all heard her: "Timothy, how often have I flogged thee for lying?"

An action was brought for a technical assault on board a steamboat. The plaintiff testified that, as he was about to be seated at the breakfast-table, the defendant took him by the shoul-

der and told him that was not the place for him, but to go to the other place, and led him along. Judge Pitman: "What is the other place?" "Sometimes it is spoken of in a bad sense." Mr. Daly, the defendant, was a short, dumpy man. Mr. Collins, his counsel, asked the plaintiff if it was not a colored waiter who put his hand on his shoulder, instead of Daly. Witness: "I don't know." Mr. Collins: "Washington [the waiter], stand up." Washington, a very stout colored man, about six feet tall, stood up. Mr. Collins: "Now is n't that the man who put his hand on your shoulder?" Witness: "I don't know." Mr. Collins: "Can't you tell the difference between Washington and little Daly here?"

B. F. Cooke was a practitioner, and once being absent when his case was called, Mr. William Brigham, who was on the other side, asked for a non-suit, which was granted. Cooke was quite a dissipated man. He had recently changed his name to Cressy on account of some legacy which had been left him. He made a motion to take off the non-suit, and said: "I am surprised at the opposition of my brother Brigham [who opposed it]; if I had been in his situation, and I was asked to take off the non-suit, I should have done it without hesitation. I have n't changed

my principles, only my name." Mr. Brigham retorted thus: "If you had changed your principles instead of your *name* you would have done a great deal better;" and he was so surprised at his own joke that he laughed immoderately. It was the only joke that I ever heard him make.

Lewis S. Dabney and Edwin N. Hill were endeavoring to prove the due and proper execution of a will. One witness testified that he thought the testator was not sane nor of disposing mind, but that if counsel would withdraw the words "disposing mind," he would testify that he thought he was sane. Another testified that as she stood on one side of him, the testator being in bed, she was struck with the expression of his eyes, which had a dreadful far-away look that had haunted her to this day. After her testimony was in, Mr. Dabney called a witness who testified as to the "far-away" eye, that it was glass.

In a certain case, the late James Ring, who was a comic actor at the Boston Museum, was called as a witness. On cross-examination by Richard H. Dana came the following: —

Mr. Dana: "Mr. Ring, I believe you are an actor?"

Ring: "Yes, sir."

Dana: "You perform at the Museum?"

Ring: "Yes, sir."

Dana: "You are in the habit of performing different parts?"

Ring: "Yes, sir."

Dana: "And you take whatever part is assigned to you?"

Ring: "Yes, sir."

Dana: "I thought so; step down, sir."

Mr. Dickinson, examining a witness: "What was the principal difficulty?"

Witness: "Ligatures out of order."

Dickinson: "What are the ligatures?"

Witness: "Ligatures connect the muscles."

Dickinson: "What do the tendons do?"

Witness: "Connect the nerves."

In another case, against the West End Railroad, Mr. Dickinson, in cross-examining a certain physician who, Dickinson thought, professed to know more than he did, asked him the following questions: —

Dickinson: "What test did you apply to ascertain what was the matter with the man?"

Witness: "The Rhomboid test."

Dickinson: "Describe it."

Witness described a certain test.

Dickinson: "Do you know this Rhomboid?"

Witness: "No."

Dickinson: "What is his full name?"

Witness: "I don't know."

Dickinson: "Is it the name of the inventor of this test?"

Witness: "Yes."

Dickinson: "Where does he live?"

Witness: "I don't know."

Dickinson: "Is he English, Irish, Swede, or Dane?"

Witness: "Some foreigner."

Here the witness seemed to be getting out of his depth, and looked pale.

Judge: "Would you like a chair?"

Witness: "N-n-no, your honor."

Judge: "Would you like this examination suspended?"

Witness: "Y-y-yes, your honor, yes, sir."

It turned out that it was a test called the Romberg test, the latter being a professor in Berlin.

In the case of the Commonwealth *vs.* Mead for manslaughter, the following colloquy took place between Mr. Durant, District Attorney Cooley, and Mr. Choate. Mr. Durant said: "May it please your honor, the attorney for the Commonwealth took the opportunity this morning, when I could not reply, to make an attack upon my professional character in the manage-

ment of this case, which he would not have *dared* to make if I could have had the opportunity to answer him. I felt that this court room was no place for a personal altercation, and I knew that I could bide my time. I have taken the first opportunity at the recess to meet him personally, and to tell him that his statements were false, and that his charges were cowardly, and I now say that he dared not resent in private what I told him to his face. I repeat here, in the presence of the Court and of the jury who heard him, that he would never have dared to make these charges in public where I could reply, nor in private where they could be resented. His courage as an advocate rises only when there is no one to answer him; his courage as a man deserts him when he is deprived of the protection of the Court; I repeat in public what he has before heard from me in private, that he is false and cowardly."

Mr. Cooley: "I hardly think, may it please your honor, that such a speech as that just made needs a reply. As to my conduct here I have nothing to say. As to my courage to reply in any other place, he will find it when I have opportunity to show it."

Durant: "You have had the opportunity and dared not resent it."

Mr. Cooley continued his address to the jury,

saying in passing that to Mr. Choate's language he made no exception and never had occasion to; but to that of his associate (Durant) he held other views and had expressed them.

Choate (with great earnestness): "I think I ought to say here that in my judgment Mr. Durant said nothing that should have led to your reply."

Cooley: "I thought the reply was just, and many others have told me their gratification at hearing my remarks."

Durant to Cooley: "I don't believe a word of it."

Mr. Durant, speaking of a certain paper in a case, said: "Now, gentlemen of the jury, the defendant over his own hand" — here the opposing counsel said (*sotto voce*), "Under his hand." "Yes," said Mr. Durant, "*under* his hand; there has been a good deal of underhand work in this case."

Mr. Durant once quoted some verses from Sternhold and Hopkins as applicable to an insurance company. While he was reading the by-laws of the company he said: "It is very difficult to read it, it is in such despicably fine print."

General Butler: "It is larger print than my edition of Sternhold and Hopkins."

Durant: "You had better read them; you will find some good things there."

Butler (sarcastically): "Psalms?"

Durant: "Yes, sir, psalms of David; while these are psalms of the devil, — a different character."

General Butler, in a closing argument to the Court, said (referring to the opposite counsel): "They are trying the case like pirates." Mr. Durant replied: "And against pirates."

In the celebrated case of Burlen *vs.* Shannon, Mr. Durant was for the plaintiff, and General Butler for the defense. After a long discussion of some point of law, General Butler said: "All that I am sorry for is that I ever indorsed my brother Durant over to the Court." Mr. Durant (for whose admission to the bar General Butler moved, and who had been a student in his office) replied: "All I am surprised at is that the Court ever took brother Butler's indorsement."

In this case Caroline Burlen was a sister to the wife of the defendant, and Mr. Durant wanted to prove that a certain party was at the sister's-in-law. "What," said General Butler, "sisters in law?" "Excuse me," said Mr. Durant, "I meant at the sister's, though it was a pardonable mistake, as the sisters have been in law for the last ten years." Upon which Gen-

eral Butler said to Mr. Durant: "You practiced that joke before a glass this morning." Mr. Durant rejoined: "I am not in the habit of practicing before a glass, nor of taking a glass before I practice."

I was in Mr. D.'s office one afternoon, when a client came in for advice, and said he hired a horse of a stable-keeper to go to ——, for a dollar, but when he returned the stable-keeper wanted a dollar more. "What for?" said the client. "For coming back," said the stable-keeper. D. gave him some instructions, and the client went to the same stable-keeper and asked him: "How much do you ask for a horse and wagon to go to Salem?" "Five dollars," said the stable-keeper. The client took the horse and wagon, went to Salem, and came back in the cars, paying the stable-keeper five dollars. The latter asked, "Where 's my horse and wagon?" "At Salem," said the client. "What did you leave them there for?" "I only hired them to *go* to Salem."

James Lloyd English, who died in February, 1883, was an old-fashioned, distinguished lawyer, who had been offered a seat on the bench. One of the good things of this life that he liked was a horse. He was highly scrupulous as to honor

and integrity in practice. He told me once that he had a case given to him which the more he investigated the less he wished to try. He told his client he was going away about the time it would be tried, and he would give it to a lawyer who would try it much better than he could. He gave the names of the parties to Mr. ——, and said to him, "I will tell you about it later; I can't stop now." Some time before the expected trial, he called upon Mr. —— and said he had come to tell him the facts in the case of —— *vs.* ——. Said the lawyer to Mr. English: "D—— the facts; what will they swear to?"

Augustus H. Fiske, who had an office at No. 5 Court Street, was the best-equipped lawyer in matters of practice that I have ever known. Although he would enter from thirty to forty actions every term, he would not average more than one or two trials a term. At this time it was the practice of the lawyers to enter their own appearances on the docket. Mr. Fiske said to me, "Willard, what time do you get to your office?" I said, "About eight o'clock, and work an hour before the office is open." He said, "That suits me exactly; call round at my office and I will go with you and write in my appearances, and I will not trouble you

again for a week." He never had to examine our dockets to find the number of his case, but always brought in his own docket and called for any paper or writ or execution from his own minutes. Being upon the witness stand one day, he was asked how long he had been in practice, which he answered; and then the question was put to him: "How long shall you continue to practice?" "Till I die," said Mr. Fiske.

He was an indefatigable worker, went to his office at eight o'clock, and did not leave until dusk. He was so intolerant of affectation that he erred slightly toward brusqueness. As he came into court one morning, he found Mr. Willey sitting at the table looking extremely nice, his wig smooth and well adjusted. Fiske, who was as bald as Willey but wore no wig, put his hand on Willey's head and said: "Willey, what do you wear such a d——d-looking thing as that for?"

Asahel Huntington was clerk of the courts of Essex County. Shortly after the passage of the Practice Act of 1852, I then being assistant clerk, he called and wanted to know what the clerk had decided as to executions retaining the clause about arresting the body. Mr. Huntington was a very sententious man. I replied, I

had had no conversation with the clerk, but that the statute said that after certain conditions had been complied with, then the execution may be *served* by arrest of defendant's body. If the body clause is not retained, how can it be *served* by arrest of defendant's body. "A good suggestion, sir," he said in his emphatic way, and walked off.

He was at one time district attorney in Essex, and a terror to rumsellers; he had certain stereotyped questions which he put to his witnesses. He would say to a witness: "You went to —— saloon?" "Yes, sir." "Drink there?" "Yes, sir." "What was it?" "Don't know, sir." "Did it *look* like rum?" "Yes, sir." "Did it *smell* like rum?" "Yes, sir." "Did it *taste* like rum?" "Yes, sir." Then in his argument to the jury he would say, "The witness says it *looked* like rum, *smelt* like rum, *tasted* like rum; *'t was* rum."

He went to the Whig convention, the last one that was ever held, and where the breaking up of the Whig party was foreshadowed. When he came home he made a speech to his constituents to explain matters, and to give some account of the proceedings. He said: "Now who *were* these men? They *looked* like Whigs, *acted* like *Whigs*, *were* Whigs." Voice in the crowd: "What did they *smell* like?"

Judge Merrick, who died in 1867, soon after leaving the bench of the Court of Common Pleas, — to which he was appointed in 1850, and to the Supreme Judicial Court in 1853, — was associate counsel with A. H. Fiske on a case. He said to Mr. Fiske: "I don't know but I 've forgotten how to argue a case, it is so long since I was at the bar." "You must have forgotten very lately," said Mr. Fiske, "for you used to argue very well when you were on the bench."

When the Whig party was demoralized by the success of Know-Nothingism in 1855, George F. Farley of Groton said that he could with good conscience make his affidavit that the Whig party was about to depart without the Commonwealth.

A certain lawyer said to a jury, "Gentlemen, character is more than wealth; I would rather leave a reputation than money to my children." Mr. Farley remarked: "If that is all he leaves his family, it will be a mere pittance."

Mr. P. J. Flatley was trying a cause before a justice in a neighboring city, and on the discussion of some proposition, the justice requested Mr. Flatley to state its application. Mr. Flatley said that he thought the well-known quotation, "Colleen dhus cruten un bhe angus

annam un dhiel" (Irish) from Horace would apply, at which the judge, profoundly bowing as though recognizing the quotation, replied, "Ah, yes."

Mr. Gargan, interrogating a witness: "What was your condition that day?" Witness: "Very good." Mr. G.: "Had you been drinking?" Witness: "I had had one glass of whiskey." Mr. G.: "Had n't you had any more?" Witness: "That 's my business." Mr. G.: "Have you any other business?" Witness did not answer.

Mr. Gargan, whose tones were usually stentorian,[1] was examining a witness of small person and meek, humble demeanor, when he was thus reprimanded by Judge Pitman: "Mr. Gargan, there is too much of you and too little of the witness."

Mr. Gaston, cross-examining a witness: "Can you read?" Witness: "No, but I know numbers." Mr. Gaston: "You say there was a 3 on this paper?" Witness: "Yes, sir." Mr. Gaston: "What does 3 mean?" Witness: "If you put another 3 with it, it is 33."

[1] It was an ancestral peculiarity, a clear case of heredity; for Horace says, "Garganum mugire putes."

Horace, *Epist.* II. 1. 202.

"Did n't you advise her to put on lamb's wool?" "No." "What would you apply lamb's wool to?" "To your back if you had a pain in it." "Did you say you heard a noise, and thought the whole d——d thing was coming down?" "I never curse." "You have been to sea; did n't you curse then? Did you say d——n?" "I might on big occasions."

J. Q. A. Griffin was an able man, and now and then fond of a sarcasm at the expense of his client. A friend of mine and of his writes me of him thus: He was of about medium height, stooped a little, and was slim, although not apparently so because of his massive head. Above his gold-bowed spectacles arose a square perpendicular forehead, from which his dark hair stood up, straight and thick. He was subject to frequent attacks of asthma. He was neither elegant nor classical, but his mind was quick and strong. He was a ready, entertaining speaker, carrying juries with him by his clear logic and by his keen if not brilliant wit and great sarcasm. These he must indulge in, on all occasions, even at the sure sacrifice of verdict or friend. But he was a wily, dangerous adversary at the bar, though not wanting in kindness of heart. "He 'd be damned if he 'd ever wear a black silk hat." I heard the following con-

versation carried on by him and another attorney *sotto voce*, between the interrogations addressed to the witness. G.: "What do you ask him that for, you d—— fool?" "My father was a l-lawyer, and I was r-rocked in the c-cradle of the law." G.: "Yes, but you have n't got your swaddling-clothes off yet."

Griffin took the office of clerk of courts for Middlesex, but it had not the excitement of the forum, and he was like a bound gladiator. He sent for me once, and among other things (this was after I was appointed assistant clerk) said: "Willard, resign, and I 'll use my influence to get you appointed here." I told him that I would rather be in Boston. He went to Cuba for his health, and after he returned asked me to come up and see him some Sunday at his house in Medford. I went and had a pleasant conversation with him, although I saw the sands of life were nearly run out. As I left, he gave me some cigars, saying: "Here, Willard, take these; I bought them on the Rialto. Remember me as you waste the smoke in the air."

His will was so singular, I give it in full: —

"I, J. Q. A. Griffin, being of sound mind and memory, but of faltering and somewhat uncertain health, and conscious of the entire certainty of death and that it often comes with no herald

announcing its approach, but with stealthy tread, make this my last will.

"First: I make no provision as to the funeral rites, knowing that in a Christian community everything will be done that ought to be done in that regard.

"Second: But as I have a horror of burials alive, I desire that my body after death may be kept a reasonable time before interment, and that it be for a time at least committed to a tomb before its burial in the earth.

"Third: If consistent with the feelings of my wife and family, as it might lead to results that would mitigate the pangs of others on their way to 'dusty death' who are suffering from diseases kindred to my own, I desire that there may be an examination of my body in the presence of skillful and experienced physicians, of both the allopathic and homœopathic schools. I have suffered largely, and perhaps the cause thereof might be discovered, but I am now satisfied that, though I have suffered many things of many physicians, no one of them had any real knowledge of the disease or the best means of curing or relieving it. But if such an examination should be distasteful to my wife and family, let it be omitted, as I owe more to them than to general posterity.

"Fourth: All my personal estate that costs

money to preserve and keep, such as horses, cows, or other articles, and all such as are useless if kept, I desire may be sold by my executor as speedily as can be most profitably done after my decease. But let my beasts be sold to kind and good masters.

"Fifth: In the settlement of the debts I owe, let great caution and care be exercised, particularly in respect to the bills of deputy sheriffs and constables whose charges are often most exorbitant, and not unfrequently made to me, when I have distinctly marked the processes committed to them in such a manner as to notify them that I would not be responsible for officers' fees.

"Sixth: In the settlement of the debts due to me, let great care also be observed; large sums are now due me. I have been remiss in their collection. I have left debts uncollected that ought to have been pressed. [Here he names two individuals and two business firms who should be pressed for payment.]

"Seventh: All my property, real and personal, I give and devise to my wife during her life, provided she remain unmarried after my decease. But if she marry again, I give and devise the same to my children who then may be living, their title to accrue immediately on Sarah's marriage, and hers to be divested therefrom.

"Eighth: My wife is a most amiable woman. She has made my life happy, and been true in all respects to her position as a wife and mother. It is my wish that she may not marry again. I would more strongly enforce this wish did I not feel that she will respect it upon the suggestion.

"Ninth: Upon the decease of my wife, in the event of her not marrying again after my decease, my will is that the property she has remaining may be equally divided between my children then living.

"Tenth: Women are not adequate to the management of most property or even a little in this community in the best way. It is therefore my will that the trustee and executor hereinafter named, or his successor, shall have the care, management, control, and disbursement thereof during the life of my said wife, or her interest in said property, and until my children are twenty-one years of age.

"Eleventh: I would make the suggestion here that it would be best after my decease, as soon as it could best be done, to sell and dispose of my property, convert the same into cash, safely invest the same in mortgages in real estate, and there let it remain, provided the interest be promptly paid. And I think it would be better for my wife and children to remove very soon to Concord into a modest but comfortable house

which may be either hired or bought for their use. It is a better location for the education of the children, intellectually and morally, than Malden or Charlestown.

"Twelfth: It is my will that Timothy T. Sawyer may act as executor and trustee under this will. The estate is small and needs an honest hand in the management. My children are many and their wants will be many. Mr. Sawyer is one of the few able men whom I have found to be rigidly upright and honest. In the event of his decease at any time, let Edward Lawrence be his successor, — a man equally trustworthy. And if any executor or trustee be needed after his decease or incapacity, let the Judge of Probate select the fittest and most honest man he knows.

"Thirteenth: I commend to the care of my wife, my aged mother. Let her suffer for nothing, nor want; she cannot long survive me. Let her declining days be made as pleasant as possible, under the unhappy circumstances that attend her.

"Fourteenth: Let my children be well cared for. Teach them to avoid frivolity, — that "Life is real, life is earnest!" Let them have the best education within their power to attain. Let one be a lawyer, if he have capacity for that profession. Be careful and vigilant of their

morals. Considering the wickedness that everywhere exists, too great care cannot be exercised in that regard. But I need not be solicitous. My wife has all the wisdom necessary to their care. No children ever had a better mother than they. No man ever had a better wife than I. I commend her and the children to the respect and the consideration of the community in which I leave them."

The will bears the date of October 4, 1858. The witnesses were Charles A. Barker, A. W. Boardman, and Joseph Jackson.

Griffin once told me how he got a man acquitted who was indicted for larceny. The indictment read: "Stealing a pair of pants." Mr. Griffin objected to the indictment on the ground that a "pant" was a short breath and not the subject of larceny, and that therefore a "pair of short breaths" could not be the subject of larceny. The Court so ruled, and his client was discharged.

At one term in the Court of Common Pleas, William Hayden, editor of the "Boston Atlas," was foreman of the first jury. The second jury were engaged in trying a case in which about ten dollars were involved as to the price of a set of felloes and tires. Chief Justice Wells kept the

other jury in all the forenoon, hoping every moment that the case would be finished, but Maine and Morris fought as though there were millions in it. Mr. Hayden addressed me these lines: —

"Morris and Maine, two lawyers shrewd,
Though they themselves may like the sport,
Talking of felloes and of tires,
Tire all the fellows in the court."

On another occasion a complaint under chapter 49 of the Revised Statutes was being tried, when he gave me these lines, — Griffin and Maine were the two counsel: —

"Poor, fatherless babe, while you are here crying,
Important inquiries around you revolve;
The jury to find you a father are trying,
A point which the mother herself can scarce solve.
Never mind, never mind, you are here upon earth,
They can't get you back where you came from again,
You are here upon earth, in spite of your birth,
Surviving the efforts of Griffin and Maine."

Mr. B. F. Hallett was a very searching cross-examiner, and he once cross-examined Rev. Thomas Whittemore at great length. When he had finished he said, "Mr. Whittemore, I have made this long and searching examination as a duty to my client, and not for the purpose of worrying you, for I have the utmost respect for you." Mr. Whittemore, with one of his blandest smiles, replied, "I wish I could say the same for you, Mr. Hallett."

In walking into Boston, which I always did in former years, I occasionally met Mr. Whittemore, and he told me this: He was chosen President of the Fitchburg Railroad, and, wishing to know all the local business situations of the road, walked the whole length of it in Massachusetts. At one place he saw some laborers unloading a car containing iron rails, which he thought they handled rather carelessly. He said to them, "Men, I would be a little more careful in handling those rails." "To h—l wid yez," said one of the men. "Ah," he said, "that's the last place I should wish to go to." "Faix," said the man, "and that's the last place ye will go to." He related this to me with a good deal of gusto. He had previously been settled as a Universalist minister at Cambridgeport.

Mr. B. F. Hallett was trying a case before Judge Cushing for slander. His principal witness was an Irishwoman, who was very impetuous; she talked so fast that Judge Cushing could not write down her testimony, and attempted in vain to stop her. Still she went on, and Judge Cushing shouted, "Old woman, shut up." But it was useless. At last he threw down his pen, exhausted, and cried out, "There, Mr. Hallett, you set her going, now *stop* her."

Mr. Hallett asked a witness how he knew that a certain conversation was on such a day. "Because your client came to me and said, 'You know I voted for Buchanan.'" Mr. Hallett turned to the jury and said, "That 's a good reason why my client should have large damages."

Mr. Healy told me that Judge ——, in traveling one summer, arrived at a hotel which was full of guests, and was put in a small room with an Irishman. Being somewhat annoyed at this, he said, "Well, Pat, you would have lived a long time in the old country before you would have slept in the same room with a judge." "Yes," said Pat, "and you would have lived a long time in the old country before you would have been a judge."

He also told me that in New Hampshire at one time there were three commissioners appointed to examine candidates for admission to the bar, — Mr. Jeremiah Mason, Mr. —— Sullivan, and one other whose name I have forgotten. A young man of very awkward appearance presented himself for examination one day, and they proceeded to examine him thus: "What is property?" He described it. "How is it acquired?" "In various ways." "Illustrate." "Mr. Mason gets his by high fees, Mr. Sullivan

by usury, and Mr." — "Stop! stop!" said Mr. Mason; "I think we can admit him, brother Sullivan."

At No. 4 Court Street many distinguished lawyers had their offices. I copy here a slip which was pasted on the outer door: —

"In 1837, here were found Rufus Choate and F. W. Crowninshield (partners), Charles Sumner and George S. Hillard (partners), Theophilus Parsons and William G. Stevens, Horace Mann, Edward G. Loring, Benjamin Guild, Luther S. Cushing, John O. Sargent, P. W. Chandler, John Codman, T. P. Chandler, John A. Andrew, and others." When Mr. George S. Hillard left the building in 1856, he bade farewell to No. 4 in these graceful lines: —

"The child that in the cradle slept,
When first upon the stairs I stepped,
Now strongly stalks across the land,
With beard on chin and vote in hand.

"And I have passed from summer's prime
To autumn's sober shadowy time,
And felt the throbs and known the strife,
That slowly rear the dome of life.

"I hear no more the well-known feet,
The kindly looks no more I greet;
But ere I part from number four,
I leave my blessings at the door."

George S. Hillard, who was the daintiest and most suave of men, was trying a case in which the opposing counsel sought to recover for services in exhibiting a panorama, when the following occurred: —

Mr. Hillard: "How long a time does it take to unroll a panorama?"

Witness (the owner): "That depends upon the audience."

Hillard: "What do you pay a man per night to turn the panorama?"

Witness: "Ten dollars or fifteen dollars."

Hillard: "Seems to me that is pretty high; I think *I* should like to work for that."

Witness: "Well, the next time I have a panorama I 'll hire yer."

A year or two before Mr. Hillard's death, I was called by him to his house to attend to some private business, after which in conversation I quoted from memory some lines from an address that he had delivered before the alumni of Harvard more than twenty years previously, and which I had not seen since. He was surprised at my memory, and at my request wrote the whole of it, and sent it to me: —

"*Est oculis credendum*, what sights my old eyes greet,
My *soboles carissimæ*, all gathered at my feet!
Senes, with their locks of snow, and *juvenes* all blooming,
Thrice welcome is this *dies* blest, and doubly bright its *lumen!*

" *Cum osculis maternis*, I fold you to my breast;
Quot anni sunt elapsi, since you left my sheltering nest!
Auditis, how I tessellate my speech with bits of Latin,
Although *sub rosa* be it said, my English comes more pat in.

" And now that *mei filii* are met around my board,
Favete linguis, for a moment, hear your mother speak a word.
Receive *arrectis auribus* my loving heart's *consilia*,
And though I'm *senex* growing, don't think my teaching 's sillier.

" You, *Præses reverende*, and you, my *Professores*,
In whose honored *capita* all kinds of learned lore is,
Take good care of my *pueri*, keep the youthful *corda* sound,
And water the *virgulta*, with streams from classic ground.

" Let a gentle *mansuetudo* ever temper your rebuke,
Sunt quædam dulcia vitia, which wise men overlook.
The rank weeds of *juventus* will *sponte sua* die off,
And if you screw the screws too hard, the *capita* will fly off.

" And you, my learned clergy, the jewel of your *mater*,
To see you round my side *cor valde delectatur*.
Come, put about the *cyathus*, and don't be melancholy,
For I hold it no *peccatum* for a parson to be jolly.

" *Eloquio et doctrina* I know your honor great is,
And to the people of your charge *vitæ panem datis*,
Ecclesiæ officiis your lives and strength are spent all,
Your merits are transcendant, *aliquando*, 'transcendental.'

" Your *Græca exemplaria*, I pray you, don't neglect,
For a clergyman *indoctum* I hold in no respect.
And pardon me, my *filii*, if *petulans* my tongue grows,
But do not preach, on Sundays, *sermones nimis longos*.

"And you, my legal brood, *cantores formularum*,
With whom *honestas* is, I fear, a thing too *rarum*;
Some of you, if tales be true, *diabolus habebit*,
And if he should, well and good, *forsan nemo flebit*.

"Let not the *honorarium* which the lay gents call a fee
Make your *oculos* so *cæcos* that the truth they cannot see.
Speak *nitide et breviter*, don't weary courts and jury,
And when you have a *finis* reached, stop talking, I conjure you.

"And you, *doctores medicinæ*, who, armed with pills and bolus,
Stand by us *in extremis*, to comfort and console us,
With whom the *Britannorum mos* is still in good repute,
For *quidam* slay *in curribus*, and *quidam* slay on foot.

"*Dum sumus validi*, your doings are in distaste,
But when *mors pulsat* at our doors, we send for you in haste;
O fortunatos nimium — your slumbers may be sound,
For all your *corpora delicti* are hidden under ground.

"And now, *valete omnes*, my errand has been sped,
I drop a benediction upon the general head.
Eheu! labuntur anni — how swift the years glide by,
But *sursum corda*, my beloved ones, for truth can never die."

Samuel Hoar, in arguing to a jury on the difference in testimony or difference in statement on the same testimony by honest witnesses, gave this illustration to a jury: A boy asked his sister what "amen" meant. She replied: "Don't touch it." One day the mother asked the girl what it meant, and she replied again: "Don't touch it." The mother then asked

her where she learned that. She said: "Why, you told me so yourself." "Oh, no; I told you, so let it be."

Major J. A. Maxwell favors me with the following description of John S. Holmes, who died in 1892: "John S. Holmes, lawyer and politician. A strong, unique, and interesting personality disappeared from human view and was left only to memory, when in the early hours of Saturday last John S. Holmes expired suddenly, humbly, and resignedly in this city. That he should have ended his earthly days suddenly was no wonder to his friends and was expected by himself, for he and they had long known that his body was the home of a diseased heart, and would soon become its coffin. In the mean time his mind remained clear and discerning of reason and logic; his humor, though somewhat grim and sardonic rather than fanciful or mirthful, remained true to nature and struck the heart of human nature, and his heart turned straight without any magnetic variation to those friends of his who greeted him with love of his unusually strong and forceful qualities, and smiled without displeasure at his peculiarities. That he should have died humbly and resignedly is more remarkable, for he was a man of rebellious instinct of thought, a somewhat defiant and always

aggressive controversialist in the fields of theology. He had sought those fields in early days as a student at Andover, then left them, then returned, and wandered about in them to the end of his life. His final creed may be embraced in the words God and Conscience. His final attendants saw his dead yet speaking features and now attest his humility and resignation. He died aged seventy years. For many consecutive years he was sought by Democracy to represent their views and interests. He was also well known as a lawyer, but in late years, on account of heart trouble, he abandoned the practice of law in the courts and confined himself to the trial of causes sent to him as auditor in law or master in equity. He had so many of these cases that he was known as 'Judge Holmes,' and at the time of his death had a number of these matters in his death-stricken hands and brain."

When Judge ——, who was not a very brilliant man, died, some one said to Holmes in my office one day: "Holmes, I understand that they are going to put up a monument to Judge ——." Holmes replied that it ought to be a bas-relief.

Judge —— was holding court, and the sunlight shone on the back of his head. Holmes said to me: "There is a beautiful illustration

of scripture." "How 's that?" said I. Holmes replied: "The light shineth upon the darkness, and the darkness comprehendeth it not."

Mr. Holmes once told me that he saw Thomas F. Maguire eating a breakfast at a restaurant, and said: "Good God! Maguire, what are you about?" Said Maguire: "What 's the matter?" Said Holmes: "Do you know what day this is?" "No," said Maguire. Said Holmes: "Why, this is Good Friday; you had better stop eating that steak, and put on a layer of fish as quickly as possible." Maguire was a staunch Roman Catholic.

Mr. Holmes was once discussing Irish affairs with a young Irish lawyer in my office, and the latter, seeming somewhat surprised at Holmes's remarks, asked: "Why, Holmes, don't you want the Irish to have their freedom?" "Yes," said Holmes, "on one condition." "What is that?" "That a wall is built around Ireland, so high that no one of you can ever get out."

"Where was —— brought up?" said a person to John S. Holmes. Holmes: "He came up himself." The former said to Holmes: "I addressed ten thousand men in the last campaign, John, for two hours." Holmes: "Are any of them alive now?"

Among the candidates for a vacancy in the Superior Court was Judge ——. Holmes said

he thought Judge —— ought to have it, as he had such an eminent judicial gait.

Mr. Holmes once told General Butler that he (Holmes) was often taken for General Butler. "Well, what of it?" said Butler. "Why," said Holmes, "I am afraid you will lose your reputation as a lawyer, and I mine as a man."

A gentleman came into my office, and, observing a photograph of the clerk and four assistants, asked: "Where can I get one of those pictures?" I said: "At Ritz'." Mr. Holmes, who stood by, remarked: "Where else should the clerks go, except to Ritz" [writs].

Mr. Holmes was talking with me about various articles of food. He asked me what I liked best for breakfast on a cold morning. I told him good hot fried sausages, and that they were a tonic. Mr. Holmes replied: "Yes, and if it is a German sausage, it is Teutonic."

A person, meeting Mr. Holmes in my office, said: "Good morning, Holmes, how are you?" "Well," said Holmes, "how are you?" The other replied: "I am very chilly. I feel the goose-flesh creeping over me." "Don't you always?" asked Holmes.

VIII.

IN RE-TORT. — PART II.

ABOUT the time of the breaking out of our civil war, George Jones, *alias* Count Joannes, came to the front. He had been a second-rate actor, had been to Europe, and by some means acquired the title of count. The first time I remember seeing him in public was at a meeting of the bar called to confer with the judiciary as to whether the courts could be held to advantage during the great excitement. He had not at that time made himself unpopular. The meeting was held in the United States Court room, old court house, where the Municipal Court for criminal business was formerly held. Though not a member of the bar, the count was present and made a speech, in which he said that he was of the opinion that the courts had better adjourn, and transact no business; but his speech only tended to increase the excitement. A. H. Fiske, who spoke in deprecatory terms of the count's speech, poured oil on the troubled waters; he said that perhaps it might

be well to adjourn for a day or two until the first excitement was over, and then proceed as usual. His remarks were received with approbation by all present, and, upon his motion, the court adjourned for two or three days.

The next I remember of the count was upon the occasion of a ball in Boston. Francis H. Underwood, writing an account of it and stating who were present, said among them were —— and ——, naming some distinguished individuals, and the *soi-disant* George, Count Joannes. Thereupon the count brought a suit for libel against Mr. Underwood. He (the count) tried his own case, and Charles Allen, now one of the justices of the Supreme Judicial Court, was counsel for Underwood. The trial lasted several days; and among other things, it was proved that at a convivial dinner in London the company got up this title and gave him a parchment certificate with seal attached. The verdict was in favor of Mr. Underwood.

At the time of the war there were a great many envelopes in circulation with different pictures and mottoes upon them. I know of one collection containing eight hundred or more. On one occasion, Joseph Nickerson sent the count a notice to appear at court at the hearing of some motion; this notice was inclosed in an envelope, on the left-hand corner of which was

a jackass, and underneath it the word "secessionist." The count immediately brought a suit against Nickerson for libel to recover the sum of $4000, alleging that Nickerson had charged him with being a secessionist and a jackass. William L. Burt, afterwards postmaster of Boston, defended Nickerson. Nickerson testified that he took the envelope from his desk among a number of others; that he had no malice against the count, and no intention of holding him up to ridicule. Burt asked the count while he was on the witness stand, if the word "secessionist" did not refer to the jackass. The count replied: "Clearly not. A secessionist may be a jackass, but a jackass cannot be a secessionist." Then Burt produced an envelope written by the count, addressed to "Joseph Nickerson, Esq., Attorney-at-Law, etc., etc., etc.," and then asked the count if that address accorded with his ideas of good manners. The count said it clearly did. Then Burt asked him what the three *et ceteras* were for. The count replied: "First, attorney; second, justice of the peace;" and stopped. "And third?" asked Burt. "That is meant to be generally complimentary," answered the count.

In this case Mr. Ropes was a witness. The count asked him: "Did you, or did you not, say I was a d—— fool?" The witness answered "No."

Burt asked him if he used any profane words. Witness: "There are different ideas about profanity;" and then Mr. Ropes was allowed to explain. He said he told Nickerson that he had heard the count called crazy and a d—— fool, but whoever took him for either would find himself mistaken. Nickerson told him (the witness) that he would break the count down in court, and witness replied that it would be the toughest job he ever did. In his argument to the jury, the count glared at Nickerson, and said: "We judge a jackass by the length of his ears; judge between the defendant and me."

He brought a suit against Governor Andrew for libel, and another against William L. Burt; and after many such suits, he was tried and found guilty of being a common barrator.

He afterwards advertised himself to play Romeo at the Boston Theatre, for his own benefit. I was present; and in one scene where he was obliged to get on his knees he was assisted to regain his feet, as his joints were so stiff that he could not rise. The whole audience was convulsed with laughter, and it was some time before he could go on.

He was once arguing a case in the Justices' Court before Chief Justice Rogers, who remarked that the law was so and so (stating it); that such was his impression. "Nevertheless,

you can look, count." The count replied with a peculiar suavity of manner: "I should not presume to look while your honor is on the bench."

Count Joannes had his photograph taken and put into a costly frame, upon which he had inscribed, "To my friend Edwin Forrest, from the Count Joannes." The picture was exhibited in Tilton's window. Some time prior to this the count had borrowed five dollars of J. L. Newton, who sued out a writ attaching the picture, and the officer carried it away. Thereupon the count paid Newton and redeemed the picture, saying that he felt very much hurt. He was a fine-looking man of pleasing address, — in one word, debonair, — but lacked stability of character, or, in every-day language, "common sense." He finally went to New York to live, and there ended his days.

Mr. A. V. Lynde, than whom there is no more temperate man, asked a witness: "Don't you drink a glass of liquor sometimes?" He replied: "Yes, I take a glass, the same as yourself, occasionally."

David H. Mason was a man who always talked to the jury in stentorian tones and made long cross-examinations. Once having examined a

witness at great length he said: "Now, sir, have n't people been to you to try to make you tell a different story from what you have here, sir?" Witness: "Yes, sir." "Now, sir, who?" said Mason. Witness: "I reckon *you* have tried as hard as anybody." Not rebuffed at this, Mason said: "Did n't you go to see Smith, sir?" "Yes, sir." "What did you go to *him* for?" "To see if he would tell the truth." "Did n't you think he would tell the truth?" "Well, I heard he had been to *your* office, and I did n't know what he might say."

Robert Morris was a leading colored practitioner, and sometimes very amusing incidents occurred. The first one I remember was this: One Brown got into some difficulty; he transferred or sold his stock in trade to one Turner on a pass-book and then left the State. Both were colored men. After the difficulty had blown over Brown returned to Boston and claimed that he only let Turner have these goods to keep while he was gone. Turner would not give them up and Mr. Searle brought a suit in *trover*, Brown against Turner. Turner was obliged to prove Brown's signature, which Morris tried once or twice and failed in. Then he called another witness and said: "Did you ever see Brown write?" "Yes," said the witness.

Morris held the piece of book behind him and said: "Now suppose I should show you his signature, do you think you would know it?" "Seeing as how people write different at different times, I don't know as I should." Morris, opening the book, showed him the signature and asked: "How does that strike you?" Witness looked at it and replied: "That strikes me just how I could n't tell." "John Wright, take the stand." Mr. Wright came forward, the darkest colored man I ever saw. "Did you ever see Brown write?" "Oh, yes, sir; frequently." Morris showed him the signature and said: "Well, what do you think of that?" "Oh, I knows not'ing 'bout dat; I t'ought you axed me, 'Wright, did you ever see Brown?'" The whole room was convulsed with laughter, and even Judge Hoar smiled.

Mr. Morris, arguing a case, stated the evidence to be so and so. Counsel on the other side said, "There 's no such evidence." Morris: "I have it on my minutes; the judge probably has it on his; the counsel on the other side *ought* to have it, and, gentlemen of the jury, *you* have it in your memory." When the opposing counsel arose he said: "Gentlemen, I shall not be so amusing as brother Morris." Morris: "You can't *do* it."

Morris was trying a case in which his client

sued for board, and after the plaintiff had testified in chief, Mr. Robert M. Morse cross-examined him, and as a final question asked: "Have you been in the House of Correction?" Witness: "Yes, sir." Morse: "That's all, sir." Morris: "No, sir; that's not all. What were you sent there for?" Witness: "For selling liquor." Morris: "The man that sold it to you did not go there, did he?" Witness: "No, sir." Morris: "That's all."

Morris was trying a case in *trover* in which the value of a goat was in question. Mr. Sprague for defendant. Morris in closing said to the jury: "Gentlemen, we can't find out what's become of dat goat, but I mistrust brother Sprague has had some of the milk of dat goat for breakfast."

Isaac S. Morse brought a suit for a dressmaker to recover damages for making a dress. Robert Morris defended on the grounds that it did not fit and that the dressmaker substituted another piece of silk. A piece of silk from the original material was put into the case and compared with the dress, and an expert testified that they were different. Morris asked if he could tell the difference between any two silks. "Yes," said the witness. Morris: "Can you tell the difference between that colored man there [pointing] and myself?" Mr. Morse: "I have

the witness here to prove difference in *silks*, and not in *wool*."

A certain Mr. Jones, living in Boston, had failed; his creditors filed a report in the Insolvency Court. A Mr. Bullard of New York, who was here trying a case, wished to put in that report as evidence, and also wanted to know what a certain Mr. Bond said at a public meeting of the creditors at which he (Bond) was present. Nathan Morse objected. Judge Devens: "Mr. Bond, you say, was present and said nothing?" Mr. Bullard: "Yes, sir; and we contend that he should have spoken." Mr. Morse: "That depends upon whether he was a good speaker in public."

Joseph Nickerson, one of the sharpest practitioners at the bar, was trying a case opposed to A. A. Dame. During the trial Mr. Dame did something equally sharp, and Nickerson said it was a kind of sharp practice he was not used to.

Henry W. Paine came to Boston from Maine, and after he had practiced here a little while, was invited by Colonel Seth J. Thomas to dine with some other guests at his house; among them being a gentleman who had known Mr. Paine in the East. After the usual greeting

the gentleman asked: "How are you getting on here, Paine?" "Oh, fairly, fairly," said Mr. Paine. "Fairly!" said the other; "how 's that, when you were the leader at the Kennebec bar?" "I 'll tell you," said Mr. Paine. "You know our friend Smith down at ——?" "Yes." "One day," said Mr. Paine, "Smith caught a fine salmon, which he took into the house and showed to his wife, saying, 'What shall we do with this salmon?' Said his wife, 'You're going down to —— to-morrow, are n't you?' 'Yes,' said Smith. 'Take it and on your way stop at Parson Jones's and make him a present of it.' He said he would. His wife packed it in a cloth and sewed it up very neatly, and the next morning he put it in the box of his vehicle and started off. He stopped to dine at a tavern on the way, and told the landlord what he was going to do with it. The landlord went out and got the salmon, brought it into the house, took it out of the cloth, put in a lot of dried codfish, hay, and stone, sewed up the cloth neatly, and put it back into the vehicle. Smith went on, stopped at Parson Jones's, and told him that he and his wife thought that they would make him a present of a salmon. He took out the bundle, left it there, and then went on to the next town. After having transacted his business he started for home the next morning, stopping at the par-

son's on the way to inquire how they liked the salmon. They began laughing, and when he asked what they were laughing about they told him that he did n't bring any salmon, and showed him what he had brought. He was somewhat amazed, but thought that they had better sew up the material he had brought and he would take it back. So it was sewed up, and he put it in his box. Again he stopped at the same tavern to dine, and when he saw the landlord he told him what had happened. The landlord went out, got the bundle, took out the stuff, replaced the salmon, and sewed up the bundle. Then Mr. Smith went home, and after having unharnessed his horse he went into the house and sat down. His wife said: 'Why, Smith, you seem to be in a quandary; what's the matter?' He said: 'I thought I carried a good salmon down to Parson Jones, but it turned out to be nothing but a lot of dried salt fish, hay, and stones.' 'Pooh!' said his wife; 'did n't I sew him up and don't I know? Where is it?' 'In the box in the vehicle in the barn.' 'Get it, and bring it in here,' said his wife. He brought it in, opened it, and there was the salmon. 'Ah,' said Smith, shaking his fist at the salmon, 'you 're a dashed good salmon on the Kennebec, but down on the Penobscot you 're nothing but a cod.'"

A certain member of the bar, not distinguished for his good manners, was trying a cause as counsel before Henry W. Paine as referee. Mr. John T. Paine, one of the counsel, was a man of very fine appearance and excellent manners, but not so highly educated a man as the counsel who was opposed to him. Mr. Paine in his closing argument commented rather severely on the testimony of one of the witnesses for the other side, and amongst other things said: "As to the testimony of Jones, Mr. Referee, I think you should give to it very little weight. He is evidently one of those *non mi recordo* witnesses." "*Non mi recordo*," shouted the other counsel; "what does that mean?" "Why," said Paine, "that's Latin for"— "Latin!" said the opposite counsel; "I should think it was hog Latin." "Well," said Paine, "I should think *you* might be a good judge of *hog* Latin."

John C. Park told me that a man came to him and wanted him to defend an action brought against him by Richard H. Fuller, when the latter first came to the bar. The case was this: When Fuller and the defendant in the action were in college, they made a wager of twenty-five dollars, which was put in writing, as to which of them would be first married. Fuller married first and sent to the defendant for the twenty-

five dollars, payment of which was refused, and Fuller thereupon brought suit. Park filed his answer in defense before the action was entered, setting forth among other things that such wagers were against the policy of the law, and countenanced immoral marriages; and that plaintiff (Fuller) hastened his marriage in order to make twenty-five dollars. When Fuller saw the answer in the clerk's office, he got frightened or ashamed and did not press his action.

When the court began to have two sessions, in the first division of cases for the first and second session, it was thought expedient to give the even numbers to the first session, and the odd numbers to the second. John C. Park said to me: "The court exercises strict jurisdiction over gambling, but the first thing the court did this term was to 'odd and even.'"

An Irishman on the stand testified about buying some rose gin for thirty-five cents a gallon. Counsel asked him to explain to the jury what rose gin is. The witness said: "An' faith, the gintlemen of the jury knows what rose gin is."

In 1849, in the Court of Common Pleas, there was a case tried about the sale of some property which was supposed to have been stolen

by Bristol Bill, a celebrated burglar. Francis E. Parker was counsel for the plaintiff, and, if my memory serves me correctly, Messrs. Smith and Bates were counsel for the defendant. It was customary at this time to have an issue tendered and joined in the old style of pleading, to wit: in cases of assumpsit, "Now comes the defendant when, etc., where, etc., and says he never promised in manner and form as set forth in plaintiff's writ, and of this he puts himself upon the country by ——, his attorney. And the plaintiff doth the like by, ——, his attorney." There was a great deal of feeling manifested at the trial, and John Wilson, who was a constable at that time and whose reputation was not of the best, was the principal witness for the plaintiff. The verdict was for the plaintiff. A day or two after the verdict was rendered, Samuel D. Parker, Esq., who was district attorney, came into the office and said he wanted to see the papers in the case. I imagined he was going to indict Wilson for perjury. I looked the papers all over, and then handed them to Mr. Parker. After he had examined them, and as he was about to leave the office, I remarked: "I think, Mr. Parker, there is one thing you want that is not there." "H'm, h'm, what 's that?" he asked. I said: "There 's no issue joined there." He looked

the papers over again, and said: "Here's the *similiter*." "Yes," I said; "but it is not signed." "He, h'm," said Mr. Parker; "leave the papers here a few minutes until I look at the —— volume of Massachusetts." He was gone a few moments, and on his return said: "I think you are right; I had that indictment all drawn, and all it lacked was the signature of the foreman of the grand jury." Then he went out. The clerk, Mr. Willard, was not in at the time. In a little while a boy rushed into the office in great haste, and putting a paper hurriedly into my hand was about to leave. Suspecting something, I shut the door, read the paper, and found it was an issue in the case properly tendered, joined, and signed. I told the boy to take it back, for it was too late. Then I went and told Mr. Francis E. Parker what I had done, and on my return to the office I found the clerk had come in. I told him what I had done, and he said I had acted judiciously. In a few moments Mr. Bates came in with the same paper and wanted it filed. Mr. Willard declined to do so, saying that it was too late, as certain rights had been acquired. Consequently the indictment was not presented. A week later I found a silver cup on my desk with the name of one of my children engraved upon it. Who left it I never knew.

At the time of which I have been writing, the old court house was the same in the rear as it is to-day in front, that is, it extended no farther than the stairs which one ascends in going where the law library then was. The addition where the sheriff's office was, the record room of the Superior Court, the law library, and the second session room of the Superior Court, was erected in 1861. The United States Court was held in a room lately occupied by the Municipal Criminal Court. The marshal's office was where the reporter's was, and the law library was where the Superior Court held equity sessions. The Police Court was where the Civil Municipal was, and the Justices' Civil Court was where the offices of the commonwealth law clerk was, and the Municipal Criminal clerks were. Costs were different in the Court of Common Pleas. Thirty-three cents per diem for attendance was the allowance by statute for taxable costs every day on which an action was open, and the only way to stop the costs was to continue on a certain day and note it upon the docket. The cost of attendance, the three long terms of October, January, and April, would be from $16.50 to $19, or $17.80 each term, and the July term about $9 or $10. And this I hold is the true way to make the costs high. It left parties to settle or try, and not

so many weak cases were brought as at present. Then the plaintiff's attorney did not charge his client so much, as the defeated party had to pay a good bill of costs. Now the plaintiff has to pay the whole of his lawyer's fees, or deduct it out of the verdict, if he gets one. Since I wrote the above a member of the bar has told me that Chief Justice Shaw said the costs should be high because it was a bar to litigation.

Horatio G. Parker was formerly judge of probate in western Massachusetts. One day he noticed a large old farmer waiting all the forenoon in his court room. In the middle of the forenoon another old farmer came in and said to the first one: "What you doing here, Captain Scott?" "Waiting for the Probate Court," said Scott. "Why, this is the Probate Court," said the other. "Where is the judge?" said Scott. "There" (pointing to Parker). "That fellow!" said Scott; "I saw him shooting chipmunks this morning." In the afternoon Scott appeared again, and Parker assented to his claim. Captain Scott said he was much obliged, and Parker said, "I 'm sorry that a man of your age and experience can't tell a chipmunk from a gray squirrel." Said Scott: "Why, squire, did you hear me?" "Yes," said Parker, "and I am sorry," etc., repeating his

remarks. "Have you got 'em?" asked Scott. "Yes," said Parker. "Let's see 'em." He and Parker went out and looked at them; the captain poked them over and turned them, to make sure they were gray squirrels, then poked the judge in the ribs, and said: "Squire, let's go and take su'thin."

A witness testified that a certain statement he made to a person was false. Mr. Ranney: "Are you in the habit of lying?" Witness: "I don't know." Ranney: "Do you lie from habit or pleasure?" Witness: "Both."

Mr. Ranney and Mr. Nathan Morse engaged on opposite sides. Mr. Morse: "Now, Mr. Witness, I did n't ask you *that;* no doubt your answer pleases brother Ranney." Mr. Ranney: "The truth always pleases me." Mr. Morse: "Because it is so rare?" Mr. Ranney: "When you are on the other side."

In the case of Mann against a life insurance company, Mr. Ranney got a verdict for plaintiff. Defendant moved for a new trial, and among other things contended that plaintiff's death might have been caused by excessive smoking. In an argument for a new trial I took down a portion of Mr. Ranney's remarks as follows: "Was he an excessive smoker? Who can tell? The term is relative. No man thinks he smokes

to excess. I smoke ten cigars a day and I don't think I smoke to excess, and a person may think another smokes excessively who smokes three per day. The doctor who testified here was a homœopath, and he wanted smoking done in homœopathic quantities in a thousandth dilution of a cigar."

In a certain case Mr. Ranney, in examining a witness and holding his notes of a previous trial in his hand, said: "Now did n't you swear before that you were at the house a week before the occurrence?" Witness: "I don't know, but if you have got it down there I suppose I must have said so." Sweetser: "Oh, no, that does n't follow by any means."

In the same case. Mr. Ranney: "Did Mr. Lund thank you for getting him figs?" Witness: "No, I don't think he did." Ranney: "Did he ever thank you for anything?" Witness: "Not as I remember." Ranney: "Did he thank you for coming to visit him?" Witness: "No." Ranney: "Did he ever thank you for going away?" Witness: "No."

Benjamin F. Russell had quite an extensive criminal practice. He bought an excellent overcoat for which he paid sixty dollars. Being sent for to the Criminal Court he went in great haste, leaving his coat hanging up in his office.

The next day a person came into his office to engage him to try his case, which was for larceny. Mr. Russell demanded ten dollars as a retainer. The client said, "You have only charged five dollars before; why do you charge double now?" Mr. R. replied, "Some of you fellows have stolen my overcoat, and you have got to subscribe, in order that I may get another."

Ivory W. Richardson, a man of excellent natural abilities, was appointed one of the examiners of young men on their application for admission to the bar. To one person whom he examined and who seemed to know the statutes very well but not the common law, he said: "I can't certify you for admission, for the next legislature will repeal all you know."

Two Irishmen were sitting together one day in the court room when I overheard this: Flanagan: "And have you a case here, Donovan?" "Yes," said Donovan. Flanagan: "Who's your counsel?" Donovan: "Mr. Gargan" (pointing to him). "Ah," said Flanagan, "why don't you get Misther Roiley? is n't he the b'y? Did n't I see him the other day arguing the case with the judge, and the judge could n't hold a candle to him, and could n't

argue with him any longer, and had to say to him, 'Sit down, Misther Roiley.'"

Mr. Russ and J. R. Smith were trying a case, opposed to each other. Mr. Russ for the defendant had his client sworn, and asked him, "State what services you performed for the plaintiff." Mr. Smith: "I object until, etc., and besides no set-off has been pleaded." Mr. Russ: "If there is any question as to the order of proof, I will waive it for the present. It used to be said that it makes no difference which leg of the trousers one puts on first." Judge Lathrop: "Provided he has a leg to stand on."

Mr. Russ was interrogating a witness who was driving a coal-cart at the time of a certain collision. Russ: "Where were you going with that coal-cart?" "To White's Wharf, sor." Russ: "Where did you come from?" Witness: "From Ireland, sor."

Mr. ——., a practicing lawyer in Boston, married a daughter of Judge ——, one of the judges of the Superior Court. Mr. —— had a cause which was liable to come on before Judge ——, in which case Mr. Russ was the opposing counsel. Mr. —— wrote to Mr. Russ: "Considering my relations with Judge ——, had n't our action better be postponed till some other judge sits?" Russ knew nothing of the mar-

riage, and supposed that Mr. —— had had some difficulty with Judge ——, and replied: "I hate the —— as much as you do, but perhaps we had better go on; I 'm not afraid of him." It is current report that the case came on before Judge ——, and, observing some hesitation on the part of Mr. Russ, Judge —— remarked: "Go on, Mr. Russ, don't be afraid."

When George Sennott came from Vermont to practice law in Boston, he went to Judge Metcalf and told him that he was advised by Chief Justice Redfield of Vermont to ask him (Judge Metcalf) what books he should read. Judge Metcalf gave him a list. Some time afterward Judge Redfield came to Boston to practice, and in conversation with Judge Metcalf the latter told him about this incident of Sennott. Said Judge Redfield: "What did you advise him to read?" Judge Metcalf told him, and asked: "What would *you* have advised him to read?" "Oh," said Judge Redfield, "I should have advised him to read the decalogue."

When Hiram S. Shurtleff was acting as clerk in the Criminal Court, George Sennott was one day somewhat indecorous and disrespectful to the Court. Judge Reed told him several times to stop, which Sennott disregarded. Then Judge Reed told him if he did not stop he would

commit him. Sennott sat down. After some minutes Judge Reed said to Shurtleff: "I found I was angry, and I would not commit him." Subsequently Sennott said to Shurtleff: "I was frightened; I thought he would commit me." "Oh," said Shurtleff, "he would not have committed you." "Why not?" said Sennott. "Because," said Shurtleff, "he would n't have committed a nuisance."

Sennott once made a motion before Judge ——, and while the judge was looking at the statutes Sennott kept up an incessant talking. Judge ——: "I don't know that there is any advantage in keeping up this talk." Sennott: "As nothing was going on I thought I would occupy the time in saying something." Judge ——: "You had better occupy the time in saying nothing."

George Sennott went to Virginia to defend some of John Brown's associates. A newspaper there said: "We presume lager beer will accumulate in Boston while Sennott is here." A man from there said to a clerk in our office: "You have nominated a pretty man for governor, a man who went to Virginia and drank all the whiskey there, and was drunk every day." "Are n't you mistaken in the man?" asked Mr. U., the clerk; "is n't it Sennott?" "Oh, yes," said the man, "I beg Mr. Andrew's pardon."

There was some resemblance between the two. Mr. Sennott was in the office in the afternoon, and we told him the story, at which he laughed heartily.

This same autumn, 1859, Sennott was making a speech at a Democratic meeting. A fellow in the crowd shouted: "You 're an abolitionist; did n't you go to Virginia to defend John Brown?" Sennott replied: "Am I a thief because I defended you on a charge of larceny and kept you from the House of Correction, where you belong?"

Matthew Hale Smith, who earlier in life preached as a Universalist minister, came to the bar and practiced somewhat in Suffolk. During a portion of his practice, Sebeus C. Maine was one of the justices of the Justices' Court. Smith told me that as he was not well he occasionally went on horseback, riding a white horse. As he was riding one day, Maine on his fast trotter overtook him and said: "Smith, you put me in mind of a passage in scripture, 'Death on a pale horse.'" Smith retorted: "You put me in mind of another." "Ah," said Maine, "what 's that?" "'And all h—l followed after.'"

Robert D. Smith was a man of infinite humor. There was a case on trial one day in which the

defendant, a Baptist, was sued for damages for firing a rocket one Fourth of July, which hit a boy in the eye. This boy (the plaintiff) was the son of a member of an Orthodox church. Smith said that the defendant had tried baptism by water, and now he had tried it by fire.

The same lawyer was examining Mr. Paige, the well-known insurance agent, on the subject of certain dangerous articles in houses. Mr. S.: "Is the risk greater where there are boarders?" "Yes." "Is it greater where there is a mother-in-law?" "Mothers-in-law are not generally boarders." "Do you allow gentlemen to keep liquors in their houses?" "Somewhat." "And not increase the risk?" "Generally not." "Suppose I came to you to insure my house, should you ask me if I had liquor in it?" "Take it for granted."

Smith often had a very humorous way of telling stories in his arguments. I had a colt in Vermont which I wanted to bring down to Boston. I found that if the railroad carried him in a car it would be expensive; but that if I put him in a car with sheep the freight would be lower. I did so, and on the passage the sheep ate the hair off his tail, owing, probably, to the salt in it. I told the fact to Mr. Smith, and one day, as he was arguing a case before the Supreme Court (I don't remember how it

became material), the Court asked him to illustrate his position. "Why," said Mr. Smith, "Mr. Willard had a colt come down in the cars from Vermont with a lot of sheep, and they ate the hairs off the colt's tail, and even gnawed the hide,"—at which the Court was convulsed with laughter.

A client of Mr. William D. Sohier, on entering the latter's office one day, threw off his coat and said: "Why, your office is as hot as an oven." "Why not," said Mr. S.; "it 's here I make my bread."

A friend of mine writes me of Mr. Sohier thus: "Edward D. Sohier (commonly spoken of as Ned Sohier) was a man of marked personal characteristics. Erect, he would have been nigh six feet in height, but he had an habitual stoop. He was among the first men in Boston to wear a mustache; he was the first professional man who wore one, and this only under the advice of an eminent oculist, for his eyes' sake. For many years he wore a fine drab English kersey top-coat, with large mother-of-pearl buttons; his hands were deeply thrust into the hip pockets, unless one of them was clutching a great garnet-colored bag full of books and papers. He always wore a felt cap, with the broad visor well pulled down over his

eyes, and ordinarily a green shade under that. His movements were very rapid. His body was the apt servant of his quick mind. As he darted along the street, glancing suddenly to right and left, his mobile, eager face lighted up with instant recognition of anything strange or ludicrous; and he attracted any one's attention. He was altogether, in his make-up, unlike the conventional man or American; perhaps in some degree because he was of old Huguenot descent. He always seemed to me like a fine specimen of the true French savant."

Mr. Edward D. Sohier and Mr. Charles A. Welch I had known in boyhood; they were students in Harvard when my father was professor; and when I entered the office I renewed my acquaintance with them. Mr. Sohier said: "Your father was very kind to me, saved me from being rusticated, and I should like to do anything I can for you." I asked him the circumstances. He said: "One day at Commons (the place where the students ate their meals), we had mouldy bread. I took a piece to the fire to toast, and occasionally looked round to see if Mr. Barlow, the proctor, were looking at me. He reported me to the faculty, and said I was making grimaces at him, and wanted me rusticated for impudence. Your father was at the meeting of the faculty, and

hearing the statement said: 'Pooh; nothing but a boy's fun!' and I was not rusticated. However," added Sohier, "Barlow got his pay, for he turned out a common drunkard."

Mr. Sohier and Mr. Welch, his partner, were obliged to leave the office which they had occupied many years over Jacobs and Deane, the tailors, on Court Street, in order that J. and D. might enlarge their premises. A gentleman remarked to Mr. Sohier: "It must be very hard for you to leave, having been there so long." "Well, well," said Mr. Sohier; "our suits will last as long as theirs."

I said to Mr. Sohier that I thought the motto of the seal of the old Police Court, *suum cuique*, might be better. "It could n't be better," said Mr. Sohier; "sue 'em quick."

Mr. Frederick W. Sawyer, who had long been a practicing attorney, organized a bank called the Pawner's Bank, of which he became president. I remarked to Mr. Sohier that I thought it strange that Mr. Sawyer should leave his practice and go into the banking business. "Oh, no," said Mr. Sohier; "it is perfectly natural that he should go from the Sioux to the Pawnees."

I told Mr. Sohier that I had read in the paper that a dead whale was driven ashore at Nantucket, and on opening him a pair of boots was

found, marked J——. Mr. Sohier replied: "They probably belonged to Jonah; he must have left them when he stepped out."

There was a case of one Coleman against the New York and New Haven Railroad, in which the plaintiff claimed damages for being rudely ejected from the car. Coleman was selling-agent for a large firm in New York, and in traveling between New York and Boston he often had coupons left by reason of stopping at intermediate places. He this time had one in his pocket, — "New Haven to New York." He entered the car at New York, presented this ticket to the conductor, and said that, as he had paid for it from New Haven to New York, it ought to be good from New York to New Haven. The conductor said he should not take it, and that if Coleman did not pay his fare he should put him out. There were a number of Boston gentlemen present, well known to Coleman and the conductor. Coleman said: "Take this coupon and my name, and if the proper authorities find fault with you and refuse to take it, I will send you the regular fare." A number of Boston gentlemen exclaimed, "That's fair." But the conductor refused, and at the next stopping-place he came in with four stout brakemen, and took hold of Coleman to put him out. Coleman clung to the cushion, but they

took him out, seat and all, and in his own words, "dumped me onto a platform like a dead sheep." When the train started he ran and caught hold of the steps, but they pushed him off. Mr. Edward D. Sohier, who appeared for Coleman, spoke of the brutal force with which the conductor and his men put him off. The counsel for the defendant said, "There 's no such evidence." "Is n't there, gentlemen?" said Mr. Sohier. "What did the conductor say when he came in with his men? — 'Now, boys, let 's put him off.' I submit to you, gentlemen, that this is force implied. I submit, further, that when a delicate thing is undertaken it is not customary to say, 'Now, boys, let 's do a certain thing;' it is only when something desperate is to be attempted, as when a general leading a forlorn hope says, 'Now, boys, let 's storm this redoubt.' A banker does not gather his clerks round him and say, '*Now*, boys, let 's go to discounting,' nor Dr. Blagden when he rises from the pulpit, '*Now*, boys, let 's read the one hundred and nineteenth psalm.'"

One evening in 18—, I went to a stable to hire a horse and buggy, and while waiting for it to be harnessed I heard a man say: "I always believe a man to be a d——d rascal until I find him honest." I made up my mind that he was a rascal himself; and as I looked at

him, I mentally took his photograph. His name was Montgomery. Shortly after this he was arrested for robbing the stage that carried the box or money-bag of the Waltham Bank, while the stage stood at the post-office. He was convicted and sent to State Prison. After his conviction, one William W. Wilson, who was looked upon with suspicion, in order to retain the money for Montgomery, brought a suit against him, and summoned the Merchants' Bank, where Montgomery had deposited the money, as trustee. Thereupon the Waltham Bank, by Sohier and Welch, its attorneys, prayed to come in as subsequent attaching creditors, and were admitted. Wilson, being a skillful engraver, had done a considerable amount of that sort of work for different manufacturing companies. About the time the action was put in for trial, Mr. Welch was going down the court house stairs, when he met the treasurer of one of these companies, whom he knew very well, going upstairs. He asked him what he was going up for. He said he was going to testify how much he paid Wilson. Mr. Welch said: "I believe Wilson is a rascal; let 's look over the papers and the orders, and compare things and see how they stand." On examination it was found that he had paid Wilson large sums on forged orders. At the trial Wilson took the stand, and after hav-

ing given his testimony in chief, and while Mr. Sohier was eliciting from him the statement that he had been overpaid by these forged orders, Wilson fainted, and Mr. John C. Adams, who was his counsel, abandoned the case. Thus the Waltham Bank recovered a large portion of their money.

As Mr. Sohier was standing in the corridor of the court house one day, talking with some gentlemen, a person with a monstrous nose passed him to go into the court room. In a few moments another gentleman came along, and, bowing, said: "Can you tell me, gentlemen, if the trial of the Roxbury nuisance case comes on to-day?" "Yes, sir, I think it does; I saw an expert on smells go into court just now."

I met Mr. Sohier one morning near the court house steps, when Mr. Benjamin F. Hallett came up and said, "Good-morning." Mr. Sohier said, "Well, brother Hallett, how does the world treat you, nowadays?" "Shockingly, sometimes," replied Mr. Hallett; "the other day a man called me Judas; however, I did n't care." Mr. Sohier instantly replied, "Well, but what does Judas say?"

One day as my predecessor, Mr. Joseph Willard, was entering the office together with Mr. Sohier, the latter, leaning on Mr. Willard, kindly remarked: "Now, if you would only die, Wil-

lard, the inheritance would be ours." This was when the appointment was made by the Court, and a member of the bar was sure to be selected.

Sohier was joking with William Brigham about ages, one day, Brigham being somewhat advanced in years, when Brigham said: "Sohier, do you know who I am?" "I know who you are not; you are not Brigham Young," said Sohier.

Judge Abbott and E. D. Sohier were talking together one morning before the Court came in, and the judge spoke of a French lady whose letters had been lately published, and of whom it was formerly said that she had been on too intimate terms with Napoleon. Judge Abbott said it appeared, now, that all that Napoleon did was to enter her bedchamber while she was in bed, and, while talking with her, pinch her toes. To which Sohier remarked, "He certainly proceeded to extremities with her."

A stranger came to Mr. Sohier's office one day and said, "I brought a load of lumber to town and sold it to Mr. ——, and took his notes; are they good?" Mr. Sohier replied, "He is the head singer at our church, and I never heard his notes complained of."

When I first went to the office it was the custom of lawyers to put their Christian names on their signs, as well as the full names of parties

in the writs, and not initials, as they do now. I think the Messrs. Chandler were the first ones to introduce the innovation; whether it was because their names were too long or because of some other reason, I don't know; but they put out their sign, "T. P. and P. W. Chandler." Some one called Mr. Sohier's attention to it and said: "What do you suppose that means, Mr. Sohier?" "Oh," said he, "Tad Pole and Polly Wog."

A witness, testifying one day, made many grimaces, writhing and twisting about; a person remarked to Mr. Sohier that the witness looked and acted as though he were swallowing a shoemaker. Mr. Sohier replied, "I don't know that he can, but he looks as though he swallowed several cobblers daily."

One morning Mr. Sohier came into court and there was a man present of large abdominal dimensions. He came to me and asked me who he was. I said, "He has a lawsuit here." "What is it?" asked Mr. Sohier; "a petition for partition?" I laughed, and said, "He is a pilot." "Pilot!" said Mr. Sohier; "I should think he was Pauncheous [Pontius] Pilate."

Mr. Sohier came to me one day and said: "Willard, what kind of a fellow is Mr. ——?" I said, "He is a very good fellow indeed; honest and square, but not a great lawyer. He is an

athlete, and sleeps with his window open when the mercury is twenty degrees below zero. He is trying to be a Spartan." "Spartan!" said Mr. Sohier; "I should think he was a lazy demon" (Lacedæmon).

Mr. Sohier and Mr. —— were discussing, in my presence, the traits of a certain judge then on the bench. Mr. Sohier was somewhat severe on him, when the other said, "I think you do great injustice to Judge ——, Mr. Sohier, for his breast is full of the milk of human kindness." "Perhaps so," said Mr. Sohier, "but if it is, he has kept it on hand too long."

One of the most adroit manœuvres that I ever saw in a trial of Mr. Sohier's was this: He had, besides the plaintiff in the case, a witness whose reputation was not of the best. He called the plaintiff and made out a *prima facie* case. He knew if he called the witness, he would be shown upon cross-examination to be wholly unreliable; and if he did not call him, there would be a great clamor from the other side; so he called the witness. "What is your name, sir?" "John B. Hoogs." "Where do you live?" "Boston." "How old are you?" "Forty years." Turning to the opposite counsel, Mr. Sohier said, "He is your witness, gentlemen." The opposite counsel hesitated. The Court said, "Proceed with the cross-examination, gentlemen." The

opposite counsel, to use a nautical expression, were taken quite aback, and said, "May it please your honor, we would like a few moments to consult." They did not examine him, and Mr. Hoogs left the stand. They could not and did not argue that Mr. Hoogs had not been produced and examined.

I said to Mr. Sohier one day: "Mr. Sohier, you have known me since boyhood, and I should like your photograph." He said, "I never was taken, but I have often been mistaken."

The first and second sessions of the Superior Court were on the same floor, up three flights of stairs, in the court house which stands in Court Square. Judge Lord, who was sitting in the first session, being much annoyed by people passing through from the first to the second session, ordered that the door which was between the two sessions, should be closed. Judge Vose, who was presiding in the second session, sent an officer to the first session to see if John C. Park were engaged there. Park, having been notified, went down the three flights and up the other three, and came up grumbling. Mr. Sohier met him and said, "Park, what is the matter?" Park said, "Lord has closed the doors against us so we can't get through." "Ah," said Sohier, "that 's not the only Lord who will close the doors against you."

In conversing with me about the different traits of the members of the bar, Mr. Sohier said, "Mr. Willey was a man with a disordered vocabulary; however, he never hesitated for want of a word."

As a bit of special pleading, the following is not bad. Mr. Edward D. Sohier kicked his father's dog. Sohier the elder: "What did you kick my dog for?" "He bit me," said Edward D. "No, he did n't," replied the father. "Then I did n't kick him," rejoined Edward D.

In 1869, some of the judges of the Supreme Judicial Court resigned and became presidents of insurance companies. Mr. Sohier said: "It seems that the Supreme Court is to be abandoned to the underwriters."

There was a well-known furrier by the name of S. Klous who had a case in the trial list. On looking the list over, Mr. Sohier asked, "When will this case of S. K. Lous come on?"

Edward D. Sohier told me this of his father, William D. Sohier. He was trying a case before Chief Justice Shaw the day before Good Friday, and asked if the court would be held to-morrow. Shaw: "Yes, sir; why should n't it be held? Is there any precedent for not holding it?" "I don't know that there is, sir, but there is a precedent for holding it." "What is that, sir?" Mr. Sohier: "Pontius Pilate, sir."

In the famous case of Burlen *vs.* Shannon, Miss Burlen sued Shannon for his wife's board; Mrs. Shannon was Miss Burlen's sister. It appeared in evidence that the first difficulty between Shannon and his wife was that she wanted forty dollars from Shannon to get Miss Burlen a new set of teeth as compensation in part for what she had done. Mr. Sohier in arguing to the jury said: "Miss Burlen was not content to use up one set of teeth at Shannon's table, but wanted Shannon to get her a new one."

Edward Mellen was appointed justice of the Court of Common Pleas in 1847, Chief Justice in 1854, and died in 1875. He was not a carefully dressed man, and his clothes hung on him all awry; as we used to say on board ship, "Like a purser's shirt on a handspike." His hair was unmanageable and his general appearance not polished, but he was a good lawyer. Soon after his appointment, a shabby-looking fruit peddler entered Sohier's office. Mr. Welch said to him, "Get out of this office." Mr. Sohier said, "Be careful, Welch; he may be appointed justice of the Court of Common Pleas to-morrow."

Mr. Sohier once had a horse which he found next to impossible to drive over a bridge. In advertising him for sale he stated that he sold

him for no fault, only, "Because the owner wished to leave town." As the only convenient way of leaving Boston at that time was to go over some bridge, his reason was substantially a true one; at all events if it had n't been true he would n't have said so.

When I went to the clerk's office, Allen C. Spooner was a leading practitioner, a brilliant man, and an excellent lawyer, — who succumbed to that great evil, intemperance. He was something of a poet and could extemporize verses. At the time of the trial of a Mrs. Kinney, who was charged with poisoning her husband, many people flocked to see her, as she was a great beauty. Spooner made the attempt to see her, but did not succeed. As he was coming down the stairs in the old court house, some one asked him, "Spooner, did you see Mrs. Kinney?"

> "No, for constables, d—— their souls,
> Stood all around her with their poles."

He also wrote a hymn which is in the collection of hymns edited by the Rev. Frederick H. Hedge and the Rev. Frederick D. Huntington.

THE VOYAGE OF LIFE.

How often as we beat along,
With wind ahead and blowing strong,
We hear our watchful captain cry,
"Near, nothing off, and full and by!"

So when in life our steps begin
To tread the devious paths of sin,
May conscience wake our timely fear,
Uttering her warning cry of "Near!"

And when from truth's unerring line,
Our coward lips would dare decline,
Then may we heed, though fools should scoff,
Her stern injunction, "Nothing off!"

Virtue and vice to win us try,
Be then our watchword, "Full and by!"
Safe course through this world to another,
Is "Full" of one, and "By" the other."

Another of Mr. Spooner's poems, a series of humorous verses entitled "Old Times and New," runs as follows[1]: —

OLD TIMES AND NEW. (THEN AND NOW.)

'T was in my easy-chair at home,
About a week ago,
I sat and puffed my light cigar,
As usual, you must know.

[1] I have lost or mislaid the copy given me by Mr. Spooner, and I am indebted to Mr. Hurd, of the *Transcript*, for his copy.

I mused upon the pilgrim flock
Whose luck it was to land
Upon almost the only rock
Among the Plymouth sand.
In my mind's eye I saw them leave
Their weatherbeaten bark;
Before them spread the wintry wilds,
Behind rolled ocean dark.
Alone that little handful stood,
While savage foes lurked nigh,
Their creed and watchword, "Trust in God,
And keep your powder dry."
Imagination's pencil then
That first stern winter painted,
When more than half their number died,
And stoutest spirits fainted.
A tear unbidden filled one eye,
My smoke half filled the other,
One sees strange sights at such a time
Which quite the senses bother.
I knew I was alone, but lo!
(Let him who dares deride me)
I looked, and drawing up a chair
Down sat a man beside me.
His dress was ancient, and his air
Was somewhat strange and foreign,
He civilly returned my stare
And said, "I 'm Richard Warren;
You 'll find my name among the list
Of hero, sage, and martyr,
Who in the Mayflower's cabin signed
The first New England charter.
I could some curious facts impart,
Perhaps some wise suggestions,
But then I 'm bent on seeing sights,
And running o'er with questions."

"Ask on," said I, "I 'll do my best
To give you information,
Whether of private men you ask,
Or our renownèd nation."
Said he, "First tell me what is that
In your compartment narrow,
Which seems to dry my eyeballs up
And scorch my very marrow?"
His finger pointed to a grate;
Said I, "That 's Lehigh coal
Dug from the earth." He shook his head.
"It is, upon my soul."
I then took up a bit of stick —
One end was black as night —
And rubbed it quick across the hearth,
When lo! a sudden light.
My guest drew back, uprolled his eyes,
And strove his breath to catch.
"What necromancy 's that?" he cried.
Quoth I, "A friction match."
Upon a pipe just overhead
I turned a little screw,
When forth with instantaneous flash
Three streams of lightning flew.
Up rose my guest; "Now heaven be saved,"
Aloud he shouted then;
"Is that hell fire?" "'T is gas," said I.
"We call it hydrogen."
Then forth into the fields we strolled;
A train came thundering by,
Drawn by the snorting iron steed
Swifter than eagles fly.
Rumbled the wheels, the whistle shrieked,
Far streamed the smoky cloud;
Echoed the hills, the valley shook,
The flying forests bowed.

Down on his knees with hands upraised,
In worship Warren fell.
"Great is the Lord our God," cried he,
"He doeth all things well.
I 've seen his chariots of fire,
His horsemen too thereof.
Oh, may I ne'er provoke his ire
Or at his threatenings scoff!"
"Rise up, my friend, rise up," said I;
"Your terrors all are vain;
That was no chariot of the sky,
'T was the New York mail-train."
We stood within a chamber small;
Men came the news to know,
From Worcester, Springfield, and New York,
Texas, and Mexico.
It came, it went, silent but sure,
He stared, smiled, burst out laughing;
"What witchcraft 's that?" "It 's what we call
Magnetic telegraphing."
Once more we stepped into the street.
Said Warren, "What is that
Which moves along across the way,
As softly as a cat?
I mean the thing upon two legs
With feathers on its head,
A monstrous hump below its waist,
Large as a feather bed;
It has the gift of speech, I hear,
But sure it can't be human?"
"My amiable friend," I said,
"That 's what we call a woman."
"Eternal Powers, it cannot be,"
Sighed he with voice that faltered;
"I loved a woman in my day,
But oh, they 're strangely altered."
I showed him then a new machine

For turning eggs to chickens,
A labor-saving hennery
That beats the very dickens.
Thereat he strongly grasped my hand
And said, "'T is plain to see
This world is so transmogrified
'T will never do for me.
Your telegraph, your railroad trains,
Your gaslights, friction matches,
Your hump-backed women, rocks for coal,
Your thing which chickens hatches,
Have turned the earth so upside down
No peace is left within it."
Then whirling round upon his heel
He vanished in a minute.
Forthwith my most veracious pen
Wrote down what I had heard,
And here dressed up in doggerel rhyme
You have it word for word.

A clever remark of Spooner's I have heard attributed to others, but as I happened to be present on the occasion, I give it place here. Judge George T. Bigelow, afterwards our esteemed Chief Justice, was once holding the Court of Common Pleas in Boston. One of Spooner's witnesses had not appeared, and Judge Bigelow insisted every few minutes that Mr. Spooner must go on, — Spooner making various excuses for his witness and pleading for time. At last Judge Bigelow said, "Mr. Spooner, you *must* go on; this Court sits here for the dispatch of business." Spooner, rising in a very

dignified manner, replied, "May it please your honor, I thought the Court sat here for the administration of justice."

A special justice for the Police Court was created by the Legislature to take the place of Judge Wells, who had gone to the civil war. It was said that it was offered to Charles W. Storey, who declined it; and when asked why he did so he replied, "People will say Judge Storey decided so and so, and it will be asked, 'What Judge Storey?' 'Why, Judge Storey of the Police Court.' 'Oh, —— his decision.'"

In 1888, Mr. —— came from Portland, where he had been very successful, to practice at the Suffolk bar. A gentleman who had known him in Portland asked me if I had ever heard Mr. —— try a case. I told him, "No." "You will find him very adroit in the examination of witnesses, and very plausible in his remarks to the jury," he said; and he related to me the following: Mr. —— and an attorney whom we will call Smith, were trying a case, and at the adjournment of the court in the evening the evidence was closed. The next morning at the assembling of the court, the judge said, "Proceed with your remarks to the jury, Mr. Smith." Smith took no notice of it. Two or three min-

utes elapsed, when the judge remarked, "Did n't you hear me, Mr. Smith; I said proceed with your case." Mr. Smith, rising, said, "May it please your honor, brother —— is not ready yet." Mr. —— arose and protested, and said he was ready. Mr. Smith said, "I think, your honor, notwithstanding what brother —— says, he is not ready." "Why do you think so?" asked the judge. "Why, may it please your honor," said Smith, "there is one juryman that brother —— has not shaken hands with yet."

Horatio B. Swasey and Edwin B. Hale were trying a case opposed to each other. In closing, Swasey's remarks as to Hale's ability were very eulogistic. Hale took a five-dollar bill from his pocket and said, "Brother Swasey, I think that is worth five dollars." Swasey took it and put it in his pocket. When Hale addressed the jury, his remarks were in the same vein as Swasey's, and perhaps more flattering, and Swasey took from his pocket the five dollars, saying, "Brother Hale, I think you have earned your five dollars back," and returned it to him.

Colonel Thomas was arguing a case in which he was seeking to recover wages for a sailing-master of a yacht. It was in evidence that the yacht was abundantly provided with everything

good, plenty of liquor, etc. The colonel inadvertently said, "This steam-yacht." Hobbs, the opposing counsel, said, "She is n't a steam-yacht." Colonel Thomas: "There was considerable *steam* on board."

Mr. S. J. Thomas: "Well, gentlemen, some people are bald, but it is said that the Chief Justice of the Supreme Court is prematurely *gray*."

Colonel Thomas brought a suit for damages for fraud in the sale of a horse, and told the jury that the horse had too much deliberation; that is, he would n't go. Mr. William S. Stearns, the opposing counsel, said he should ask for a view. Viewing a horse because he had too much deliberation was too much for the Court, jury, and audience, and a suppressed titter went round the court room.

Robert M. Morse submitted to the Court certain prayers for instruction to the jury. Mr. Shattuck, the opposing counsel, after reading them, said, "These prayers are very ambiguous." Colonel Thomas, sitting by, said, "Most prayers are, I believe."

Colonel Thomas was once defending a man who was sued for the price of a horse, and the defense was that the horse had the heaves. He put on a well-known stable-keeper, and after a few introductory questions asked, "Mr. ——,

do you know this horse described here?" "Yes, sir, I know him." "How long have you kept a stable in Boston?" "Forty years successfully." "What was the matter with this horse?" "Why, colonel, I can't give you the botanical name of the disease, but we stable-men call it the heaves." "Is there any cure for it?" asked Colonel Thomas. "Yes, sir," said the witness. Colonel Thomas was somewhat staggered, knowing that there was not; but after such an answer he found he had put his foot in it and must go on. He said, "What is it?" "Take a big knife, colonel, and [suiting the action to the word] begin back of his ear, and cut till you reach his throat."

In 1856, the United States Court with its officers took a building fronting on Bowdoin Square, corner of Chardon Street, — the Parkman House. After leaving that, they went to the old Masonic Temple, where they remained until they removed to their own building in Post Office Square. While the United States Court was held in the Parkman House, Colonel Thomas wrote to the authorities at Washington that, "No judge can hope to be respected who holds his court in a pig-sty."

An agreement was brought into my office for judgment for a certain sum and "accrued

costs." As the previous Legislature had changed the law as to costs, a question arose as to whether this meant costs *ab initio*, or costs under the new law. As Mr. J. B. F. Thomas was standing by me when I was examining the paper, I asked him to look at it and tell me what he thought of it. "Accrued costs!" he said; "I think I should send it back as being a crude agreement."

Among the occupants of the Tudor building, which stood on the corner of Court Square where Young's Hotel is now, were Charles G. Thomas, B. F. Hallett, Hutchins and Wheeler, D. H. Mason, Tolman Willey, and F. W. Sawyer. Harvey D. Parker kept a restaurant underneath.

Charles G. Thomas, who practiced a great many years at the Suffolk bar, told me that he was born in Denmark, N. Y., and was brought up as a charcoal-burner. He grew fond of study and got an appointment as lighthouse keeper somewhere at Martha's Vineyard, — I 'm not sure that it was not Holmes's Hole, long called by the ridiculous name of Holl, but since ordered by the United States Government to have its former name restored; the old name, Hole, means an indenture in the coast. He fitted himself for college while there, and

finally was admitted to the Suffolk bar. He was a very persistent and studious man, but never became a great lawyer. Occasionally he was quite absent-minded. I remember one day when, after he had closed his argument, some thought occurred to him, and as the judge was beginning the charge he suddenly jumped to his feet and cried out: "Stop, stop! hold on there! That is, your honor, I have forgotten something I wished to say." At this time the counsel talked as long as they pleased in their closing argument to the jury, and in the above case, which was brought to recover seventy dollars demurrage money for Mr. Tudor, who was the plaintiff, Mr. Thomas spoke three hours, and Mr. William Hayden, editor of the "Boston Atlas," who was foreman of the jury, sent me this *jeu d'esprit*: —

> "It requires of each juror most uncommon courage
> To listen to Thomas's plea on demurrage.
> If Tudor gets off from this trial secure,
> He 'll do it in spite of his counsel, I 'm sure."

Thomas told the jury he thought they would give him a verdict in fifteen minutes. They were out about five, and returned a verdict against him.

George A. Torrey in closing a case for the

defendant said: "Now, gentlemen of the jury, you see that this writ is signed by my friend Mr. Willard, the clerk of this court. The *ad damnum* as we call it, the amount claimed in this writ, is $5000. There is a legend in this court house that the jurors think Mr. Willard would not sign a paper summoning a defendant into court to answer, unless he knew the plaintiff to be a respectable man and entitled to recover the amount sued for, and that Mr. Willard actually wants the plaintiff to recover what he asks. Now I wish to disabuse your minds of this. Mr. Willard signs all those writs, and we lawyers when we issue one put in what amount we choose, and Mr. Willard knows nothing of it."

Attorney-General Marston and Charles R. Train, who was Marston's immediate predecessor in the office, were trying a case opposed to each other in which the late Mr. David Pulsifer, the transcriber of records at the State House, was a witness. Mr. Marston asked Pulsifer how much work he had done for the Commonwealth for the past sixteen years. Pulsifer: "Nothing to boast of; we are unprofitable servants." Mr. Train: "As far as brother Marston is concerned, I agree to that."

J. L. English was examining a witness in a cause in which both parties were Irish, and Francis O. Irish, deputy sheriff, was a witness. Mr. Treanor said: "If you are done, Mr. English, we will now take Mr. Irish."

Mr. Van Duzee, arguing to the jury, said: "Gentlemen, the statutes say so and so, but it is no use to argue the statutes to you; you understand them as well as I do, — almost."

My father told me an anecdote of Daniel Webster which I have never seen printed. He had a boatman who was inclined to tell large stories, sometimes exceeding the truth. My father was with Mr. Webster and a party of gentlemen on a fishing excursion, and the conversation at one time was about amphibious animals. The boatman waited for his chance, and when Mr. Webster stepped a little to one side said: "Mr. Webster, what is an amphiberous animal?" "John," replied Mr. Webster, "an amphibious animal is an animal which *lies* on the water and *lies* on the land."

Samuel Wells, formerly governor of Maine, who had also been judge, tried a case with Mr. R. H. Dana for his opponent. He read a letter written by Mr. Dana's client which was quite difficult to decipher, and Mr. Dana said, "Let

me have it, judge." Whereupon Mr. Dana read it quite differently, and after having read it said: "Your excellency must not come up here from Maine to teach us Boston gentlemen how to read." Shortly after, Judge Wells offered some other evidence, when Mr. Dana said: "I'll admit that." "Thank you," said Judge Wells; "I would rather prove it. '*Timeo Danaos et dona ferentes.*'"

In one case the judge said that Mr. Dana kept shifting his ground. Mr. Dana said that he (Mr. D.) had made a certain statement at the commencement of the trial. Judge Wells replied that he had said no such thing. Then Dana said: "I shall have to blow a trumpet before me, that my friend on the other side may hear me." Judge Wells: "Your trumpet gives a very uncertain sound."

During the trial of a horseshoe patent case, the same counsel were opposed. Judge Wells was reading law to the Court. Mr. Dana: "I did n't catch that last sentence." Wells: "Never mind, sir; you 'll catch enough before I'm done." Dana, in speaking of a word which the judge had used, thought he had employed it wrongly, and said, "His excellency has misapplied it." Wells: "I suppose we may use such words as we please." Dana: "Oh, yes, it is the prerogative of office."

Wells: "You wrote a book once, and employed or coined some strange words." Dana: "I pray you, do not visit the sins of my youth upon me."

As I was putting on my spectacles to look at the docket, I said to my kinsman, Mr. Joseph Willard, who was standing by: "My eyes don't get any better." "And so you try eyes-in-glass," said he.

I asked Mr. Willard who his opponent was in a certain case. He said: "Stillman B. Allen, with any other judge than Judge Aldrich, and then it is Allen B. *Still*man."

Mr. Joseph Willard: "What does this letter 't' mean on the margin of the docket?" "This black one means trial in October, a blue 't' for January, and a red 't' for April." "We ought to have a little green 't' occasionally," he said.

Tolman Willey, Esq., was a remarkable man in his way. He was not a profound lawyer, but an excellent advocate when he had a good case, although sometimes he damaged it by his scathing remarks. He was never at a loss for a word, and his face invariably wore an intensely sarcastic expression. He used some of the most remarkable, extravagant, and unique phrases and figures of speech. He was always neatly

dressed in black, except perhaps a buff or white vest; he wore a standing collar, and a big bandanna handkerchief. A friend of mine and of his writes me of him thus: "He was above medium height, portly, and of excellent physique and figure, and of great magnetism of person. He was of the old school of elegant manners; not a cultivated but a thoroughly born gentleman, who never could possibly forget himself. His dress was perfection and his walk *ex pede Herculem*, without meaning or knowing it. His eyes were expressive and kindly, and his voice most charming. He never halted for a word, and his speech was the delight of the bar, who always flocked to hear him. He would startle the world with his antitheses and comparisons, and there was no greater master of invective when (but only when) the occasion called it out."

Towards the end of the Know-Nothing period, Major Cobb was very extensively engaged in a political campaign, and as the agent, secretary, or some other official of the party which he was serving, he had a number of flaming political handbills printed. The Messrs. Farwell, who printed them, found it difficult to get their pay from the party, and brought an action against Major Cobb to recover the price for the printing of the bills. Mr. Willey defended. In the

course of his remarks to the jury as to the ingratitude of the people towards politicians, and referring to Daniel Webster, whom he almost worshiped, he uttered the following: "Like that immortal man who set a-going all the spindles on the rivers of the Commonwealth, was driven to his two thousand acres, and went down there to his home by the sea the other day, and dug his own grave, and then was transformed into a block of granite and stuck up in the State House yard, in the model of some Kentucky giant with a bundle of canebrake under his arm, and a touch of spasmodic colic, leaning against a post — there 's honor for politicians. Major Cobb, foreseeing this, left the party."

Again he said: "Major Cobb, after joining the military and politics, found that he was like the gentleman who undertook the journey from Jerusalem down to Jericho; he fell among thieves who stripped him and left him half dead."

In the same case, in endeavoring to get a witness, who testified that there were two wings of the American party, to say that they both worked for the same object although ostensibly opposed, Mr. Willey asked: "Did n't both wings brood over the same egg in the dark?"

In a certain case on trial, Mr. Abraham A.

Dame took the stand as a witness. Mr. Willey cross-examined him. "How many times have you been a witness in your own cases?" Mr. Dame: "I have refused to be a witness a great many times, when if I had testified for my client I should have got the case." Mr. Willey (sternly): "Does n't that depend on another fact, sir?" "Ah, yes, sir."

Once in arguing a case, and speaking of the financial difficulties, he said: "It was the crash that crushed the commercial community."

S. J. Thomas, Esq., once told Mr. Willey that he (Thomas) was trying a case in which —— Lewis was a defendant; that Lewis was rather roguish, and that Nathaniel Richardson, Esq., was Lewis's counsel. "Yes," said Willey; "Lewis is a d—— scoundrel; he has good counsel, and he ought to have Dr. Brown for a family physician." Dr. Brown had been lately convicted of some heinous offense in the Criminal Court, and was somewhat notorious.

In arguing a motion for a new trial in which Mr. —— was opposed to him, Mr. Willey made use of the following language: "I hope I am not small enough to try half my case. If a man has not mind enough to stretch from plaintiff to defendant, and state the whole of his case, he is not large enough to be intrusted with the consideration of a toothpick. If a man had

passed a post where a decent lawyer had hitched his horse, he would know that what the gentleman states is not law."

Mr. —— said that —— testified that he was a member of the firm. Willey: "What firm was he a member of? That firm is ancient,— ancient as Eve; the gentleman's argument consisted of lean, famished adjectives, repeated for an hour."

Mr. Willey asked a witness if his counsel advised him to make a tender. Mr. ——: "I should have been very foolish to have thus advised him." Mr. Willey: "You should not volunteer your wisdom until you know in what estimation we hold it."

Arguing a case one day with Mr. Abraham A. Dame for his opponent, Mr. Willey said: "Nobody finds fault with ——'s testimony." "Yes," said Mr. Dame, "I do." "Well," retorted Willey, "I meant *you* when I said nobody."

He was sometimes hasty in interrupting a witness before he had fully answered; and in doing so one day, his opponent being Colonel Seth J. Thomas, the latter with some warmth said: "Let the witness answer." "You are *exquisitely* courteous," replied Willey.

At one time Mr. Daniel F. Fitz was a partner with Mr. Willey. Mr. Fitz, who is small

in stature and a fine singer, belonged to the well-known "Masonic Quartette." Mr. Willey being in search of him one morning came to me and said: "Willard, have you seen anything of my little wandering minstrel this morning?"

Mr. Somerby offered some evidence in a case which he was trying, to which Mr. Willey, his opponent, objected, calmly stating his objections. Mr. Somerby arose with much feeling, urging his point, making a great display and noise, and sat down. Mr. Willey: "May it please your honor, I have not seen the parallel to this since the death of Cock Robin."

Mr. J. L. English, who was counsel for Mr. Jacob Stanwood, a large ship-owner, invited me to go down in the Maid of the Sea, with her owner, Mr. Stanwood, and a party of gentlemen, as far as Minot's Light, requesting me to extend his invitation to Mr. Willey. Returning, and as it was somewhat misty, we all went below in the forecastle of the tug, and speeches were called for from different members of the company. Mr. Willey, who was brilliant on a cold-water diet, but who had taken too much medicine to keep down seasickness, was an entirely different man. The crowd shouted for Mr. Willey; he rose and said: "Gentlemen, Stanwood is a trump; English, a mere appendage."

Mr. Willey was examining a female witness. "What did you say your name was?" Witness: "Coral." Willey: "Is it music or mineral?"

Mr. Willey was trying a case with Mr. Abraham A. Dame as the opposing counsel. Mr. Dame produced two witnesses who were so similar in appearance that it was difficult to distinguish them. They were called and recalled, and Mr. Willey was somewhat confused as to which one he was examining. He asked a question of one, when Mr. Dame said: "He does n't know anything about that; it is the other one." "How do you know?" said Willey. Dame said: "You 've got the wrong one; they 're twins." Said Willey: "Were you present at the birth? You 're a fit midwife to have been there."

He came to me one day, and complained that Mr. Somerby had retained him in a number of insurance cases, and had agreed to pay him five hundred dollars. He said he asked Mr. Somerby to come to his office and talk the matter over, and that he came. Willey said: "He cursed and swore, and, though two years have elapsed since that interview, my office is *redolent* with the blasphemy of that creature to-day."

A tall and formerly a well-known member of the bar was one day making some motion before the Court, in his usual noisy, blustering way. It

may as well be said the man was unpopular. Mr. Willey happened to be sitting by the side of a friend, another lawyer, both looking on. The latter made some observation to Mr. Willey about the person addressing the Court, when Willey said: "Richard, do you know that for nineteen years that d—— giraffe has been prowling about this bar, lapping the dew from every green thing that grows?"

Mr. Willey brought a suit against Mr. Somerby to recover an amount which Somerby had promised him as a retainer, and while Willey was gone to Europe the lawyers in the case caused "neither party" to be entered. When he returned, he made a motion to vacate the entry of neither party and to restore the action to the docket. It was heard in the judge's room before Mr. Justice Colburn. Theodore Sweetser acted for Somerby, and Mr. Willey for himself. Mr. Sweetser asked Mr. Willey some questions, and Mr. Willey was rather discursive. Mr. Sweetser, with quite a rough manner, striking the table heavily with his clenched hand, said: "For God's sake, Mr. Willey, can't you give us a categorical answer?" Mr. Willey, who was seated in a chair, rose, and, extending both hands and bending low, replied, "Mr. Sweetser, I'll do *anything* but copy your inimitable manners."

At the same hearing, while Mr. Somerby was being examined, Mr. Willey said: "Just here I would like to ask one question, merely for the purpose of fixing a date. Was this about the time, Mr. Somerby, when you bought out the office of brother ——, with all its practices and appurtenances? [*sotto voce*] — merely for the purpose of fixing a date!"

One day, when wishing to see Mr. Willey's partner, Mr. Fitz, whose small stature has been previously mentioned, I asked Mr. Willey, who was in the court room, if he knew where I could find Mr. Fitz. He replied: "I have n't the slightest idea where the little cockroach is."

Mr. William Whiting, who was opposed to Mr. Willey in a case, remarked, "If I should make such a proposition it would make every hair on brother Willey's head stand on end." After that there was a marked coolness on the part of Mr. Willey towards Mr. Whiting, and at one time Mr. Willey put his hand over Mr. Whiting's mouth in open court as Mr. Whiting was asking a question. Mr. Whiting inquired of his own partner, Mr. William G. Russell, what had made Mr. Willey so unfriendly. Then Mr. Russell inquired and learned what Mr. Whiting had said. "What's that to do with it?" asked the latter. Mr. Russell replied:

"Everything; he thought you meant to insult him, as brother Willey wears a wig."

Years ago there was a woman exhibited in Boston who was remarkably thin, and almost a skeleton. She was called Joyce Heth, and was said to be over one hundred years old and to have been a nurse of George Washington. Mr. Willey, criticising the character of a witness in a case, said: "Gentlemen of the jury, you might as well look for the ghost of Joyce Heth with a lantern, in the sky, as for a particle of truth in this witness."

Mr. Willey, in speaking of a certain firm of lawyers, said: "One of them has not brains enough for a ground-sparrow; they are a contemptible set; I would n't trust them for a gill of peanuts." He then picked up from the table a pen whose handle bore marks of having been bitten or gnawed off at the end; he threw it down, saying, "Faugh! I wish we had a bar that were n't a set of d—— raccoons."

A witness was testifying about some goods and chattels in an ordinary hotel in the country. Mr. Willey said to him: "What number of sheets and towels were there, *if such luxuries existed?*"

Mr. Willey and Mr. A. were trying a case as opposing counsel, and had various tilts. Each was abusive to the other, and among other

things Mr. A. said (holding out his hand half closed): "I hold my brother Willey in my hand; he is a rotten egg; I forbear to crush him." After the case was through, I said: "Brother Willey, you should n't abuse brother A. so severely; he is sick." Mr. Willey replied languidly, "Poor thing."

In a case — the parties' names I have forgotten — in which Mr. Willey was for the plaintiff, he found it necessary to make some scathing remarks relative to the defendant's conduct. He said to the jury: "The defendant had no more right to arrest the plaintiff than a Baptist minister has to grab one of you by the collar on dry land and thrust you against the side of a house as an illustration of the divine ordinance of baptism;" and for his peroration he said, "As for this defendant, he ought to be taken down to Owl's Head with a soldier's monument slung round his neck, and there sunk, to await the eternal repose of the genius of gravitation."

I said: "Mr. Willey, is —— a liberal man?" "Liberal! he is so mean, his soul would rattle in a grain of mustard-seed."

Another time Mr. Willey said: "As to getting a grain of truth from this witness, you might as well go fishing in the sky, with an anchor for a hook, and expect a bite from the ghost of Joyce Heth."

Speaking of a panel of jurors, Mr. Willey said: "Twelve such heads were never before seen on the panel. The judge who tried the case could not inject an idea into their heads without a surgical operation."

Colonel Thomas had a case and argued it half an hour, the rule allowing an hour. Mr. Willey in reply said: "Colonel Thomas nor any one else can argue this case in an hour for the defendant, and therefore all Colonel Thomas's argument amounts to is this: 'Gentlemen, I have made up my mind that my client has a good case, and it is not worth while for me to spend my time on it; so I respectfully invite you to coincide with me;' a very pretty way of putting it."

Speaking of one of the witnesses who testified in the case, Mr. Willey said: "He was without a drop of remorse, and as hard as a cast-iron bulldog."

After he returned from Europe he came into the court room to see me, and invited me to his office; as counsel were arguing a case in court I had leisure and went. He gave me a very entertaining account of his travels, particularly in England, of which, I am very sorry to say, I took no notes. He then changed the topic quite suddenly, and said: "Willard, were you ever in the Provinces?" I said, "Yes." "Have you

ever been to Annapolis, Nova Scotia?" "Yes," I said. "Did you ever see ——'s place?" I replied in the affirmative. Said Mr. Willey: "Is n't it a gem?" "It is a beautiful place." "I am going down there to buy it, and quit this disgusting New England. While I was negotiating for it, a gentleman said to me: 'Mr. Willey, you don't intend to live here in winter?' 'Why not, sir?' I said. 'Why, sir,' he said, 'the mercury goes down here to ten degrees below zero.' With great contempt I said, 'Eh! where I was born, sir, my father one Sunday took me into a meeting-house which sat on four stone posts with no other underpinning. I sat in that church and listened to a sermon on Hell for sixty minutes, with the wind howling underneath the church and blowing forty miles a minute, with no fire in the stove and the mercury forty degrees below zero; don't you think I can live here, sir? Do you think I was born in a sugar-box, and nursed on heliotropes?'"

During the trial of the case of Elms *vs.* Kelly, for breach of promise to marry, there was a ring offered in evidence with this inscription inside, "Dan to Belle;" and it was contended that Kelly gave this ring to the plaintiff on the eve of a proposed marriage. I was appointed by the Supreme Court to go to Portland, Maine, where I should meet a person who would

go with me and find the jeweler who made it, and see if he could identify it. We found the person who made it, and after some hesitation he identified the ring. Mr. Willey was for the plaintiff in this case. At a certain point, Kelly became somewhat lachrymose. Some one called Willey's attention to it, when he burst out: "Tears! tears! from Dan Kelly! I should as soon think of a well of water in the desert of Sahara after the retirement of the flood!"

Early in the summer of 1875, George C. Wilde, the clerk of the Supreme Judicial Court, died. I have spoken of him before as being my companion to Marshfield to attend the funeral of Daniel Webster. He was at times somewhat irascible, but a high-minded, honest gentleman, and an excellent friend of mine. As I am not an expert in eulogy such as Mr. Wilde merited, I give the remarks of Seth J. Thomas, Esq., relative to him, before the Supreme Judicial Court.

"A poet supposed to be wise has said, —

> "'Awhile these feeble forms endure,
> The fabric of a day;
> Then lose their animating power,
> And moulder back to clay.'

"Another wise or unwise man has said, 'The Fates ride their horses by night.' They will

overtake us; we cannot escape them. They ride faster than we can run. We know not at what hour they start nor when they will arrive. The life of Mr. Wilde was longer than that of most men; but when, at length, the appointed hour came, the destinies cut the silver thread, and he, too, is gone! What shall I say of him? Certainly I can say nothing that you do not already know. When the late President Walker was at the height of his fame, an excellent friend said: 'I never knew that Dr. Walker was so great a man, but whenever I heard him preach I thought this: if I were going to preach on that subject I would preach just such a sermon as he did.' A finer commendation could hardly have been bestowed. Similarly of Mr. Wilde, when I tell you I can say nothing of him you do not already know, if you deem me worthy to say so, you will agree that I say much in his praise, for it implies that what he was to you, that, and nothing else, he also was to me; not all things to all men, but the same to everybody. He had but one face, and that was manly. He was sincere. He had also the essential requisites of a good officer. In the first place, he knew his duty, and in the second place, he did it straight. He never went a long way to get that which was near at hand. He was impatient of long prefaces, of which, as Jean Paul said, 'Some die on

their way to the book.' He regarded the sitting-room as of more value to a tired man than the vestibule, — the sound meat as less indispensable than the unsound grace that is said before it, and for want of which meat one sometimes faints while the grace is being said. Need I say he had sense? He had the honesty of an educated lawyer, — an honesty that is classical and immovable. He rejected all new names for authentic virtues and vices, and continued to call virtue, virtue, and vice, vice. He was critical in his conversation. He sought the conversation of the cheerful. He valued the judicious. He was indulgent to youth. He respected age. His likes were strong. He kept his friendships in constant repair. He looked upon wealth as an appurtenance of life, and esteemed it of more consequence to live richly than to die rich. Must I say he was too confiding? He knew but one way to do a thing, and that was the straight way. He had a just pride in his ancestry, and loved to talk of his wise and altogether excellent father; but yet it concerned him less of what family he was born than of what family he was the father and head. His look was kindly. A little girl, meeting him in the street, was not afraid to inquire the way. He kept his mind and his body clean. He valued his bath and his razors. He was thoroughly wholesome. A lady would not

hesitate to sit down by his side in a horse-car. He was one that you could tie to, and feel safe. He had the key to our hearts, while his own was like the Common, open on the south side. His mind was virtuously composed. He lived up to the dignity of his nature, and has not left it disputable at the last, whether he has been a man. It was fitting that he should die in June-time, near the close of a long, warm day, and when the night is shortest."

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