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JNO. H. HENDERSON
President 1904-1905
PROCEEDINGS OF THE
TWENTY-FOURTH
ANNUAL MEETING

OF THE

BAR ASSOCIATION
OF
TENNESSEE

Held at Lookout Mountain,
Tennessee, July 19, 20 and 21
1905
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BAR ASSOCIATION OF TENNESSEE.

PRESIDENTS SINCE ORGANIZATION.

W. F. COOPER ............................................. Nashville 1881-2.

B. M. ESTES ............................................. Memphis 1882-3.

ANDREW ALLISON ........................................ Nashville 1883-4.

XENOPHON WHEELER ..................................... Chattanooga 1884-5.

W. C. FOLKES ............................................. Memphis 1885-6.


H. H. INGERSOLL ......................................... Knoxville 1887-8.


J. M. DICKINSON ......................................... Nashville 1889-90.

G. W. PICKLE ............................................. Dandridge 1890-1.

M. M. NEIL ............................................... Trenton 1891-2.

ED. BAXTER ............................................... Nashville 1892-3.

W. A. HENDERSON ......................................... Knoxville 1893-4.
1894–5.
JAMES H. MALONE
Memphis

1895–6.
ALBERT D. MARKS
Nashville

1896–7.
W. B. SWANEY
Chattanooga

1897–8.
C. W. METCALF
Memphis

1898–9.
J. W. BONNER
Nashville

1899–1900.
W. L. WELCKER
Knoxville

1900–1901.
GEORGE GILLHAM
Memphis

1901–1902.
J. H. ACKLEN
Nashville

1902–1903.
R. E. L. MOUNTCASTLE
Morristown

1903–1904.
JNO. E. WELLS
Union City
EDWARD T. SANFORD
Knoxville

1904–1905.
JOHN H. HENDERSON
Franklin

1905–1906.
EDWARD T. SANFORD
Knoxville
OFFICERS FOR 1905-1906.

PRESIDENT.

EDWARD T. SANFORD.............................................Knoxville

VICE-PRESIDENTS.

F. H. HEISKELL..................................................Memphis
SAMUEL HOLDING...............................................Columbia
FOSTER V. BROWN...............................................Chattanooga

SECRETARY AND TREASURER.

ROBERT LUSK....................................................Nashville

CENTRAL COUNCIL.

R. H. SANSON, Chairman.....................................Knoxville
J. PIKE POWERS................................................Knoxville
L. M. G. BAKER................................................Knoxville
J. R. SMITH....................................................Lebanon
THOMAS HARWOOD.............................................Trenton
STANDING COMMITTEES, 1905-1906

JURISPRUDENCE AND LAW REFORM.

L. B. McFARLAND, Chairman..........................Memphis
GEORGE RANDOLPH..................................Memphis
C. E. PIGFORD........................................Jackson
W. L. PRIERSON.......................................Chattanooga
J. A. SUSONG.........................................Greeneville

JUDICIAL ADMINISTRATION AND REMEDIAL PROCEDURE.

W. G. M. THOMAS, Chairman..........................Chattanooga
JUDGE M. M. ALLISON................................Chattanooga
L. M. COLEMAN.......................................Chattanooga
HENRY E. SMITH......................................Nashville
A. W. BIGGS..........................................Memphis

LEGAL EDUCATION AND ADMISSION TO THE BAR.

S. A. CHAMPION, Chairman............................Nashville
ROBERT BURROW.......................................Johnson City
J. W. GREEN..........................................Knoxville
LUKE LEA..............................................Nashville
JOHN W. TIPTON......................................Elizabethtown

PUBLICATION.

JUDGE J. W. BONNER, Chairman.......................Nashville
E. E. BARTHELL........................................Nashville
T. A. WRIGHT........................................Rockwood
S. E. YOUNG..........................................Sweetwater
A. B. LAMB............................................Paris
BAR ASSOCIATION OF TENNESSEE

GRIEVANCES.

J. W. JUDD, Chairman ........................................ Nashville
J. H. DÆWITT .................................................... Nashville
JOHN E. RICHARDSON .......................................... Murfreesboro
X. Z. HICKS ..................................................... Clinton
W. M. BRANDON ................................................ Dover

OBITUARIES AND MEMORIALS.

C. W. METCALF, Chairman ..................................... Memphis
M. B. TREZEVANT ................................................ Memphis
J. W. CALDWELL .................................................. Knoxville
H. H. SHELTON ................................................... Bristol
G. A. FRAZER ..................................................... Nashville
LOCAL COUNCILS.

CHATTANOOGA.
W. B. SWANEY, Chairman.
ALBERT W. GAINES.
J. M. TRIMBLE.
GEO. D. LANCASTER.
CHAS. W. RANKIN.

KNOXVILLE.
JOHN H. FRANTZ, Chairman.
C. H. BROWN.
JAMES MAYNARD, Jr.
NORMAN B. MORRELL.
W. T. KENNERLY.

MEMPHIS.
JAMES H. MALONE, Chairman.
T. B. COLLIER.
R. LEE BARTELS.
ROWAN GREER.
W. P. METCALF.

NASHVILLE
J. S. PILCHER, Chairman.
LEE BROCK.
W. H. WILLIAMSON.
R. BOYTE C. HOWELL.
STITH M. CAIN.
SPECIAL COMMITTEES, 1905-1906.

COMMITTEE TO INCREASE THE ATTENDANCE AT THE ANNUAL MEETINGS OF THE ASSOCIATION.

C. J. ST. JOHN, Chairman .......................................................... Bristol
JUDGE R. M. BARTON, Jr ......................................................... Chattanooga
JNO. H. HENDERSON ............................................................... Franklin
C. C. TRABUE ................................................................. Nashville
ED. WATKINS ................................................................. Chattanooga
M. B. TREZEVANT ............................................................... Memphis
STEWART C. PILCHER .......................................................... Nashville

COMMITTEE TO REPORT ON THE TORRENS SYSTEM OF REGISTERING DEEDS.

S. C. WILLIAMS, Chairman ....................................................... Johnson City
JEROME TEMPLETON ............................................................ Knoxville
H. E. SMITH ................................................................. Nashville
J. W. JUDD ................................................................. Nashville
J. H. MALONE ................................................................. Memphis

COMMITTEE TO RECOMMEND TO THE LEGISLATURE THE MOVEMENT TOWARDS UNIFORM LAWS.

EDWARD T. SANFORD, Chairman ............................................ Knoxville
J. W. BONNER ............................................................... Nashville
THOS. B. COLLIER .............................................................. Memphis
The meeting was called to order by President J. H. Henderson, who congratulated the Association on the gratifying attendance at the opening session and announced that the Association was to be welcomed by the Hon. Foster V. Brown, of Chattanooga, representing the Chattanooga bar.

The Hon. Foster V. Brown then read the following address:

*Mr. President and Gentlemen of the Association:*

It is an exceedingly pleasant duty assigned me—to extend on behalf of the bar of Chattanooga to this Association a cordial and hearty welcome.

You have met here many times before, and your meetings have always been appreciated by our bar, but you have never met here before when the prospects of a well-attended meeting and promise of good work and good results were so flattering. Our bar now fully understands and appreciates the good which this Association may do its members, and the greater good it may render the State, and we have fully determined to join our brethren in other parts of the State in an earnest effort to make this Association a power and a force for good in Tennessee.

While we may leave our briefs, our books, our courts, our clients, and our everyday work behind, and while we may profit by the social intercourse incident to this coming together, still we must not forget that
a lawyer in a republic is always more or less a public man and, especially in this country, largely responsible for the ideals of citizenship whatever they may be, and the character of government, State and National, and we must not forget that there is always earnest, serious work for the legal profession in its relations to the public and public questions.

The American lawyer has always borne a creditable and conspicuous part in governmental affairs in this country, and, be it said to his credit, he has always stood for constitutional liberty and the rights of man.

There never has been a time when the legal profession of this country has been lacking in patriotism and devotion to country, and it seems to me the American lawyer has been and is to-day the most unselfish member of the community and more disposed to sacrifice his own interests to advance the public good. The American lawyer, from the time of the American Revolution, has not only largely controlled public sentiment but has created public sentiment on all great questions. He has been the leader of his people in every community in this country—creating, moulding, controlling public sentiment and public affairs, and, as the New York *Times* declared the other day, in an editorial, "he is to-day the controller and the guide of the Government."

The world has never seen more marvelous prosperity than we enjoy to-day, and this prosperity is not ephemeral, and the world has never known a more beneficent government; and the world has never known a government where the rights of individual man were so secure, and to the American lawyer is largely due this happy condition of affairs.

The natural resources of this country have often been the subject of eulogy. Far more worthy of our national pride is its resourcefulness in men. The latest illustration of this true national wealth is afforded by the fact that Elihu Root succeeds John Hay as Secretary of State. Lyman Abbott, speaking of this, says: "He (Root) does not bring to the office John Hay's life-long experience in diplomacy, but he brings what John Hay did not possess—an expert knowledge in constitutional and international law. And he brings the same clear vision, the same patriotic devotion to his country, the same faith in its destiny, and the same high ideal regarding its duties."

Whatever our, political faith may be, I am sure we all have a just pride in the belief that at no time in the history of our country have we had in the public service two more able and patriotic men than Mr. Root and Judge Taft. We know how large a part they have borne in the solution of the new and difficult problems which have confronted our people, and we know how well they have discharged the duties devolving on them, and these two men, so much trusted by the country and the President, are to be the conspicuous figures in the American government for years to come, and their work, already done and to be done, shall not soon pass away. As lawyers we feel justly proud that two such distinguished and able jurists should have so large a share in shaping the destinies of this country.
Not only has the American lawyer borne a conspicuous part in the affairs of this country, but he has gone out into the world as the legal adviser of other governments; and while the American manufacturer has been furnishing steel rails, bridges, and other material to build the Trans-Siberian Railway, the road from Cape to Cairo and roads in Korea and Japan, an American lawyer has been the confidential legal adviser of Korea, and for more than five years another American lawyer has been the legal adviser of the Emperor of Japan, and comes now to America with its Peace Commissioners; and in the far East the American lawyer has stood for progress, civilization and the rights of man just as he has at home.

I wish I had time to recount to you the achievements of the American lawyer. He drew the Declaration of Independence; he made, and since has interpreted, the Constitution and enforced the laws passed under it. Write the history of this country and you write his history. While he has always been poor in this world's goods, and must live by his profession, he has not allowed his profession to become a mere commercial one. Much of his time and talent is devoted to public questions and to the advancement of the public good.

The American lawyer in times past did his work well for this country. A like obligation is laid on the lawyer of to-day.

Difficult questions in our dealings with other people are constantly coming up for settlement, and difficult questions in our relations to our own people.

No one can fail to discern that the great struggle through which this nation is now to pass in its political and judicial life springs not from the conflicting relations of the national government to the States. These questions were settled by the war. The strain will come from the fact of our rapidly increasing population and the struggle to throw off all constitutional guaranties of protection to life and property as mere restraints on the so-called liberty of the many.

The cry is, "Down with the Constitution and the courts. Leave all questions to the will of the temporary and shifting majorities."

We must stand with the courts for the Constitution and the enforcement of the laws in the appointed way, and not join the hue and cry of the mob against the established order of things.

Political honesty is as essential as business honesty. The man who cheats his neighbor out of the right of suffrage is as much a thief as if he stole his horse out of his stable at night, and the lawyers of Tennessee can, if they will, drive the man disposed to swindle his fellow man out of the right to vote to private life and put him in everlasting disgrace.

I insist that the legal profession in Tennessee can influence governmental affairs in Tennessee more than it has, and my plea to the bar is to exert that influence for the good of our State.

Stand for law and its enforcement, for honest elections, and for an honest administration of public affairs in the cities, the counties and State, and the nation.
The legal profession in Tennessee must uphold the courts, protect the courts against unjust criticism, and in the courts' efforts to suppress crime and enforce the law they must have our unceasing and outspoken support, for, as John Marshall said, "the judicial department comes home in its effects to every man's fireside; it passes on his property, his reputation, his life, his all." How important then that the lawyers, who know the courts so well and know the difficulties under which they labor and how often they are subjected to unjust criticism by the unthinking, should stand boldly forth as the friend and defender of the courts.

There are many hopeful signs to encourage the lover of his country—nothing more than this one fact, that while there have been times in the world's history when the law was more of a terror to the poor and ignorant than it is to-day, but in this country there has never been a time before this when the law has reached into the high places with a stern hand as it is reaching to-day.

If the people are honest and have high ideals of government, the government will be honest; and who can contribute so much to inculcate the correct ideas and ideals of good government than the lawyer among his people.

A careful student of the times said the other day: "We are not living under the best possible government, but we are living under the best possible government for the man of to-day and are making ready a better government for the man of to-morrow."

The settlement of difficult questions in the national government and securing better government in the State and the cities may seem slow and attended by many discouragements. We shall have our ups and downs; the wave at times may recede, but the tide toward better government will go steadily higher. We have an abiding faith in the growing strength and the growing future of this mighty young nation. I am sure we shall agree that the President spoke as a patriot when, he said:

"We know there are dangers ahead, as we know there are evils to fight and overcome, but we feel to the full that pulse of the prosperity which we enjoy. Stout of heart we see across the dangers the great future that lies beyond, and we rejoice as a giant refreshed, as a strong man girt for the race; and we go down into the arena where the nations strive for mastery, our hearts lifted with the faith that to us and to our children and our children's children it shall be given to make this republic the greatest of all the peoples of mankind."

It is a fine thing to have faith in man, in the country, in the future; to feel that it is an excellent thing to live and labor, and to have lived not alone for one's self, and that this is a great country, which is growing greater and better.

Let no man say we despair of this Union. We love it. We love its glorious flag, its glorious principles guaranteeing the rights of all men. We love best of all its matchless Constitution, which Mr. Gladstone declared to be the greatest work of all the ages. We take from Webster the motto of the future: "Our country, our whole country, and nothing but our country."
Reverently deducing from the past its great lessons, and standing on this historic spot in the exalted joy of the present, let us make the noble language of Dean Stanley voice our aspirations as we face the great future:

"We have climbed to the height of one of those ridges which part the past from the future. We are on the watershed of the dividing streams. We see the last thread of the waters which belonged to the earlier epoch amongst the remains of which the ashes of the dead are laid; we are on the turning point whence, henceforward, the springs of political and national life will flow in another direction, taking their rise from another range, destined to commingle with other seas and to fertilize other climes. Let us forget all that is behind the best spirit of our age, all that is behind the requirements of the most enlightened and the most Christian conscience, and reach forward, one and all, towards those great things which we may trust are still before us—the great problems which our age, if any, may solve, the great tasks which our nation alone can accomplish, the great doctrines of our common faith, which we may have the opportunity of grasping with a firmer hold than ever before, the great reconciliation of things old with things new, of things common with things sacred, of class with class, of man with man, of nation with nation, of church with church, of all with God."

In the solution of these problems the American lawyer will have a conspicuous part. Now and in the future as in the past he will do his part well.

Again I extend to you, on behalf of our bar, a cordial greeting and a hearty welcome, sincerely hoping and confidently believing that you shall have a very pleasant and profitable meeting.

At the request of the President, Mr. C. C. Trabue, on behalf of the Association, expressed the appreciation of the Association for the welcome extended by the Chattanooga bar.

It was moved and seconded that the reading of the minutes of the last meeting be dispensed with, as they had been printed in the 1904 Annual and distributed to the members of the Association.

This motion was carried.

The first order of business was the annual address of the President, which was read by Mr. J. H. Henderson. (See Appendix.)

The report of the Secretary and Treasurer was then read by Mr. Lusk, as follows:
July 19, 1905.

To the President and Members of the Bar Association of Tennessee:

As Secretary and Treasurer of the Bar Association of Tennessee, I respectfully submit the following report for the year ending July 15, 1905:

MEMBERSHIP.

Active members.............................................. 290
Honorary members........................................... 37

Total.......................................................... 327

RECEIPTS AND DISBURSEMENTS.

Receipts.

Balance on hand as shown by report dated June 28, 1904.... $182 26
From admission fees and annual dues collected since June 28, 1904........................................ 833 70

Total.......................................................... $1,015 96

Disbursements.

Disbursements as shown by vouchers this day filed with the Central Council................................. $917 38

Cash balance on hand July 15, 1905.......................... $98 58

Respectfully submitted,

ROBERT LUSK,
Secretary and Treasurer.

It was moved and seconded that this report be referred to the Central Council to be audited.

Motion carried.

On request of the chairman of the Central Council, it was moved and seconded that the report of the Central Council, which was the next order of business, and elections to membership be postponed until the afternoon session.

Motion carried.

The meeting then adjourned until 2:30 P. M.
The meeting was called to order by the President.

Pursuant to motion at the morning session, the first thing on the programme was the report of the Central Council and elections to membership. Mr. C. C. Trabue, chairman of the Central Council, read the report of the Central Council, which was as follows:

To the President and Members of the Bar Association of Tennessee:

Your Central Council reports that it has examined the report and vouchers filed by the Secretary and Treasurer of this Association, and finds them in all points satisfactory and correct.

Further, your Central Council recommends the following applicants for membership in this Association:

T. T. Rankin. .................................................. Chattanooga
S. Bartow Strang. .......................................... Chattanooga
Norris Headrick. ........................................ Chattanooga
Bruce Forshee ................................................ Chattanooga
John H. Early ........................................ Chattanooga
T. R. Hudson ................................................ Chattanooga
A. S. Dickey ................................................ Chattanooga
G. W. Chamlee ............................................. Chattanooga
W. F. Chamlee ............................................. Chattanooga
A. H. Trewitt ............................................... Chattanooga
James C. Sima ............................................ Chattanooga
Martin A. Fleming ........................................ Chattanooga
Henry P. Fry ................................................ Chattanooga
Battle McLester ............................................ Chattanooga
W. H. Payne, Jr. ........................................... Chattanooga
W. B. Miller ................................................ Chattanooga
A. W. Gaines ............................................... Chattanooga
D. L. Grayson ............................................. Chattanooga
John O. Benson ............................................ Chattanooga
W. B. Garvin ................................................ Chattanooga
J. N. McCutcheon .......................................... Chattanooga
Robert T. Cameron ........................................ Chattanooga
Will J. Watson ............................................. Chattanooga
Ed. Watkins ................................................ Chattanooga
F. S. Carden ................................................ Chattanooga
W. H. Cummins ............................................ Chattanooga
J. W. Eastman .............................................. Chattanooga
George D. Lancaster ...................................... Chattanooga
E. J. Nolan .................................................. Chattanooga
Jeff McCarn ................................................ Nashville
A. W. Stockell ........................................ Nashville
Robin J. Cooper ........................................ Nashville
Thos. I. Webb, Jr. ...................................... Nashville
J. J. Roach ............................................. Nashville
R. H. Crockett ........................................ Franklin
J. F. Eggleston ........................................ Franklin
N. N. Cox ............................................... Franklin
R. N. Richardson ....................................... Franklin
T. F. P. Henderson .................................... Franklin
J. J. Lynch ............................................. Winchester
Jesse M. Littleton ..................................... Winchester
Joe Brown ............................................... Jasper
A. B. Lamb ............................................. Paris
J. W. Lewis ............................................ Paris
W. C. Armstrong ....................................... Lewisburg
E. W. Essary ........................................... Lexington
J. Shelby Coffee ....................................... Columbia
W. B. Turner ........................................... Columbia
Willard Keen .......................................... Huntsville
J. W. Lillard ........................................... Decatur
W. H. Dietz ............................................. Kingston
C. E. Pigford .......................................... Jackson
J. D. Center ............................................ Humboldt
W. M. Brandon ......................................... Dover
Clarence W. Barber ................................... Knoxville
A. W. Ketchum ......................................... Memphis
H. Clay Carter ......................................... Waverly
R. A. Haggard ......................................... Waynesboro
Z. W. Ewing ........................................... Pulaski
S. E. Miller ............................................ Johnson City
A. R. Johnson .......................................... Johnson City
L. H. Trim .............................................. Greeneville
J. E. Biddle ............................................. Greeneville
Woodsan Turney ........................................ Winchester
W. R. King ............................................. Lawrenceburg
John B. Holloway ..................................... Morristown

Respectfully submitted,

C. C. TRABUE,
Chairman Central Council.

The names proposed were voted on, and the President announced that all applicants recommended by the Central Council were unanimously elected members of the Association.

The next order of business was the report of the State Board of Law Examiners, which was read by the Secretary in the
absence of Col. S. A. Champion, Chairman of the Board. The report is as follows:

To the President and Members of the Bar Association of Tennessee:

Since the last meeting of the Tennessee Bar Association the State Board of Law Examiners has held two meetings at Lebanon, and one each at Memphis, Nashville, Chattanooga and Knoxville. At these meetings more than one hundred applicants for license were examined, and of these about fifteen per cent failed because of inability to pass the required examination. Those who were recommended to the Supreme Court for license produced satisfactory evidence of good character and, from their examinations, appeared to be young men of fine intelligence and with sufficient legal knowledge to undertake the practice of law. Of course, they are not lawyers, nor is any other young man when first licensed. But those who passed a satisfactory examination had laid the foundation and were sufficiently grounded in the principles of law and procedure to make good lawyers, and most of them, we have no doubt, will do so.

The examination requires two days, and is in writing. There are about fifteen subjects and five questions are asked as to each subject. The questions are printed, and the applicant is given five questions at one time, and when these are completed he calls for more. The printed question is pasted on legal cap paper, and under it is written the answer. When the answer is completed it is followed by another question, and so on until the examination is ended. The completed examination, when fastened together in one volume, is not unlike the transcript of a record in the Supreme Court. These records are then examined by the members of the Board. A grade of eighty per cent is required for the applicant to "pass." The records are then read separately by the members of the Board, or when all are present, one reading and the others listening. When two members of the Board have read a record and marked it "O. K.," it is not usually read by the other member. When a record is read by one member and pronounced "doubtful," it is read by all the other members. Out of abundant precaution, no applicant is rejected until every member of the Board has read, or heard read, the complete examination.

The usual time required for examining applicants for law license in other States having a board of examiners is one day. In Massachusetts but thirty questions are propounded, and one day is all that is required to finish the examination.

The work of the examiner is exacting and laborious and involves great responsibility. The standing of the profession will largely depend upon the manner in which their work is performed. If the present law in Tennessee is maintained, and fairly and conscientiously enforced, the elevation of the standard of the legal profession will necessarily follow. Under its correct administration the ignoramus can never be admitted
to the bar, and it is to be hoped that it will greatly aid in keeping out the shyster.

ROBT. BURROW,
For the Board.

July 19, 1905.

It was moved and seconded that the report be received and filed.

Motion carried.

In accordance with the programme, Chancellor Heiskell then read a paper entitled "Why is it so Difficult to Enforce Our Criminal Law?" (See Appendix.)

The next order of business was the report of the Committee on Jurisprudence and Law Reform, made by Mr. J. H. Holman, of Fayetteville, Tenn., chairman of the committee. This report being an oral report, Mr. H. H. Ingersoll moved that Mr. Holman reduce the report to writing and file same with the Committee on Jurisprudence and Law Reform to be appointed for the year 1905-06, and that the Association direct said committee to prepare a bill and submit to the next meeting in accordance with this report.

This motion was seconded and carried.

It was moved and seconded that the hospitable invitation of the Chattanooga Bar Association to the members of the Bar Association of Tennessee to attend a smoker at Lookout Mountain Inn on the evening of the 19th be accepted.

Motion carried.

Upon motion, the Association then adjourned.

SECOND DAY.

MORNING SESSION, 10 A. M.

THURSDAY, July 20th.

The meeting was called to order by the President, who announced that the first thing on the programme would be the reading of a paper by Hon. H. P. Figuers, of Columbia, entitled "Two Lawyers of Our Town." (See Appendix).
The next order of business was the report of the Committee on Obituaries. The following letter was read from Mr. C. W. Metcalf, chairman of this committee, who was unable to be present on account of illness:

MEMPHIS, TENN., July 18, 1905.

Col. J. H. Henderson, Lookout Mountain, Tenn.:

Dear Colonel—After having made efforts to procure a good attendance from our bar, I find at last that I am unable myself to attend. I was at home sick all of last week and am not now well enough to make the trip. When you were in Memphis last, I think I stated to you that there would be no obituary report—that I had corresponded with the other members of the committee and it was ascertained that there had been no deaths since our last meeting. It is, of course, a pleasure to be able to state that we have no report to make.

I do trust the session will be largely attended and will be in every respect a complete success. This is only the third meeting in about twenty years that I have failed to attend, and you can not imagine how disappointed I am at not being able to be present at this meeting.

With kind regards to yourself and such of my lawyer friends as may inquire about me, I remain.

Your friend truly,

C. W. METCALF.

Upon motion of Judge Ingersoll, properly seconded, the following resolution was adopted:

Resolved, That the Bar Association of Tennessee learns with deep regret of the detaining illness of our brother C. W. Metcalf, Chairman of the Committee on Obituaries, and extends to him in his unwilling absence the cordial sympathy of its members and their earnest wishes for his restoration to health.

Resolved further, That the Secretary wire this resolution to Mr. Metcalf.

The next thing on the programme was a paper prepared by the Hon. Michael Savage, of Clarksville, Tenn., which, upon motion, was postponed until the morning session of the 21st, and the report of the Committee on Special Legislation appointed at the last meeting was substituted. Mr. J. H. Malone, of Memphis, chairman of this committee, then read the report, which was as follows:

To the President and Members of the Bar Association of Tennessee:

Your committee appointed under a resolution at the last annual meeting, with directions to appear before the next General Assembly of the
State of Tennessee and advocate the enactment of certain laws, beg leave to report as follows:

First—That a bill was introduced to create a Board of Jury Commissioners for each county modeled upon the general plan of the jury commission law advocated by the Association and which with various modifications has been enacted so as to apply to different counties in the State, our particular instructions from this Association being to have a general jury commission law passed applicable to each and every county in the State. A bill was drawn at Memphis under the auspices of the local Bar Association and was introduced into the Legislature and its passage advocated and urged by your committee according to instructions, but it became evident that the bill would not become a law if urged to apply to the entire State, and your chairman, being from Shelby County, and feeling and knowing that the proposed bill was an improvement upon the bill in force in Shelby County, as a last resort, had the bill amended so as to apply only to Shelby County, and the bill became a law, and is now comprised in Chapter 230 of the Acts of 1905.

Two features of this bill deserve special notice. The first provided that no citizen shall be required to perform more than twelve days' jury service (or two weeks) during any one given year, which exempts them from further duty in that respect for one entire year. The second feature makes it a punishable misdemeanor for a juror to serve more than two weeks during any given year. The result is twofold. First, there is no difficulty in obtaining business men and the best citizenship generally to serve upon juries; and in the next place, it has eliminated the professional juror, and the law has given great satisfaction.

Second—Your committee was likewise charged with taking some steps looking to the relief of the Supreme Court docket, as there are twelve hundred cases which go before the court of last resort in this State and must be decided each year, a task which no set of men ought to be called upon to complete, and moreover, no court can decide twelve hundred cases per year, or on an average of about four cases for every day in the year, and give them that care and attention which their importance demands, for it is next to impossible to sift the wheat from the chaff without a careful examination of each case.

Of the several bills proposed or suggested to this Association by James H. Malone, Esq., at previous annual meetings, only one was approved or endorsed by the Association, there being a difference of opinion as to the other measures. This Association directed your committee to advocate the bill referred to, viz.: A bill to limit the right of appeal to cases involving $200, except in exceptional instances. This bill was introduced, and some others, on the personal responsibility of the chairman, all looking to the relief of the Supreme Court docket. All of the bills seemed doomed to defeat, and all were defeated, including the bill endorsed by this Association, except one introduced by the chairman on his own responsibility, viz.: A bill to require bond to be given in appeals
from law courts, not only for the costs but for the whole amount of the judgment. This bill was variously amended and finally passed, but in a very different garb to that in which it made its appearance. It is now comprised in Chapter 89 of the Acts of 1905, and provides that Section 3182 of the Code of Tennessee be amended so as to provide that bonds on appeals and on writs of error in actions on account must be given not only to secure the costs but the amount of the judgment as well.

While there was considerable opposition, it is believed that this Act will meet with the approval both of the bench and the bar, and serve somewhat to weed out trashy litigation.

All of which is respectfully submitted,

JAMES H. MALONE, Chairman,
W. B. SWANEY.

Lookout Mountain, July 19, 1905.

It was moved and seconded that the report be received and filed as part of the minutes of the proceedings, and this special committee, having performed its duties, be discharged.

Motion carried.

The next order of business was the report of the special committee on Uniform Laws, which was read by the chairman of the committee, Mr. Edward T. Sanford. The report is as follows:

To the President and Members of the Bar Association of Tennessee:

Your committee appointed to memorialize the Legislature for the creation of a Board of Tennessee Commissioners for the promotion of uniformity of legislation in the United States, beg to report that in accordance with the instructions of the Association, they prepared a memorial to the Fifty-fourth General Assembly, a copy of which is attached as an exhibit hereto, setting forth the want of uniformity in the laws of the several States; the need of greater uniformity, especially in general matters relating to the execution and probate of wills and deeds, and the like; the growth of the movement toward uniformity, and the holding of the annual conference of commissioners on uniformity of legislation, in which thirty-seven States and Territories are now represented; and petitioning the General Assembly to create a board of commissioners from Tennessee to take part in this important work. This memorial was printed and one copy furnished each member of the Legislature at Nashville, and another sent to the residence of each member during the recess.

Your committee also prepared a bill entitled "An Act to establish a Board of Tennessee Commissioners for the promotion of uniformity of legislation in the United States," a copy of which is also attached as an exhibit to this report, providing for the appointment by the Governor of a board of three commissioners to serve for terms of three years, who
should receive no compensation, but whose actual traveling expenses, not exceeding in the aggregate $250 in any one year, should be reimbursed from the State Treasury; the general duties of this board, as provided in Section 2 of the proposed act, being "to examine the subjects of marriage and divorce, insolvency, the descent and distribution of property, the execution and probate of wills and deeds, partnerships, sales, and other subjects upon which uniformity of legislation in the various States and Territories of the Union is desirable, but which are outside the jurisdiction of the Congress of the United States; to confer upon these matters with the commissioners appointed by other States and Territories for the same purpose; to consider and draft uniform laws to be submitted for approval and adoption by the legislatures of the several States; and generally to devise and recommend such other and further course of action as shall be best suited to accomplish the purposes of this Act."

This bill was introduced into the Senate by Senator A. G. Ewing, Jr., of Davidson County, and into the House by Mr. Thomas B. Collier, of Shelby County, a member of your committee.

The committee also communicated with members of the Association in the larger cities of the State with a view to procuring the endorsement of the Chambers of Commerce in such cities, and succeeded in the city of Knoxville in obtaining a strong endorsement from the Chamber of Commerce.

Vigorous effort was made to secure the passage of the bill, the members of the committee in Nashville, Judge Bonner and Mr. Collier, doing everything that they could to bring the matter to the attention of the General Assembly and secure its passage, but your committee regrets to state that it was impossible to secure the passage of the bill at the last session of the Legislature.

The chief, if not the only, objection that was urged to the bill was the expression of the fear that if a commission were appointed to act at first without salary, this commission would at a subsequent session request a salary, and thus ultimately lead to increased expense, an objection which your committee believes to be unfounded, as similar boards have been appointed in almost all the States of the Union, in most of which commissioners received no compensation, and no difficulty of this character has been encountered, so far as we can ascertain, the appointment on such commission being universally regarded as an honorary position involving public service of the character for which compensation is not expected or demanded.

Your committee is of opinion that the end sought by the memorial is highly desirable of accomplishment and that if renewed efforts are made at the next session of the Legislature, the passage of a bill can perhaps be secured, or if not then, at a subsequent session.

In view, however, of the fact that there will be no session of the Legislature until after our next meeting, your committee recommends that this matter be referred to the incoming Committee on Jurisprudence and Law Reform, with instructions to recommend such action as they deem
BAR ASSOCIATION OF TENNESSEE

advisable to be taken by the Association at its next session, together with a draft of such bill, if any, as they may recommend for further submission to the Legislature, and that in the meantime the report of this present committee may be received and this committee discharged.

Respectfully submitted,

EDWARD SANFORD, Chairman,
Of and for the Committee.

MEMORIAL

To the Honorable Fifty-fourth General Assembly of the State of Tennessee:

Your memorialists, having been appointed by the Bar Association of Tennessee as a committee to memorialize your honorable body for the creation of a Board of Tennessee Commissioners for the Promotion of Uniformity of Legislation in the United States, respectfully show:

DIVERSITY OF LEGISLATION.

There now exists a great want of uniformity in the laws of the several States on many matters in which such diversity, by reason of the confusion and uncertainty resulting in dealings between citizens of different States, or in connection with property interests in different States, constitutes serious and unnecessary burden, especially in matters of trade and property.

Even in the original thirteen States an original diversity of laws existed, both in their local ordinances and in the extent to which the common law and statutes of England were adopted; while with the marvelous growth of the nation and the addition of new States, until now the Legislatures of half a hundred States and Territories are engaged in the creation of statute laws, and annually enacting about six thousand new statutes, the original diversity has inevitably increased and extended not only to those matters of purely local concern, in which diversity in State legislation is desirable, but to many matters having no especial local character, whose effects are not limited by State boundaries and are far-reaching in their consequences to inter-state dealings and relationships.

This diversity, even in the case of adjoining States having close commercial ties, is well illustrated in the laws of New York and Connecticut. "In New York a marriage ceremony, if ceremony it can be called, is valid without the aid of a clerical or civil officer; in Connecticut it is not. New York limits absolute divorce to one cause; Connecticut invites discontent by eight. New York has two kinds of divorce; Connecticut one. In New York, property descends, so to speak, from child to parent, in preference to brother or sister; Connecticut favors fraternal rather than paternal heirship. * * * New York requires two witnesses to a will; Connecticut three. New York abolishes common law trusts and powers,
except as defined by statute; Connecticut retains them. New York allows preferences in insolvency assignments; Connecticut treats all general creditors alike." In New York a notarial seal, especially from over the border, must be proved as such; in Connecticut the seal proves itself. "A deed in New York must have a seal, but only one witness; in Connecticut a scroll will answer for a seal, but two witnesses are necessary. * * * While in the conduct of a suit at law Connecticut allows an initial attachment on the service of process in all cases; in New York the rule is to wait until final judgment before touching the debtor's property."

So the validity and effect of mortgages, a matter constantly overlapping State boundaries, varies widely. In Minnesota, Kansas and other States the mortgage investor has "no advantage whatever over an ordinary judgment creditor except a kind of priority of attachment; and in some respects has not even so much advantage, as he has practically no remedy whatever against the debtor, but only against the property mortgaged. Of this he cannot even get possession for more than a year after default, during which time the borrower enjoys the fruits of the mortgaged property, while the lender has to pay all taxes and insurance, and in the meantime the property itself goes to rack and ruin because nobody can safely pay for repairs." The law of Massachusetts is in sharp contrast, "the lender being allowed to sell the property by a few weeks' notice in any newspaper—a notice which may well never reach the eye of the borrower—and without redemption. Thus it happens that a citizen of Massachusetts who lends money on mortgage may suppose he is getting the full security of the property besides a personal liability; while a citizen of Minnesota who borrows money on mortgage knows very well that he is giving no personal security and that of the property only after much delay and expense to the lender."

As to the effect and necessity of a seal, under the old law of conservative statutes, generally followed in New England, all deeds must be sealed or they will be of no validity; in Tennessee and thirteen other States the use of private seals has been abolished entirely; while in California and other Pacific States a seal is not required, but imports consideration.

Marriage laws vary on the one side from the extreme of the "so-called common law marriage, or Scotch marriage," termed "marriage by consent, marriage de facto, or as the extreme conservatives would call it, marriage which is not marriage at all," to those holding marriage "a sacrament, a state or a finality." A like variability exists in the various statutes fixing the age of legal capacity for marriage; while in divorce there is every varying shade of provision, from South Carolina, that grants no divorces whatever, and New York, standing alone in granting absolute divorce only for adultery, to those States, chiefly in the West, facilitating what has been termed migratory or "carpet-bag divorce," easily obtained by transient visitors through various forms of procedure easily lending themselves to collusion. In forty-nine States and Terri-
tories of the Union, divorce is granted for adultery; in forty-nine for extreme cruelty, of which seven are limited divorces; in forty-nine for continuous desertion, of which four are limited divorces; while failure to support the wife is a cause of divorce in many of the States and a fertile field of collusive proceedings.

A like diversity exists in criminal law, there being great inequality in the punishment of the same crimes in the different States. The death penalty, which is in force for murder in all States except three, is in some applied even for perjury, arson, robbery, or mayhem. The maximum penalty for counterfeiting varies from three years' imprisonment in Delaware to imprisonment for life in Massachusetts and other States; and for perjury from five years in New Hampshire and other States, to death in Missouri, if the perjurer designed to effect the death of an innocent person; while in Delaware it is so lightly regarded as to be punishable only by a fine.

**NEED FOR UNIFORMITY.**

While, however, on the one hand, diversity of State legislation has been constantly increasing, on the other, the growth of commerce and the multiplied means of communication between the different States, strengthening the ties that bind our entire people into closer unity, have made the diversity of legislation, especially in general matters relating to contracts, commerce and the like, whose effect is not limited to the borders of one State, and for which there are no local reasons requiring difference, a matter of constantly increasing inconvenience, annoyance and expense. "The continuing diversity of the laws of the various States and Territories on the subject in question causes constant and gross waste of capital by suitors and of skilled labor by bench and bar; occasions long delays, which are substantial denials of justice; facilitates various admitted immoralities, and issues in uncertainty of law, which Burke aptly described as 'the essence of tyranny.'"

A committee of the American Bar Association has admirably said: "The constantly increasing interstate trade and traffic, interstate migration and a wonderful development of the means of inter-communication, fuse and unite all interests and all localities. Variance, dissonance, contradiction, and any unnecessary diversity in the fifty subdivisions of the one American people in the general laws affecting the one people in their business and social relations, cannot but produce perplexity, uncertainty and damage. Such diversity, always an annoyance, is always a nuisance. It is harmful and injudicious in the same way, in kind if not in degree, as it would be for us to have fifty different languages, or fifty different metric systems. The business man may well ask, Why should not the meaning and effect of a promissory note, a bill of lading or guaranty, be as certain and definite and practically identical in all the States as the meaning of words in an American dictionary, and for the same reason, the common convenience of all? Obviously, the vast volume of inter-
state trade and commerce and business dealings of all kinds growing in range and complexity to enormous proportions, is entitled to the protection and advantage of substantially uniform laws. * * * This whole matter * * * is a practical, common-sense question of comity, made certain of the easy avoidance of useless annoyances by common consent, in a word, of good neighborhood, and of good neighborhood between the members of the same family."

The true scope of the movement towards uniformity in legislation, together with its reasonable limitations, has been well stated as follows:

"It is highly proper, in the interest of human freedom, that the several States alone have the power to pass laws on other matters of private right; that each community can carry into effect its own views as to what is fair or humane, and what is against good manners and public policy; and there is no desire among right-minded men that the field of congressional jurisdiction should be widened or that the field of State legislation should be narrowed. But undoubtedly there are many subjects on which the laws of several States differ from each other, either broadly or in some slight detail, to the great detriment and inconvenience of those whose business interests outrun their immediate State line; and these differences are in most cases accidental; that is, they do not flow from a difference in sentiment or policy. * * * If Georgia and six other States require the attestation of three witnesses to a will, while thirty-seven other States are satisfied with the signatures of two witnesses, and Pennsylvania requires no attestation at all, * * * there is no sentiment at the bottom of all this, no question of good policy. One law on these subjects is pretty much as good as the other, but the co-existence of both laws often leads to a failure of justice. A testator owning lands in Georgia makes his will in Ohio, before two witnesses, and the devisee of the Georgia land is thrown out."

MOVEMENT TOWARDS UNIFORMITY.

Before the year 1889 some effort towards securing uniformity had been made by the American Bar Association, but with little avail. In that year, however, the President of the Bar Association of Tennessee, Major L. B. McFarland, forcibly called attention to the want of uniformity in the laws of the several States in the matter of deeds and wills, marriage and divorce, and like questions not involving diverse local interests, and the discouraging effect of this diversity to material development and legal accuracy, and on his suggestion the Association instructed its delegates to the American and National Bar Associations, to urge the passage of a resolution recommending a convention of representatives from all the States to frame a system of uniform laws on these and kindred subjects to be submitted to the several legislatures; as the result of which Col. W. A. Collier, one of the delegates to the American Bar Association, at its meeting in 1889, brought President McFarland's sug-
gestions to the attention of that Association and submitted a resolution, which was adopted, "recognizing the desirability of uniformity of laws in the several States, especially those relating to marriage and divorce and distribution of property, acknowledgments of deeds, execution and probate of wills," and directing the President to appoint a committee of one from each State, who should meet and compare and consider the laws of the different States relating to these subjects and prepare and report recommendations and measures to bring about the desired result; a Committee on Uniform State Laws having been appointed that year and annually thereafter until it was recently made one of the standing committees of the Association. In 1890 this committee reported that the State of New York had passed an act authorizing the appointment of three commissioners for the promotion of uniformity of legislation in the United States, who were authorized to examine the subjects of marriage and divorce, notarial certificates and other subjects, and to ascertain the best means to effect an assimilation and uniformity in the laws of the States; and, in 1891, that commissioners on uniformity of legislation had been appointed by six States, and further, that by correspondence with judges and lawyers throughout the United States they had found a substantial agreement of opinion that the desired uniformity could be best secured by legislative action in the States, and that the most urgent need of uniformity was "in matters affecting directly the business common to and co-extensive with the whole country," such as the enforcement of contracts, the formalities and proof of legal instruments, and that sudden and radical changes in the laws of divorce, descent and distribution would meet with great difficulty, and be more likely to be adopted, if at all, "after the general advantages of uniformity in commercial matters had been demonstrated by experience." This report lays down the broad lines upon which all subsequent work has been conducted.

In subsequent years this committee has reported from year to year the appointment by State after State of Commissioners on Uniformity of Legislation, until now thirty-seven States and Territories—of whom Tennessee is not yet one—have appointed State Boards of Commissioners. The boards consist usually of three commissioners from each State, appointed generally for five years, with authority to confer with commissioners of other States and recommend the form of bills to bring about uniformity of law in the execution and proof of deeds and wills and other subjects where uniformity seems practicable and desirable. None of these commissioners receive a salary. They hold an annual National Conference during the same weeks and at the same place as the American Bar Association, with the natural result that the work on uniformity of legislation has recently been mainly done by the conference of the commissioners rather than by the committee of the Association. These commissioners are appointed directly by the States themselves, in the exercise of their own law-making power; and the commissioners have no powers except that of investigation and conference, reporting their conclusions
to the legislatures for such subsequent exercise of their law-making power as they may then deem proper.

Fourteen annual conferences of the commissioners have been held; the first at Saratoga, in 1892; the last at St. Louis, in 1904. At the first conference, short sections were recommended in reference to negotiable instruments, but for the first few years after its organization the conference confined its recommendations to forms for written instruments of title, a standard of weights and measures, the legalization of foreign wills and the abolition of days of grace; the commissioners believing that until a majority of the States had joined in the movement it was useless to recommend uniform laws except upon the simplest matters, as to whose utility there could be no possible question. A simple statute suggested by the conference making a last will and testament executed outside of any State in the mode prescribed by the law either of the State where it is executed or the State where the testator lived, has been adopted by most of the States of the Union, while a similar statute recommended by the conference, that any will duly proven in the State where the testator lives may be duly admitted to probate in any other State by filing an exemplified copy, is already the law of a majority of the States.

However, in 1896, after more than half the States had appointed commissioners, and after a year's careful study by various committees the conference recommended a Uniform Negotiable Instruments Act. The immense importance of this act to the great business community was soon recognized; and it has now been successively adopted by twenty-one States, one District, and one Territory, beginning with New York in 1897 and ending with Montana and Idaho in 1903; having been adopted by Tennessee in 1899. The success that has attended this act has been of the greatest encouragement and given renewed vigor to the entire movement.

In the matter of divorce the conference has recommended a uniform law in reference to divorce procedure, intended to prevent the procurement of migratory divorces, through fictitious residence in distant States, by preventing a divorce in any State for any cause arising prior to the residence of petitioner in such State, which was not a ground for divorce in the State where the cause arose, requiring at least one year's actual residence in a State before application is made for a divorce, and providing for bona fide notice of the proceedings to the opposite party in cases where the same is possible.

The conference will next consider a uniform act on sales, prepared by Prof. Samuel Williston, of the Harvard Law School, and a uniform act on partnership, which is to be drafted by Prof. J. B. Ames, Dean of the Harvard Law School.

It is to be profoundly regretted that Tennessee, which had so honorable part in giving impetus, in 1889, to the movement for uniformity, is not represented at these conferences by a State Board of Commissioners, and in order that Tennessee may actively join her sister States in the beneficent work of uniform and harmonious legislation, facilitating the
business interests of the country, removing the inconveniences and petty annoyances that harass its interstate trade, and promoting a large community of benefits throughout the country and fraternal comity among the States, your memorialists, for and in behalf of the Bar Association of Tennessee, and by its direction, respectfully petition your Honorable Body to provide for the appointment of a Board of Commissioners from Tennessee, that they may hereafter take part in the annual conference for promoting uniformity of legislation throughout the United States, and that the voice of Tennessee may no longer be silent in the council of the States upon this matter of deepest national concern.

Respectfully submitted,

Edward T. Sanford,
J. W. Bonner,
T. B. Collier,
Committee of the Bar Association of Tennessee.

EXHIBITS.

BILL No. —

AN ACT to establish a Board of Tennessee Commissioners for the promotion of uniformity of legislation in the United States.

SECTION 1. Be it enacted by the General Assembly of the State of Tennessee, That there shall be appointed by the Governor, within thirty days after the passage of this Act, and every five years thereafter, three suitable persons, residents of this State, who shall be and constitute "A Board of Tennessee Commissioners for the Promotion of Uniformity of Legislation in the United States;" any vacancy in said board by resignation, death, or otherwise, to be filled by like appointment by the Governor.

SEC. 2. Be it further enacted, That it shall be the duty of said board to examine the subjects of marriage and divorce, insolvency, the descent and distribution of property, the execution and probate of wills and deeds, partnerships, sales, and other subjects upon which uniformity of legislation in the various States and Territories of the Union is desirable, but which are outside the jurisdiction of the Congress of the United States; to confer upon these matters with the commissioners appointed by other States and Territories for the same purpose; to consider and draft uniform laws to be submitted for approval and adoption by the legislatures of the several states; and generally to devise and recommend such other or further course of action as shall be best suited to accomplish the purposes of this Act.

SEC. 3. Be it further enacted, That said board of commissioners shall keep a record of all its transactions and shall, at each biennial session of the Legislature, and may, at any other time, make a report of its doings and of its recommendations to the General Assembly.
Sect. 4. *Be it further enacted*, That no member of said board shall receive any compensation for his services, but each member shall be repaid from the State Treasury the amount of his actual traveling and other necessary expenses incurred in the discharge of his official duty, after the account thereof has been audited by said board and by the State Comptroller, provided that the aggregate expenses repaid to the three members of said board in any one year shall not exceed the sum of two hundred and fifty dollars. Said board shall keep a full account of its expenditures and shall report the same in each annual report.

Sect. 5. *Be it further enacted*, That this Act shall take effect from and after its passage, the public welfare requiring it.

Mr. Mountcastle moved that this report be received and adopted, and that the committee, consisting of Messrs. Edward T. Sanford, J. W. Bonner and T. B. Collier, be continued and the subject matter referred back for an additional report at the next meeting of the Association.

Motion seconded and carried.

On motion the meeting adjourned.

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AFTERNOON SESSION.

THURSDAY, July 20, 3 p. m.

The meeting was called to order by the President.

The first thing on the program was a paper read by Samuel Bosworth Smith, of Chattanooga. (See Appendix.)

The next order of business was the report of the Committee on Grievances, read by Chairman Thomas H. Cooke, of Chattanooga:

*To the President and Members of the Bar Association of Tennessee:*

Your Grievance Committee reports to the Association that very few grievances have been brought to their attention; none in fact that the committee deem of sufficient importance to burden the records of the Association with.

However, the committee takes great satisfaction in reporting for the purpose of making a permanent record, that Wm. Farr, whose operations in Tennessee for such a length of time were a reproach to the bar and to the people of the State, has been effectually disposed of by an indictment and conviction in the United States Circuit Court for the Middle District of Tennessee under Section 5480 of the Revised Statutes as amended by the Act of March 2, 1889. 1st Supp. R. S. U. S., Ch. 393, p. 694.
The history of this prosecution and conviction is contained in the following letter, which has been received by the Chairman of the Grievance Committee, from Mr. A. M. Tillman, United States Attorney. And the thanks of the Grievance Committee is tendered to Mr. Tillman for his kindness in supplying us with this detailed account of the prosecution and conviction of Farr.

The thanks of the bar and people of Tennessee are due to Mr. Tillman and to the gentlemen mentioned in his letter for their efforts in ridding the State of the disgrace of Mr. Farr and his alleged law schools.

Respectfully submitted,

THOS. H. COOKE, Chairman.

NASHVILLE, TENN., July 5, 1905.

Hon. Thomas H. Cooke, Chairman of the Committee on Grievances, Bar Association of Tennessee, Chattanooga, Tenn.:

Dear Sir,—In compliance with the request of Mr. Robert Lusk, Secretary of our State Bar Association, I submit the following in reference to the case of the United States vs. William Farr, who was, on October 22, 1903, indicted in the United States Circuit Court, Middle District of Tennessee, under Section 5480 R. S. U. S., as amended by the Act of March 2, 1889, 1st Supplement R. S. U. S., Chapter 393, page 694.


At the last meeting of our Bar Association I, by letter, explained that at my instance Farr had been arrested in Washington, D. C., on October 28, 1903, and was making every effort possible to prevent being returned to Nashville, Tenn., for trial on aforesaid indictment. (See my letter published on pages 91 and 92 of the Proceedings of the Twenty-third Annual Meeting of the Bar Association of Tennessee.)

The Court of Appeals, District of Columbia, on November 1, 1904, decided that the order of the Supreme Court of the District of Columbia, discharging the writ of habeas corpus and remanding Farr to the custody of the United States Marshal, to await the warrant of removal, was correct, and it was, therefore, accordingly affirmed. Farr, thereupon, gave bond for his appearance for trial at the April (1905) Term of Court, at Nashville, Tenn.

The trial of Farr was begun on April 25, 1905, and consumed three days. Considerable of Farr literature, many letters and numerous witnesses being introduced by the Government. The examination and cross-examination of Farr required about a day, and proved quite interesting and often amusing.

There were only two counts in the indictment. The first count was based on the correspondence and transaction which took place between Farr and Rev. Will Arthur Dietrick, Pastor of the Highland Congregational Church of Cleveland, Ohio. Said Dietrick received a letter offering
him a degree, upon usual terms (usual "Farr" terms), and immediately reached the conclusion that Farr was operating a scheme to defraud, etc. Dietrick at once wrote the postmaster of Cleveland, Ohio, a letter expressing his belief and stating that, "If necessary I will cheerfully apply for the mock degree as requested by the letter for the sake of obtaining further evidence."

After this letter reached my hands I communicated with Mr. Dietrick, informing him that I would be glad to have him apply for the degree, instructed him not to furnish any "record of data" but to simply purchase the alleged degree for ten dollars, which I enclosed. The degree was purchased and was introduced as evidence at the trial: Mr. Dietrick being used as a witness and explaining how said degree was obtained. On this, the first count of the indictment, the jury returned a verdict of "not guilty," though for a time it seemed there would be a mistrial. The jury finally agreed to acquit on this count as all had agreed to return a verdict of "guilty" on the second or general count, which was done.

The failure to convict on the first count was probably due to the fact that several members of the jury considered the law had not been violated as Dietrick had not been "deceived" and had not been "defrauded" because he suffered no pecuniary loss by the purchase of the degree.

The transaction with Dietrick, however, demonstrated very plainly Farr's method of operation, and, in my opinion, greatly aided the Government in getting a conviction.

I am quite sure other members of the Bar Association as well as myself greatly appreciate the intelligent, earnest and efficient services rendered by Mr. Dietrick in our effort to rid this State and the country at large of Farr and his law-school methods, which I trust has finally been done.

After Farr was convicted, motions to discharge the prisoner, for a new trial, and in arrest of judgment, were made, but overruled by Hon. C. D. Clark, United States District Judge, who had patiently listened to all the evidence and argument throughout the trial and had resolved every doubt in favor of the defendant, who had been ably represented by Mr. W. D. Covington, Col. Tip Gamble, Gen. W. G. Brien and Mr. Charles Rutherford, of the Nashville bar. Both the District Attorney and his assistant, Mr. Lee Brock, participated in the trial of this case.

Judge Clark, after carefully considering the matter, sentenced Farr to four months in jail and to pay a fine of $500 and costs, but suspended the same until the further order of the court, upon condition that Farr pay into court $25 and file an affidavit showing his inability to pay the fine and setting forth the fact that he would never at any time again engage in any such educational scheme—which it is scarcely necessary to state, was promptly done.

Before dismissing the case, it may be proper and interesting to note the fact that the Government had as witnesses several former students of Farr who were, in his literature, held out to the public as the "Faculty of Law" of the "Nashville College of Law," one being termed "Chan-
cellor," another "Vice-Chancellor and Professor of Law," another, "Secretary," etc. Several of these young men, who had come here and made the best of their time after getting here and learning the true situation (which was not learned until after they had paid certain money to Farr), claimed not to know until I informed them that they were supposed to have official connection with Farr's alleged law school, in the capacities mentioned.

Farr, however, produced papers or powers of attorney, which he claimed authorized him to make such use of their names, sign names to diplomas, etc. Two diplomas or degrees were introduced in evidence and shown by Prof. R. W. Jennings to have all the names in the same handwriting, and such was admitted by Farr to be the fact, he claiming as before stated that he had authority to sign all said names.

The Government witnesses afterwards explained that they had at the request of Farr signed certain papers, did so without expecting or intending that any such use be made of their names, etc.

Farr appears to have had three charters from the State of Tennessee for schools: "The National College of Law," "The Nashville College of Law," and "The Nashville College," the latter of which was not mentioned in the indictment against Farr.

Letters and literature indicated that degrees would be conferred by "The Nashville College of Law," but Dietrick's degree or diploma and the other one introduced in evidence were from "The Nashville College." Whether or not other diplomas were similarly worded I am unable to state, but several of the witnesses appeared not to know which alleged "institution" they attended nor from which they received their diplomas.

One of the witnesses introduced by the Government brought his diploma with him, and when requested to exhibit it did so in such a manner as to indicate that he was rather "proud" of his title of "LL. D." conferred by "The Nashville College," although it is probable he may have changed his views somewhat before leaving Nashville, as he heard considerable about Farr and himself while here.

This witness, in thanking Farr for the "honor," spelled "promise" "promas," "satisfied," "satersfied," and mis-spelled numerous other words. Farr afterwards wrote him asking him to become a member of his "Board of Trustees."

The correspondence between said witness and Farr was probably the most valuable and effective evidence introduced, as said witness, in his letter to Farr, stated: * * * "you are not in business for fun" * * * "no one on earth shall know how or on what terms I got my diploma," etc.

I have referred to a few of the incidents or the trial as Mr. Lusk's letter indicated a desire that I should do so.

Before closing this communication, I desire to state that the record from the Chancery Court at Nashville, Tenn., in the case of The State of Tennessee upon the relation of the Bar Association of Tennessee against The National College of Law was used as evidence in the prosecution of
Proceedings of the

Farr, and I wish to thank members of the Bar Association generally, and Hon. John Ruhm, Mr. Chas. C. Trabue, Col. S. A. Champion and Mr. Robt. Lusk in particular for their efforts and aid in suppressing and convicting Farr.

Yours truly,
A. M. Tillman,
U. S. Attorney.

On motion the report was ordered to be received and filed.

Upon motion the following resolution was adopted:

1. Resolved, That the Bar Association of Tennessee expresses to the editor of the Chattanooga Daily Times its appreciation of the editorial in the Times of this date, entitled "A Slander on the Legal Profession."

2. Resolved, That the editorial statement in the New York newspaper quoted in said editorial of the Chattanooga Times, to the effect that the reprehensible means of a certain attorney in conducting the cross-examination of a witness was "in accordance with the ethics of his profession" is unjustified, uncalled for, untrue, and is, as stated by the Chattanooga Times, a slander on the legal profession.

3. Resolved, That a copy of these resolutions be furnished the Chattanooga Times and to the Associated Press.

The next order of business was the report of the Committee on Judicial Administration and Remedial Procedure, which was read by Mr. T. E. Harwood in the absence of Mr. W. C. Caldwell, the chairman:

To the President and Members of the Bar Association of Tennessee:

Your Committee on Judicial Administration and Remedial Procedure submits for your consideration the following report and suggestions:

1. Speaking generally, it is a matter of just pride to the legal profession and of sincere congratulation to the people at large that the judges of our courts administer the law and perform their respective functions in our system of government with marked intelligence, industry and impartiality, thereby contributing a very full share to the civilization, industrial growth and prosperity and happiness of this great and glorious commonwealth.

2. Nothing is more effective as a restraint upon a dishonest man than the knowledge that the courts are alert to grant redress against his wrongful acts; nothing more potent to deter the criminal than the certainty of speedy punishment for his crimes. Therefore, those whose duty it is to administer the law to such persons should be encouraged in all reasonable efforts to prevent evasion and delay and to attain full and expeditious trials.

3. The remarkable fact that the Supreme Court of Tennessee tries annually two or three times as many cases as are tried in the same period
by courts of last resort in other States should be constantly borne in mind by this Association, to the end that it may put forth proper efforts to lessen the burdens of that court. Whether the situation can be best relieved by an increase of the number of judges on the supreme bench, as has been done in some of the States, or by the creation of an additional court of chancery appeals or some similar court, or by a limitation on the right of appeal by amount, or by some other means, your committee does not know, and is not prepared even to suggest.

4. Your committee notes with approbation the growing disposition among the people and in legislation to simplify the business and curtail the expenses of the county courts of the State by large reductions in the number of civil districts in different counties, and it is to be hoped that this disposition will continue to grow until every county in the State may enjoy the advantages of such a reduction.

5. The tendency in favor of county judgeships to be filled by capable lawyers is likewise gratifying in a high degree. It indicates a better appreciation of the important powers and legal functions of the county court as a part of our judicial system, and promises a most favorable result.

Would it not be well to have a capable lawyer preside over every county court in the State, as its judge, and to clothe him with concurrent jurisdiction to grant extraordinary writs, to try habeas corpus cases, misdemeanors, and perhaps other cases?

6. Might not even greater uniformity, ease and effectiveness in judicial administration and remedial procedure than now exists be attained by and through stated voluntary meetings of all the judges of all the courts in the State?

7. It is assumed that your Committee on Jurisprudence and Law Reform will say what need be said in reference to economy in the public service, to the assessment and collection of taxes and to other important matters of legislation; therefore this committee makes no specific suggestions as to them.

8. Comment on recent legislation is left for the President of this Association.

Respectfully submitted,

W. C. CALDWELL, Chairman.
T. E. HARWOOD,
Foster V. BROWN,
WALTER S. BRANDON.

On motion this report was ordered to be received and filed.

Upon motion, properly seconded, the following resolution was adopted:

Resolved, That it is the sense of the Bar Association of Tennessee that our judiciary is inadequately paid and that their salaries should be increased, and that the chair appoint a committee of three, with Mr.
Charles W. Rankin, of Chattanooga, as chairman, to take up the question of an increase in the salaries of our judiciary and report at the next meeting of the Association.

A telegram from Hon. Michael Savage, of Clarksville, was then read, stating that he could not be present owing to the illness of his father.

On motion, properly seconded, the Secretary was instructed to wire Mr. Savage, expressing the regret of the Association at his absence and the cause of same.

The meeting then adjourned.

THIRD DAY.

MORNING SESSION.

Friday, July 21, 10 A. M.

The meeting was called to order by the President.

The President then announced that Hon. John W. Judd, of Nashville, would read the sketch of the life of John F. House, prepared by Mr. Savage. (See Appendix.)

The President announced that in accordance with resolution of yesterday he had appointed on the committee to report at the next meeting of the Association on the salaries of our judiciary the following: Charles W. Rankin, Chattanooga, Chairman; James S. Pilcher, of Nashville, and T. E. Harwood, of Trenton.

The next thing on the programme was the paper of Judge Ingersoll, "The International Congress of Lawyers and Jurists." (See Appendix.)

The report of the special committee on the Torrens System was then read by its chairman, S. C. Williams, of Johnson City.

THE TORRENS SYSTEM.

Among the reforms considered within recent years the "Torrens System" of registering the title to real property and of dealing with the land after registration is one of the most discussed and perhaps the most radical.

The general principle of registering the title of real estate has been in successful operation in Bohemia, Prague, Munich, Vienna and other parts
of continental Europe for centuries, and the system was made universal in Austria in 1811, and was adopted in Saxony in 1843, in Hungary in 1849–56, and in Prussia in 1872, and the system is in operation also in Sweden, Switzerland, Norway, Tunis, and Alsace-Lorraine.

But the system that is now in effect throughout the British Empire was introduced by Sir Robert Richard Torrens, from whom it takes its name. He was born in Cork; emigrated to South Australia in 1841; was collector of customs, and thus, though not a lawyer, he became familiar with the shipping laws. It is said that the starting point of his system was the application of the principles which regulate the transfer of vessels by means of registration to the transfer of land; and it does not appear that Sir Robert R. Torrens had studied the continental methods of land registration, or even knew of them at first, though there is nothing new about the fundamental principles involved in his acts.

He suggested the reform in 1850, and at first it met with much opposition. It was adopted in 1858 in South Australia, in 1861 in Queensland, in 1862 in Victoria and New South Wales, in 1863 in Tasmania, in New Zealand and British Columbia in 1870, in West Australia in 1874, in Manitoba and Ontario in 1870. The system was partially adopted in England in 1862 and more fully in 1875. Comprehensive acts were passed in 1891 and 1897. In 1900 Parliament appropriated $1,325,000 for registry office in Lincoln's-Inn-Fields, and in 1891 registration was made compulsory in London. In Australia the system is so popular that over eighty per cent in value of all the lands are registered.

In this country, the States of Illinois and Massachusetts both claim the distinction of being the first to take up the subject. The first act was passed in Illinois in 1895. The act was not skilfully drawn and was declared unconstitutional by an almost equally divided court in People v. Chase, 165 Ill., 527; 46 N. E., 454; 36 L. R. A., 105. The defects were remedied in the new act passed by the Legislature of the State in 1897, and this law was sustained by the Supreme Court in 1898 in People v. Simon, 176 Ill., 165; 52 N. E., 910; 44 L. R. A., 801; 68 Am. St. Rep., 175, and the law is now settled in that State.

The Massachusetts act was passed in 1898, and was sustained by its Supreme Court in an exhaustive opinion by Chief Justice Holmes in 1900 in Tyler v. Judges, etc., 175 Mass., 71; 55 N. E., 812; 51 L. R. A., 433.

Acts are in effect in California (1897), Oregon (1901), Minnesota (1901), Colorado (1903), Virginia (1903). The California act contains several unreasonable provisions that render the law in that State practically inoperative. In Minnesota the act was sustained by the Supreme Court in 1902 in State v. Westfall, 85 Minn., 437; 99 N. W., 175; 89 Am. St. R., 175; 57 L. R. A., 297. In 1902 the United States Congress passed an act putting the system in force throughout the Philippines. An act was passed in Ohio in 1896, but was not properly drawn, and was declared unconstitutional in 1897 in State v. Gilbert, 56 O. St., 575; 47 N. E., 551; 60 Am. St. Rep., 756; 38 L. R. A., 519; and this seems to have ended the matter there.
In Georgia and Louisiana the subject of this system of land registration is being investigated by commissions appointed by the Governor in pursuance of resolutions of the Legislature, and the subject is also being discussed by the bar associations of a number of other States, to wit: Kentucky, Maine, Missouri, New York, North Dakota, Pennsylvania, Texas, Washington, and West Virginia. Also the subject is being agitated in Iowa, Nebraska, Rhode Island and Wisconsin, and possibly in other States.

The subject was first brought before this Association in 1897, in a report of the Committee on Jurisprudence and Law Reform, of which Edward T. Sanford, Esq., was chairman, and James Maynard, Esq., and Hon. John K. Shields were members signing the report. In 1898 the Committee on Jurisprudence and Law Reform, of which Hon. Jerome Templeton was chairman, reported on the system. Then for several meetings the question was allowed to rest until 1903, when an elaborate discussion of the subject was made by this same committee, then consisting of Messrs. S. C. Williams, Chairman; C. E. Lucky, W. B. Bates, W. L. Granbery, and S. D. Hays, when the present committee to draft the act was appointed by President Mountcastle.

While all the acts adopted by the several States above named are known as the Torrens Law, yet there is quite a wide difference between them, both in substance and in mode of procedure, and they extend in length all the way from 59 to 165 sections. The acts here submitted contain 120 sections, and is modeled after the Minnesota, Illinois and Colorado acts, which were considered the most concise and best adapted to the wants in Tennessee. No doubt this act could be compressed into much smaller compass, but at the probable cost of clearness. The act is one of great importance, and great property rights depend upon its provisions, and it was thought best that every requirement of the law and each act of each official should be so clearly and explicitly stated that every intelligent citizen could easily understand every provision of the statute, and that those who were astute to find vagueness, ambiguities and obscurity would be disappointed.

If this result has been accomplished even reasonably well in this first draft of the act it will be not only gratifying, but fortunate, and experience in this and other States will in the future eventually suggest important changes. Perfection can be approximated only after much longer experience in the practical working of the acts than has as yet been had in the United States.

PROCEDURE AND PRACTICE.

Each county register of deeds is made registrar of titles, and in addition to his duties as register conducts the registration of titles and other dealings with registered land. (Sec. 9.) He is assisted by deputy registrars and examiners of titles, the latter attorneys at law appointed by the chancery court. (Secs. 11 and 13.)
INITIAL REGISTRATION.

Bringing land under the law, by registration of the title, is in the first instance optional with the owner (Sec. 118), and for those lands not brought under this law the old system continues unaltered. (Sec. 119.) Application for initial registration is made by filing in the chancery court of the county where the land lies a petition, a form of which is given in the act. (Secs. 7 and 8.)

Minors and those under disability must apply through their guardians. It must be for a registration of the fee simple, since until the fee is registered no lesser estate can be registered. (Sec. 2.) If the application is made by an agent, his authority must be in writing, executed and acknowledged in the usual form, and filed with the registrar before formal application is made. (Sec. 1.)

All persons interested in the land and all persons in possession or occupancy must be made parties defendant. (Sec. 4.) Subpoena is issued for all resident defendants, and may on application issue for non-residents if they can be served. (Sec. 20.) Service is made by the sheriff as subpoena in chancery is served. Non-residents and persons whose names and residences are unknown and cannot be ascertained by diligent inquiry are served by publication (Sec. 21.); also by notice mailed to those whose names and residences are known. (Sec. 22.)

Due opportunity to contest the application must be afforded, and any person, whether named as a party or not, may appear and answer; also cross application to register may be filed. (Sec. 24 and 25.)

An abstract of title must be filed by the applicant. (Sec. 17.) The court refers the application to an examiner of titles, who proceeds with an independent investigation of the title. (Sec. 19.) To him is submitted the abstracts of title and any oral testimony tending to determine the rights of all parties. He approves no title unless satisfied that all persons interested are before the court. If in his opinion the applicant is entitled to registration, he so reports to the court. To the report of the examiner any party may file objections, which are heard and disposed of by the court. Jury trial may be had upon issues framed under direction of the chancellor as in other chancery cases. (29 a.) Upon confirmation of the report a decree is entered confirming the applicant's title and directing the registrar to issue to him the first certificate. (Sec. 30.) This is done by entry in a book called the "Register of Titles," which contains a number of certificates of title bound together one to a page, with ample space at the foot for entry of subsequent notation thereon. (Secs. 38, 39, and 43.) Every certificate is in duplicate, signed and sealed by the registrar and numbered. One of these is kept by the registrar bound in the "Register of Titles," the other is delivered to the owner. This completes the initial registration.

The certificate of title immediately upon its issue is conclusive proof of ownership in all courts as against all parties before the court in the proceeding for initial registration (Sec. 31), and all persons dealing with
the land after registration. After the expiration of two years from the first registration no suit attacking the title of the registered owner can be brought. (Sec. 32.) No exception is made in favor of infants or persons under disability (Sec. 31), but such persons are given recourse upon the indemnity fund. (Sec. 105.) It is thus seen that all persons are bound by the first certificate of title, except those overlooked and not made parties to the suit for registration. If the court proceeding is properly conducted there should be no persons not bound by the first certificate of title. In all dealings with the land after registration the bona fide purchaser or incumbrancer has a like security to that given to the purchaser of negotiable paper. (Secs. 46 and 47.) The title of such purchaser or incumbrancer cannot be upset. (Secs. 90, 91 and 92.)

TRANSFERS OF REGISTERED LAND.

When it is desired to convey registered land, the owner executes the usual conveyance and delivers this and his certificate of title to the purchaser. (Secs. 67 and 68.) In every transaction the owner's certificate of title must be produced. If lost or destroyed, upon the proper showing (Sec. 61) the owner receives a duplicate, so marked, which answers the purpose of the lost certificate. No new forms of conveyance are required. (Sec. 62.) The purchaser takes the deed and certificate of title to the register's office, files his deed and leaves it with the registrar (who files and keeps it but does not record it), surrenders his certificate for cancellation, the registrar makes the proper entry in the "Register of Titles" and makes out a new certificate to the purchaser (Sec. 16), and upon payment of the consideration and $3 to the registrar the whole transaction is closed. The new certificate operates to transfer the title to the land, no title passing by the deed. (Sec. 57.) The deed, after delivering and before the registration of the transfer, is a mere contract between the parties. (Sec. 55.) The transfer is registered, when the registrar cancels the old certificate of title and issues a new one in duplicate as before, one, called the original, being retained in the register, and the other, called the duplicate, after proper receipt wherefor filed with the registrar, delivered to the buyer, now the new owner. The registrar shall not transfer until he is satisfied that taxes are paid. (Sec. 63.) All existing incumbrances and adverse claims to title of the registered owner must be stated on the new certificate unless they are simultaneously released or discharged. When only a part of the registered land is conveyed a new certificate is entered and an owner's certificate is given to the grantor for that part of the land which is not conveyed. (Sec. 62.)

MORTGAGES AND TRUST DEEDS.

A mortgage of registered land is effected in a similar manner. (Sec. 67.) The owner executes the ordinary mortgage or trust deed and files it with the registrar and presents his certificate of title to the registrar.
The mortgage or trust deed is filed and kept by the registrar, but not recorded. The registrar makes the notation of the mortgage upon the owner's certificate and also upon the register of titles and issues a duplicate of the owner's certificate, showing such mortgage to the mortgagee or beneficiary. This is called the mortgagee's certificate. The fee is paid and the transaction is closed. Upon payment of the indebtedness a release deed of trust or of the mortgage, together with the "Mortgagee's Duplicate," is presented to the registrar. That official cancels the mortgagee's duplicate, files (but does not record) release deed of trust or release of the mortgage, makes the proper entry in the "Register of Titles," charges the proper fee and issues to the owner a new certificate of title. (Sec. 69.) In case of the debtor's failure to pay according to the terms of the mortgage or trust deed, the instrument is foreclosed in the same manner as though the title was not registered. The purchaser at the sale, after the expiration of the period of redemption, takes his trustee's deed, or master's deed, or certified copy of decree confirming the sale, and files that with the registrar and obtains a new duplicate certificate of title. (Secs. 70, 71, 72, and 73.)

TRUSTS, CONDITIONS, LIMITATIONS.

Registered owners, by deed or other instrument filed with the registrar, may create such trusts as may be desired. (Sec. 75.) The terms of the trust are not set out in the certificate of title, but after the name of the trustee is inserted, the words "in trust," "upon condition," or "with limitations," as the case may be, and no subsequent transfer or dealing can be had thereafter, except upon the orders of a court of proper jurisdiction. (Secs. 75, 76, and 77.)

When interests in registered land less than an estate in fee simple are transferred, the same shall be registered by filing the instrument with the registrar, who shall make a brief memorandum thereof on the certificate of title signed by him. A similar memorandum is made on the owner's duplicate. The cancellation of such interest is effected in like manner. When doubt or disagreement exists as to the proper memorandum to be made in such cases, the question shall be referred to the court for decision, either on the certificate of the registrar or on demand in writing of any party in interest. All the papers and evidences must be brought before the court by the registrar, and after hearing all the parties in interest the court makes the proper order for the registrar to enter. (Sec. 59.)

JUDGMENT AND OTHER LIENS.

No judgment, decree (Sec. 79), attachment (Sec. 80), *lis pendens* (Sec. 78), mechanic's lien, or other statutory legal or equitable lien (Sec. 84) except taxes and special assessments, for which a sale has not been had, is a lien upon registered land, until a certified copy of the judicial proceedings, or a copy of the instrument upon which the lien is
based, is filed with the registrar, and a brief note thereof is entered by him upon the certificate of title in the register. This abolishes all general liens, and one dealing with a registered title can safely ignore any lien not entered upon the certificate of title in the register.

ADVERSE CLAIMS.

Provision is made for all who wish to make notice of a lien upon or claimed against registered land. (Sec. 102.) All such notices are entered by the registrar upon the proper certificate of title in the register book, and are thus brought directly to the attention of any one proposing to deal with the registered land. The registrar will enter such claims on all subsequent certificates, until they are removed by proper proceedings, which are provided for.

CURTESY, DOWER AND HOMESTEAD.

Curtesy, dower and homestead are preserved in registered land, and in its first registration, as well as in all subsequent dealings. (Secs. 63, 65.) All other rights incident to husband or wife are preserved in registered land. (Secs. 64, 65.)

DECEASE AND DEVISE.

The heirs at law, or devisees, of registered land, may on expiration of thirty days after letters of administration are granted, or the will is probated, or in case of appeal, any time after the expiration of thirty days from the entry of final judgment thereon, apply to the chancery court for order of entry of a new certificate of title, a certified copy of probate of will, or order granting administration being filed with the clerk and master. Notice is given to persons in interest, and after a hearing the court may direct entry of the new certificates. Any certificate issued before the estate is finally wound up and final settlement made shall so state. After final settlement, or after the time allowed by law for bringing action against the executor or administrator, the heirs or devisees may petition the court for an order canceling the entry on the certificate that the estate is undergoing settlement, and the court may so order after such notice and hearing as it may require. (Sec. 94.)

TAX SALES.

The holder of a tax certificate of sale must, within three months after the date of sale, file the certificate of sale, or a sworn copy thereof with the registrar for entry upon the proper certificate of title, and during the same period must mail to all persons noted upon the certificate of title as interested in the land a notice of the registration of the tax certificate of sale. In default of such filing and notice, the land is released from the sale. (Sec. 88.) Should the certificate of sale ripen into a tax deed, the holder thereof may, on presentation of the tax deed and outstanding
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certificate of title, have the land transferred to him. If he cannot present the outstanding certificate of title he must present an order of the court, directing such transfer of the certificate, obtained on petition and notice to interested parties. (Sec. 89.) Minors, insane persons, etc., are allowed the time allowed by law to redeem before such order shall be issued. The registrar is required to see that there has been no sale for taxes, or that no tax deed has been issued, before he makes a transfer. (Sec. 63.)

No initial registration can be had of any title derived through sale for taxes or assessments, unless the purchaser has had his title adjudicated by a court of competent jurisdiction, and a decree duly made decreeing the title in him, or unless the purchaser has had undisputed, actual, adverse possession under such title for seven years immediately prior to the application, and paid all taxes and assessments for said time, or in case of vacant or unoccupied land, has paid all taxes and assessments thereon for eight successive years prior to the application. (Sec. 3.)

EXCHANGE OF CERTIFICATES—PLATS.

A registered owner having one certificate of title for land including several parcels may exchange for separate certificates and conversely. An owner subdividing his lands into lots must file a plat with the registrar as now provided concerning unregistered lands. (Sec. 45.)

SALES OF LANDS OF DECEDENTS AND PERSONS UNDER DISABILITIES.

The jurisdiction of county, probate and chancery courts as now existing for sale or other disposition of lands of decedents, or of persons under the disabilities of infancy, coverture, insanity, etc., is not affected (Sec. 95), and provision is made for the entry of a new certificate on such transfer, as after other judicial sales.

REGISTRAR AT ALL TIMES UNDER CONTROL OF CHANCERY COURT.

Provision is made for ready recourse to the chancery court in all cases of dissatisfaction, wrong, doubt or mistake, and this court has at all times full control over the registration. (Secs. 90–93.) But the title of a bona fide purchaser or incumbrancer for value will always be upheld. (Sec. 92.)

INDEMNITY FUND.

Although not an absolutely essential feature of the system, yet in nearly all countries where the Torrens System is in use, an indemnity fund is provided to make good any losses incurred by rightful owners in being deprived of their land through fraud or accident. This fund is raised by charging a small fee, in this act one tenth of one per cent, upon the value of the land when first registered, and each time it afterwards
passes by descent or devise. Small as this charge is it is believed that it
will prove to be larger than necessary. Drafts on these funds have been
few and unimportant in actual practice. This fund is kept and managed
by the county trustee under the supervision of the chancery court.
(Secs. 104, 105.) Proceedings are authorized for the recovery of com-
ensation for loss or damage arising from the operation of the act.
(Sec. 106.)

FEES.

It is believed that the cost of initial registration will not be materially
more than the cost of most abstracts and legal examinations thereof at
present, and after this first registration all subsequent costs of transfers
will be nominal.

ADVANTAGES OF REGISTRATION.

The immediate effect of registering a title is to make the property a
quick asset. The title is made absolutely perfect, and it always remains
so. The county, itself, becomes in reality the insurer of the title. The
value of the land is enhanced by making it more available as an invest-
ment. It may be sold or mortgaged in the time it takes to make out a
deed, go to the courthouse, file it, surrender the certificate and obtain a
new one. The register shows on its face, and everybody can see at a
glance the exact condition of the title of any piece of real estate, that is
who actually owns the property, and just what liens or incumbrances,
if any, there are on it. The cost of registration is not much more than
having an abstract made and examined; and when the initial registra-
tion is once effected, the costs of any subsequent dealing or transfer is
nominal. A large tract of lots can be registered and after this each lot
can be separately transferred, and no new abstract is required for each
lot disposed of.

In time the system, if it becomes at all general, will largely dispense
with the use of abstracts, and also with the guaranty of titles; but this
will be only after a long period. And the reform is almost bound to come,
as the old system is becoming antiquated and burdensome. But at first,
and for a long time, as every application must be accompanied by a com-
plete abstract of title, and all registration is voluntary, those employed
in the abstracting of title will not be injured.

Also, the system will do away largely with the examination of titles
by attorneys, but this change will be slow and gradual and certainly
will not materially affect those now engaged in the practice of law, except
possibly to increase their business by having lands brought under the
system, it is believed.

Under the present system, with all due care in the preparation of
abstracts, and in their examination by competent attorneys, the utmost
foresight and care cannot guarantee the perfection of the title. As the
deeds appear in the register's office there is no guaranty of the genuine-
ness of the signatures. Forgeries are easy. There is no proof of deliver-
ing of the deed. It may have been registered without delivery and may
have been left in escrow. There is no certainty of identity of parties.
There are many John Smiths and the like. All the evidence of heirship
is purely in pais and does not appear of record, and is often very hard
to obtain. There is no proof of the legal capacity of the parties to the
deeds and other registered instruments. Lands may be subject to rights
by adverse possession which does not appear from the register's office,
or the abstract. Conflicts of grants from the State do not appear by
ordinary examination, and the chain of title may appear faultless with
only the original link worthless. Mistakes of the register in indexing or
not indexing recorded deeds or in failing to record deeds noted for regis-
tration may occasion loss. These are but a few of the risks and incon-
veniences of the present system, which multiply with every increase in
the length of the record.

Most or all of these imperfections the present act seeks to obviate.
Of course it is not perfect. It can be made so only by long experience.
But such as it is it is believed to be up to date and to embody the Tor-
rens law as now in force and practical operation in several of our large
and wealthy States, and as best suited to our State.

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AN ACT to provide for the settlement, registration, transfer and assurance of titles to land (throughout the State of Tennessee) lying within counties of this State, having a population by the last Federal census, or any subsequent Federal census, of not more than ______ thousand nor less than ______ thousand; and to provide penalties for the violation of this Act.

SECTION 1. Be it enacted by the General Assembly of the State of Tennessee, That the owner of any estate or interest in land, whether legal or equitable (which lies within counties of this State, having a population by the last Federal census, or any subsequent Federal census, of not less than ______ thousand nor more than ______ thousand), may apply, as hereinafter provided, to have the title of said land registered. The application may be made by the applicant personally or by an agent thereunto lawfully authorized in writing, which authority shall be executed and acknowledged in the same manner and form as is now required as to a deed, and shall be recorded in the office of the register of deeds in the county in which the land, or the major portion thereof, is situated before the making of the application by such agent. A corporation may apply by its authorized agent, and an infant or any other person under disability by his legal guardian, and in case there is no such regular guardian, by next friend. Joint tenants, tenants by entireties, and tenants in common shall join in the application. The person in whose behalf the application is made shall be named as applicant.

Sec. 2. It shall not be an objection to bringing land under this Act, that the estate or interest of the applicant is subject to any outstanding lesser estate, mortgage, lien or charge; but no mortgage, lien, charge or lesser estate than a fee simple shall be registered unless the estate in fee simple to the same land is registered; and every such lesser estate, mortgage, lien or charge shall be noted upon the certificate of title and the duplicate thereof, and the title or interest certified shall be subject only to such estates, mortgages, liens and charges as are so noted, except as herein provided.

Sec. 3. No title derived through sale for any tax or assessment, or special assessment, shall be entitled to be registered, unless it shall be made to appear that the title of the applicant, or those through whom he claims title, has been adjudicated by a court of competent jurisdiction, and a decree of such court duly made and recorded in the office of the register of deeds, decreeing the title of the applicant, or that the applicant, or those through whom he claims title, have been in the actual and undisputed possession of the land under such title at least seven years, immediately prior to the application, and shall have paid all taxes and assessments legally levied thereon during said time; unless the same is vacant and unoccupied lands or lots, and the applicant, or those through whom he claims title, shall have paid all taxes and assessments legally levied thereon for eight successive years immediately prior to the appli-
cation, in which case such lands and lots shall be entitled to be registered as other lands provided for in this section.

Sect. 4. The application shall be in writing and shall be signed and verified by the oath of the applicant, or signed and verified by the oath of the agent authorized to act in that behalf. It shall set forth substantially:

(a) The name and place of residence of the applicant, and if the application is by one acting in behalf of another, the name and place of residence and capacity of the person so acting.

(b) Whether the applicant (except in the case of a corporation) is married, or not, and if married, the name and residence of the husband or wife; and the age of the applicant.

(c) The description of the land, and the assessed value thereof, according to the last official assessment, the same to be taken as a basis for the payments required under Section one hundred and four (104) and subdivision "a" of Section one hundred and sixteen (116) of this Act.

(d) The applicant's estate or interest in the same, and whether the same is subject to an estate of homestead.

(e) The names of all persons or parties as appear of record to have title, claim, estate, lien or interest in the lands described in the application for registration.

(f) Whether the land is occupied or unoccupied by any other person than the applicant, the name and post-office address of each occupant, and what estate or interest he has or claims in the land.

(g) Whether the land is subject to any lien or incumbrance, and, if any, give the nature and amount of the same, and if recorded, the book and page of record; also give the name and post-office address of each holder thereof.

(h) Whether any other person has any estate or claims any interest in the land, in law or equity, in possession, remainder, reversion or expectancy, and, if any, set forth the name and post-office address of every such person and the nature of his estate or claim.

(i) In case it is desired to settle or establish boundary lines, the names and post-office addresses of all the owners of the adjoining lands that may be affected thereby, so far as he is able, upon diligent inquiry, to ascertain the same.

(j) If the application is on behalf of a minor, the age of such minor shall be stated. If the application is by a husband or wife, the other shall by endorsement thereon acknowledge, as in the case of deeds or by a separate instrument acknowledged in the same way, signify his or her assent to the registration as prayed.

(k) When the place of residence of any person whose residence is required to be given is unknown, it may be so stated if the applicant shall also state that upon diligent inquiry he has been unable to ascertain the same.
Sec. 5. Any number of adjoining pieces of land in the same county and owned by the same person, and in the same right, or any number of pieces of property in the same county having the same chain of title and belonging to the same person, may be included in one application.

Sec. 6. The application may be amended only by supplemental statement in writing, signed and verified as in the case of the original application.

Sec. 7. The form of the application may be, with appropriate changes, as follows:

*Form of Application for Initial Registration of Title to Land.*

**STATE OF TENNESSEE,**

**COUNTY OF __________________**

*To the Honorable _________________, Chancellor, holding the Chancery Court at __________________.*

I hereby make application to have registered the title to the land hereinafter described, and do solemnly swear that the answers to the questions herewith, and the statements herein contained, are true to the best of my knowledge and belief.

(1) Name of applicant, _________________; age, ___ years; residence, _________________ (No. ___ street, county, town); married to _________________ (name husband or wife), residence, _________________ (No. ___ street, county, town).

(2) Application made by _________________, acting as _________________ (owner, agent or attorney); residence, _________________ (No. ___ street, town, county).

(3) Description of real estate is as follows: ______ estate or interest therein is __________ and ______ subject to homestead, and a plat of said property, showing the correct boundaries and adjoining owners, is herewith filed as Exhibit A hereto and made a part hereof.

(4) The land is ______ occupied by _________________ (name of occupants), whose address is _________________ (No. ___ street, county, town), and ______ address _________________.

The estate, interest or claim of occupant is _________________.

(5) Liens and incumbrances on the land, _________________.

Name of holder or owner thereof, _________________; postoffice address, _________________; amount of claim, $______; recorded, book ______, page ______.

(6) Other persons, firm or corporation having or claiming any estate, interest or claim in law or equity, in possession, remainder, reversion or expectancy in said land are _________________; address, _________________. Character of estate, interest or claim is _________________.

(7) Other facts connected with said land are _________________.

(8) Therefore, the applicant prays the court to find and declare the title or interest of the applicant in said land, and decree the same, and
order the registrar of titles to register the same, and to grant such other and further relief as shall be according to equity.

(Applicant's signature.)

By -------------------------------
(Agent, attorney, administrator, or guardian, or next friend.)

Subscribed and sworn to before me by the above named -------------- , as ---------------- (owner, attorney or agent), this --------- day of ------------- , A. D. 19----- .

I hereby assent to the registration of the above described real estate, as prayed for by -------------- , who is my --------- (husband or wife).

(Husband or wife's signature.)

STATE OF TENNESSEE,
COUNTY OF ------------------

Personally appeared before me -------------- (name and official title), in and for said county and State, ------------------ , with whom I am personally acquainted, and whom I know to be the person whose name is subscribed to the foregoing assent, and acknowledged that he executed and subscribed the said assent for the uses and purposes therein contained.

(Or, if the wife, as follows:)

STATE OF TENNESSEE,
COUNTY OF ------------------

Personally appeared before me, -------------- (name and official title), in and for said county and State, ------------------ , with whom I am personally acquainted, and whom I know to be the person whose name is subscribed to the foregoing assent, and having been examined by me privately and apart from her husband, the said -------------- (husband's name), acknowledged that she executed and subscribed said assent, freely, voluntarily and understandingly, without compulsion or constraint from her husband, and for the purposes therein expressed.

Witness my hand and seal of office, this --------- day of --------- A. D. 19----- .

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SEC. 8. The application for registration shall be made to the chancery court of the county wherein the land is situated. Said court shall have power to inquire into the condition of the title to, and any interest in the land, and any lien or incumbrance thereon, and to make all orders, judgments and decrees as may be necessary to determine, establish and declare the title or interest, legal or equitable, as against all persons known or unknown, and all liens and incumbrances existing thereon, whether by law, contract, judgment, mortgage, trust deed or otherwise, and to
declare the order, priority and preference as between the same, and to remove all clouds from the title, and for that purpose the said court shall always be open, and such orders, judgments and decrees may be made and entered as well in vacation as in term time.

(a) The party at whose instance the application or cross application for registration is made shall give bond for the successful prosecution of his application, and for the payment of all costs and damages which may be awarded against him, or take the pauper's oath when he could take such oath in other proceedings in the chancery courts of the State; and any person required by law to give security for costs may, at any stage of the cause, be ruled to give such security, if it has not previously been done, or to justify or give new security on sufficient cause shown, as in other cases in the chancery court.

Sec. 9. Registers of deeds in the several counties aforesaid in this State shall be registrars of titles in their respective counties. Their deputies shall be deputy registrars. All laws relative to registers and their deputies, including their compensation, clerks' hire and expenses, shall extend to registrars and their deputies, as far as the same may be applicable. All acts performed by registrars and deputy registrars under this law shall be performed under rules and instructions established and given by the chancery court having jurisdiction of the county in which they act.

Sec. 10. Every register or ex officio register of deeds shall, before entering upon his duties as registrar of titles, give a bond, with sufficient sureties, to be approved by the chancellor holding the chancery court for the county in which he acts, payable to the State of Tennessee, in such sum as shall be fixed by said chancellor, conditioned for the faithful discharge of his duties, and to deliver up all papers, books, records and other property belonging to the county or appertaining to his office as registrar of titles, whole, safe and undefaced, when lawfully required so to do. Said bond shall be filed in the office of the Secretary of State, and a copy thereof shall be filed and entered upon the records of the chancery court in the county wherein the register of deeds shall hold office.

Sec. 11. Deputy registrars shall perform any and all duties of the registrars in the name of the registrar, and the acts of such deputies shall be held to be the acts of the registrar, and in case of the death of the registrar or his removal from office, the chief deputy shall thereupon become the acting registrar until such vacancy shall be filled according to law, and he shall file a like bond and be vested with the same powers and subject to the same responsibilities and entitled to the same compensation as in the case of the registrar.

Sec. 12. No registrar or deputy registrar shall practice as attorney or counsellor at law, nor prepare any papers in any proceeding herein provided for, nor while in office be in partnership with any attorney or counsellor at law so practicing. The registrar shall be liable for any neglect or omission of the duties of his office when occasioned by a deputy registrar in the same manner as for his own personal neglect or omission.
Sec. 13. The chancellor of the chancery court in and for the chancery division for which he was elected or appointed shall appoint one or more competent attorneys in each county within his division, when this act is or may become operative, to be examiner of titles and legal adviser of the registrar. Such examiners of titles shall hold office subject to the will and discretion of the chancellor of the division in which they are so appointed. The examiners of titles in each county shall be paid in each case by the applicant such compensation as the chancellor shall determine. Every examiner of titles shall, before entering upon the duties of his office, take and subscribe the oath of office prescribed by the Constitution, and to faithfully and impartially perform the duties of his office, and shall also give a bond in such amount and with such sureties as shall be approved by said chancellor, payable in like manner and with like conditions as required of the registrar. A copy of the bond shall be entered upon the records of said court and the original shall be filed with the registrar. It shall be the duty of said examiners of title to search the records and investigate all facts stated in the petition or otherwise brought to their notice in any case referred to them. Each shall have the powers of a commissioner in chancery, and may hear the parties and their evidence, either orally or in writing, and shall make report thereof to the court in the form required by it, with a certificate of his examination of the title and opinion thereon.

Sec. 14. If the applicant is not a resident of the State of Tennessee, he shall record in the office of the county register of the county in which the land is situated a paper, duly acknowledged, appointing an agent residing in the State, giving his name in full and postoffice address, and shall therein agree that the service of any legal process in proceedings under or growing out of the application shall be of the same legal effect when made on said agent as if made on the applicant within the State. If the agent so appointed dies or removes from the State the applicant shall at once make another appointment in like manner, and if he fails so to do the court may dismiss the application. In subsequent applications made by the same applicant he may refer to said written authority, so recorded, provided the agreement or authority is sufficiently general to cover the case or cause in which any application is filed.

Sec. 15. The application shall be filed in the office of the clerk and master of the court to which the application is made, and the clerk and master shall docket the case in a book to be kept for that purpose, which shall be known as the "Land Registration Docket." The record entry of the application shall be entitled (name of applicant), applicant, against (here insert the names of all persons named in the application as being in possession of the premises, or as having any lien, incumbrance, right, title or interest in the land, and the names of all persons who shall be found by the report of the examiner hereinafter provided for to be in possession of or to have any lien, incumbrance, right, title or interest in the land), also all other persons or parties unknown claiming any right, title, estate, lien, or interest in the real estate described in the application
herein, defendants. All other persons shall be made and deemed to be defendants by the name or designation "of all whom it may concern."

Sec. 16. All applications for initial registration of title shall be docketed in such book and numbered consecutively, beginning with number one. All orders, judgments and decrees of the court in the case shall be entered in the minutes of the court, and shall be numbered to correspond with the number of said application. All orders or decrees shall be also appropriately noted on said docket under the number so given them, with proper reference to the book and page of the minute book where such order or decree is entered.

Sec. 17. The applicant shall also file with the said clerk and master, at the time the application is filed, an abstract of title such as is now commonly used, satisfactory to the examiner who is to examine the title, and if upon examination of said abstract after the matter of the title has been referred to him said examiner shall be of opinion that said abstract is incomplete and imperfect, on report of this fact to the court by said examiner, the applicant shall be required to remedy the defect or imperfection by amending or supplementing said abstract to the satisfaction of said examiner, or by furnishing a wholly new abstract satisfactory to said examiner if necessary, and on failure to comply with the order of the court requiring him so to do the application shall be dismissed at his cost, but without prejudice, in the discretion of the court. On request of the examiner, the abstract shall be brought down to a date subsequent to the filing of the copy of the application in the office of the register of deeds.

(a) The applicant shall file with the application a plan of the land and all original muniments of title within his control which are mentioned in the schedule of documents. Such muniments as affect land not included in the application may be withdrawn upon filing certified copies thereof. If, an application is dismissed or discontinued the applicant may, with the consent of the court, withdraw such original muniments of title.

Sec. 18. At the time of the filing of the application in the office of the clerk and master of the court, a copy thereof, certified by the clerk and master, shall be filed in the office of the register of deeds, which copy shall be recorded and indexed by the register of deeds, with the records of deeds, and shall have the force and effect of a lis pendens of a suit.

Sec. 19. Immediately after the filing of the abstract of title the court shall enter an order referring the application to an examiner of titles, who shall proceed to examine into the truth of the matter set forth in the application, and particularly whether the land is occupied, the nature of the occupation if occupied, and by what right, and also as to all judgments against the applicant or those through whom he claims title which may be a lien upon the lands described in the application; he shall search the records and investigate the facts brought to his notice, and file in the case a report thereon, including a certificate of his opinion upon the title. He shall have power to administer oaths and examine witnesses and the parties to the application, and may at any time apply to the court for direc-
tions in any matter concerning his investigation. He shall not be required to report the evidence submitted to him, except upon the request of some party to the proceedings or by direction of the court. No report shall be made upon such application until after the expiration of the time specified in the notice hereinafter provided for the appearance of the defendants, and in case of such appearance, until opportunity is given to such defendant to contest the rights of the applicant in such manner as may be allowed by the court. The clerk and master of the court shall give notice to the applicant of the filing of such report. The examiner of titles may also in his report, or in a supplemental report, recommend that other persons not named in the petition be made parties by subpoena or publication, or both, as the exigencies of the case may require, and on such recommendation such persons shall be made parties in the proper manner, by amendment or otherwise, before the case shall be further proceeded with, unless the court shall on application to it order to the contrary.

Sec. 20. The clerk and master shall also immediately on the filing of such petition issue subpoena against all persons mentioned in the petition as defendants, except such as are stated to be non-residents of the State, and on request of the applicant subpoena shall issue against any of said non-residents. The subpoena shall state the date of the filing of the application, and shall be returnable at such time as shall be directed therein, not less than ten days after the filing of such petition, and may be returned to any day in vacation or in term time. Said subpoena shall run in the name of the State of Tennessee, and shall be tested and endorsed and served as in other cases in chancery. Provided, That if any named defendant assents in writing to the registration as prayed for, which assent shall be endorsed upon the application or filed therewith, and be duly witnessed and acknowledged before an officer authorized to take acknowledgments to deeds, in the way such deeds are acknowledged, that in all cases no service of summons upon said assenting defendant need be made.

(a) Whenever, in the opinion of the examiner, the State of Tennessee has any interest in or claim upon the land, he shall state the nature and character thereof in his report, and in all cases when the examiner reports that the State has, or may have, some interest in or claim upon the land, it shall be joined as a party in said proceedings and named in the summons as a party thereto, in order that its interests or claim may be defended, protected and preserved. The summons shall be served upon the State by delivering a copy thereof to the attorney-general, who shall appear in the proceedings and represent the State therein. The judgment and decree rendered in said proceedings shall adjudicate and determine the interest of the State in said land and its claim upon or against the same.

Sec. 21. The clerk and master shall also immediately upon the filing of such application cause notice of the filing thereof to be published once in each week for four consecutive weeks in some newspaper published in the county, or if there is no newspaper published in the county, then in a newspaper published in one of the counties nearest thereto. Said notice
shall contain the names of the parties, the style of the court in which the proceedings are held, and the name of the place where the court is held, and if the application is filed against any unknown defendants the notice shall describe such unknown parties, as near as may be by the character in which they are sued and by reference to their title or interest in the land described in the application. The notice may be substantially as follows:

Registration of Land Title.

In the matter of the application of ______________ to register the title (here insert description of the land as contained in the application, and in case any person is named as defendant, the name of such persons defendant, and in case said defendants are unknown, then the description of such parties as above required). To all whom it may concern: TAKE NOTICE, That on the _____ day of ______, A. D. _____, an application was filed by said ______ in the ______ county, for initial registration of the title to the land above described. Now, unless you appear on or before the _____ day of ______, A. D. _____ (the time should not be less than thirty days after the filing of such application) and show cause why such application shall not be granted, the same will be taken as confessed, and a decree will be entered according to the prayer of the application, and you will be forever barred from disputing the same.

Sec. 22. The clerk and master shall also, within ten days after the first publication, send a copy thereof by mail addressed to such defendants whose places of residence are stated in the application and whose appearance is not entered and who are not served with process. The certificate of the clerk that he has sent such notice in pursuance of this section shall be conclusive evidence thereof. Other and further notice of such application may be given in such manner and to such persons as may be directed by the court or any judge thereof.

Sec. 23. The court shall appoint a disinterested solicitor to act as guardian ad litem for minors and other persons under disability, and for all other persons not in being who may appear to have an interest in the land. The compensation of said guardian shall be determined by the court, and paid as a part of the expense of the proceeding.

Sec. 24. Any person interested, whether named as defendant or not, may, upon entering his appearance and answering the application within the time allowed by this act, or such further time as shall be allowed by the court, oppose any such application or file a cross-application in like form, as in case of an original application, to have the title registered in his behalf. In either case he shall state particularly what his interest is and full answer make to each and every of the material allegations of the application, admitting, avoiding or traversing the same, or showing some cause in law why the same need not be admitted, avoided or traversed. Said answer shall be subject to exception by the applicant as
in the case of sworn answer in chancery. Such answer shall be verified, by the affidavit of the respondent or his agent having knowledge of the facts, but shall have no weight as evidence, but serve only to make an issue; unless a discovery is especially asked of respondent, either generally or as to some particular matter, when said discovery, as asked, may be admitted in evidence and given the same weight and effect as a discovery in chancery.

Ssc. 25. If any person shall fail to appear within the time required of him by subpoena duly served upon him or within the time required by any notice given in pursuance of this Act, or appearing shall fail to answer the application as herein provided, his default may be entered and the application taken as confessed, and upon satisfactory proof of the applicant's right thereto, and upon report of the examiner showing that the facts stated in the application are true and the applicant is the owner of the land or interest therein, as set forth in the application, the court may grant an order or decree in accordance with the prayer of the application.

Ssc. 26. The court shall in no case be bound by the report of an examiner of title, but may require other or further proof.

Ssc. 27. The court may order such other or further hearing of the cause before the court or before the examiner of titles after the filing of the report of the examiner, referred to in the last preceding section, and shall require such other or further proof by either of the parties to the cause as to the court shall seem just and proper.

Ssc. 28. If in any case, after hearing, the court finds that the applicant has not title proper for registration, a decree shall be entered dismissing the application, and such decree may be ordered to be without prejudice. The applicant may dismiss his application at any time before the final decree, upon such terms as shall be fixed by the court, upon motion duly made to the court.

Ssc. 29. While the cause is pending before the examiner of titles, or at any time before final decree, the court may require the land to be surveyed by the surveyor of the county or corporation in which it lies, or other competent surveyor; may order durable bounds to be set and a plat thereof to be filed among the papers of the suit, and may enter all necessary decrees for the establishment, declaration, and protection of the right, title or interest of all persons appearing to have any interest in or claim against the land.

(a) Either party to the application to register the title to any land as provided in this act is entitled, upon proper application, to a jury to try and determine any material question of fact in dispute, and all the issues of fact in any case shall be submitted to one jury. The demand for a jury shall be made in the same manner, and the cause shall be for trial upon issues of fact made up by the parties under direction of the court, setting forth briefly and clearly the true questions of fact to be tried; and the jury shall be chosen and the trial conducted as in other cases in chancery. The finding of the jury shall have the same force and
effect and the court have the same power and control over the finding
as in other jury trials in the chancery court.

Sec. 30. If the court, after hearing, finds that the applicant has title,
whether as stated in his application or otherwise, proper for registration,
a decree of confirmation of title and registration shall be entered. The
court may, in any proceeding under this act, find and decree in whom
the title to or any interest in the land is vested, whether in the applicant
or in any other person, and remove any cloud upon the title, and also
whether the same is subject to any lien or incumbrance, estate, trust or
interest, and declare the same, and may order the registrar of titles to
register such title or interest, and in case the same is subject to any lien,
incumbrance, estate, trust or interest, give directions as to the manner
and order in which the same shall appear upon the certificate of title to
be issued by the registrar, and generally may make any and all such orders
and decrees as shall be according to equity in the premises and as shall
be in conformity to the principles of this act.

Sec. 31. The decree of registration so made and entered shall, except
as herein otherwise provided, be forever binding and conclusive upon all
persons, whether mentioned by name in the application or included in
"All whom it may concern." Such decree shall not be opened by reason
of the absence, infancy, or other disability of any person affected thereby,
nor by any proceeding at law or in equity for reversing judgments or
decrees, except as herein especially provided. An appeal from said
decree of registration may be taken to the supreme court within the
same time, upon like terms and conditions as are now provided for taking
appeals in the chancery court to the supreme court.

Sec. 32. Any person having an interest in or lien upon the land who
has not been actually served with process or notified of the filing of such
application or the pendency thereof, may, at any time within two years
after the entry of such order or decree, and not afterwards, appear and
file his sworn answer to such application in like manner as hereinbefore
prescribed for making answers; provided, however, that such person had
no notice or information of the filing of such application or the pendency
of the proceeding during the pendency thereof or within three months
of the time of the filing of such answer, which facts shall be made to
appear before answering by the affidavit of the person answering or the
affidavit of some one in his behalf having knowledge of the facts; and,
provided, also, that no innocent purchaser for value has acquired an
interest. If there is any such purchaser the decree of registration shall
not be opened, but shall remain in full force and effect forever, subject
only to the right of appeal hereinbefore provided; but any person ag-
grieved by such decree in any case may pursue his remedy by action of
tort against the applicant or any other person for fraud in procuring the
decree. Upon the filing of such answer, and not less than ten days' notice
having been given to the applicant, and to such other interested
parties as the court may order in such manner as shall be directed by
the court, the court shall proceed to review the case, and if the court is satisfied that the order or decree ought to be opened an order shall be entered to that effect, and the court shall proceed to review the proceedings, and make such order in the case as shall be according to equity in the premises. An appeal may be allowed in this case, as well as from all other decrees affecting any registered title within a like time and in a like manner as in the case of an original decree under this act, and not otherwise.

Sec. 33. No person shall commence any proceeding in law or equity for the recovery of such lands or any interest, right, lien or demand upon the same adverse to the title or interest as found, ordered or decreed in the decree of registration, or make entry thereon adversely to the title or interest as found, ordered or decreed by the court, unless within two years after the entry of the order or decree. This section shall be construed as giving such right of action to such persons only as shall not, because of some irregularity, insufficiency, or for some other cause, be bound and concluded by such order or decree.

Sec. 34. Any person having any interest, right, title, lien or demand, whether vested, contingent or inchoate, in, to or upon registered land, which existed at the time the land was first registered, and upon or for which no cause of action shall have accrued at the date of the registration of the land, and who has not become bound or concluded by such order or decree, may, prior to the expiration of said two years after such registration, file in the registrar's office a notice, under oath, setting forth his interest, right, title, lien or demand, and how and under whom derived, and the character and nature thereof, and if such counter-claim is so filed, an action may be brought to assert or recover or enforce the same any time within one year after the right of action shall have accrued thereon, and not afterwards. It shall be the duty of a life tenant or trustee to file such counter-claim on behalf of any remainderman or reversioner, whether the remainder or reversion be at the time vested or contingent, and of a guardian to file such counter-claim on behalf of his ward.

Sec. 35. Every decree of registration shall bear the date of the year, day, hour and minute of its entry, and shall be signed by the chancellor. It shall state whether the owner is married or unmarried, and, if married, the name of the husband or wife; if the owner is under disability it shall state the nature of the disability, and, if a minor, shall state his age. It shall contain a description of the land as finally determined by the court, and shall set forth the estate of the owner, and also in such manner as to show their relative priority, all particular estates, mortgages, easements, liens, attachments, homestead and other incumbrances, including rights of husband and wife, if any, to which the land or the owner’s estate is subject, and shall contain any other matter or information properly to be determined by the court in pursuance of this act. The decree shall be stated in a convenient form for transcription upon the certificate of title, to be made as hereinafter provided by the registrar of titles.
Immediately upon the filing of the decree of registration, the clerk shall file a certified copy thereof in the office of the registrar of titles of the county where any of the land is situated.

Sec. 36. Any person who shall take by conveyance, attachment, judgment, lien or otherwise any right, title or interest in the land, subsequent to the filing of a copy of the application for registration in the office of the clerk and master, shall at once appear and answer as a party defendant in the proceeding for registration, and the right, title or interest of such person shall be subject to the order or decree of the court.

Sec. 37. The obtaining of a decree of registration and receiving of a certificate of title shall be deemed an agreement running with the land and binding upon the applicant and the successors in title, that the land shall be and forever remain registered land, and subject to the provisions of this act and of all acts amendatory thereof. All dealings with the land or any estate or interest therein after the same has been brought under this act, and all liens, incumbrances and charges upon the same shall be made only subject to the terms of this act.

Sec. 38. Immediately upon the filing of the decree of registration in the office of the registrar of titles, the registrar shall proceed to register the title or interest pursuant to the terms of the decree in the manner hereinafter provided. The registrar shall keep a book known as the "Register of Titles," wherein he shall enter all first and subsequent original certificates of title, by binding or recording them therein in the order of their numbers, consecutively, beginning with number one, with appropriate blanks for entry of memorials and notations allowed by this act. Each certificate, with such blanks, shall constitute a separate page of each book. All memorials and notations that may be entered upon the register shall be entered upon the page whereon the last certificate of title of the land to which they relate is entered. The term certificate of title used in this act shall be deemed to include all memorials and notations thereon.

Sec. 39. Every certificate shall bear date of the day and year of its issue, and be under the hand and official seal of the registrar, and be numbered in the order of its issue. It shall contain the name of the owner, a description of the land and of the estate of the owner, and shall by memorial or notation contain a description of all incumbrances, liens and interests to which the estate of the owner is subject; it shall state the residence of the owner and, if a minor, give his age; if under disability, it shall state the nature of the disability; it shall state whether married or not; and, if married, the name of the husband or wife; in case of a trust, condition or limitation, it shall state the trust, condition or limitation, as the case may be; and shall contain and conform in respect to all statements to the certified copy of the decree of registration, filed with the registrar of titles as hereinbefore provided, and shall be in form substantially as follows:
First Certificate of Title.

Pursuant to the order of the Chancery Court, sitting at ————,
————— County, Tennessee:

STATE OF TENNESSEE,  
COUNTY OF ————.  
   55.

This is to certify that A——— B———, of ———— County,
State of ————, is now the owner of an estate (describe the estate)
of, and in a certain tract or parcel of land situated in ————, County
of ————, Tennessee, described as follows: (here describe the land),
subject to the incumbrances, liens and interests noted by memorial
underwritten or endorsed hereon, subject to the exceptions and qualifi-
cations mentioned in the 47th section of "An Act to provide for the
settlement, registration, transfer and assurance of titles to land (through-
out the State of Tennessee) lying within counties of this State, having a
population by the last Federal census, or any subsequent Federal census,
of not less than ———— thousand nor more than ———— thousand;
and to provide penalties for the violation of this Act," same being Chap-
ter —— of the Acts of Tennessee for the year 19——. (Here note all
statements provided herein to appear upon the certificate.)

In witness whereof, I have hereunto set my hand and affixed the
official seal of my office, this ———— day of ————, A. D. 19——.

(Seal.)

Registrar of Titles.

Sec. 40. The words "heirs and assigns," or either of them, shall not
in any case be necessary to create a fee simple estate of inheritance.

Sec. 41. The registrar shall at the time he enters his original certifi-
cate of title make an exact duplicate thereof, but putting on it the words,
"Owner's Duplicate Certificate of Ownership," and deliver the same to
the owner or to his attorney duly authorized. For the purpose of pre-
serving evidence of the signature and handwriting of the owner in his
office, it shall be the duty of the registrar to take from the owner, in
every case where it is practicable so to do, his receipt for the certificate
of title, which shall be signed by the owner in person. Such receipt shall
be witnessed by the registrar or deputy registrar. If such receipt is
signed elsewhere, it shall be witnessed and acknowledged in the same
manner as is now provided for witnessing and acknowledgment of deeds.
When so signed, such receipt shall be prima facie evidence of the genuinen-
ess of such signature.

Sec. 42. Where two or more persons are registered owners, as tenants
in common or otherwise, one owner's duplicate certificate can be issued
for the entirety, or a separate duplicate owner's certificate may be issued
to each owner for his undivided share.

Sec. 43. All certificates subsequent to the first shall be in like form,
except that they shall be entitled "Transfer from No. ———" (the number
of the next previous certificate relating to the same land), and shall also
contend the words, "Originally registered -----------------" (date, book and page of registry).

Sec. 44. In every case of initial registration the certificate of title shall relate back to and take affect as of the date of the order or decree directing the registration, and all dealings with the land, and all statutory or other liens upon the same subsequent to the filing of the application shall be subject to such order or decree of court.

Sec. 45. A registered owner holding one duplicate for several distinct parcels of land may surrender it and take out several certificates for portions thereof. A registered owner holding several duplicate certificates for several distinct parcels of land may surrender them and take out a single duplicate certificate for all said parcels, or several certificates for different portions thereof. Such exchange of certificates, however, shall only be made by the order of the court upon petition therefor duly made by the owner. An owner of registered land who shall subdivide such land into lots shall file with the registrar of titles a plat of said land so subdivided, in the same manner and subject to the same rules of law and restrictions as are provided for platting land that is not registered.

Sec. 46. The original certificate in the registration book, any copy thereof duly certified under the signature of the registrar of titles or his deputy, and authenticated by his seal, and also the owner's duplicate certificate, shall be received as evidence in all the courts of this State, and shall be conclusive as to all matters contained therein, except so far as is otherwise provided in this act. In case of a variance between the owner's duplicate certificate and the original certificate, the original shall prevail.

Sec. 47. The registered owner of any estate or interest in land brought under this act shall, except in cases of fraud to which he is a party, or of the person through whom he claims without valuable consideration paid in good faith, hold the same subject only to such estates, mortgages, liens, charges and interests as may be noted in the last certificate of title in the register's office and free from all others, except:

1. Liens, claims or rights arising or existing under the Constitution or laws or treaties of the United States, and which the statutes of this State cannot require to appear of record in the registrar's office.

2. Any tax or special assessment for which a sale of the land has not been had at the date of the certificate of title.

3. Any lease for a period not exceeding three years, where there is actual occupation of the premises under the lease.

4. All public highways embraced in the description of the lands included in the certificates shall be deemed to be excluded from the certificates.

5. Any subsisting right of way or other easement, however created, upon, over or in respect of the land.

6. Such right of appeal, writ of error, right to appear and contest the application, and of such action or to make counterclaim as is allowed by this act.
Sec. 48. After land has been registered no title thereto adverse or in derogation to the title of the registered owner shall be acquired by any length of possession.

Sec. 49. Except in case of fraud, and except as herein otherwise provided, no person taking a transfer of registered land, or any interest or estate therein, or of any charge upon the same, from the registered owner shall be held to inquire into the circumstances under which or the consideration for which such owner or any previous registered owner was registered, or be affected with notice, actual or constructive, of any unregistered trust, lien, claim, demand or interest; and the knowledge that any unregistered trust, lien, claim, demand or interest is in existence shall not of itself be imputed as fraud.

Sec. 50. In any suit for specific performance brought by a registered owner of any land under the provisions of this act against a person who may have contracted to purchase such land, not having notice of any fraud or other circumstances which, according to the provisions of this act, would affect the right of the vendor, the certificate of title of such registered owner shall be held in every court to be conclusive evidence that such registered owner has a good and valid title to the land and for the estate or interest therein mentioned or described.

Sec. 51. In any action or proceeding brought for ejectment, partition or possession of land the certificate of title of a registered owner shall, except as to any person not bound by the order or decree of the court, or by some limitation herein or in some other statute contained, be held to be conclusive evidence that such registered owner has a good and valid title to the land and for the estate or interest therein mentioned or described, subject only to such estates, mortgages, liens, charges and interests as may be noted thereunder, and unless it shall otherwise appear by such notations that said registered owner is entitled to the possession of said land.

Sec. 52. Whenever a memorial or notation has been entered as permitted by this act, the registrar shall carry the same forward upon all certificates of title until the same is cancelled in some manner authorized by this act.

Sec. 53. The registrar of titles, under the direction of the court, shall make and keep indexes of all applications and of all certified copies and decrees of registration and certificates of titles, and shall also index and file in classified order all papers and instruments filed in his office relating to applications and to registered titles. The registrar shall also, under the direction of the court, prepare and keep forms and indexes and registration and entry books.

The court shall prepare and adopt convenient forms of certificates of titles and also general forms of memorials or notations to be used by the registrars of titles in registering the common forms of conveyances and other instruments to express briefly their effect.
SEC. 54. The registrar shall also keep alphabetical indexes, in which shall be entered in alphabetical order the names of all registered owners and all other persons interested in or holding charges upon the registered land, with a reference to the volume and page of the register of titles in which the land is registered.

SEC. 55. The owner of registered land may convey, mortgage, lease, charge or otherwise deal with the same as fully as if it had not been registered. He may use forms of deeds, mortgages and leases or voluntary instruments like those now in use and sufficient in law for the purpose intended. But no voluntary instrument of conveyance, except a will and a lease for a term not exceeding three years, purporting to convey or affect registered land, shall take effect as a conveyance or bind the land, but shall operate only as a contract between the parties and as evidence of the authority to the registrar of titles to make registration. The act of registration shall be the operative act to convey or affect the land.

SEC. 56. Every conveyance, lien, attachment, order, decree, judgment of the court of record, or instrument or entry which would under existing laws, if recorded, filed or entered in the office of the register of deeds, in which the real estate is situate, affect the said real estate to which it relates, if the title thereto were not registered, shall, if recorded, filed or entered in the office of the registrar of titles in the county where the real estate to which such instrument relates, affect in like manner the title thereto if registered, and shall be notice to all persons from the time of such recording, filing or entering.

SEC. 57. The registrar of titles shall number and note, in proper book to be kept for that purpose, and also on each instrument received, the year, month, day, hour and minute of the reception, and number of all conveyances, orders or decrees, writs or other process, judgments, liens, and all other instruments or papers or orders affecting the title of land the title to which is registered. Every instrument so filed shall be retained in the office of the registrar of titles and shall be regarded as registered from the time so noted, and the memorial of each instrument when made on the certificate of title to which it refers shall bear the same date. Every instrument so filed, whether voluntary or involuntary, shall be numbered and indexed and indorsed with a reference to the proper certificate of title. All records and papers relating to registered land in the office of the registrar of titles shall be open to the public inspection in the same manner as now are the papers and records in the office of the registrar of deeds.

SEC. 58. Duplicates, triplicates or more parts of all instruments filed and registered in the office of the registrar of titles may be presented with the originals, and shall be attested and sealed by the registrar of titles and indorsed with the file number and other memoranda of the originals, and may be taken by the person presenting the same. Certified copies of all instruments filed and registered may be obtained from the register of titles on the payment of a fee of the same amount that the register of deeds is now entitled for a like certified copy.
Sec. 59. No new certificate shall be entered or issued upon any transfer of registered land which does not divest the title in fee simple to said land or some part thereof from the owner or some one of the registered owners. All interests in the registered land less than an estate in fee simple shall be registered by filing with the register of titles the instrument creating or transferring or claiming such interest, and by a brief memorandum or memorial thereof made by a registrar of titles upon the certificate of title and signed by him. A similar memorandum or memorial shall also be made on the owner's duplicate. The cancellation or extinguishment of such interest shall be registered in the same manner. When any party in interest does not agree as to the proper memorial to be made upon the filing of any instrument (voluntary or involuntary) presented for registration, or when the registrar of titles is in doubt as to the form of such memorial, the question shall be referred to the court for decision, either on the certificate of the registrar of titles or upon the demand in writing of any party in interest. The registrar of titles shall bring before the court all the papers and evidence as shall be necessary for the determination of the question by the court. The court, after notice to all parties in interest and a hearing, shall enter an order prescribing the form of the memorial, and the registrar of titles shall make registration in accordance therewith.

Sec. 60. No new certificate of titles shall be entered and no memorial shall be made upon any certificate of title in pursuance of any deed or other voluntary instrument unless the owner's duplicate certificate is presented with such instrument, except in cases provided for in this act, or upon the order of the chancery court for cause shown; and whenever such order is made a memorial shall be entered or a new certificate issue, as directed by said order. The production of the owner's duplicate certificate whenever any voluntary instrument is presented for registration shall be conclusive authority from the registered owner to the registrar of titles to enter a new certificate or to make a memorial of registration in accordance with such instrument, and a new certificate or memorial shall be binding upon the registered owner and upon all persons claiming under him in favor of every purchaser for value and in good faith.

Sec. 61. In the event that an owner's duplicate certificate of title shall be lost, mislaid or destroyed, the owner may make affidavit of the fact before any official authorized to administer oaths, stating, with particularity, the facts relating to the loss, mislaying or destruction, and shall file the same in the office of the register of titles. Any party in interest may thereupon apply to the chancery court, and the court shall, upon proofs of the facts set forth in the affidavit, enter an order directing the registrar of titles to make and issue a new owner's duplicate certificate. Such new owner's duplicate certificate shall be printed or marked "Certified copy of owner's duplicate certificate, issued in the place of lost certificate," and such certified copy shall stand in the place of and have like effect as the owner's duplicate certificate.
SRC. 62. An owner of registered land conveying the same, or any portion thereof, in fee, shall execute a deed of conveyance, which the grantor shall file with the registrar of titles in the county where the land lies. The owner's duplicate certificate shall be surrendered at the same time, and shall be by the registrar marked "Canceled." The original certificate of title shall also be marked "Canceled." The registrar of titles shall thereupon enter in the register of titles a new certificate of title to the grantor, and shall prepare and deliver to such grantee an owner's duplicate certificate. All incumbrances, claims or interests adverse to the title of the registered owner shall be stated upon the new certificate or certificates, except so far as they may be simultaneously released or discharged. When a deed in fee is for a part only of the land described in a certificate of title the registrar of titles shall enter a new certificate and issue an owner's duplicate certificate to the grantor for that part of the land conveyed in the deed. The registrar shall require an affidavit by the grantee or some one on his behalf, and said affidavit shall set forth the name, age, and residence of the grantee, whether the grantee (except in the case of a corporation) is married or not, and, if married, the name of the husband and wife.

SRC. 63. No transfer of title to the land, or any estate or interest thereon, or mortgage, shall be registered until it shall be made to appear to the registrar that the land has not been sold for any tax or assessment upon which a deed has been given and the title is outstanding, or upon which a deed may thereafter be given, and that the dower, right of dower, courtesy and estate of homestead, if any, have been released or extinguished, or that the transfer or mortgage is intended to be subject thereto, in which case it shall be so stated in the certificate of title.

SRC. 64. Every certificate of title to land shall state whether the transferee (except where the latter is a corporation) is married or not married, and, if married, the name of the husband or wife. The transferee shall furnish the registrar the necessary information before he shall be entitled to have the land transferred to him on the register.

SRC. 65. Registered land and ownership therein shall in all respects be subject to the same burdens and incidents which attach to unregistered land. Nothing contained in this act shall in any way be construed to relieve registered land or the owners thereof from any rights incident to the relation of husband and wife, or from liability to attachment or mesne process or levy on execution, or from liability to any lien of any description established by law on land and the buildings thereon, or the interest of the owner in such land or buildings, or to change the laws of descent or the rights of partition between co-tenants, or the rights to take the same by eminent domain, or to relieve such land from liability to be recovered under the provisions of law relating thereto, or to change or affect in any way any other rights or liabilities created by law and applicable to unregistered land, except as otherwise expressly provided in this act or any amendments hereof.
Sec. 66. Before any person can convey, charge or otherwise deal with any registered land or any part thereof, or any estate or interest therein, as attorney in fact for another, the deed or instrument empowering him so to act, shall be filed with the registrar, properly acknowledged, and a memorial thereof entered upon the register in like manner as in the case of a charge. Any instrument revoking such letters or power of attorney shall be acknowledged and registered in the same manner.

Sec. 67. The owner of registered land may mortgage the same by executing a deed or instrument sufficient in law for that purpose, and such deed or instrument may be assigned, extended, discharged, released in whole or in part, or otherwise dealt with by the mortgagee by any form of instrument sufficient in law for the purpose. But such deed or instrument, and all instruments assigning, extending, discharging, releasing or otherwise dealing with the mortgage, shall be registered, and shall take effect upon the title only from the time of registration.

Sec. 68. A deed of trust in the nature of a mortgage shall be deemed to be a mortgage, and be subject to the same rules as a mortgage, except as to the manner of the foreclosure thereof. The registration of a mortgage shall be made in the following manner, to wit: The owner's duplicate of title shall be presented to the registrar of titles with the mortgage deed or instrument to be registered, and the registrar shall enter upon the original certificate of title and also upon the owner's duplicate certificate a memorandum of the purport of the instrument registered, the time of filing and the file number of the registered instrument, which memorial shall be signed by the registrar. He shall also note upon the instrument registered the time of filing and a reference to the volume and page of the register of title wherein the same is registered. The registrar of titles shall also, at the request of the mortgagee, make out and deliver to him a duplicate certificate of title, like the owner's duplicate, except the words "Mortgagee's duplicate" shall be written or printed upon such certificate in large letters diagonally across the face. A memorandum of the issuance of the mortgagee's duplicate shall be made upon the certificate of title.

Sec. 69. Whenever a mortgage upon which a mortgagee's duplicate has been issued is assigned, extended or otherwise dealt with, the mortgagee's duplicate shall be presented with the instrument assigning, extending or otherwise dealing with the mortgage, and a memorial of the instrument shall be made upon the mortgagee's duplicate and upon the original certificate of title. When the mortgage is discharged or otherwise extinguished, the mortgagee's duplicate shall be surrendered and stamped "Canceled." In case only a part of the charge or of the land is intended to be released, discharged or surrendered, the entry shall be made by a memorial accordingly, in like manner as before provided for a release or discharge. The production of the mortgagee's duplicate certificate shall be conclusive authority to register the instrument there-
Sec. 70. All charges upon registered land, or any estate or interest in the same, and any right thereunder may be enforced as is now allowed by law, and all laws relating to the foreclosure of mortgages shall apply to mortgages upon registered land, or any estate or interest therein, except as herein otherwise provided, and except that a notice of the pendency of any suit or of any proceeding to enforce or foreclose the mortgage or any charge shall be filed in the office of the registrar of titles, and a memorial thereof entered on the register at the time of or prior to the commencement of such suit or the beginning of any such proceeding. A notice so filed and registered shall be notice to the registrar of titles and all persons dealing with the land or any part thereof. When a mortgagee's duplicate has been issued such duplicate shall, at the time of the registering of the notice be presented and a memorial of such notice shall be entered upon the mortgagee's duplicate.

Sec. 71. In any action affecting registered land a judgment or final decree shall be entitled to registration on the presentation of a certified copy of the entry thereof from the clerk of the court where the action is pending, to the registrar of titles. The registrar of titles shall enter a memorial thereof upon the certificates of title and upon the owner's duplicate, and also upon the mortgagee's duplicate, if any there be outstanding. When the registered owner of such land is by such judgment or decree divested of his estate in fee to the land or any part thereof, the plaintiff or defendant shall be entitled to a new certificate of title for the land or that part thereof designated in the judgment or decree, and the registrar of titles shall enter such new certificate of title and issue a new owner's duplicate in such manner as is provided in the case of voluntary conveyance; provided, however, no such new certificate shall be entered except upon the application to the court and upon filing in the office of the registrar of titles an order of the court directing the entering of such new certificate.

Sec. 72. Any person who has, by an action or proceeding to enforce or foreclose any mortgage, lien or charge upon registered land, become the owner in fee of the land or any part thereof, shall be entitled to have his title registered, and the registrar of titles shall, upon application therefore, enter a new certificate of title for the land or that part thereof to which the applicant is the owner, and issue an owner's duplicate in such manner as in the case of a voluntary conveyance of registered land; provided, however, no such new certificate of title shall be entered, except after the time to redeem from such foreclosure has expired and upon the filing in the office of the registrar of titles an order of the court directing the entering of such new certificates.

Sec. 73. In all cases wherein by this action it is provided that a new certificate of title to register land shall be entered by order of the court a person applying for such new certificate shall apply to the court by petition, setting forth the facts, and the court shall, after notice to all parties in interest, as the court may direct, and upon hearing, make an
order or decree for the entry of a new certificate to such person as shall appear to be entitled thereto.

Sec. 74. Leases for registered land for a term of more than three years shall be registered in like manner as a mortgage, and the provisions herein relating to the registration of mortgages shall apply to the registration of leases. The registrar shall, at the request of the lessee, make out and deliver to him a duplicate of the certificate of title like the owner's duplicate, except the words "Lessees's duplicate" shall be written or printed upon it in large letters diagonally across its face.

Sec. 75. Whenever a deed or other instrument is filed in the office of the registrar of titles for the purpose of effecting a transfer of or charge upon the registered land or any estate or interest in the same, and it shall appear that the transfer or charge is to be in trust, or upon condition or limitation expressed in such deed or instrument, such deed or instrument shall be registered in the usual manner, except that the particulars of the trust, condition or limitation or other equitable interest shall not be entered on the certificate of title by memorial, but a memorandum or memorial shall be entered by the words "in trust," or "upon condition," or other apt words, and by reference by number to the instrument authorizing or creating the same. A similar memorial shall be made upon the owner's duplicate certificate. No transfer of or charge upon or dealing with the land, estate or interest shall thereafter be registered, except upon an order of the court first filed in the office of the registrar of titles directing such transfer, charge or dealing in accordance with the true intent and meaning of the trust, condition or limitation. Such registration shall be conclusive evidence in favor of the person taking such transfer, charge or right, and those claiming under him, in good faith and for a valuable consideration, that such transfer, charge or other dealing is in accordance with the true intent and meaning of the trust, condition or limitation.

Sec. 76. When the title to registered land passes from a trustee to a new trustee a new certificate shall be entered to him and shall be registered in like manner as upon an original conveyance in trust.

Sec. 77. Any trustee shall have authority to file an application for the registration of any land held in trust by him, unless expressly prohibited by the instrument creating the trust.

Sec. 78. No suit, bill or proceeding at law or in equity for any purpose whatever affecting registered land or any estate or interest therein, or any charge upon the same, shall be deemed to be lis pendens or notice to any person dealing with the same, until a certificate of the pendency of such suit, bill or proceeding, under the hand and official seal of the clerk of the court in which it is pending, shall be filed with the registrar and a memorial thereof entered by him upon the register of the last certificate of the title to be affected. This action shall not apply to attachment proceedings when the officer making the levy shall file his certificate of levy as herein provided.
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Sec. 79. No judgment or decree or order of any court shall be a lien upon or affect registered land or any estate or interest therein, until a certificate, under the hand and official seal of the clerk of the court in which the same is of record, stating the date and purport of the judgment, decree or order, or a certified copy of such judgment, decree or order, is filed in the office of the registrar and a memorial of the same is entered upon the register of the last certificate of the title to be affected.

Sec. 80. Whenever registered land is levied upon by virtue of any writ of attachment, execution or other process, it shall be the duty of the officer making such levy to file with the registrar a certificate of the fact of such levy, a memorial of which shall be entered upon the register, and no lien shall arise by reason of such levy until the filing of such certificate and the entry in the register of such memorial, any notice thereof, actual or constructive, to the contrary notwithstanding.

Sec. 81. When any registered land is sold by virtue of any execution, judgment or decree, it shall be the duty of the sheriff, master in chancery, or other officer making such sale, to file a duplicate of his deed or certificate of sale with the registrar, and upon its being so filed the registrar shall enter a memorial thereof upon a register in the same manner as he is required to enter other memorials. Certificates of redemption shall be filed and noted upon the register in like manner.

Sec. 82. In case of sale of registered land by a sheriff, master in chancery, receiver, special commissioner or other officer or person pursuant to a judgment, decree, or order of court, no transfer of title shall be made by the registrar, except upon the surrender and cancellation of the outstanding certificate of title, or upon an order of the court filed with the registrar directing such transfer, and in case of the transfer of the fee, directing the cancellation of the outstanding certificate, and granting to the transferee a writ of assistance or possession to put him in possession of the premises.

Sec. 83. In all cases where, by any law in relation to the liens of mechanics or others, any claim or notice is authorized to be filed in any court or office, the same, when it relates to registered land or any interest therein, may be filed in the registrar’s office, and being so filed, a memorial thereof shall be entered by the registrar, as in the case of other charges, and proceedings to enforce the lien may be had, as provided in this act, creating the same. Until it is so filed and registered no such lien shall be deemed to have been created.

Sec. 84. No statutory or other lien shall be deemed to affect the title to registered land until after a memorial thereof is entered upon the register, as herein provided.

Sec. 85. The certificate of the clerk of the court in which any suit, bill or proceeding shall have been pending, or any judgment or decree is of record, that such suit, bill or proceeding has been dismissed or otherwise disposed of, or the judgment, decree or order has been satisfied, released, reversed or overruled, or of any sheriff or other officer that the
levy of an execution, attachment or other process certified by him, has been released, discharged or otherwise disposed of, being filed in the registrar's office and noted upon the register, shall be sufficient to authorize the registrar to cancel or otherwise treat the memorial of such suit, bill, proceeding, judgment, decree or levy, according to the purport of such certificate.

Sec. 86. Whenever registered land is sold and the same is by law subject to redemption by the owner or any other person, the purchaser shall not be entitled to have a new certificate of title entered until the time within which the land may be redeemed shall have expired. At any time after the time to redeem shall have expired the purchaser may petition the chancery court for an order directing the entering of a new certificate of title to him, and the chancery court shall, after such notice as it may order and hearing, grant and make an order directing the entry of such new certificate of title.

Sec. 87. The name and address of the attorney for the plaintiff in any action affecting the title to registered land shall in all cases be endorsed upon the writ or other writing filed in the office of the registrar of titles, and he shall be deemed the attorney of the plaintiff until written notice that he has ceased to be such plaintiff's attorney shall be filed for registration by the plaintiff.

Sec. 88. The holder of any certificate of sale of registered land or any estate or interest therein for any tax, assessment or imposition shall, within three months of the date of sale, present the same or a sworn copy thereof to the registrar, who shall thereupon enter on the register of the land a memorial thereof, stating the day of the sale and the date of presentation, and shall also note upon the certificate of sale the date of presentation and the book and page of the register where the memorial is entered. The holder of such certificate shall also within the same time mail to each of the persons who appear by the register to have any interest in the land a notice of the registration of such certificate. Unless such certificate is presented and registered, and notice given as herein provided within the time above mentioned, the land shall be forever released from the effect of such sale, and no deed shall be issued in pursuance of such certificate. When it shall appear by the affidavit of the holder of the certificate filed with the registrar that the place of residence of any person interested in the land cannot upon diligent inquiry be ascertained, the requirement of this section as to mailing notice shall not apply to such person. (Nor shall the requirement of this section apply to the State or county when it bids in land for payment of taxes, or the same is bid in for it by any duly authorized public officer.)

Sec. 89. A tax deed of registered land, or an estate or interest therein issued in pursuance of any sale for tax or assessment made after the taking effect of this act, shall have only the effect of an agreement for the transfer of the title upon the register, and may be filed in the registrar's office, and a transfer effected as in case of other deeds of convey-
ance. But no certificate of title shall be issued thereon, except upon the surrender and cancellation of the outstanding certificate of title, or upon the order of court as provided in section 82 of this act. No such order shall be granted except upon petition to the chancery court, or, if the sale is under order of court, to the court ordering such sale, and except after personal service of notice upon all persons in possession of the premises, and notice either by personal services or by publication, as provided in proceedings in chancery, to all persons appearing upon the register to have any interest in the premises. And in case any minor heir, idiot, or insane person is interested in the premises, no such order shall be granted until the expiration of the time to redeem the premises allowed by law to such minor heir, idiot or insane person shall have expired.

Sec. 90. Whenever any person interested in registered land or any estate or interest therein or charge upon the same, shall be entitled to have any certificate of title, memorial or other entry upon the registry cancellèd, removed or modified, and the registrar or person whose duty it shall be to cancel, remove or modify the same, or do any act towards the same, shall, upon request, fail or refuse so to do, or is absent from the country, or cannot be found, or for any reason such request cannot be made upon him, a court of chancery may, upon petition by the person interested, make such orders as may be according to equity in the premises, and upon a certified copy of such order being filed in the registrar's office the registrar shall make such cancelation, memorial or modification as shall be decreed in such order.

Sec. 91. Any person feeling himself aggrieved by the action of the registrar or by his refusal to act in any matter pertaining to the first registration of land or any estate or interest therein after the first registration, or any transfer of or charge upon the same, the filing or neglect or refusal to file any instrument, or to enter or cancel any memorial or notation, or to do any other thing required of him by this act, may file his bill or petition in equity in any chancery court of competent jurisdiction, making the registrar and other persons whose interest may be affected parties defendant, and the court may proceed therein as in other cases in equity and make such order or decree as shall be according to equity in the premises and purport of this act.

Sec. 92. Nothing contained in either of the two preceding sections shall be so construed as to remove the bar of any order or decree or extend the time of limitation hereinbefore provided, nor affect the right of any bona fide purchaser or incumbrancer, without notice filed with the registrar and noted as in the case of other memorials.

Sec. 93. The court may in any case contemplated in sections 90 and 91, in addition to the costs, award such damages, including reasonable attorney's fees, as it shall deem just in the premises.

Sec. 94. The heirs at law and devisees, upon the death of an owner of lands and any estate or interest therein, registered pursuant to this act,
on the expiration of thirty days after the entry of a decree of the county or probate court granting letters testamentary or of administration, or in case of an appeal from such decree, at any time after the entry of a final decree, may file a certified copy of the final decree of the county or probate court and of the will, if any, with the clerk and master of the chancery court in the county in which the land is, and make application to the court for an order for the entry of a new certificate of title. The court shall issue notice to the executor or administrator and all other persons in interest, and may also give notice by publication in such newspaper or newspapers as it may deem proper, to all whom it may concern, and after hearing may direct the entry of a new certificate or certificates to the person or persons as appear entitled thereto as heirs or devisees. Any new certificate so entered before the final settlement of the estate of the deceased owner in the county or probate court shall state expressly that it is entered by transfer from the last certificate by descent or devise, and that the estate is in process of settlement. After final settlement of the estate in the county or probate court, or after expiration of the time allowed by law for bringing an action against an executor or administrator by creditors of the deceased, the heirs at law or devisees may petition the court for an order to cancel the memorial upon their certificates, stating that the estate is in process of settlement, and the court, after such notice as it may order and hearing, may grant the petition; provided, however, that the liability of heirs, devisees of registered land, for claims against the estate of the deceased shall not in any way be diminished or changed.

Sec. 95. Nothing contained in this act shall include, affect or impair the jurisdiction of the county, probate or chancery court to decree or order a sale, mortgage or other dealing with registered land of a deceased person or of a person or persons under disability of infancy, coverture, insanity or other disability, for any purpose for which such order or decree may be granted in the case of unregistered land. The purchaser or mortgagee taking a deed or mortgage or other conveyance executed in pursuance of such order of such court shall be entitled to register his title and to the entry of a new certificate of title or memorial of registration upon application to the chancery court and upon filing in the office of the registrar of titles an order of said court directing the entry of such certificates.

Sec. 96. An assignee for the benefit of creditors, receiver, trustee in bankruptcy, master in chancery, special commissioner, or other person appointed by court, shall file in the office of the registrar of titles the instrument or instruments by which he is vested with the title, estate or interest in any registered land, or a certified copy of an order of the court showing that such assignee, receiver, trustee in bankruptcy, master in chancery, special commissioner or other person, is authorized to deal with such land, estate or interest, and if in the power of such person he shall at the same time present to the registrar of titles the owner's duplicate certificate of
title. Thereupon the registrar shall enter upon the register of titles and the duplicate certificate, if presented, a memorial thereof, with a reference to such order or deed by its file number. Such memorial having been entered, the assignee, receiver, trustee in bankruptcy, master in chancery, special commissioner, or other person, may, subject to the direction of the court, deal with or transfer such land as if he were the registered owner.

Sec. 97. Whenever registered land or any right or interest therein is taken by eminent domain, the State or body politic or corporate, or other authority exercising such right, shall pay, all fees on account of any memorial of registration or entry of new certificate or duplicate thereof and fees for the filing of instruments required by this act to be filed.

When for any reason by operation of law land which has been taken for public use reverts to the owner from whom it was taken, or his heirs or assignees, the chancery court, upon petition of the person entitled to the benefit of the reversion, after such notice as it may order and hearing, may order the entry of a new certificate of title to him.

Sec. 98. In every case where the registrar of titles enters a memorial of titles, or enters a new certificate of title in pursuance of any instrument executed by the registered owner, or by reason of any instrument or proceeding which affects or devises the title of the registered owner against his consent, if the outstanding owner's duplicate is not presented the registrar of titles shall not enter a new certificate or make a memorial, but the person claiming to be entitled thereto may apply by petition to the chancery court. The court may order the registered owner, or any person withholding the duplicate certificate to present or surrender the same, and direct the entry of a memorial or new certificate upon such presentation or surrender. If in any case the person withholding the duplicate certificate is not amenable to the process of the court or cannot be found, or if for any reason the outstanding owner's duplicate certificate cannot be presented or surrendered without delay, the chancery court may by decree annul the same and order a new certificate of title to be entered. Such new certificate and all duplicates thereof shall contain a memorial of the annulment of the outstanding duplicate.

If in any case an outstanding mortgagee's or lessee's duplicate certificate is not procured or surrendered when the mortgage or lease is discharged, assigned or otherwise dealt with, like proceedings may be had to obtain registration as in case of the owner's production of the owner's duplicate certificate.

Sec. 99. In all cases where, under the provisions of this act, application is made to the chancery court for an order or decree, the court may refer the matter to one of the examiners of title for hearing and report, in like manner as is herein provided for the reference of the application for registration.

Sec. 100. Examiners of titles shall, upon request of the registrar of titles, advise him upon any act or duty pertaining to the conduct of his
office, and shall, upon request, prepare the form of any memorial to be
made and entered by the registrar of titles. An examiner of titles shall
have full power to administer oaths and examine witnesses concerning
any matter involved in his investigation of titles.

Sec. 101. Every written instrument required or permitted by this act
to be filed for registration shall contain or have endorsed upon it the full
name, place of residence and postoffice address of the grantee or other
person acquiring or claiming any right, title or interest under such instru-
ment. Any change in residence or postoffice address of such person
shall be endorsed by the registrar of titles in the original instrument on
receiving a sworn statement of such change. All names and addresses
shall also be entered on all certificates.

All notices required by or given in pursuance of the provisions of this
act by the registrar of titles or by the court, after original registration,
shall be served upon the person to be notified, if a resident of the State of
Tennessee, as subpoenas in civil actions are served, and proof of such
service shall be made as on the return of a subpoena. All such notices
shall be sent by registered mail to the person to be notified, if not a resi-
dent of the State of Tennessee, at his residence and postoffice address as
stated in the certificate of title or in any registered instrument under
which he claims an interest. The certificate of the registrar of titles or
clerk and master of the chancery court that any notice has been served
by mailing the same as aforesaid shall be conclusive proof of such notice;
provided, however, that the court may in any case order different or
further service by publication or otherwise.

Sec. 102. Any person claiming any right or interest in registered land
adverse to the registered owner, arising subsequent to the date of the
original registration, may, if no other provision is made in this act for
registering same, make a statement in writing, setting forth fully his
alleged right or interest, and how or under whom acquired, and a reference
to the volume or page of the certificate of title of the registered owner,
and a description of the land to which the right or interest is claimed.
The statement shall be signed and sworn to, and shall state the adverse
claimant’s residence and designate a place at which all notices may be
served upon him. This statement shall be entitled to registration as an
adverse claim, and the court, upon the petition of any party in interest,
shall grant a speedy hearing upon the question of the validity of such
adverse claim, and shall enter such decree thereon as justice and equity
may require. If the claim is adjudged to be invalid the registration shall
be canceled. The court may, in any case, award such costs and dam-
ages, including reasonable attorney’s fees, as it may deem just in the
premises.

Sec. 103. Upon the original registration of land under this act, and
also upon the entry of a certificate showing title as registered owners in
heirs or devisees, there shall be paid to the registrar of titles one-tenth of
one per cent of the assessed value of the real estate on the basis of the last assessment for general taxation, as an assurance fund.

Sec. 104. All sums of money received by the registrar, as provided for in the last section, shall be paid by the registrar to the county trustee of the county in which the land lies, for the purpose of an assurance fund, under the terms of this act. It shall be the duty of the county trustee, whenever the amount on hand in said assurance fund is sufficient, to invest the same, principal and income, and report annually to the chancery court the condition and income thereof, and no investment of the fund or any part thereof shall be made without the approval of said court by order entered of record. The said fund shall be invested only in lands or securities of the United States, or of one of the States of the United States, or counties or other municipalities of any State.

Sec. 105. Any person sustaining loss or damage through any omission, mistake or misfeasance of the registrar of titles, or of any examiner of titles, or of any deputy, or by the mistake or misfeasance of the clerk and master of the chancery court or any deputy, in the performance of their respective duties under the provisions of this act, and any person wrongfully deprived of any land or any interest therein through the bringing of the same under the provisions of this act, or by the registration of any other person as the owner of such land, or by any mistake, omission or misdescription in any certificate or any entry or memorial in the registrar of titles, or by any cancelation, and who by the provisions of this act is barred or precluded from bringing an action for the recovery of such land or interest therein or claim upon the same, may bring an action against the trustee of the county in which such land is situated for the recovery of damages, to be paid out of the assurance fund.

Sec. 106. If such action be for recovery for loss or damage arising only from any omission, mistake or misfeasance of the registrar of titles or his deputies, or of any examiner of titles, or any clerk of court or his deputy, in the performance of their respective duties under the provisions of this act, then the county trustee shall be the sole defendant to such action, but if such action be brought for loss or damage arising only through the fraud or wrongful act of some person or persons other than the registrar, his deputies, the examiner of titles, the clerk and master of the chancery court or his deputies, or arising jointly through the fraud or wrongful act of such other person or persons, and the omissions, mistakes or misfeasance of the registrar of titles or his deputies, the examiners of titles, the clerk and master or his deputies, then such action shall be brought against both the county trustee and such person or persons aforesaid.

In all such actions where there are defendants other than the county trustee, and damages shall have been recovered, no final judgment shall be entered against the county trustee until execution against the other defendants shall be returned unsatisfied, in whole or in part, and the officer returning the execution shall certify that the amount still due upon
the execution cannot be collected except by application to the indemnity fund. Thereupon the court, being satisfied as to the truth of such return, shall order final judgment against the trustee for the amount of the execution and costs, or so much thereof as remains unpaid. The county trustee shall, upon such order of the court and final judgment pay the amount of such judgment out of the assurance fund. It shall be the duty of the county attorney, or if there be no county attorney then the attorney-general of the district in which said county is situated, to appear and defend such actions. If the funds in the assurance fund at any time are insufficient to pay any judgment in full, the balance shall draw interest at the legal rate of interest, and be paid with such interest out of the first funds coming into the fund.

Sec. 107. The assurance fund shall not be liable in any action to pay for any loss, damage or deprivation occasioned by a breach of trust, whether express, implied or constructive, by any registered owner who is a trustee, or by the improper exercise of any power of sale in a mortgage or deed of trust in the nature of a mortgage.

Final judgment shall not be entered against the county trustee in any action under this act to recover from the assurance fund more than the fair market value of the real estate at the time of the last payment to the assurance fund on account of the same real estate.

Sec. 108. No action or proceeding for compensation for or by reason of any deprivation, loss, or damage occasioned or sustained as provided in this act shall be made, brought or taken, except within the period of six years from the time when the right to bring or take such action or proceeding first accrued; except that if at the time when such right of action first accrues the person entitled to bring such action or take such proceeding is within the age of twenty-one years, or insane, imprisoned or absent from the United States in the service of the United States or of this State, then such person or any one claiming from, by or under him, may bring the action or take the proceeding at any time within two years after such disability is removed, notwithstanding the time before limited in that behalf has expired.

Sec. 109. No erasure, alteration or amendment shall be made upon the register of titles after the entry of a certificate of title or of a memorial thereon and the alteration of the same by the registrar of titles, except by order of the chancery court. Any registered owner or other person in interest may at any time apply by petition to the chancery court, upon the ground that registered interests of any description, whether vested, contingent, expectant or inchoate, have terminated and ceased; or that new interests have arisen or been created which do not appear upon the certificate; or that an error, omission or mistake was made in entering a certificate; or any memorial thereon, or on any duplicate certificate; or that the name of any person on the certificate has been changed; or that the registered owner has been married, or if registered as married, that the marriage has been terminated; or that a corporation
which owned registered land and has been dissolved has not conveyed
the same within five years after its dissolution; or upon any other reason-
able ground; and 'the court shall have jurisdiction to hear and deter-
mine the petition after such notice as it may order to all parties in
interest; and may order the entry of a new certificate, the entry or
cancellation of a memorial upon a certificate, or grant any other relief
upon such terms and conditions, requiring security if necessary, as it
may deem proper; provided, however, that this section shall not be con-
strued to give the court authority to open the original decree of registra-
tion, and that nothing shall be done or ordered by the court which shall
impair the title or other interest of a purchaser holding a certificate for
value and in good faith, or his heirs or assigns, without his or their written
consent.

Scc. 110. Certificates of title and duplicate certificates entered or
issued under this act shall be subjects of larceny, and any one unlawfully
stealing or carrying away any such certificate shall, upon conviction
thereof, be deemed guilty of grand larceny, and punished accordingly.

Scc. 111. Whoever knowingly swears falsely to any statement re-
quired by this act to be made under oath, shall be guilty of perjury,
and shall be liable to the statutory penalties therefor.

Scc. 112. Whoever fraudulently procures or assists in fraudulently
procuring, or is privy to the fraudulent procurement, of any certificate
of title or other instrument, or of any entry in the register of titles, or
other book kept in the registrar's office or of any erasure or alteration
in any entry in any such book, or in any instrument authorized by this
act, or knowingly defrauds or is privy to defrauding any person by
means of a false or fraudulent instrument, certificate, statement, or
affidavit affecting registered land, shall be guilty of a felony, and, upon
conviction, shall be fined in any sum not exceeding five thousand dollars,
or imprisoned in the penitentiary not exceeding five years, or both such
fine and imprisonment in the discretion of the court.

Scc. 113. Whoever forges or procures to be forged, or assists in for-
ging, the seal of the registrar, or the name, signature or handwriting of
any officer of the registry office, in case where such officer is expressly or
impliedly authorized to affix his signature; or forges or procures to be
forged, or assists in forging, the name, signature or handwriting of any
person whomsoever to any instrument which is expressly or impliedly
authorized to be signed by such person; or uses any document upon
which an impression or part of the impression of any seal of said regis-
trar has been forged, knowing the same to have been forged, or any
document the signature to which has been forged, shall be guilty of a
felony, and, upon conviction, shall be imprisoned in the penitentiary not
exceeding ten years, or fined in any sum not exceeding one thousand
dollars, or both fined and imprisoned, in the discretion of the court.

Scc. 114. No proceeding or conviction for any act hereby declared
to be a felony shall affect any remedy which any person aggrieved or
injured by such act may be entitled to at law or in equity against the person who has committed such act or against his estate.

Sec. 115. On the filing of any application for registration the applicant shall pay to the clerk and master of the chancery court the sum of five dollars, which shall be in full of all clerk's fees and charges in such proceeding on behalf of the applicant. Any defendant, on entering his appearance, shall pay to the clerk and master of said court the sum of three dollars, which shall be in full of all clerk's fees in behalf of such defendant.

When any number of defendants enter their appearance at the same time, before default, but one fee shall be paid. Every publication in a newspaper required by this act shall be paid for by the party on whose application the order of publication is made in addition to the fees above prescribed. The party at whose request any notice is issued shall pay for the service of the same, except when sent by mail by the clerk and master of the court or registrar of titles.

Sec. 116. The fees to be paid to the registrar of titles shall be as follows:

(a) At or before the time of filing of the certified copy of the application with the registrar, the applicant shall pay to the registrar on all land having an assessed value of $1,000 or less, $1; and twenty-five cents on each $1,000 or major fraction thereof of the assessed value of said land additional.

(b) For granting certificates of title upon each applicant and registering the same, $2.

(c) For registering each transfer, including the filing of all instruments connected therewith, and the issuance and registration of the instruments connected therewith, and the issuance and registration of the new certificates of title, $3.

(d) When the land transferred is held upon any trust, condition or limitation, an additional fee of $3.

(e) For entry of each memorial on the register, including the filing of all instruments and papers connected therewith, and endorsements upon the duplicate certificates, $1.50.

(f) For issuing each additional owner's duplicate certificate, mortgagee's duplicate certificate or lessee's duplicate, $1.

(g) For filing copy of will with letters testamentary, or filing copy of letters of administration and entering memorial thereof, $2.50.

(h) For the cancellation of each memorial, or charge, fifty cents.

(i) For each certificate showing condition of the register, $1.

(j) For any certified copy of any instrument or writing on file in his office, the same fees now allowed by law to county registers for like service.

(k) For any other service required or necessary to carry out this act, and not hereinbefore itemized, such fee or fees as the chancery court shall determine and establish.
Sec. 117. One-half of all fees provided for in subdivision "a" of section 116 shall be collected by the register and paid to the county trustee of the county in which the fees are paid, to be used for the current expenses of the county; and all of the remaining fees provided for in said section and all the subdivisions thereof shall be collected by the registrar and applied the same as the other fees of his office (but his salary as county register, as now provided by law, shall not be increased on account of the additional duties, or by reason of the allowance of additional fees provided for him); and the said registrar, as such, shall receive no salary.

Sec. 118. This act shall be construed liberally, so far as may be necessary for the purpose of carrying out its general intent, which is that any owner of land may register his title and bring his land under the provisions of this act, but no one is required so to do.

Sec. 119. All acts and parts of acts, if any there be, necessarily in conflict herewith are hereby repealed, but this act is not intended to interfere with the present system of recording, transferring or dealing in any real estate, not brought under the provisions hereof.

Sec. 120. Be it further enacted, That this Act take effect from and after its passage, the public welfare requiring it.

Passed ------------------------, 190...

Respectfully submitted,

July 5, 1905.

S. C. Williams, Chairman.
J. W. Judd,
Jerome Templeton,
J. H. Malone,
Henry E. Smith.

Upon motion of Mr. Swaney, properly seconded, the following resolution was passed:

Resolved, That the report of the special committee on the Torrens System of Registering Deeds be received and its recommendations be adopted, and that the committee be continued with instructions to make such additional report and recommendation as they may deem advisable to the next meeting of the Association.

It was then decided to take up the miscellaneous business of the Association.

Upon motion, properly seconded, the following resolution was passed:

Resolved, That in the opinion of this Association, the business in the courts of the United States for the Eastern and Middle Districts of Tennessee has grown to such an extent and has reached such proportions that an additional United States District Judge should be appointed and the work fairly and justly divided between two separate courts and two separate districts. The proper method of dividing the entire work can
be best determined by Congress through proper committee work and inquiry, and this Association only desires to express the view that such division should be made and to recommend accordingly to Congress and to our Senators and Representatives in Congress.

On motion of Judge Ingersoll, properly seconded, the following resolution was carried:

Resolved, That this Association favors and recommends the enactment of a law forbidding the appointment by judges of our State of near kindred to offices of trust or profit in our courts of justice.

Upon motion of Mr. Swaney, properly seconded, the following resolution was passed:

Resolved, That the Bar Association of Tennessee extend through its delegates to the American Bar Association a cordial invitation to hold its next meeting, or some future meeting, at Lookout Mountain, Tenn.

Upon motion the meeting adjourned.

AFTERNOON SESSION—Friday, July 21.

The Association was called to order by the President.
Upon motion of Mr. James S. Pilcher, the following resolution was passed:

Resolved, In view of the long connection of the Hon. Thomas H. Malone, of Nashville, Tenn., with the Bar Association of Tennessee, and his valuable services to it, that he be elected an honorary member of the Association.

The President announced that the next order of business was the election of officers for the ensuing year and that nominations were in order.

The Hon. John W. Judd nominated for President of the Association Mr. Edward T. Sanford, of Knoxville. This nomination was seconded by Mr. Frierson, of Chattanooga, and the Secretary, upon motion properly seconded and carried, was instructed to cast the unanimous vote of the Association for Mr. Sanford. The Secretary announced that the ballot was so cast, and Mr. Sanford was declared elected and escorted to the chair, now vacated by Mr. Henderson.

Upon motion the Secretary was instructed to cast the unanimous vote of the Association for the following Vice-Presidents:
From West Tennessee, Chancellor F. H. Heiskell; Middle Tennessee, Judge Samuel Holding, and for East Tennessee, Hon. Foster V. Brown. The Secretary announced that the ballot was so cast, and the above named were declared elected.

Upon nomination and motion, the President was instructed to cast the unanimous vote of the Association for Mr. Robert Lusk, of Nashville, for Secretary and Treasurer, and he was declared elected.

The following delegates to the American Bar Association, and alternates, were elected:

From East Tennessee—Delegate, Charles T. Cates, Jr., Knoxville; Alternate, Judge C. J. St. John, Bristol.

From Middle Tennessee—Delegate, J. H. Holman, Fayetteville; Alternate, J. R. Smith, Lebanon.

From West Tennessee—Delegate, James H. Malone, Memphis; Alternate, C. E. Pigford, Jackson.

The following Central Council was then elected: Chairman, R. H. Sanson, of Knoxville; J. Pike Powers, Knoxville; L. M. G. Baker, Knoxville; J. R. Smith, Lebanon; Thomas Harwood, Trenton.

Upon motion, properly seconded, the following resolution was adopted:

Resolved, That the thanks of the Bar Association of Tennessee be extended to the Chattanooga bar, to Mr. W. G. M. Thomas, and the Twelfth Regiment Band for the courtesy and hospitality extended by them to the Bar Association of Tennessee.

Resolved further, That the thanks of the Association be extended to those judges and chancellors who adjourned their courts in order that the members of the bar might attend the present meeting of the Association.

Upon motion the Association then adjourned sine die.
APPENDIX.

PRESIDENT'S ADDRESS.

BY JOHN H. HENDERSON, OF FRANKLIN.

Gentlemen of the Bar Association of Tennessee:

The publication and distribution of the Acts of the recent session of the General Assembly of the State of Tennessee so much earlier than has been the rule heretofore renders, as far as it is deemed the occasion requires; a very extended review of them unnecessary, as they are already accessible to the profession. My predecessors have differed in their construction of our constitutional provision on the subject, though many of them have referred to practically all the laws of a general nature enacted by the preceding Legislature. I am inclined to the opinion that the constitution contemplates a review of only such changes in the statute law as relate to subjects that are required to be considered by the two standing committees, the one on Jurisprudence and Law Reform, and the other on Judicial Administration and Remedial Procedure; but I follow the precedent of some of my predecessors and refer also to some of the other legislation.

STATE LEGISLATION.

There seems to be an increasing tendency in recent years to local legislation, and a tendency to so manipulate the figures of the census as to evade the constitutional inhibition against class or local legislation. Of the 543 Acts, near nine-tenths of them are of a local nature, changing county lines, re-districting counties, creating school districts, relating to town charters, etc.
The "courtesy" that is extended with reference to local matters gives the Representative practically control of the legislation affecting his county, the policy of such legislation, whatever its character and scope, not being considered by the whole body.

While the principle of this, in the main, may be not improper, it does not absolve the other members from the duty of informing themselves on the merits of the proposed legislation. The practice is liable to abuse and has really been productive of lax and loose methods in legislation. Among the evidences of this are the facts that certain local laws were duplicated; an Act was passed even without a caption chartering a turnpike company, and another incorporating an academy, all passing without detection of the mistakes through all the formalities required to become laws.

This is not said in a spirit of unkind criticism of the law-making power of the State, but is cited as evidence of the danger of unlimited legislative "courtesy." The result is due in a great measure to the confusion produced by the introduction of so many hundreds of bills, the most of them of local character, and the rush incident to the eagerness of the respective statesmen to have their measures considered.

By the death of Tennessee's senior United States Senator, Hon. William B. Bate, the State has lost a public servant whose long life, in war and in peace, is pre-eminently characterized by courage, efficiency, fidelity and unbending integrity. The Legislature elected as his successor Gov. Jas. B. Frazier, and for the third time in the history of the State the Speaker of the Senate becomes Governor, Hon. John I. Cox.

The Attorney-General and Reporter is authorized to appoint an assistant, at a salary of $2,000 per annum and necessary expenses, to be paid out of the State Treasury. He is authorized to appoint an additional assistant, but his compensation is not to be paid out of the State Treasury. These assistants shall serve only during the pleasure of the Attorney-General and Reporter. The first appointee to the office of first assistant is Hon. W. W. Faw, of Williamson County.

A flag for the State of Tennessee is adopted, for description of which reference is made to the Act, Chapter 498.
Reform of our jury system is one of the measures which this Association has earnestly sought to bring about. Jury commissions have been created heretofore for a number of counties. The main provisions of the law were, at last session, extended to the counties of Franklin, McMinn, Marion, Sullivan, Hancock, Claiborne, Roane, Williamson, Warren, Hawkins, and Shelby. This was done by separate Acts, except that one Act applies to Hancock and Claiborne counties.

It is a matter of self gratulation that this beneficent measure originated with this Association, and after a fair trial in the counties where operative its good effects will be felt and the demand for it will be general. If the judges will reasonably enforce its provisions, and not be too ready to excuse the busy citizen, it will not be long until the professional juror is a thing of the past. His passing will mark an era for good in the administration of justice.

It has been a matter of some difficulty to determine just what laws should be reviewed for this occasion. As stated, a comparatively small number of laws of general application were enacted. This is not deemed a just cause of complaint. We will refer briefly to only some of them.

1.

Chapter II prohibits any person who shall feloniously kill another from succeeding to any portion of the estate of the deceased.

2.

Chapter 31 amends Section 3397 of the Code of 1858 so as to empower the justice of the peace in replevin cases when the judgment is in favor of defendant to render such judgment against plaintiff and his surety as "will be likely to effect a return of the property, if the character of the property is such as to make the return of the specific property important." And the justice may, in proper case, award exemplary damages.

3.

Chapter 32 extends the lien of landlord and furnisher from three to six months.
By rule of the Supreme Court, evidence excluded by the Chancellor, although it may be one question and answer in a deposition, ceases to be a part of the record, and the ruling of the Chancellor will not be reviewed unless the excluded evidence is made again part of the record by bill of exceptions. This rule is changed by Chapter 49, and the necessity of bill of exceptions is obviated if the rulings of the Chancellor, the exceptions and the excluded evidence are set out in the body of the deposition, properly authenticated by the Chancellor. When any document, deposition or other paper on file in the case shall be excluded in whole or in part it shall only be necessary for the Chancellor to note the exceptions and his rulings on the paper, which will continue them as a part of the record.

This Act abrogates what was surely a technical rule and relieves the transcript on appeal from the complications that were found in practice to be incident thereto.

Chapter 73 amends Section 3778 of the Code of 1858 by allowing the heir or other person entitled to the estate, who is a party to the suit, to plead *non est factum* in cases where the personal representative fails or refuses to do so, making the denial under oath "according to the best of his knowledge and belief."

The pension appropriation for Confederate soldiers is by Chapter 80 increased to $250,000 annually; and by Chapter 202 a pension of $6 per month is allowed to dependent widows of Tennessee Confederate soldiers, in cases where the husband was killed or died in the service and the widow has not since remarried. A pension of $5 per month is allowed to dependent widows of Confederate soldiers married prior to 1870, with similar provisos.

Chapter 82 prohibits gambling on races, to take effect December 1, 1905.
8.

Chapter 89 amends Code of 1858, Section 3162, so as to require bond to secure the debt and damages on appeal or appeal in the nature of a writ of error from judgments in actions on accounts.

9.

Chapter 112 provides for the registration of certified powers of attorney to convey lands, where the lands are situated in more than one county and the power of attorney has been registered in one county.

10.

Chapter 113 empowers the judge of the circuit and criminal courts to adjourn after the expiration of his regular term to a special term, with same jurors, grand and petit.

11.

Chapter 150 provides for the separation of the two races on street cars, passed April 4, 1905, to take effect ninety days after passage.

The bill provoked considerable discussion and aroused the antagonism of some of the leading men of the colored race, and led to threats by them of boycott of the street cars. In my individual opinion, to which I would by the reference commit no one, the principle of the Act is right. Legislation which tends in a proper way towards the separation of the races along these lines will prove, as it has in the past, for the good of both.

Care should be taken that exact justice is done the negro, and his rights should be fully protected. Whether this purpose has been attained in the Act referred to will be found out after it shall have been fully tested. A sort of police power is given the conductor, and he is authorized to designate the space in the car to be occupied by the races respectively, which he may change from time to time "when in his judgment it may be necessary and proper for the comfort and convenience of the passengers so to do;" and the passengers will be required to occupy the seats
assigned to them. If they should refuse, I do not understand that the conductor is authorized to eject them, but they are declared guilty of a misdemeanor and subject to a fine of $25. If this view of the Act is correct, then by conferring inquisitorial power on the grand jury it will be made more effective.

12.

Chapter 171 furnishes additional evidence of the disposition of our people to come to the relief of the unprotected female; and the proprietors of houses where females are employed as clerks and salesladies are required to provide chairs for their use when they are not engaged in making sales, etc. Violation of this Act by the proprietor subjects him to fine.

13.

The automobile has come to stay, at least until it shall be replaced by something better along the same line; but for the public safety it must assume some of the burdens incident to its strenuous operation. By Chapter 173 it must adopt a number, displayed in large figures on the front and rear, which number must be registered with the Secretary of State and with the county court clerk of the county where the owner resides. The rate of speed is limited to twenty miles an hour. Rigid precautions are prescribed to prevent accidents on the highway, and for injuries occasioned by violation of them a lien is given the injured party upon the automobile as further security against the owner or wrong doer.

14.

Chapter 174 provides for the division by private corporations hereafter created under existing laws of the capital stock into common and preferred stock. The Act is simply referred to here, without setting out its specific provisions.

15.

Chapter 329 makes it a felony to mortgage personal property and obtain money or goods thereunder, knowing that the title is not in the mortgagor.
16.

Chapter 376 exempts from execution, attachment and garnishment ninety per cent of the "salary, income or wages" of every person earning a salary of $40 or less per month who is eighteen years of age or head of a family and resident of Tennessee, and there is exempt $36 of the "salary, wages or income" of such person earning a "salary, wages or income in excess of $40 per month."

17.

Chapter 393 bars all bonds and script of the State issued prior to the Funding Act of 1883 that are not presented for funding as provided in said Act on or before January 1, 1907, excepting from this provision such bonds as are held by the United States Government.

18.

Chapter 410 prevents traffic in non-transferable signature tickets issued by common carriers, and requires redemption by carriers of such unused tickets if presented within six months.

19.

Chapter 414 amends Chapter 78, Acts of 1897, so as to give employees and day laborers of individuals engaged in mercantile lines of business first lien on merchandise for their services.

20.

Chapter 422 is enacted to reach the middle man in purchase of liquor from the "boot-legger."

21.

The inconvenience and delay in many of the counties occasioned by a session of the chancery court for only a few days twice a year are but little known to lawyers in counties where the court is in session practically all of the time, and were it not for the kind accommodation of many of the chancellors, already overworked and poorly paid, in giving a special term between
terms to try unlitigated cases or to enter unlitigated decrees, it would in many instances result in a denial of justice. The machinery employed and the time required to conduct a case through its various stages to final determination are the same in all of the counties, and this cannot be speedily done in a hurried session of the court. This is a matter of very serious concern to the lawyers and litigants in from ninety to ninety-five per cent of the counties in the State.

Chapter 248, Acts of 1903, was enacted to remedy these evils. While it gave some relief, it is still imperfect. Chapter 427 of the Acts of 1905 amends this Act in important particulars. It provides for final decree in vacation where the parties consent to a hearing. When necessary the Chancellor may hold a case under advisement after the adjournment of his court, sending order or decree to be entered within thirty days. In his discretion, he can leave his records unadjourned until court in course, in which event any order or decree that might be made and entered under the Act at chambers may be entered on the minutes as in term time, by consent or upon the notice required by the Act in the other cases provided for. Any irregularities in these orders or decrees are cured unless objection be made during the succeeding regular or special term of the court. Twenty-five days are allowed for appeal from the decrees provided by the Act to be made.

22.

I only mention, without any discussion of it, Chapter 516, "An Act Concerning Delinquent Children," known as the Juvenile Court Law, a law similar to that enacted by a number of other States.

23.

On appeal from civil cases tried by justices of the peace during the sitting of the circuit court, the justice shall file the papers in the circuit court within five days thereafter; and if the court shall continue in session ten days after the papers are filed the case shall stand for trial at that term, either party being allowed seven days "after the right of appeal has accrued" within which to demand a jury. This does not change the rule of demanding a jury on the first day of the term at which the case is to be tried. This is Chapter 8.
24.

By Chapter 64 the county trustee is prohibited from paying warrants issued by the school directors "for maps, charts, libraries and other school furniture or apparatus," excepting chalk, fuel, brooms and other incidentals. The violation of the Act by the trustee is made a misdemeanor, and the grand jury is given inquisitorial powers in such cases.

25.

Chapter 76 is an Act to regulate the practice of veterinary medicine and veterinary surgery. A State Board of Veterinary Medical Examiners is created, consisting of four veterinary surgeons, to be appointed by the Governor. This board is authorized to examine applicants and grant licenses to practice the science. They are to hold one or more meetings for the examination of applicants. They have to look for their compensation of $10 per day while in actual service, and expenses, to the fees provided by the Act to be paid by applicants. No one will be permitted to practice the science without a license from this board.

The provisions of this Act apply only to counties having a population of 40,000 and over by the Federal census.

26.

Chapter 255 repeals Chapter 394 of the Acts of 1899 and creates a Board of Examination and Registration for the regulation of the system or science of osteopathy. This board consists of five persons duly registered as practitioners under the Act of 1899, to be appointed by the Governor, who shall be authorized to issue license to applicants after proper examination.

27.

Chapter 455 creates the "Department of Game, Fish and Forestry," and provides for the appointment by the Governor of a State Warden, who is to serve for the term of eight years without salary. The first appointee to this position is Hon. J. H. Acklen, of Nashville.
The State warden is authorized to appoint a county warden for each county and such special wardens for the State-at-large as he may deem proper. The county wardens are authorized to appoint as many deputies in their respective counties as in their judgment the requirements may demand. There are excepted from the provisions of the Act thirty-eight counties by name.

The State, county and special wardens are each required to give bond in the sum of $500, and the deputy wardens in the sum of $250, conditioned for the faithful performance of their respective duties, and to take the oath prescribed for public offices. I doubt if sufficient safeguard is thrown around the execution of these bonds.

All the wardens appointed under this Act are constituted conservators of the peace, charged with the duty of enforcing the laws for the protection of game, birds, fish and the forests of the State.

With respect to the particular laws relating to these subjects, all the numerous wardens that may be appointed "shall each and every one have and exercise all the rights, powers and authority of the sheriffs of the respective counties. They may serve process and have power to make arrests without warrants of offenders and take them before any justice of the peace or criminal court, there to be dealt with according to law as the nature of the case may demand."

I recognize the fact that rigid precautions are necessary for the protection of game and fish, and am prepared to commend this purpose of the Act, but the power attempted to be conferred on the deputy wardens is liable to abuse. As the county warden can appoint as many deputies as he pleases, the appointment may be made simply for the asking and indiscriminately. In this way we may have an army of irresponsible men in the county carrying concealed weapons, which is one of the privileges of the sheriff with criminal process in his hands for execution, and of making arrests even without warrants, a power that is not conferred on the sheriff except under certain circumstances. This provision, I think, should be qualified.

The Act also provides:

"All fines, penalties, forfeitures or licenses collected under any laws which said wardens are authorized or called
upon to enforce shall go to that warden so acting or making or causing the arrest or securing the conviction, as compensation for his services."

Thus, fine that may be imposed by the justice of the peace on submission, or by the court on conviction under indictment, is to be paid to the warden who has worked up the case instead of being paid into the county treasury. True the provision is a strong incentive for the deputy to prosecute violators of the law, and tends to the attainment of its commendable purpose, but I think the citizen should not be permitted to use the machinery of the criminal court for his own pecuniary advantage.

In addition, as I am informed has already occurred in practice, serious complications may arise with regard to disposition of the fine where there are contesting claimants.

For some time the necessity for legislation on these subjects has been apparent. Rigid laws may be needed to attain the desired purpose, but measures too drastic will tend to defeat rather than carry it out.

**FEDERALLEGISLATION.**

The Acts of the Third Session of the Fifty-eighth Congress, which began December 5, 1904, are voluminous and relate largely to matters that are not of general interest. We refer to only some of them.

1.

The Red Cross is the product of modern civilization. On August 22, 1864, there was a convention at Geneva by plenipotentiaries representing ten nations, when a treaty was agreed upon "for the purpose of mitigating the evils inseparable from war." It is noticeable that of the ten none were English-speaking people. Our own nation was absent doubtless only because of troubles at home. That treaty has since been ratified by us together with forty-two other nations. In July, 1881, an association was formed at Washington under the name of "The American National Association of the Red Cross."

The importance of the work, demanding a reincorporation by Congress, an Act is passed January 5, 1905, granting a charter to a number of persons headed by Clara Barton, under the
name of "The American National Red Cross," conferring ample powers on the corporation to fully carry out the purposes of the treaty.

2.

There is additional legislation to prevent the carrying of obscene literature and articles designated for indecent and immoral uses by common carriers, Chapter 550.

3.

Chapter 744 authorizes the President to award bronze medals of honor to persons who shall risk their own lives in saving or attempting to save the lives of others from wreck or disaster upon railroads engaged in interstate commerce.

4.

Section 5146 of the Revised Statutes is amended by Chapter 1163 so as to allow the holder of five shares of the capital stock of National Banks, whose stock does not exceed $25,000, to become directors.

5.

Section 4952 of the Revised Statutes, for the benefit of authors, inventors, etc., is amended in material particulars by Chapter 1432. The privileges of copyrights, heretofore confined to our own citizens, are substantially extended to citizens and subjects of such foreign nations as permits to citizens of the United States the benefit of copyright on substantially the same basis as to its own citizens.

6.

Chapter 1478 provides for celebrating, A. D. 1907, the birth of the American nation at Jamestown, Virginia, the site of the first permanent settlement of English-speaking people in America. That place is sacred ground. In the vicinity, at Yorktown, is the scene of the capitulation of Lord Cornwallis. On the waters of Hampton Roads near by, was the conflict of the Monitor and Merrimac.

The Centennial at Philadelphia in 1876 celebrated the emancipation of two million people from the yoke of the mother
country. The Columbian Exposition at Chicago in 1893 did honor to the great navigator who found this country and gave it to Spain. The Louisiana Purchase was celebrated at St. Louis in 1904. Portland now has on gala attire in honor of Lewis and Clark, who opened up the vast territory watered by the Columbia.

But the greatest event of all, though the most modest in its original pretensions, was the nucleus which was formed at Jamestown May 13, 1607. It was there when the proud Spanish Armada went down before the English guns, as result of which Spain lost her birthright. And from this little English settlement, has sprung this mighty empire of 80,000,000 English instead of Spanish-speaking people.

7.

The animosities engendered by the war between the States have been gradually subsiding under the healing march of time. Heretofore that war, in the official documents of the Government, was referred to as the rebellion. On February 28, 1905, by joint resolution of the Senate and House of Representatives, the Secretary of War is authorized to return to the proper authorities of the several States the "Union and Confederate" battle-flags now in the custody of the War Department.

This is in accord with the magnanimous spirit which pervades the Union. The time is at hand when all reminders of that desperate struggle shall disappear save alone the monuments of marble, granite and bronze, which will point future generations back to the heroism, not of Union or Confederate, Yankee or Rebel, but of Americans, our countrymen.

What precedes is offered as a compliance with Article XIII of the Constitution of the Association. There are a number of general laws, both State and Federal, enacted since the last meeting, to which no reference has been made. Some of those omitted may be deemed of more importance than any of those included. But the selection and the manner of communicating them is such as you have heard, and it is left with you.

The Constitution refers to changes in statute law. It will, perhaps, not be out of order to refer in this connection to the case of Tyrus v. R. R. Co., decided April term, 1905, at Jackson,
by the Supreme Court of Tennessee. I do not refer to it as a change in the law that is proper to be reviewed for this occasion, but only for its importance.

In that case the trial judge, after briefly stating its nature and his conclusions from the proof, instructed the jury to return their verdict in favor of the defendant. The discussion of Art. 6, Sec. 9, of the Constitution of 1870 and of the adjudications by the court on the subject, Mr. Justice Neil, delivering the opinion, is indeed interesting and instructive.

The practice of directing the verdict in a proper case is sustained; the rule laid down in the case is not a change, but is in entire harmony with previous adjudications by the court, and a legitimate deduction therefrom. The concise statement of it by the court is terse, yet complete. It is based upon principles that are elementary and self-evident. It is so clearly stated that upon its face and without more it is itself unanswerable answer to any objection that may be urged against it. It is as follows:

"Where there is no controversy as to any material facts, there is nothing for the jury to find; the question is, then, solely one of law for the court; and in such a case the court may instruct the jury to return a verdict in accordance with his view of the law applicable to such ascertained and uncontroverted facts. There can be no constitutional exercise of the power to direct a verdict in any case in which there is a dispute as to any material evidence or any legal doubt as to the conclusion to be drawn from the whole evidence upon the issues to be tried."

Trial by jury, one of the bulwarks of American freedom which will stand as long as our government stands, for it is one of its main supports, is not impaired. By proper application of the rule so clearly defined by the Supreme Court, the discriminative circuit judge can put an end to litigation in a proper case. He need not sit idly by waiting for the verdict of the jury, and then have to set it aside because there is no evidence to support it; in which case he must call another jury who may render the same verdict. This performance may be repeated indefinitely in a case that has no merit, accumulating a bill of costs that may or may not be ultimately paid, in addition to obstructing the business of the court.
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In a case where is conflict in material testimony, no power on earth can decide it excepting a jury. In such case the statute puts an end to litigation after the second verdict.

The question had been previously made in the case of Greenlaw v. R. R. before the court at Nashville, December term, 1904, which came up from Hon. Saml. Holding, who, may I be permitted to say, is a model circuit judge as well as one of the youngest in the State. The right to direct the verdict is upheld in that case. The opinion of the court, prepared by Mr. Justice Wilkes, was not filed until during the session at Jackson. I have not had access to this opinion, my information having been obtained from the certified copy of the opinion in the Virus case which cites it.

U. S. DISTRICT JUDGE.

Some provision for expediting the business of the Federal Court in the Middle and Eastern Districts of Tennessee, is a matter that especially concerns the lawyers of those divisions of the State. Hon. Chas. D. Clark is unremitting in his labors and untiring in his efforts to dispatch the business of the courts without unnecessary burden and inconvenience to lawyers and litigants, but the work has grown to the proportions that it is impracticable of satisfactory performance by one man.

The matter of the creation of an additional judge will doubtless be before the next session of Congress. Two plans have been suggested, to have a new judge for the Middle District, or to add Hamilton County to the Middle District, the courts to be held by Judge Clark at Chattanooga and Nashville, and have a new judge for the courts at Greeneville and Knoxville.

I call the matter to the attention of the Association that such action may be taken thereon as may be deemed proper.

IN CONCLUSION.

At the beginning of the first session of this annual meeting may I be permitted to impress upon you the importance of vigilance and diligence in the transaction of business that may be brought before you? Let no legislation be recommended unless and until it has been thoroughly considered by you;
let these recommendations be confined to matters of general interest, having in view their quality instead of quantity. Thus prepared and equipped we can go with confidence and assurance before the General Assembly. Our motto should be, not how many laws we can have enacted, but how much good we can accomplish for the general welfare.

While it is well and profitable that the social feature of these meetings should be cultivated, the members should all be promptly present at every session and give close attention to all that may be done.

All this may sound commonplace, as didactic mention of a part of the subject in hand, which is thrown in for good measure, but which really need not be regarded. But unless these elementary suggestions are observed by you, the great bar of Tennessee, as great as that of any State in the Union, may be credited with the endorsement of measures for which the more thoughtful of you would not care to be held responsible.

WHY IS IT SO DIFFICULT TO ENFORCE OUR CRIMINAL LAW?

BY CHANCELLOR P. H. HEISKELL, MEMPHIS.

There is a widespread opinion in the land, especially in our section of it, that in many instances our laws are violated with impunity; that in many cases in which the attempt is made by earnest officers of the law to punish this violation the attempt results in failure, and that where punishment is meted to the crime committed the result is attained with a doubt and difficulty which ought not to exist.

This opinion is in part without foundation and in part based upon solid truth.

Much of this opinion is created by the newspapers. For every crime that is committed is tried in the daily press before a trial is had in the courts. The papers are, as a rule, free in expressing an opinion as to the guilt of the accused, but whether this is done or not, from the statement of facts alone we make up our minds. Thus it comes to pass that in many cases a
man is adjudged guilty by the public sentiment of his community, upon a partial or incorrect statement of facts, who upon a full investigation and fair trial ought not to be convicted. Yet such is the effect of trial by newspaper and of the adjudication so reached that a jury is often denounced for acquitting by men, every one of whom if they had been upon the jury would have refused to convict.

It may be that the accused deserves a complete vindication; it may be only that proof of guilt is lacking, yet public opinion sets down the case in its long column of miscarriages of justice and that entry is never changed.

However, after making all proper allowances for the fact that we are led to believe that men should be indicted, who ought not to be, and that men who are indicted should be convicted when they ought not to be, it remains the truth that gross guilt many times escapes, and that where it is adequately convicted, this is accomplished by a stress and strain, which leaves behind it the impression, not how scarcely shall the righteous be saved but how scarcely shall the guilty be punished.

DIFFICULT TO ENFORCE LAW.

The question calls for a further limitation. It is not difficult to enforce criminal law in all kinds of cases. It is easy enough to convict the crap-shooter and the chicken thief. It is not very difficult to convict of murder, if only the accused be without money and without influence and low enough in the social scale.

The law against larceny is fairly well enforced because a gentleman does not steal in this way, but when it comes to other kinds of offenses it seems to be considered that law-breaking and crime is consistent with social position, and that no man of good family should be punished by death or even by imprisonment. It is easy to convict the bank robber who cracks a safe, if you can catch him, and recover the money, his sinews of war, but it is difficult to punish the bank president or cashier, who wrecks a bank and causes a thousandfold more trouble and distress than comes from a case of mere larceny.
A few weeks ago my attention was called to the arrest of a party of crapshooters, and that they escaped with a light fine and costs, which amounted, however, to about ten days' wages of the delinquents.

If the same rate of punishment was administered to all gamblers in the United States the proceeds would pay the national debt at one haul. If every gambler in the United States were arrested and fined to the extent of ten days' income and the proceeds conveyed into the public treasury one trembles to think of the surplus.

THE LAW IMPARTIAL.

Even where the law itself is impartial, as between rich and poor, prince and beggar, the powerful and the weak, the administration and the execution of it are marked by vast distinctions. In some cases at least, however, the law itself favors the influential as against the proletariat class. For instance, we send the chicken thief to the workhouse or penitentiary. The man who abuses the confidence of his employer and steals from him is allowed to make restitution and go scot free. Go and sin some more. The petty thief, though he offers to make restitution as ample as was tendered Shylock in lieu of the penalty of his bond is not allowed to do so. But if the petty thief habitually had money or could raise money upon the pride of a family, or the honor of a name, no doubt commercialism would soon assert itself and larceny become by law a mere matter of civil compensation.

Is it possible we can afford to demand punishment instead of restitution only where the value of the theft is small and the loss insignificant?

THOSE MEMPHIS HANGINGS.

At the time this is written six men are under sentence of death for murder in the jail of Shelby County, the convictions all having been affirmed by the Supreme Court. And all of them negroes. Not in a dozen years has a white man been exe-
cuted in the county, and yet heinous murders have in that time, been committed by whites.

We all know the sentiment in most parts of this country against hanging a woman. We never expect to live to hear of a woman being executed in the South, scarcely anywhere, though she be a very Borgia.

Can it be that in the South the sentiment is being extended to white males until it has well nigh come to pass that race as well as sex confers benefit of clergy? If so, the time has come when we should abolish the death penalty and the time has come when we may well recall the words of Burke, "When the laws of Great Britain are not strong enough to protect the humblest Hindoo upon the shore of the Ganges, the nobleman is not safe in his castle upon the banks of the Thames."

We may well recall these words because a jury that has refused to convict a white man under the same circumstances, because the extreme penalty of the law has become a matter of caste, may still be a good enough palladium of liberty to protect us from the tyranny of the State, but has become a poor palladium of safety to guard us from the threatenings of crime. Of the one protection, the one afforded, there is little use; of the other, which we do not get, there is sore need.

**TROUBLE OF ENFORCING LAW.**

A great portion of the trouble in enforcing criminal law is encountered in murder cases, and this grows out of a wide-spread demoralization of public sentiment, that is if the law of the land be taken as the standard.

It cannot be said that we consider human life of no value. Juries are ready enough to make corporations pay for taking life or limb, though it be done without malice, but are not willing to punish men, at least men of their own class, for taking human life, save under the most aggravated circumstances. This cannot be due to any sentiment peculiar to the men who go into the jury box. They are simply so many drawn from the community at large. It must be due to some widespread failure to appreciate the sacredness of human life.

The spirit of commercialism which we have developed so highly is responsible no doubt for a good deal of our unwilling-
ness to inflict the death penalty or even incarceration. We are ready enough to require those who are able to pay for taking life, but there is by no means the same readiness to punish them otherwise.

Juries give damages against corporations, and these in turn, to protect themselves, take out policies of insurance against such risks, and thus find it more profitable to go on being negligent than to take such precautions as to reduce the loss of life to a minimum. Loss of life and liability therefor is placed upon a commercial basis, we become accustomed to death by other than natural means and become unaccustomed to other than pecuniary punishment for destroying life.

A little wholesome imprisonment for gross negligence would no doubt tone up our sense of the sacredness of life to a point that would manifest itself in even a different class of cases.

CODES OF HONOR AND STATE.

There is another subtle yet well defined influence which makes it difficult to secure a strict enforcement of law in a large class of cases. We are in a transition state. We have set sail from the code of honor and we have not landed upon the code of Tennessee. We have abandoned dueling as a mode of settling our grievances for insults, but we are not willing to sue for damages. We have made up our minds that we will not send or accept a challenge, but deep down in the hearts of all of us there is a dim but deep seated conviction that for certain wrongs the only tribunal is the six-shooter, and that it is unmanly to redress certain wrongs in the courts.

Consider, in this connection, the fact, well known to all of us, that no juryman is going to convict a man for doing what under the same circumstances he feels he himself might have done, and then consider how various are the standards of men and even of communities as to what will justify homicide, and we have the germ of uncertainty in many murder trials. The bacteria that produce a miscarriage of justice.

It is customary to compare this country with England. The trial by jury is the same, except the reversals on appeal, but the sentiment of the people in regard to the respect for
law is vastly different. There no one hesitates to ask the law to redress his wrongs and no one thinks of righting his injuries at the point of a pistol. The time was in the eighteenth century when Englishmen were as ready to fight in single combat as Americans were, to a later date, and no doubt juries were just as loath to convict the victor as juries in the South before the war were to punish the duelist, who, in fair fight, killed his antagonist.

HOW DUELING HAS BEEN SUPPRESSED.

Dueling was suppressed in England sooner than in the United States. In the Northern States sooner than in the Southern. In the South, therefore, we are the least removed in point of time of all English-speaking and jury system people from the spirit which provoked and sanctioned personal encounters with deadly weapons. As a matter of course the people from whom juries are selected retain here more than elsewhere a sympathy with the man who is ashamed to invoke the law to punish an insult, but who is neither ashamed nor afraid to avenge himself.

The old geographical distinction to a large extent still holds good as to the South at least. If you call a man a liar in New Orleans he will shoot you; in Louisville he will knock you down; in New York he will say "You're another," and in Boston say "You can't prove it."

You cannot yet expect a juror in these four communities to take the same view of the killing of a man for a personal wrong. Not that the juror himself would have killed the man in either place, but in each locality he is affected by a different sort of latent sympathy with the prisoner on trial for the killing.

They do not hang as many men in Texas for stealing horses as formerly, nor do they shoot as many men for little or nothing, but a Texas jury can no doubt still see and feel the point of the time-honored story of the prisoner before a magistrate on the line between Arkansas and Texas who was accused of killing a man and of stealing his horse, and was told by the justice that he could have his choice between the law of the two States. He said he would take the law of Arkansas and the court told him very well, he would be acquitted of stealing the horse and hung for killing the man.
Naturally dissatisfied he asked if he might change and take the law of Texas. Certainly, said the justice, and under that law you will be acquitted for killing the man and hung for stealing the horse.

A MEMPHIS LYNCHING.

Several years ago a negro was lynched in Memphis for an offense committed in one of the civil districts of the county, some miles from the city. In the city there was considerable criticism of the sheriff for not preventing the mob from taking the prisoner from the jail, but in the community where the offense was committed the sheriff was more popular than ever before.

We have all read of Judge Speake of Huntsville, Alabama; of his determined stand for the punishment of lynchers and the unpopularity he has won from a perverted public opinion. Public opinion is, after all, the only law-maker. A law not sanctioned and supported by the sentiment of the people is a dead wire.

If the bar does not exercise the same influence as formerly upon the law it is because the lawyers do not lead and dominate public opinion as they once did.

Many reforms have been discussed in regard to the jury system. Much has been said in favor of majority verdicts, especially in civil suits. Also in favor of smaller juries. It has been shown that the business men of the country, by arbitration submit large interests to the decision of three men, a majority of whom conclude by their finding. That the highest court in the land decides questions of fact by a divided bench, sometimes by a bare majority. Very recently the Court of Appeals of New York, having before it the appeal of Patrick, convicted of murder, voted four to three to sustain the lower court and send the prisoner to the electric chair.

THE LOCHNER CASE.

In the recent and celebrated criminal case of the People of New York v. Lochner, involving the constitutionality of the law restricting the hours of labor in bakeries, four judges of the
Court of Appeals of New York held the law valid while the other three thought it unconstitutional. On appeal to the Supreme Court of the United States five of the judges of the court declared the law invalid, while the four remaining judges held it constitutional. Here, then, we have sixteen judges composing the two leading courts of last resort in America, yet taken as a whole they were equally divided on a question of law involving the liberty of the citizen.

It seems clear that no set of practical men if now devising a new system would provide for twelve men and a unanimous verdict. No possible reason has ever been suggested why the number twelve was selected, except that Jacob happened to have twelve sons. It is true that by reason of this there came twelve tribes, and after this, if not on account thereof, twelve apostles. This of itself would hardly seem to justify so cumbersome a piece of judicial machinery.

These questions, however, I take it, are beyond all hope or expectation of change in Tennessee.

Our Supreme Court has held that when the Constitution provides that trial by jury shall remain inviolate, it means trial by jury as it existed at common law, that is, by twelve men, and as a matter of course, a unanimous verdict.

This being so, the jury system is with us for good and all, for the Constitution of Tennessee is sempiternal. It is not subject to change, neither indeed can be; it is invested with the attributes not only of immortality, but of divinity. It is the same yesterday, to-day and forever. Heretofore the pyramids of Egypt have exhibited good staying qualities, but the time is coming when the touch of the centuries will have worn them into dust, but the Constitution of Tennessee serenely sings, "Pyramids may come and pyramids may go, but I go on forever." In fact it is predicted by our ablest prophets that when the Angel shall stand one foot on sea and one on solid land, and proclaim that time shall be no more, when the heavens shall be rolled together as a scroll, that the Constitution of Tennessee will survive in its original edition of 1870, unchanged and unamended, one and indivisible. It was said by them of old time, "While stands the Coliseum, Rome shall stand; they stood
together in their days of grandeur, and together they remain as splendid but pathetic ruins."

**WISER THAN THE ANCIENTS.**

We are wiser than the ancients; we have improved upon this old prediction of permanence. With us the Oracle proclaims, "While stands the county court the Constitution shall stand pat, and while the Constitution stands pat the county court shall not be disturbed."

The circle is complete. It is without beginning or end. No combination can break it. And the gates of hell shall not prevail against it.

It is as if the fathers by divine sanction had written: "If any man take away from or add to the words of this instrument let him be anathema maranatha."

This is no digression, it is simply the statement of a fact that we must do the best we can with the jury system as it is, whether we like it or not. Some slight changes may be made under our Constitution but they are few and small. The next best thing, however, to knowing what can be done to improve unsatisfactory conditions is knowing what cannot be done.

**OUR JURY SYSTEM.**

We are told that the jury originally consisted of twelve witnesses selected because they knew the facts, and long after jurors ceased to be witnesses and became triers of fact before whom other witnesses testified, we are told that a knowledge of the facts was a reason for selecting and not for rejecting a juror.

In the Close Rolls of Henry III, Vol. 2, page 124, may be found an order to remove ignorant jurors in a particular case and substitute nearer neighbors and better informed men.

Our Constitution provides for an impartial jury in criminal cases, and this by judicial construction means that no juror must have any knowledge of the facts.

Our Supreme Court has perhaps done all that can be done under the Constitution, as it has been construed and therefore
as it exists, to prevent this provision operating to exclude jurors, yet the case of Turner v. The State, 3 Cates, 610, is an illustration of a failure of justice caused by this rule. The case was one of the plainest of murder in the first degree and the jury so convicted, but the case was reversed on appeal because C. W. Edmonds was allowed on the jury, notwithstanding he had formed and expressed an opinion based upon what was told him by persons who professed to have talked with witnesses.

Now, C. W. Edmonds is a type of juror, essentially impartial. He stands for a class of ideal, "good and lawful men." No matter how many opinions he had expressed upon hearsay testimony he would be and remain impartial. So impartial that any half-way innocent man would be glad to have twelve such men in the box. The fact that he was disqualified shows that the mass of good and lawful, intelligent and impartial men of the county were disqualified.

It was held that Edmonds was disqualified and the case was reversed because he was accepted as a juror, and on the next trial the prisoner was sent to the penitentiary for five years—a gross miscarriage of justice.

Edmonds was held disqualified because it would take some evidence to remove the opinion he had formed, and yet when he went into the jury box and was sworn with eleven others to render a verdict according to the law and the evidence, the State proceeded no doubt to introduce before the jury the very witnesses of whose testimony Edmonds had heard something from others. By the time these witnesses had finished their testimony every man upon that jury had formed an opinion which it would take evidence to remove, and no doubt the impression made on the mind of Edmonds (at the time the defendant began to introduce evidence) was incapable of being distinguished from that made upon the minds of the qualified jurors.

When this case came back from the appellate court for a new trial almost every man in Shelby County who could read had read the published evidence of the first trial and had formed an opinion, at the time, and while he had forgotten all about this evidence he was still disqualified.
Whatever may be said in favor of this provision as construed, still it remains a fact that it results in driving intelligence out of the jury box, and the greater the crime the more important that punishment should be administered, the more ignorant is the jury and the lower its character.

We provide that a juror shall be a householder or freeholder. The intention being to get intelligent and responsible men as jurors, yet by another provision we practically exclude all intelligence and responsibility from the jury box.

ANOTHER MEMPHIS CASE.

Recently in a murder case in Shelby County, of no special notoriety, it was fifty-three days from the time the first juror was passed until a verdict was reached. Most of the time was spent in selecting an impartial jury. In certain other cases it is practically impossible to obtain a jury.

This word "impartial" in the Constitution, with its barnacles of construction is very expensive to the State. It requires vast treasure to maintain it. No one would deny the accused an impartial jury, but we would if possible abolish the construction which makes impartiality synonymous with ignorance, and often with corruption.

We would not deny an impartial jury to the prisoner, but we would most earnestly insist that the construction put upon the word, or rather the test applied by the courts, does not tend to protect the accused, where he needs protection, but only to embarrass the State where the accused deserves no protection. The test applied does not shield the accused from danger of an unfair trial. His danger is from the juror who will take advantage of the office to vent his prejudice or malice upon the accused. Such a juror will not disqualify himself. The fair minded, honest, conscientious and justice loving citizen who admits having formed and expressed an opinion is not the juror that any innocent man should fear.

THE STRONG GOVERNMENT.

A strong government can enforce its criminal law with more certainty and rigor than a weak one. The danger is that the
strong government will oppress the people who are law-abiding and destroy their liberties, and that the weak government will not protect the law-abiding from the criminal classes. The danger to a strong government comes from the uprising of those who ordinarily obey the laws. The danger to a weak government comes from those who habitually break the laws.

The Federal Government convicts violators of law in a way that seems impossible to the State authorities, at least of this section. Notice the vast difference in the case of those who loot National banks, or violate the revenue laws of the United States, and of similar offenders against State law. The difference is largely due to the superior methods of the general government in obtaining evidence. As soon as a crime is committed the United States District Attorney has only to notify the Federal authorities and a force of detectives is sent to work up the case and secure the evidence. These officers work with the District Attorney and under his direction as long as necessary.

England has known better than any people, it seems, how to enforce strictly her laws for the punishment of crime without impairing the freedom of the law-abiding citizen.

In some other countries the punishment of crime is perfected at the sacrifice of the liberty of the citizen. In our State we have exalted and exaggerated the liberty of the citizen at the sacrifice of the ability to punish the law breaker. The Romans had a maxim that mercy to the offender was cruelty to the law-abiding citizen, and Shakespeare says "Mercy but murders pardoning those that kill."

The great dominant idea in England for centuries before our government was devised had been the liberty of the individual. This resulted in a long contest between the people and the Crown, and the jury was the defense of the people. Sometimes a verdict arose almost to the dignity of a revolution, as in the trial of the seven bishops.

Without trial by jury, magna charta and petition of right would have been of little value. It is manifest that the jury system was developed from this point of view rather than from the standpoint of the police power of the Crown.
This country was settled in a spirit of protest against the oppression of the Crown. This feeling was intensified by the historic causes which culminated in the Declaration of Independence and the Revolution. One of the arraignments of George III was "for depriving us in many cases of the benefit of trial by jury."

In such mood our forefathers approached the task of framing constitutions for States and nation. There is no cause for wonder then, that they safeguarded the right of trial by jury with the most rigid precision, and that the public opinion of that period should have dictated a construction of these constitutions almost quixotic in defense of the accused in criminal cases. For public opinion is the vital spark of constitutions, and public opinion at that time and afterwards was excited to the point of suspicion.

Out of this state of the public mind grew and developed the idea of guarding the rights of the citizen when put on trial more abundantly and redundantly even than had ever been known to the law of Great Britain.

Not only must the jury be an impartial jury, but it must be composed of twelve men, and the accused in a criminal case cannot legally waive a trial by twelve jurors.

When such strictness as to matter of form was adhered to, it was no wonder that every intention was in favor of the prisoner in criminal trials and that the idea of protecting the accused from the government was developed until it has become difficult to punish the guilty, until the criminal classes have become often the real tyrants of the people, who are entirely safe from the oppression of the State; until the people need a new charter and a new Declaration of Independence to free them from the result of protecting the criminal, who deserves no protection, from the State which has little power and no purpose to oppress.

**CHALLENGES SHOULD BE DIVIDED.**

A bill was introduced in the last Legislature of Tennessee to give the State an equal number of challenges with the accused.
This would seem to be an eminently proper way to give the State more power, where it is much needed, that is for the protection of the harmless and helpless law-abiding element. Yet the bill was defeated and one of the arguments used against it was that of the criminal lawyer, who, speaking for a class, said, "We find it hard enough to get our men off as it is." Why should the accused in a felony case be allowed twenty-four challenges to the State's six? Especially in view of the fact that so many other advantages have been conceded to the guilty as against the government, and in view of the fact that the government has lost its power to oppress.

Some of the States, as New York, Ohio and Oregon, have enacted in substance that having formed an opinion from what he has heard shall not disqualify a juror provided the court thinks that the opinion will not prevent the juror from trying the case impartially.

Such a provision would, if not unconstitutional, go far towards reducing challenges for cause, and if at the same time peremptory challenges could be abolished or an equal number given to the State and the accused, the State would have something like a fair chance for a fair trial.

As it is, the combination of unjust challenges for cause and the excessive number of peremptory challenges allowed the accused puts it in the power of offenders to pack juries, and makes it almost impossible for the State to obtain an impartial trial.

There is perhaps a sane, if very conservative, reason for declining to reduce the safeguards of the accused. The conservative argues that while it may be at present the balance of power runs against the State, that the time has been when this was not so, and may be again when the balance of power will be shifted, and the best citizens need protection from the State.

When, in 1866, the Legislature of this State enacted that it should be good ground for challenge in all civil and criminal cases that the person offered as a juror was not a qualified voter of the State. The men of that day were glad of the provision in the Constitution that the right of trial by jury shall remain inviolate and that no religious or political test shall ever be required as a qualification for jurors.
The lessons of history are not soon forgotten by the conservative; so slowly and painfully do we work out our political and civil salvation that for the sake of safety from possible power in the State, which may at some time be acquired, we submit to this long servitude of crime.

The right of appeal is responsible for many miscarriages of justice. This is one reason why punishment is more swift and certain in England than in America. In many cases when with the utmost difficulty a richly deserved conviction is obtained, on appeal some error is found in the record and the case sent back for another trial, then it is more difficult to secure an intelligent and honest jury than before. Popular indignation at the crime has passed away and the tendency is to acquittal or an inadequate punishment. Many cases are reversed on appeal, yet whoever hears of an innocent man being convicted in the first instance. The reversal does not mean that the prisoner is not guilty, but only that some error has been committed in rendering the judgment of guilt. There are many cases of justly outraged public opinion, of popular indignation at the escape of the guilty. There is no fear of punishment of the innocent. If no appeal was allowed there would be no more convictions of those who are not guilty than under our present system.

If, however, an appeal is to be allowed the defendant in the event of reversal, the indictment should stand for new trial as if there had been no former trial. That is, if being indicted for murder in the first degree and convicted of murder in the second degree and this verdict is set aside on appeal, the accused should not be protected by the verdict which is upon his own appeal vacated, from a second trial for murder in the first degree.

I am aware that the Supreme Court of Tennessee has declared that it will not be bound by technicalities that tend to defeat law and rights and that where guilt is clearly established and the merits have been reached beyond all doubt, there will be no reversal except for substantial errors which deprive the defendant of some constitutional or legal right. While it is
highly probable that hereafter fewer reversals will be obtained in the plainer and more aggravated cases of guilt than heretofore, still there will remain a large number of technical rules which the court will feel compelled by former decisions to enforce, with the result that many grossly guilty will be awarded new trials to which by law they should not be entitled.

THE GREATEST TROUBLE.

One great trouble under our system is our mistreatment of juries in felony trials. We let the prisoner out on bond, except in extreme cases, and keep the jury in close confinement. If a man of income has committed murder and is refused bail he can obtain better entertainment in jail than he can if upon a jury trying another man for murder.

The compensation in large counties is inadequate as compared with the small counties.

The Supreme Court has held that it is not taking a man's services without due compensation to require him to serve on a jury for nothing, but this does not forbid the Legislature to recognize that it is unequal and unjust to require an artisan who can make four dollars and fifty cents a day and who needs every cent of it to support his family to serve for the same price as one who cannot make but one dollar and fifty cents a day. Perhaps no distinction could be made in the same county, but it might be provided that in counties in which the average wage of a workman is four dollars and fifty cents a day a juror should receive more than in counties where the same workman's wage is one dollar and fifty cents a day.

Equality, under such unequal conditions, is the height of inequality. It is unequal and unjust taxation, but this is not the worst. It has a direct tendency to prevent the selection of good and lawful men on juries in the large cities. Men will form and express an opinion, or will say they have when they have not, in order to escape the hardships and unjust taxation of jury service.

It is the earnest aim of this Association to accomplish something in the way of improving our laws, however, it is not the purpose of this paper to formulate any remedial measures.
DIFFICULTY IN SYSTEM, NOT LAWS.

In conclusion, by way of partial summary, it may be said that many of the difficulties in enforcing the criminal law rest not in the law itself or in our system of procedure, but in public opinion, which is the great autocrat ruling by a sanction more potent than the divine rights of kings in virtue of its power to nullify as well as enact laws. This Association in this regard can influence the enforcement of law only in so far as its members are as they should be, leaders and directors of that opinion.

It is impossible to make any great changes in our jury system without a change in our Constitution. There are some things, however, which can be done without constitutional revision. The provision for challenges is statutory and therefore subject to change by legislative enactment. There is a crying need for this reform in order to put the State upon an equal footing with the accused in selecting a jury.

The Constitution guarantees a trial by jury, but not an appeal, hence it is competent for the Legislature to deny or limit the right of appeal. There is little probability, however, that the people would permit or sanction a system of law which grants an appeal in civil cases, involving rights of property and denies it in criminal cases, involving life and liberty.

Yet rightly considered, why should the criminal in whose favor the right of trial by jury has been developed and fostered, when he has exhausted all his manifold advantages, has had the more than fair and favorable trial provided by the Constitution and has been convicted, why, then, should he necessarily have the right to reverse the action of this jury, which is his great safeguard, on grounds which leave the certainty of his guilt unquestioned?

Whether any act limiting the meaning of the word "impartial," as used in the Constitution and construed by the court, would have any effect is very questionable. The courts would perhaps say it was their province and not that of the Legislature to construe the Constitution and define the words thereof. Such a statute has, however, been sustained in New York and may be in other States.
It is, as has just been stated, the earnest aim of this Association to accomplish something in the way of improvement of our laws. This aim at times is barred by so many difficulties, and beset by so many discouragements, that one is almost tempted to give over the purpose of reform.

SOME ACCOMPLISHMENTS.

We must remember, however, that something at least has been accomplished by the Association already, and we must remember that all the reforms in the history of our law and our civilization have been worked out by long and painful contests and through distressing difficulties. Force is met by inertia, reform by conservatism, so loth are men to quit their old ways and venture on new. We admire the way England has learned to keep the peace and punish crime without losing sight of the liberty of the citizen, but it is not without consolation to us to recall that England did not achieve this result suddenly or easily.

It should make us more hopeful of better things to remember the time when sanctuary and benefit of clergy made the punishment of crime a farce. It is consoling to bear in mind that as late as 1818 Abraham Thornton threw down his gauntlet in Westminster Hall and demanded wager of battle which the judges held could not be denied him, and that as late as 1824 a litigant taking advantage of his adversary's slip presented himself at the bar of the King's Bench, prepared with his compurgators to swear away a debt and that this ancient custom was not abolished until 1833.

The law may not move fast, it moves nevertheless. Out of the clash and the conflict, the sunshine and storm, the contention for the good that is, and the struggle for the better that should be, it grows like the oak, flows on like the river, following the method of nature and keeping pace with the human race.
TWO LAWYERS OF OUR TOWN.

BY HON. H. P. FIGUERS, OF COLUMBIA.

Mr. President and Gentlemen of the State Bar Association:

When I was first invited to read this paper before this honorable body I did not know how fully my time would be occupied and what little opportunity I would have for preparing it. I first selected for my theme "The County Court," and intended to prepare a discourse upon that subject. But after examining that question for a short while I concluded that the question of "The County Court" was already settled. That since the Supreme Court had sustained the county redistricting laws, the opportunity was afforded to the people, in all counties where it was desired, to virtually get rid of that old octopus by reducing the number of districts in the county. After abandoning this theme I decided to write upon the subject, "Two Lawyers of Our Town."

The two persons of whom I shall write, Chief Justice A. O. P. Nicholson and Gen. W. C. Whitthorne, have both been dead some years, but have never, in my opinion, received that notice from the bar to which they were entitled. They constituted two characters worthy of study, and, in many phases, of emulation. Each achieved along his own particular line a reputation in the State and in the nation of which any man might be proud. The two men were antipodal in many respects of their characters, and yet each was successful along his own line.

General Whitthorne was bold, aggressive, vehement and earnest, and carried things by storm, while Judge Nicholson was very quiet, slow of speech, quiet in manner and tactful in all his movements.

Nicholson was sheet lightning, giving a general, full light upon any subject he touched; Whitthorne was a thunderbolt; each was a master in his art.

It will be helpful to the young members of the bar to study the lives and characters of these two men. From them the young lawyer will learn that it is possible for a young man, by
a fixed purpose, to succeed, by sobriety, industry and hard
study, from a situation of poverty to one of undoubted success
and eminence.

Both of these men started life very poor. They both made
a great deal of money and died leaving small estates. But this
is attributable to the fact that they had hearts and feelings
that were generous and public spirited, and acted upon the
idea that money was made to be used and not to be hoarded.

In fact I may say that the legal profession is not a money-
making business. The same amount of intelligence, activity
and business push in almost any other line of business would
yield quicker and larger monied returns. While this is true,
it is a business that a poor young man can engage in with but
very little money capital and achieve great success. The pro-
fession of the law opens up to the worthy and competent young
man more avenues to prominence in the world than any other
profession or avocation. The fact that it is not a money-mak-
ing profession explains why so many young men abandon it
for a more lucrative and easier field of action.

The young student may learn from these two men how to
avoid falling into the error of making the profession a mere
commercial business. In these pushing days and times there
is too much tendency among young men to get rich quickly.
They are not willing to study, to labor and to wait. The gen-
eration of lawyers and the type of lawyers to which these two
men belong have passed away in a large measure. They studied
law as a science, and they mastered it before they offered their
services to the public.

I am sure that a statement of the lives of these two men will
prove both interesting and instructive.

In the early part of the century W. J. Whitthorne, the
father of my subject, emigrated from North Carolina to this
State. A gentleman well acquainted with the family has often
told me how on one occasion the elder Whitthorne came to his
mother's house and stayed all night in the little village of Lib-
erty. All of the goods that he had of this world were carried
in a two-wheel ox-cart. He had buried his first wife on the trip.
After leaving Liberty he crossed over and settled in Bedford
County, and for a while lived near Nashville. He was a saddler
and harness maker by trade. He was a man of great firmness, energy and exactitude of character. He married for his second wife Miss Eliza J. Wisener, a sister of the late W. H. Wisener, a prominent lawyer of Bedford County, and reared a large family of children.

His son, Washington Curran Whitthorne, was born April 19, 1825, near Petersburg, Marshall County, Tennessee. He first attended school at Arlington, Williamson County, and afterwards at Lebanon, Tennessee, and finally at the University of East Tennessee at Knoxville, from which institution he graduated in 1843.

He worked at his father's trade until he was about fourteen years of age. One day James K. Polk, who was then a candidate for office, stayed all night at the Whitthorne home. Seeing that Washington Curran was an unusually bright boy, Mr. Polk said, "What are you going to make of this boy?" And the father replied, "I am going to make him President of the United States." Polk said, "All right, send him over to me at Columbia and I will make a lawyer of him."

After leaving the University at Knoxville he came to Columbia and read law in the office of James K. Polk (afterwards President Polk) and was admitted to the bar in 1845.

While Mr. Polk was President he was so attached to his student that he gave him a good clerkship in the Treasury Department at Washington, and after young Whitthorne accumulated enough money to resume the practice of his profession he did so.

A little later, in 1848, President Polk sent him with important dispatches to the city of Mexico, and to investigate the causes of trouble that had arisen between General Scott, General Worth and General Pillow. He was successful in this enterprise and discharged all of his duties with perfect satisfaction to the President.

After this he returned to Maury County, and on July 4, 1848, married the beautiful Miss Matilda Jane Campbell, who was a distant relative of President Polk. This good woman, whose life was full of sunshine and sweetness, outlived her husband three years. She sustained him through many a trying ordeal, and was to him a helpmate indeed.
Young Whitthorne soon manifested signal ability as a public debater. He was a Democrat, but in a strong Whig district at that time. His party forced him to run for the Legislature against William E. Erwin, a strong and popular Whig. In this election he was defeated, but in 1855, and again in 1857, he was elected to the State Senate, and in 1859 was elected to the House of Representatives, from the district in which he had been defeated by Erwin in 1853. As soon as the Legislature met his ability was so well recognized that he was made Speaker of the House of Representatives, which place he occupied in that stormy period of contention between the members who favored secession and those who favored the Union.

In 1860 he canvassed the State of Tennessee as elector-at-large upon the Breckenridge ticket. He made great reputation in this canvass, meeting such men as N. G. Taylor, Henry S. Foote and men of that calibre upon the hustings.

After the secession of the State General Whitthorne probably did as much as any one man in the State in assisting the Governor in the military organization of the State. He rendered active service in Virginia as Adjutant-General for General Anderson's Brigade, and received special commendation from the illustrious Lee for efficiency.

After hostilities actively opened he was very active and organized and equipped and put into the field fourteen infantry regiments, three cavalry battalions and three artillery companies. He served at different times upon the staffs of Generals S. Hardee, Anderson and Wright.

At the close of the war, having been a warm political and personal friend of Andrew Johnson, then President of the United States, he received a pardon. After this he returned to his home and resumed the practice of law. He was then as poor as when he first started life.

Just after the war the practice of law was very lucrative, and he probably did as much as any member of the Columbia bar, which had then many distinguished members, including such men as Nicholson, Looney, Thompson, Barnett, Thomas, Myers and others.

After the adoption of the Constitution in 1870, at which time the State passed from under Republican dominion into
the hands of the Democratic party, and disfranchising laws were repealed. The Democratic party demanded of him, for awhile, to quit the profession of law, at least in a measure, and to enter into the field where his broad statesmanship and recognized talents could be made useful to his countrymen. He was in Congress from 1870 to the close of the Forty-seventh Congress.

Notwithstanding he was a Democrat and from the South, he was chairman of the Committee on Naval Affairs, and in that capacity rendered the country great and signal services in investigating frauds which had been practiced for many years in that department of the government, and was largely instrumental in exposing these frauds and destroying illegal practices in the Naval Department. He achieved such success and notoriety in this work that he became a man of national repute, and was called "the Little Admiral."

In 1886, when Howell E. Jackson, then United States Senator, was made a Justice of the Supreme Court of the United States, General Whitthorne was appointed by Governor Bate to fill out his unexpired time. He declined to run against his old friend, General Bate, for the Senate, but was again elected to the House of Representatives, taking his seat March, 1889.

He died at his home in Columbia in 1894, much beloved by his fellow countrymen and esteemed by even his political enemies. Senator Beveridge once said that no lawyer had a right to decline to serve his country when called upon, and to ignore politics. His idea was that the lawyer, on account of his general information, learning and ability as a public speaker, had no right to decline to serve the public as a politician when called upon. In his latter days General Whitthorne maintained the opposite view. When well advanced in years and broken down in health, and fully aware his end was not far off, he said to me, "Let politics alone and stick to the law; it is a jealous mistress and will have no partners." He expressed a regret that he had ever allowed himself to be enticed into the political field.

General Whitthorne was a great lawyer. In every case that he undertook he performed a great deal of labor.
I once heard him say that he never lost a case where he had bestowed the proper amount of labor upon it, and that the great fault of the profession was that they went into the trial of their causes unprepared. General Whitthorne's management of a case was admirable, and his courthouse ethics worthy of emulation. He was always distinctly courteous to the court, but never obsequious, and always managed to command the respect of every court in which he practiced. With his brethren at the bar he was lovable and kind, especially to young lawyers, but when in a lawsuit realized that he was in a legal battle. He never attempted to be witty, nor quoted poetry, nor essayed to be eloquent. His style was forceful and aggressive, full of vim and earnestness, and at times vehemence. I have seen him state his case with such forceful effect as to carry jurors off of their feet and enforce conviction upon their minds that his cause was just. He was at times very eloquent, but his eloquence was born of the occasion. He had studied books, he had mastered law, but he had not forgotten to study the great book of human nature. He knew man and studied how to impress him. He was very successful in his lawsuits. He was a master of common law pleading. His pleadings were models for perspicuity and clearness.

While he was a great common law pleader he was equally at home in the chancery court, and his pleadings there were always the product of a master mind. He knew, as all great lawyers do, that pleadings, while they must be carefully prepared, and the law must be known, cannot gain a lawsuit alone, and for this reason he looked carefully after the facts of his case. For grouping together and presenting both to the court and jury the facts of his case in a forceful, eloquent and earnest manner, he had but few superiors in the State.

Chief Justice Alfred Osburn Pope Nicholson was really one of the great men of Tennessee. Retiring, modest and gentle as a woman, yet he had courage enough and mind sufficient to cope with the great men of the State and nation in the judicial and political arenas.

He was born in Williamson County, Tennessee, August 31, 1808. The place of his nativity now lies within the limits of Maury County, Tennessee. He descended from a rather dis-
tinguished family of English people. He was a descendant of Governor Nicholson of colonial fame, and of Peter Nicholson, the author of an encyclopædia, and Gen. John Nicholson of the English Army, who fell at the siege of Delhi. His father, O. A. Nicholson, was born in North Carolina, and was among the earliest settlers in this State. He was a millwright, carpenter and surveyor, and had a better education than most of the people around him. He died when Judge Nicholson was four years old.

Judge Nicholson went to school to Mr. Black, the grandfather of Henry M. Watterson, near Spring Hill, in Maury County, and later to Dr. Simon Peter Jordon, near Mt. Pleasant. After acquiring all of the learning that could be afforded by this country school he went to Chapel Hill, North Carolina, from which place he graduated in 1827, and was long afterwards spoken of in that institution as a born student, who took the first rank in every department.

After graduating his first business was that of editor of the Columbia Mercury, and later, during the Polk campaign of 1844, he was editor of the Nashville Union, and still later, from 1852 to 1857, was the editor of the National Union, published in Washington City, and at that time a paper of great enterprise and influence in national politics.

After graduating at Chapel Hill and returning to Columbia he for a while studied medicine and attended medical lectures at Philadelphia, but never intended, it seems, to practice medicine as a business.

After graduating in medicine he at once commenced the study of law, and was one of the few men of whom it could be said that he mastered that profession.

His first law partner was the Honorable Sam D. Frierson, a great lawyer of his time and first chancellor of this division. He was afterwards, while he lived at Nashville, partner of Russell Houston and later of the Hon. William F. Cooper and Col. A. M. Looney.

As a member of the bar at Columbia his ability was soon recognized and was universally regarded as the head of that bar, which was at that time universally conceded to be the most brilliant in the State, composed of such men as Russell Houston, Jas. K. Polk, Gideon J. Pillow, Jas. H. Thomas,
Edmond Dillahunty, Terry Cahal, M. S. Frierson, Judge W. P. Martin, L. D. Myers, George Gant, A. M. Hughes, W. S. Fleming, A. M. Looney and others. During his practice at that bar there was never a case of any importance that he was not upon one side or the other. When quite a young man the Legislature of the State appointed him to revise the statutes of the State in connection with Judge Caruthers. That work was a model of its kind, and was the first thing in the nature of a code issued in the State of Tennessee.

Ten years later, while President of the State Bank, he issued an additional volume completing the work up to that time. These books were in general use until the code was issued in 1858.

After the death of Felix Grundy, United States Senator, he was appointed by the Governor of the State, who was James K. Polk, to fill the vacancy occasioned by the death of that great and illustrious lawyer and statesman.

At the end of that period he was a candidate and was nominated by the Democratic party for re-election, but owing to a defection within his party and the forming of the combination with the Whigs, Hopkins L. Turney was elected over him. In 1857 he was regularly elected to the United States Senate by the Legislature, and served in that capacity with great ability until the breaking out of the war, when his State seceded from the Union and he returned to his home. He was three times a member of the State Legislature, and once to the State Senate, and was elected the first time before he was twenty-one years old. He was appointed chancellor of this division in 1851 by the Governor of the State, and held that position until the regular election, when he declined to be a candidate for re-election.

Judge Nicholson, whether considered as a newspaper writer, a statesman or a lawyer, always manifested himself as a strong man, and has left his mark upon the history of his native State. Whether as editor of the Columbia Mercury, The Nashville Daily or the National Union at Washington, he was an able, facile and forcible writer. His editorials were read by his fellow Democrats everywhere as authority on all party questions. He was more of a statesman than a politician. For
forty years he was recognized and known as one of the safest and wisest councilors of the Democratic party. Such men as Andrew Johnson, Jas. K. Polk, and men of that cast were always ready to give respectful heed to his council.

While he was a safe councilor he was also a powerful factor and ranked among the highest of the great public speakers of his time. He made the most complicated questions simple by his clear, comprehensive and forcible presentation of the same. He was not what you would call a hurrah speaker. He was the easiest, plainest speaker I ever heard. His comprehension of the subject-matter was so perfect that he made it plain to others. His language was always simple, plain and pointed. He was not an orator in the Roman and Grecian style—action—but he was a great orator along a different line. He rarely ever changed the tone of his voice, which was pleasant and musical, and made very few gestures at all, and spoke almost entirely in colloquial style.

It is really to be regretted that Judge Nicholson ever allowed himself to be enticed into the field of politics, but he was really forced there by the demands of his party. He was a profound lawyer; he was both jurist and advocate. As an advocate he at all times commanded the respect of the court and confidence of the jury. In the conduct of a lawsuit he was very retired and quiet, and usually left the examination of witnesses to his associate counsel. His arguments were models of the speaking art. His manner was gentle and quiet, his voice low, his language plain and pointed.

A feature worthy of note in his arguments was brevity. His ability to concentrate and present in simple form the tangled threads of a lawsuit was so marked that he rarely ever spoke longer than an hour. His ethics in the courtroom were perfect and worthy of imitation by the rising generation. I never heard of his having a “spat” with a brother lawyer in the courtroom. As a jurist his success was eminent from the beginning. His written opinions while on the supreme bench will compare favorably with those of any other judge who has filled that exalted position. He had clearness and rapidity of conception, exhaustive and analytical acumen, concentration and grasp of intellect and extraordinary reasoning powers. He had an easy
flow of language, and his thoughts and words seemed to come
to him easily together. He wrote with the same fluency and
readiness of language that he spoke. He was one of the most
scholarly men ever in public life in Tennessee.

Personally Judge Nicholson was a very lovable man. Like
all great men he was modest and retiring and always mani-
fested a due deference for the opinions of others. His language
was always chaste and pure. One who was with him all his
life, from his youth up, said that he never heard him use a
vulgar or low expression in his life, and in his conversation he
used such language as would be proper in the presence of refined
ladies. He never told vulgar anecdotes. While timid and
shrinking he was a man of great moral courage. No man ever
knew him to falter in the discharge of a known duty. He
always had the courage to do what he conceived to be right and
his duty. He was not a member of any church at the time of
his death, and yet he had abundant faith in the promises of
our holy religion. He was a great student of the Bible.

In speaking of Dr. Orman not long before his death he said:
"In my early manhood I critically examined the claims of the
Bible, and I concluded then that it was a book of divine origin,
and have never yet changed my opinion."

One who knew him well said: "For more than forty years he
was in public service, and I know no more honorable tribute
that can be paid to the integrity of his official life than to record
the fact that while the traces of his great genius and industry
are to be found in the judicial and political annals of his country,
he died, after so long a period of faithful service, a poor man
and without a blot upon his good name."
LIFE INSURANCE—SHALL WE HAVE STATE OR FEDERAL SUPERVISION?

BY SAMUEL BOSWORTH SMITH, OF CHATTANOOGA.

Ordinarily the discussion of such a topic as life insurance might be considered hardly a fitting theme for a meeting of lawyers. Under existing circumstances, however, I hardly feel that any apology is due for the choice of my subject.

The airing of Equitable affairs has made life insurance a matter of almost universal interest and comment, while the fact that Senator Dryden, President of the great Prudential Insurance Company, has introduced a bill in the United States Senate in which it is sought to have interstate life insurance declared interstate commerce, has been deemed of so much importance by some of the Bar Associations of our sister States that they have appointed special committees to look into the question and to report their conclusions to the bodies which appointed them.

It is not my object to go into either an exhaustive nor a technical discussion of my topic, but only to briefly touch upon the proposition from three points of view.

First—The historical. Discussing the attempts which have been made to bring about Federal supervision.

Second—The practical. Is Federal supervision greatly to be desired? And

Third—The legal. Is supervision of insurance one of the powers delegated to the national government?

State supervision of insurance originated in Massachusetts in 1855. Following the erection of the Massachusetts Department the other States fell in line with their own theories as to the proper methods of inspection, regulation and taxation of these institutions, which were beginning to give some intimation of the growth to which they have in our day attained. Naturally such inspection and regulation being a new idea, the rules and regulations of the different States differed widely, and the insurance companies which had begun business in these
States without supervision began very soon to chafe under what they considered, and in many instances rightfully considered, unjust and oppressive surveillance.

The first step looking toward national supervision took the form, in 1865, of an address to Congress from some of the leading companies asking for legislation looking to relief from oppressive supervision, legislation and taxation.

In 1868 a bill was introduced in Congress, evidently suggested by the recently invented National Bank Act, seeking to concede to insurance companies the privilege of incorporating as Federal corporations, with privileges and immunities similar to those of the National Banks. Naturally, as the peculiar reason for the existence of National Banks applied to National Banks, and to National Banks alone, the bill to create National Insurance Companies found an early grave.

During the early seventies, and even down into the eighties, the life of the insurance company was hard. The business was comparatively in its infancy; each insurance financier that was developed had his theories and ideas for reducing the cost to the policy-holder and the returns to the stockholder, and failures were many and severe. These failures were easily attributed to vicious State legislation, and every fellow who did not succeed, as well as every one who did succeed in maintaining his company, but who failed to give the policy-holder as much as he had promised, cried loud and long against the crime of State supervision. It was easy, and it is easy, to say that results would be better if things, over which we have no control, were changed.

The Supreme Court, however, in 1868, soon after the introduction of this first bill, handed down its opinion in the case of Paul v. Virginia, holding that insurance was not commerce, and this seemed so decisive of the case that no further attempt at Federal legislation was made until 1892, when Mr. John M. Pattison, President of the Union Central Life Insurance Company and member of Congress from Ohio, introduced a bill having in view the object of the bill of 1868, the Federal supervision of insurance. But he approached the subject in an entirely different way, and his bill is the real foundation for the bills which have been subsequently introduced. By the terms of
the Pattison measure all interstate insurance was to be made interstate commerce; a National Commissioner of Insurance was to be appointed; a National Bureau of Insurance was quite elaborately planned; State supervision of business in the home State of the company was to be retained, but for all interstate business National supervision was to be exclusive. This bill also failed, Congress having had, up to the present time, the grace to follow the opinion of the United States Supreme Court, and having therefore declined to pass a bill which, under repeated decisions of that court, would be unconstitutional.

The proposition next appears in a bill introduced by request in 1898 by Senator Platt, of Connecticut. This bill followed the Pattison bill in its main lines; declaring interstate insurance interstate commerce, and erecting an insurance division of the Treasury Department: This bill departed from those which had gone before it in one radical particular, in that it provided that the solvency of the company should be tested by the laws of the State of its organization. This act, like its predecessors, failed of passage, and the subject again lay dormant in the halls of Congress until the last session.

In December, 1904, Mr. Morrell introduced into the House a bill providing, in a few words, that the Bureau of Corporations of the Department of Commerce and Labor should prescribe and enforce suitable regulations for the transaction of the business of insurance in all cases wherein such business shall include a contract or agreement between citizens of different States, such regulations to be subject to modification, alteration or repeal by Congress at any time, and to be enforce under such penalties only as Congress shall from time to time prescribe. The bill further provided for the appointment, by the Secretary of Commerce and Labor, of a Superintendent of Insurance, to be subordinate to the Commissioner of Corporations, at a salary of $3,000 a year. This bill does not seem to have been seriously pushed, and in February, 1905, a bill was introduced in the Senate by Mr. Dryden, President of the Prudential Insurance Company, which undoubtedly embodies the ideas of the great insurance companies on the subject of supervision. This bill takes the form of an amendment to the act to establish the Department of Commerce and Labor;
it provides, in as few words as possible, that there shall be in
the Bureau of Corporations an officer called the Superintendent
of Insurance, in charge of the Bureau to be called the Division
of Insurance, who shall be appointed by the President for a
term of four years. Mr. Dryden then, by a sweep of the pen,
provides "That policies of insurance are hereby deemed articles
of commerce and instrumentalities thereof." Further, that
"The delivery by said corporations of said contracts of insur-
ance from the State, Territory or county of the locality to the
citizens, corporations or other persons located in other States,
Territories or nations, the transmission by the insured from
such other States, Territories or nations of the premiums or
other valuable consideration for said policies to the home office
of the company, in the State, Territory or nation of the locality
if and when said locality is situated in another State, nation
or Territory, and the transmission by said insurance company
from the home office to the insured in other States, Territories
or foreign nations than that of the locality, of any sums of money
which from time to time shall become due to the insured on said
contracts of insurance, are hereby declared and deemed to be
transactions in interstate or foreign commerce as the case may
be." In the broadest way the bill proceeds to give to the Su-
perintendent of Insurance, subject only to the approval of the
Secretary of the Department of Commerce, the power to fix
fees, establish rules and regulations for, and to pass upon the
solvency of all companies engaged in interstate insurance.

These various bills very fairly express the general advance
of the demands of the great insurance companies.

If constitutional, there was no grave objection to the bill
of 1868. Its object was simply to give the right to insurance
companies to incorporate as Federal institutions. Its passage
would not have prevented State insurance companies any more
than the National Banking Act prohibited State banks.

Passing over the twenty-four years from 1868 to the Pattis-
son bill of 1892, we see a great change.

In the Pattison bill the privilege of the State charter with
immunity from State taxation and regulation is sought. This
bill was the creation of the life insurance president of 1892,
and while broad in its scope it was still quite specific in its details,
and under its terms it was at least possible to forecast what
the regulations of the National Insurance Commissioner would be.

The Platt bill of 1898 was not framed by a president of an
insurance company, but by a gentleman who had been for
many years deeply interested in insurance as a science and in
Federal supervision as a hobby. The bill in many of its pro-
visions was crude, but it had one fundamental point of fair-
ness, in that it required the National Department to take the
law of the State of the corporation as the law by which it should
be judged by the Federal Commissioner. Under this provi-
sion the insurance company which had organized and launched
itself under conditions and laws with which it was familiar,
had the assurance of the protection of these same laws and con-
ditions, and the change from the State to the Federal control
would have simply meant the change in an official, not in the
law. At the time the Platt bill was framed this clause seemed
altogether above criticism, since that time the country has
been flooded with interstate trust companies from New Jersey,
and we can see now the danger in such a clause which was not
then appreciated, as, under it, a dishonest commonwealth
might make itself the mother and foster mother of every bas-
tard wildcat insurance scheme which might enter the brain of
frenzied financiers, and, the Federal Department being bound
by the State law, and the States in general being bound to admit
all interstate companies, there would be no method provided
for killing the financial fraud.

Coming to the Dryden bill, the bill of the Prudential Insur-
ance Company. What have we? We have State supervision
eliminated; we have a political official who is given carte
blanche to fix rules and regulations to suit himself, or to suit
his owners, as the case may be; we have the power given to
this political individual to provide arbitrary tests of solvency
for the benefit of a few companies; we have a man who can fix
the basis on which interest on the reserve shall be compounded,
and therefore he will have the practical power of fixing the
rates; we have a politician who, to all intents and purposes,
would be Legislature and Supreme Court in all practical ques-
tions touching the conduct of the insurance company, and the
rulings of this man would be binding upon the States. His
ruling might be absolutely adverse to the Massachusetts Insurance Department and to the laws of Massachusetts, the recognized standard of strict insurance inspection in this country; yet Massachusetts would be helpless; they might override every idea of the Department of Tennessee, which ranks second in the United States, which has had long and varied experience under competent heads; they might force upon Tennessee companies which our legislation and our Department had rigidly excluded; might shut from our doors that form of company which we would most desire, yet our will, our judgment, would be as naught before the dictum of one who might be a mere political henchman. And looking at the whole scheme fairly and squarely, where would be the real advantage, to the public, of Federal supervision; of creating insurance interstate commerce; of taking from the States the power of regulation, taxation and control? Has Federal supervision proven so successful, State control such a failure, that there can be but one side to the question? Take our National Banks, it is a matter of common remark that the bank examiner never finds anything the matter until the bank is insolvent. Despite the boasted strength of the National Bank, twenty-six failed in the fiscal year of 1903–1904; six resumed business; twenty were insolvent. In the past decade 142 National Banks failed, nearly three per cent of those now in being. I speak only of the failures, not of the liquidations. In the past fifteen years 269 National Banks have failed, or about five per cent of the total number in existence.

Looking to the "Old Line" insurance companies with their State supervision, we fail to find one failure in the last ten years, we find but one since 1890. As there are something over a hundred of such companies now in business, we find less than one per cent of failures in fifteen years, as against five per cent of National Bank failures during the same period. Has the success of the Interstate Commerce Commission been such as to invite its extension over business in general?

If the ordinary citizen be asked his opinion as to the greatest problem of the country and of the hour, the chances are strong that his answer will be "the trusts." No one questions the will of the great insurance interests to create an insurance trust.
should the opportunity present itself. Up to date it has never been possible to complete the formation of such a trust, though rumor has had it for a long time that there exists a "community of interest" arrangement among certain of the great companies. So long as there is State supervision and State regulation, such a trust is impossible. Make insurance interstate commerce and such a result is inevitable. This may sound like demagogy, but, looking over the industrial field, it will be found that every trust is engaged in interstate commerce and is able to sustain itself because of a really necessary and beneficent clause in the National Constitution; that in those industries and pursuits, in the great financial enterprises which do not come under the commerce clause of the Federal Constitution, that is not a trust; there never was a trust and there will never be a trust until and unless State lines are obliterated.

Looking at the pressure now being brought for the centralizing of all regulation in one department, one is reminded of a little recent history.

Most of us have read of and remember that master stroke of finance by which a small body of men were to control in perpetuum a great insurance company and a great trust company, with practically not a dollar in either concern. The plan was to largely increase the stock of the trust company and to put it on the market at a very high figure; this stock, together with the stock of the trust company already outstanding, and which was owned by the controlling stockholders and directors of the insurance company, was to be bought by the insurance company. The insurance company's directors thus were to make a handsome trade in their stock, and as directors of the insurance company they would control the trust company, to which they were to elect themselves directors. The trust company, now having a large surplus by reason of its sale to the insurance company, would be in pressing need of finding an investment. What could be more advantageous than the controlling stock in the insurance company, which could be bought from the directors of the trust company and of the insurance company if enough were paid for it? This purchase being made, the trust company would own the control of the insurance company, and would, through its directors, elect
the directors of the insurance company, and *vice versa*. By this simple, though unique plan, the directors in these two massive corporations would sell out their own holdings at enormous profits and still retain for all time the absolute control of both corporations. This was, in rough and in brief, the scheme. This well laid plan was scotched by the Insurance Commissioner of Massachusetts, although the insurance company in question was domiciled in New Jersey.

At the next Senatorial election, after the Massachusetts Department had been so rude as to interfere with so neat a plan of high finance, the President of this same insurance company is elected to the United States Senate, and has hardly well warmed his seat before introducing a bill which is intended to take from the Massachusetts Commissioner, and from all other commissioners, the power of interfering with the plans of the "Big Four" of life insurance.

The States are learning that it does not pay to be too severe upon the insurance companies. If they are too severe the companies can withdraw from the State, and this remedy has more than once been resorted to.

It is true that taxation is too high—entirely too high. It is also true that, as a rule, the consumer pays the tax, yet even from this standpoint the burden upon the individual policy-holder is not great. If we can assume, and the assumption is a violent one in most instances, that the policy-holder would get the benefit of every cent of tax saved by eliminating State taxation the saving upon his premium could in no case be over two per cent, which is as nothing if the State supervision can possibly avoid evils which might arise under a one man administration.

If the Equitable tangle be pointed to as an example of weakness in State supervision, a moment's thought will demonstrate that this argument is really for, not against, the State idea. It is true that monumental graft has apparently gone on under the closed eyes of the New York Insurance Department. It is equally true that Superintendent Hendricks is a man of quite the calibre one might expect to find in the National Superintendent's office. It has been charged for a long time that the New York Insurance Department was owned by the great
corporations of that State. It is believed to be true that Hendrick's last report on the Equitable was not given to the world until it had been edited by the Republican machine, and particularly by Odell. To-day Higgins is claiming that Odell has used this method of weakening the Governor's position. At this writing it seems that District Attorney Jerome has at last succeeded in procuring a copy of the testimony taken in the Equitable investigation, though he succeeded only after pressure of public opinion had been brought to bear on the Insurance Department. All this, and much more, is doubtless true, but the Insurance Departments of the other States are vigilantly watching developments; the chosen men at the head of some fifty departments are seeking distinction in protecting the interests of the policy-holders of their States. What has happened in this instance in Albany has happened and will happen again in Washington. If Albany flickers, half a hundred independent departments are entitled to a "look in" and an investigation; should Washington fail, this is the end of it. If Chairman Paul Morton is being protected by the Republican machine in New York, Vice-President Paul Morton of the rebating Santa Fe was none the less well protected by the administration at Washington.

The corporation or the individual who has nothing to hide invites publicity. The eyes of the State Departments are dreaded only by those who have something to hide. Foreign inspection is dreaded by many concerns because they have no pull with the foreign inspector. Let him remain. The dread of him must do more good than his cost can do harm.

This brings us to the legal question. Would Federal supervision of insurance be a constitutional exercise of the national power? The negative would seem to be, in the light of the decisions, the only possible answer to this question. The clause of the Constitution, and the only clause, under which it is claimed that Federal jurisdiction might be invoked is the commerce clause: "The Congress shall have power to regulate commerce with foreign nations and among the several States and with the Indian tribes."

It is not necessary to go into a dissertation as to what is interstate commerce, as our courts have definitely decided that
insurance cannot be such commerce. The leading case upon
this point seems to leave nothing unsaid. Decided in 1868 in an
able opinion by Mr. Justice Field, Paul v. Virginia,* has been
many times followed, never departed from.
A well known writer upon the Federal power over commerce,
has thus digested and commented upon this famous case:

† "The next attempt to extend the meaning of the
term commerce is found in the case of Paul v. Virginia.
The State of Virginia passed a law requiring all insurance
companies not incorporated in the State to take out a
license before doing business. To obtain this license cer-
tain taxes and other conditions were imposed. The act was
a discrimination in favor of home insurance companies.
One Paul, an agent of several New York companies,
eglected to conform to the conditions necessary to obtain
a license from the State, but nevertheless persisted in
acting as the company's agent. He was indicted and
fined in the State courts, and appealed to the Supreme
Court of the United States. One of the grounds for
appeal was that the law of Virginia intrenched on the
power of Congress to regulate commerce. This brought
the following question before the court: Is one engaged
in interstate business who is within the State an agent
of a corporation organized under the laws of another
State, soliciting insurance on the buildings within the
State? Paul was an agent for a corporation. It is a well
settled rule of international law that a corporation can
have no existence in a foreign country except by the
express or implied permission of the laws of that country.
In this respect the different States of the Union are like
distinct nations. A corporation organized in one State
can exercise its corporate power in another only by the
comity of the latter. There are, however, two exceptions
to this statement: First, where the corporation has
been vested by the Federal Government with the execu-
tion of one of its expressed or implied powers; second,
where the corporation is engaged in interstate business.
Thus Mr. Justice Field, in his opinion in the case under
discussion, said: 'There is nothing in the fact that the
insurance companies of New York were corporations to
impair the force of the argument of counsel, that being
engaged in interstate commerce they had the right to

* 8 Wall., 168.
† Lewis Federal Power Over Commerce.
do business in any State in the Union.' But the learned
judge goes on to say: 'The defect of the argument lies
in the character of their business. Issuing a policy of in-
surance is not a transaction of commerce. . . . They
are like other personal contracts between the parties
which are completed by their signature and the transfer
of the consideration. Such contracts are not interstate
transactions, though the parties may be domiciled in
different States. The policies do not take effect, are not
executed contracts until delivered by the agent in Vir-
ginia. . . . They do not constitute a part of the com-
merce between the States any more than the contract
for the purchase and sale of goods in Virginia by a citizen
of New York whilst in Virginia would constitute a portion
of such commerce.' In determining whether a partic-
ular contract forms a transaction of interstate commerce,
we must not look at the domicile of the parties or where
the contract is made, but where it is to be performed. It
is the performance which is the intercourse; the contract
is simply the preparation of that performance. It can-
not be disputed, for instance, but that a contract by A,
of Pennsylvania, to leave C, of San Francisco, $1,000 in
his, A's, will, would be determined by the laws of Penn-
sylvania. Only those contracts in whose performance
interstate business is transacted are under the control
of Congress. A contract of insurance while made by a
corporation of one State and a citizen of another was to
be performed by paying money in the State of Maryland
if a house in that State was destroyed by fire. The loan-
ing or payment of money in itself cannot be a transaction
in interstate commerce, for it always must be paid at a
particular place. The decision in Paul v. Virginia has
received the repeated approval of the court which pro-
nounced it. The soliciting of insurance on property in
the State cannot ever be interstate business or com-
merce."

As stated, the decision in Paul v. Virginia has been several
times affirmed and approved by the court which rendered it* and has been followed in numerous other decisions, both State and Federal.

A similar opinion was expressed by the House of Lords in the case of Citizens Ins. Co. v. Parsons. The question in this

case concerned the validity of a regulation of insurance business by the Province of Quebec, which, by the provisions of the British-North American Act, is without jurisdiction over interprovincial regulation of trade and commerce. The court says that the business of insurance,

"when carried on for the sake of profit, may, no doubt, in some sense of the word, be called trade, but contracts of indemnity made by insurers can scarcely be called trading contracts, nor were insurers who made them held to be 'traders' under the English bankruptcy laws."†

There is also a long line of decisions excluding from interstate commerce transactions involving, as does insurance, the matter of contracts.

In Nathan v. Louisiana it was said that a broker dealing in foreign bills of exchange was not engaged in commerce, but, like the ship builder, was engaged in supplying an instrument of commerce.‡

"The business of a commercial agency in procuring and supplying information of the standing of merchants is not commerce, and a tax thereon is not in conflict with the commerce clause. Nor is the business of a building and loan association, nor of loaning money, nor of dealing in foreign lands, nor of conducting a manufacturing establishment in another State."§

It is conceded by those who are pushing the idea of Federal supervision that Paul v. Virginia seems to dispose of the question, and that adversely to the right of such supervision. But those advocates seek to make a distinction between the Supreme Court holding as an abstract proposition that insurance is not interstate commerce, and the probable action of the same court in passing upon a Congressional bill declaring it to be such commerce.

Mr. Dryden, in an address delivered in 1904, adopts the language of that well known advocate of National supervision,

‡ 8 How., 73; Cases cited in Prentiss & Eagen, p. 46.
§ Cases cited in Prentiss & Eagen, p. 55.
the "Spectator," quoting from an article in an issue of that journal of January, 1898, as follows:

"It seems clear that it is the duty of Congress to so legislate, from time to time, as to keep the laws of the country abreast with modern ideas and to accord recognition to everything that will stimulate and facilitate interest to commerce and friendly and business intercourse between the citizens of the different States. The growth of the country and its development in wealth and prosperity are dependent upon its so doing. \textit{It has the power most unquestionably under the Constitution to designate the factors that go to make up interstate commerce, and to legislate for their regulation and supervision. It has so legislated regarding railroad and steamboat transportation, regarding banking, telegraph lines, etc., and it has but to declare insurance to be a necessary factor of interstate commerce to have it recognized as such by the courts of the country.}\"

Has Congress the unquestionable power, under the Constitution, to designate the factors that go to make up interstate commerce and to legislate for their regulation and supervision? I hope and believe that it has no such power. If we concede that Congress has the right, by a word, to make that interstate commerce which otherwise is not interstate commerce, we wipe out State lines entirely so far as business enterprises are concerned which may not be exclusively confined to one State. While the Supreme Court seems to have never had the opportunity of passing directly upon this question, it has passed upon its converse and has held, to quote from a distinguished authority, that

"the question, what articles are legitimate subjects of trade and commercial intercourse, is determined by the general commercial usage of the world, and does not depend upon the declaration of any State. The necessity of this rule is apparent. If Congress could regulate only those subjects which the States decided were proper subjects of Federal regulation, the power of the States would be paramount to the power of Congress."*

The question as to what articles are legitimate subjects of trade and commercial intercourse being determined by the

* Prentiss & Eagen Com. Clause, p. 49, and cases cited.
general commercial usage of the world, Congress could no more make that interstate commerce which the courts have held, under the commercial usage of the world, to be not interstate commerce, than the States could take by legislation from the category of interstate commerce that which is accepted by commercial usage to be interstate commerce. There was a time when it might have been plausibly argued that the decision in Paul v. Virginia was not of binding authority, because at the time of the decision no act had been passed by the Federal Government regulating insurance, and that therefore the matter of insurance was still under State control. For a long time this contention was made, that the State could regulate until Congress took action. But, as early as 1851 in the well known case of Cooley v. Port Wardens,*, seventeen years before the decision of Paul v. Virginia, the Supreme Court held that “the subjects, indeed, upon which Congress can act under this power are of infinite variety,” requiring for their successful management different plans or modes of treatment. Some of them are national in their character and admit and require uniformity of regulation, applying alike to all the States, others are local or are mere aids to commerce, and can only be properly regulated by provisions adapted to their special circumstances and localities. In the former class may be mentioned all that portion of commerce with foreign countries or between the States, which consists in the transportation, purchase, sale or exchange of commodities. Here there can of necessity be only one system or plan of regulations and that Congress alone can prescribe. Its non-action in such cases with respect to any particular commodity or mode of transportation is a declaration of its purpose that the commerce in that commodity or by that means of transportation shall be free.

And this has been the consistent stand of the court to this day, that, in the absence of Congressional action, commerce must be free and that interstate commerce cannot be taxed.†

These propositions are not only not answered by the advocates of Federal supervision, but they are hardly dodged. Their argument reduces itself to simple propositions, that insurance is a great business, national in its character, and should not be hampered by State laws, and that, while the Supreme Court has consistently held that insurance is not interstate commerce it has never held a Congressional Act declaring it to be such, to be beyond the powers of Congress. If Congress can change the character of a business by a declaration, if it can declare a contract of insurance to be interstate commerce, it is but a step for it to declare that all the varied pursuits which our highest courts have held to be purely State matters, to be also interstate commerce and therefore not subject to tax, license or regulation by the States. Then has centralization triumphed indeed, and the American idea of the sovereign State is but a memory of a passed generation.

The passage of such a bill would precipitate litigation, and it might, and probably would be, years before the companies would know just where they stood and by whom they were controlled. In the meantime irreparably wrong might be done which no final decision could cure.
JOHN FORD HOUSE.

BY MICHAEL SAVAGE, OF CLARKSVILLE.

John Ford House was born in Williamson County, Tenn., on the 9th day of January, 1827; his grandparents were from North Carolina, and became citizens of the territory now comprising the State of Tennessee before it was ceded to the Federal Government by the State of North Carolina. They were well-to-do farmers, and ranked among the best people of Middle Tennessee. His mother was Margaret S. Warren, a descendant of prominent Virginia families. His father died when he was but a boy, and his care and education devolved upon his mother. The basis of his education was acquired under that eminent educator, Edwin Paschall, a man of superior talents, who ranked with the best educators of the land in his day. He also attended Transylvania University, near Lexington, Ky., but because of his mother's inability to continue him longer in that institution he was forced to close his course at the end of the junior year. He had succeeded, however, in laying the foundation of a splendid education upon which, by strict industry, ambition and application, he became one of the best educated of his profession in the State. He often referred to the training he received under Mr. Paschall and the effect it had on his life.

After leaving Transylvania University he entered the law office of Campbell & McEwen, of Franklin, Tennessee, and after a few months of diligent application he entered Lebanon Law School, then in its infancy, but was, for the want of means, unable to complete his course in that institution, and was compelled to leave its halls and go to work. His standing, however, with Professors Caruthers and Green was so high that they conferred upon him at the end of the session, 1850, a diploma. After leaving Lebanon Law School he opened a law office in Franklin, Tennessee, but soon thereafter decided to make Clarksville, Tennessee, his home, and in the latter part of 1850 moved to Clarksville and became a member of the Clarksville bar.
In January, 1851, he married Miss Julia F. Beach, then a young lady of Williamson County, Tennessee, and to this marriage there was born one child, a daughter, who died when quite young. After more than fifty years of married life death separated this couple, whose lives had been a charm to all who knew them. He was devoted to his wife, and she was indeed his devoted helpmeet and companion, and after her death he frequently said to his friends that to him the charms of life had passed away, and that he longed to see the coming of another morn when the bride of his youth would be restored to him in that land where there would be no parting and no death. He survived his wife about four years, and often during those years he could be seen sitting beside her grave in deep reflection, no doubt feasting upon memories that were sweet to his soul. His devotion to this life-long companion is among the most hallowed memories his friends cherish of him, and those who knew them and who pass their beautiful monument in Greenwood Cemetery stand reverently uncovered in the presence of his last tribute to her in these words: "The memory of her faithful life sings like an angel in my heart."

Colonel House was a great man in every sphere of life in which he lived. In a short while after being admitted to the Clarksville bar he took rank among its ablest and most eminent members, and in a few years was numbered among its brightest and ablest advocates and lawyers. Colonel House was a member of Congress when I was admitted to the bar, and never thereafter became very actively engaged in the practice of law. He did, however, represent some of his old clients after returning from Washington. I saw enough of him to know that he was a great lawyer, and standing at this point and looking back over the Clarksville bar, a list of illustrious and great men, I feel that I can say, without the least apprehension of question, that of all the great men of that great bar from 1850 to 1890, the four decades of its most brilliant history, Colonel House was the greatest lawyer of that bar, and I feel no hesitancy in saying that the bar of Tennessee did not have, in the forty years of his practice, a purer man or better lawyer.

Colonel House was a great orator, and at the bar, on the stump and in the halls of our State and Federal Legislatures,
he delivered some of the greatest speeches and orations that were delivered by any man of his time. His speeches were full expositions of the subjects with which he dealt, pregnant with the best thought, expressed in vigorous and eloquent diction and delivered with the animation and fervor of the genuine orator. His first speech in Congress, in Committee of the Whole, in 1876, on the State of the Union, was pronounced by his colleagues to be the most statesmanlike utterance in that long discussion, and placed him at once among the great thinkers, debaters and orators of that great body of representatives. His speech on the Louisiana Returning Board, in which he denounced the scoundrelism of that shameful theft of the Presidency ranks with the greatest efforts of the great men who figured in that discussion. He delivered many notable speeches while a member of Congress—on the tobacco tax, the relation of capital and labor, and burdens of the public debt, on the policy of the Government towards the Texas & Pacific Railway, on measures appropriating revenue, on civil service reform, on the election of delegate Cannon of Utah, and other notable speeches.

His oration in May, 1880, on the occasion of the Centennial celebration of the founding of Nashville, when the equestrian statue of Andrew Jackson, on the grounds of the capitol, was unveiled in the presence of thousands assembled, was perhaps one of the greatest oratorical efforts of his life.

In politics, before the war, Colonel House was a Whig, and in the last national struggle of that party he was a sub-elector for the county of Montgomery in behalf of the candidacy of General Scott. He was elected in 1853 as Representative of Montgomery county in the General Assembly, the first which met in the present capitol. As a member of that General Assembly, though one of its youngest members, he was conspicuous for the ability and conservatism he displayed. In every political contest from 1853 until 1888, his eloquent voice was heard in behalf of his party throughout the State of Tennessee.

In 1856, when the conservatism of the South, under the lead of Fillmore, endeavored to stem the tide of the sectionally aggressive forces, which had resulted in the repeal of the Misi-
souri Compromise, he delivered a number of speeches equal to any of the best efforts, and materially added to his growing fame as one of the ablest debaters of that day. He was elector for his Congressional District on the Bell and Everett ticket, in that memorable contest when the banner of "The Union, the Constitution, and the Enforcement of the Law" went down, not to rise again until it emerged, rent and disfigured, from the blood of that terrible civil conflict. In that hour of great national excitement the utterances of no man were more persuasively eloquent in the attempt to allay the passions which precipitated that result.

Early in the year 1861 an election was held in Tennessee, by authority of the Legislature, to elect delegates to a convention to consider the impending crisis in national affairs and the attitude of Tennessee thereto. Mr. House was elected a delegate, and a decided majority of the delegates elected were in favor of maintaining the Union, and had this convention been organized the relationship of Tennessee to subsequent events might have been different, and the fortunes of the commonwealth and its prominent actors had a different history. The popular majority, however, was against the assembling of this convention. Mr. House maintained his attachment to the cause of peace, fraternity and union, and favored the Crittenden compromise, or any other adjustment that looked to peace. It was impossible to stem the tide of the great popular demand, however, for separation, and the voices of those whose counsels were against a conflict of arms were drowned by the guns of Fort Sumpter and the tramp of great armies marching South. After the vote for separation and Tennessee had formally become a member of the Confederacy, Mr. House was elected a member of the Provisional Congress and served in that body until February, 1862, when he declined to be a candidate for the permanent Congress, sought service in the field and was assigned to the staff of General Maney. He took part in the battles of Murfreesboro, Chickamauga, Missionary Ridge and the engagements between the armies of Generals Johnson and Sherman around Dalton, and in the early part of 1864 was ordered from New Hope Church to report at Richmond and was assigned to the position of Judge Advocate, with the rank of Captain of
Cavalry, and continued in that service until the end of hostilities, when he was paroled at Columbus, Mississippi, in June, 1865.

In 1868 he was a delegate to the National Democratic Convention that met in the city of New York. He was a member of the Constitutional Convention in 1870, and was a member of the Judicial Department Committee, and was regarded as one of the foremost members of that distinguished body charged with the delicate responsibility of framing the organic law of the State to meet the new and changed conditions of the country.

In 1874 Colonel House was nominated for Congress from the Hermitage District, his nomination being by acclamation, and in December, 1875, he took his seat as a member of the Forty-fourth Congress. He was renominated in 1876, also in 1878 and in 1880, and in 1882 he voluntarily declined to become a candidate for another nomination. The period of his service in Congress included the last half of Grant's second term, Hayes' administration and the first half of the Garfield-Arthur administration. It required but little time in Congress for Colonel House to become a central figure among the illustrious men with whom he served. In the House of Representatives during his period of service were John G. Carlisle, S. S. Cox, Joe Blackburn, Proctor Knott, Randle and Kelly of Pennsylvania, Holman of Indiana, Mills and Ragan of Texas, Alexander H. Stevens, Garfield, McKinley, Randolph, Tucker, Joseph E. Johnson and Effa Hunton of Virginia, Adkins and McMillin from Tennessee, and many other men of distinction.

In the Senate were Thurman and Sherman of Ohio, McDonald and Voorhees of Indiana, Hampton and Butler of South Carolina, Carpenter of Wisconsin, Hill and Gordon of Georgia, Morgan of Alabama, Edmonds of Vermont, Blaine of Maine, Conklin of New York, Beck from Kentucky, and Isham G. Harris and James E. Bailey from Tennessee. One of Colonel House's colleagues from Tennessee, on a recent occasion, in referring to him as a member of Congress said: "I had a splendid opportunity to compare Colonel House with the brightest men of the age in which he lived, and in the great galaxy of statesmen of which he was a member he shone with resplendent lustre." He was a great lawyer, a great orator and a statesman.
of profound ability. He had wisdom without ostentation, and brilliancy without egotism. The years embracing his services in Congress was a history-making period. In the organization of the House of Representatives there was a contest for the Speakership. Those who were opposed to the protective tariff generally opposed Mr. Randle, but many even who differed from him on this question stood by him personally. All of the Democratic delegation from Tennessee except Colonel House, Governor Taylor, and I think Mr. McMillin, lined up with the distinguished Pennsylvanian. I believed then, and I know now, that if he (Colonel House) had been pitted against Mr. Randle he would have defeated him, for he could have carried all those Tennessee Representatives who supported Randle, and would have received a sufficient number of votes to have given him the speakership, and if this had occurred he would have entered at that session on an agitation for correct taxation and a reduction of the tariff, which came later under the leadership of Mr. Carlisle.

Colonel House was not self-assertive; he was slow to enter a conflict, but as soon as the battle was declared on and his sword unsheathed, no man was more furious in the charge or more persistent in the battle. On such an occasion he was absolutely without fear, and in that body he never stood up that he did not have the undivided attention of the House and frequently the applause of both sides. He was eminently a just man. If there is any case that tests the representative's unswerving fidelity to principle above another it is the contested election case, where party supremacy may hang on the result and where partisan rancor is sure to be injected into the contest; but even here he rose above all petty or mere partisan consideration and stood by justice, irrespective of whose personal interest would rise or fall with the result. I remember on one occasion when he took a position in opposition to the majority report of his party and led the assault against what he thought was wrong, and although the party majority in the House was great, it was reduced until one of the closest votes in the history of the House resulted.

He was intensely devoted to the South, for which he had taken up arms, and in whose behalf he had risked his life in the
Civil War. On all fitting occasions he defended her fair name, the purity of her motives and the disinterestedness of her patriotism. He had a devotion to his country that made him revere its Constitution next to his Bible. He loved every foot of ground over which our flag floats and our eagle soars. He predicted then, and I am glad that he lived to see his prediction fulfilled, that sordid, bitter and mean sectionalism and strife must give way to patriotism and fraternity.

I know of no man to whom the words of a great author appeal more appropriately than to John F. House:

"A sweeter and nobler gentleman, Framed in all the prodigality of nature, This spacious world hath not seen."

Colonel House, after returning from Congress, for a while cherished an ambition to represent his native State in the Senate of the United States. At that time, it will be remembered, he addressed the people of Tennessee an open letter in reply to speeches of Senator Jackson and the message of Governor Taylor to the Legislature in advocacy of the Blair educational bill, and it will be conceded by all who were in touch at that time with the political forces in Tennessee that this paper completely revolutionized the sentiment of the State on this measure, for it was a complete answer to every argument in support of that measure. Failure, however, to reach the Senate of the United States was no serious disappointment to him. He loved his home, his church and his friends, and lived happy in their enjoyment. Indeed, Colonel House, great as he was in all of his relations in life, was greatest in his private and personal relations. His life was a benediction to his friends, and if

"To live in hearts we leave behind is not to die,"

Colonel House will continue to live at least until all of those who knew him well have passed away. God raises up only a few here and there to tower above their fellows, like some great lighthouse along the shores of time. The conception which his great mind had of divinity was as bright a diadem as ever bedecked the crown of human loyalty to God. The childish
reverence and unaltering devotion of his great heart to the Master whose divinity he so ably proclaimed to the world was perhaps the most noble phase of his life. You may measure this man by any human standard and he was great. As a patriot, apply the test of patriotism to his life and you will find him among the noblest. On the occasion of his last appearance among his friends at a dinner, given in his honor, a few months before his death, his hopes for the welfare of the republic that he loved so well and served so long were expressed in the most beautiful and earnest language. It was at a time when the building of the Panama canal was the subject uppermost in the public mind. How well I remember his splendid commendation of the President's action in that matter. He appealed to all the young men present to give their best thought and energy for the welfare of their country, and declared that the brightest and greatest era of the republic was just beginning to dawn, and that the young men of this generation would soon behold a country far excelling the most extravagant dreams of fifty years ago. In this connection I think of these lines:

"'Tis the sunset of life gives me mystical lore
And coming events cast their shadows before."

Apply the test of social purity and he stood four square to every temptation that besets weak human beings. So pure a life exerted a splendid influence for good while he lived and those of us who were his neighbors and friends will all be better men if he will allow our hearts to make pilgrimages to his tomb and in memory live over the hours spent in his presence. Who are the great men in this world? I recall an instance in Holy Writ when men were discussing this question and they appealed to the greatest Teacher the world has ever known for answer. He called an innocent little child and held it up as an example of greatness. Measured by that exalted example, Colonel House was great. Although he must have been conscious of his mastery of earthly environments, he would listen as eagerly to the prattle of a child as to the utterances of philosophers and scholars. His modesty was one of the greatest foundation stones in the temple of his greatness. The sun of his life was never beclouded by vice, and the end of it was like the sunset of a
cloudless day. The end was unexpected to his friends. He retained all of his mental faculties until he breathed his last breath. Turning to his lifelong friend and physician, Dr. C. E. L. McCauley, with that coolness of manner that characterized him under all circumstances, he said, "Doctor, this is the end," and thus passed John F. House to the great beyond.

THE UNIVERSAL CONGRESS OF LAWYERS AND JURISTS.

BY H. H. INGERSOLL, OF KNOXVILLE.

The ambition of the managers of the Louisiana Purchase Exposition was to excel and outdo the World's Fair at Chicago. In space and territory they succeeded, doubtless to their fondest desires—far beyond that, indeed, of many of their visitors. Their plans compassed every field of human thought and endeavor, and thus they sought to furnish attraction for "all sorts and conditions of men." And it is possible that herein, too, they gratified the civic pride of St. Louis and believed that they had "beat Chicago" in the variety of their entertainments.

It is certain that they made the American Bar Association a feature of the Grand Vaudeville of the Nations, and it is possible that they gained thereby for the exposition as much eclat as the performance gave of inconvenience to the Association.

Do not misunderstand me—there was no lack of attention or courtesy on the part of the management in its entertainment of the members of the Association. We were, pro tem., the feature of the show. The stage was cleared for our performance and we were given the right of way in the great Festival Hall at the focus of the exposition.

But the Association was too small for the auditorium, or the auditorium was too spacious for the Association, and the outside attractions were far too numerous and alluring for the welfare of the Association. Speakers could not be heard unless they
were old campaigners accustomed to stump-speaking, and the multitudinous performances and functions, synchronizing our sessions and clamoring for attention, kept the meeting in constant fermentation. The consensus of opinion seemed to be that our twenty-seventh annual was the most insignificant and unprofitable meeting of the past decade.

Close on the heels of the Bar Association as an allied attraction of greater size and variety came the polyglot performance of the Universal Congress of Lawyers and Jurists. There were present several representatives from Tennessee, including Chief Justice Beard and our venerable ex-Attorney-General Heiskell, from "Rebels' Rest, taxing district of Memphis."

Having accepted the honor of an appointment as a delegate from the American Bar Association without the duty of reporting to it or any other body on earth, I feel under a sort of equitable estoppel against uttering anything not eulogistic of this heterogeneous assemblage of lawyers and jurists in an universal congress at the Louisiana Purchase Exposition.

There were appointees of the President of the United States and of the Governor of every State and Territory thereof; of the National and every State Bar Association; of the executives of foreign nations—not all of them, to be sure, but many of the foremost nations of the earth.

Japan was there, but Russia was absent, as she seems to have been from many functions and places during the last year when she was expected to be well represented. There were two delegates from Great Britain, France, Germany, Holland, Italy, Belgium, Switzerland, Canada, China and several of our Spanish-American neighbors.

The presiding officer of the assemblage was Mr. Justice Brewer, of the Federal Supreme Court, who opened the programme with very felicitous tact and great success on the first day, at the close of which he announced himself a victim of world's fair conditions, hereinbefore alluded to, and expected to attend the exercises of Kansas State Day on the morrow, when the people of his State would unite in some sort of patriotic celebration at their State building, and he therefore asked the Congress to designate some Vice-President to act in his absence.
Judge Simeon E. Baldwin, of the Supreme Court of Connecticut (possibly "Mr. Justice" Baldwin would be more appropriate under present Tennessee terminology), was unanimously chosen and proved a very efficient substitute for Justice Brewer, whom we saw no more until on the following night at headquarters, when it was remarked that he had kept his word and faithfully attended the Kansas State function.

Naturally the papers and discussions of such a body of lawyers and jurists were upon subjects of general jurisprudence and international law and took a wide range. They were frequently in the English language and thus "generally understood" of the audience, though it must be conceded that the accent of some of the speakers gave confusing notions to some of the audience, who, like Mrs. Malaprop, plumed themselves upon their "parts of speech," as for example when the Switzer spoke of the develope-ment of the criminal law, and a Netherlander expatiated upon the international interest in "die grand spectakel of the liberalization of die damen covert."

But the climax of unintelligibility was reached when the oratorical representatives of France and Italy presented with characteristic national fervor in their mother tongues the conflicting and divergent views held by their respective governments on the rights of neutral vessels on the high seas in time of war. Both seemed instinct with thought and fluent of speech. Their gestures and poses were admirable; their tones were musical and mellifluous; they suited the action to the word, no doubt, and probably the word to the action. But whether they exactly "suited" or not, the Tennessee contingent of universal lawyers and jurists could not tell. What either "Monsheer" or the "Count" said or thought upon the all-important subjects we were congregated from the four corners of the globe to discuss, we could not tell; could not then conjecture, even, and have not since been able to learn—though when we clamored for an interpreter we were calmed by the assurance that their remarks would afterwards appear in the report in the universal English language. As yet they are "non est."

It was matter for regret, if not surprise, to the large body of American delegates present that these distinguished lawyers should know so little about the language of Blackstone and
Kent and Mansfield and Story and Erskine and Marshall. It showed too plainly that they had neglected to avail themselves of the opportunities and advantages offered for English scholarship and honors by the late lamented Dr. James William Farr, of Chattanooga, Nashville, Washington, D. C., and—but I forbear. What may be the present or future residence of our departed professional and professorial brother-in-law is reported to be so dependent upon the painful uncertainties of his own good conduct and the judicial discretion of a Federal judge as to baffle the skill of the gazetteer.

At former meetings of this Association the cry has often been heard: Quousque tandem abutere, O Dr. Farr, patientia nostra? Let Tully also give the answer: "Evasit; excessit, erumpit; erupit. Dr. Farr is gone. Requiescat in pace! He was not a member of the Universal Congress of Lawyers and Jurists.

The address of the Englishmen, Canadians and Americans—I believe in appropriating the term to our own exclusive national use and behoof—were good in varying degrees and interested the Swiss, Italians, Frenchmen, and other universal lawyers and jurists as deeply as theirs impressed us.

Really the best daylight speech of this universal occasion, me judice, was an impromptu by our own Swaney in favor of Lookout Mountain and Chattanooga as the best place on the continent for anything imaginable and portable, and especially for holding the next meeting of the American Bar Association, or Universal Congress of Lawyers and Jurists, or any other council, conclave, convention, synod, conference or assembly of any kind. It was the same patriotic speech we have heard so often from Swaney in praise of his beloved city; but the new latitude, environment and audience seemed to inspire the speaker with the original fervor of fresh thought, and he fairly loomed with eloquence, capturing the audience and calling forth a motion instanter that the Association accept on the spot; but this was ruled out of order by the President, and the seed sown was given time to germinate in the sterile ground of the general council, where I hope, by "digging about it and dunging around it," we may ere long cause abundant fructification. At any rate, Swaney exhorting in the Association and
I dig in the council, will, ere long, if endorsed by this Association, bring the American Bar Association to this glorious mountain for its annual gathering, if such a thing is possible. But that is another story.

The Universal Congress of Lawyers and Jurists may be perpetuated. There were among its members a number of "jiners" who seemed to spend their time and money—and they had an abundance of both—in such showy and harmless dissipations; and on motion a committee was appointed to formulate a plan for its useless perpetuation. It may happen again somewhere.

The most memorable scene of this occasion was the banquet in the Tyrolean Alps, where wine was drunk and speeches made in all languages, living and dead. The wine needed no bush. The viands were varied and abundant. The speeches were also. And the function was appreciated and enjoyed by the thousand lawyers present. It was the feature of the Congress worthy of repetition. But it seems scarcely necessary to this pleasant function that the cumbersome machinery of the Universal Congress of Lawyers and Jurists, with its heterogenous membership and polyglot performances "not understood of the people" in attendance should be perpetuated. At any rate this faithful and truthful chronicle of the sayings and doings of the first Congress need not be prolonged. The next will be reported by some other delegate.

In anticipation of such a consummation I take leave now to suggest that one of the topics for discussion be comparative legislation and its curiosities. And as I may not have the honor to be present, I further suggest to the member from Tennessee that he contribute as sample products of our skill and experience a few statutes published in our last volume of session acts as illustrative not only of our legislative capacity but also of the genius of our institutions.

First, to show the peculiar flexibility of our Constitution, the easy adjustability of our official functions and the unbounded reliance upon the patriotism of our profession, offer the Act of 1905, Chapter 500, providing for the appointment by the Attorney-General and Reporter of two assistants, one salaried and
one unsalaried, to serve during his will and pleasure and perform such duties as he shall require.

Second, to illustrate our obedience to Section 8 of Article 9 of the Constitution forbidding special legislation or the suspension of any general law for the particular benefit of any particular individual, submit Chapter 96, being an act to "remove the disability" of that young man of "splendid personal attainments, but not twenty-one years of age till July 29, 1905. Mr. Grover Cleveland Sherrod, of Crockett County, Tennessee," so as to allow him alone of all young men to practice law before maturity. And since, otherwise, he would wait like others until he was of full age, to wit, four long months, this act takes effect immediately, "the public welfare requiring it."

Of similar import and purport, if not quite so unanimously personal and special, should be offered Chapter 33, making "four barbed wires a lawful fence in counties having a population of not less than 22,738, nor more than 22,750, to wit, "Roane County," says the marginal note.

And Chapter 60, to prevent live stock running at large in Loudon County, to wit, "all counties having a population of 10,700 and not more than 11,000."

And Chapter 75, creating a delinquent polltax collector in Hamilton County, to wit, "counties having not less than 60,000, nor more than 70,000."

And Chapter 461, being the special jury law for the county of our honored President, to wit, "each county having a population of not less than 26,424 nor more than 26,430"—the very narrow oscillating margin of six.

And Chapter 352, the prohibition state of Tipton County, to wit, between 29,250 and 29,003.

And Chapter 297, for Montgomery County, "having between 35,000 and 36,250."

And Chapter 274, for enlarging the gubernatorial patronage in Wayne County, "having a population between 12,936 and 12,975," by two additional notaries public for each civil district. Wayne must be under suspicion.

These special instances would probably suffice to exemplify the spirit of special legislation, but the list could be extended into the hundreds during the last five years.
The reckless tendency to disregard constitutional limitations has so alarmed our Secretary of State, a man reared under the old Constitution, and doubtless a conservative withal, as to impel him to send out this note of warning appended as a footnote to Chapter 99, which has no title except "Senate Bill No. 216," but purports to create a turnpike company: "This act creates a private corporation and is admittedly (a new bastard word) in contravention of Article II, Section 8 of the Constitution. It was signed by Governor Frazier through mistake.

"John W. Morton, Secretary of State."

Whether this was mistake of law or mistake of fact the Secretary withholds, and for some unexplained reason he fails to throw his willing aegis of official protection over the legislative as well as the executive department; he even declines to include in certified exemption from intentional wrong in signing this "admittedly" unconstitutional act the present executive, whose name is subscribed as "Speaker of the Senate."

Perhaps it is ungracious to criticise an officious certificate so obviously well intended and much needed as this one to give immunity to a State official; but would not the Secretary have escaped the suspicion of partiality and done equal justice to all engaged officially in this act if he had placed as his postscript thereto, after his declaration of unconstitutionality: "People, forgive them, for they know not what they do." This should be placed only after certain acts and not at the close of the volume.

Such matters as these brought before the next Universal Congress of Lawyers and Jurists would lend vivacity to the discussions even if they did not equal in interest the trial of Caleb Powers or Senator Mitchell or Judge Hooker, or the episodes of the Equitable Life Assurance Society, or the Philadelphia Gas Co. as phases of our American life showing want of attention to jurisprudence; and I record them for the use of my successor in office, hoping that he will prove impartial in his review, and "naught exterminate nor set down naught in malice," but giving these few incongruous remarks the benefit of doubt will believe, with this audience, that they are strictly within the express objects of this Association, "to cultivate social intercourse among its members and promote improvements in the law."
CONSTITUTION.

Article I.

Objects.

The objects of the Association are to foster legal science, maintain the honor and dignity of the profession of law, to cultivate professional ethics and social intercourse among its members, and to promote improvements in the law and the modes of its administration.

Article II.

Election of Members.

All nominations for membership shall be made by the Local Council of a county or Bar Association when such Local Council or Bar Association exists; when there is no Local Council or Bar Association in any county, nominations for such county shall be made by the Central Council. All nominations thus made or approved shall be reported by the council to the Association, and all whose names are reported thereupon become members of the Association; provided, that if any member demands a vote upon any name thus reported, the Association shall thereupon vote thereon by ballot. Five negative votes shall be sufficient to defeat any election for membership. But interim, the Central Council, upon recommendation of any Local Council, shall have the power to elect applicants to membership.

Article III.

Membership.

Any person shall be eligible to membership in this Association who shall be a member of the bar of this State, in good standing, and who shall also be nominated as herein provided.

Article IV.

Officers.

The officers of this Association shall consist of one President, three Vice-Presidents, a Secretary and Treasurer, a Central Council, who shall be the Board of Directors, under the charter, to be chosen by the Association. One of the members of the Central Council shall be its chairman.
Each of these officers shall be elected at each annual meeting for the next ensuing year, but the same person shall not be elected President for two years in succession. All such elections shall be by ballot. The officers elected shall hold office until their successors are elected and qualified according to the constitution and by-laws.

**Article V.**

*Central Council.*

The Central Council shall consist of five members, and shall be, at all times, an advisory board for consultation and conference, when called on for that purpose by the President, or any Vice-President who may, for the time being, be acting as President.

**Article VI.**

*Local Council.*

The President, by and with the advice and consent of the Central Council, may establish a Local Council in any county in the State by issuing a warrant to that effect, naming therein the persons composing such Local Council. Each Local Council shall not consist of less than three nor more than seven members. No person shall be eligible to appointment as a member of any Local Council who is not at the time a member of this Association.

**Article VII.**

*Election of Members.*

All members of this convention signing the charter, and all members elected as herein provided shall become members of the Association upon the payment of the admission fee as herein provided for. But after the adjournment of this convention all nominations for membership shall be made as herein provided.

**Article VIII.**

*Annual Dues.*

Each member shall pay three dollars to the Treasurer as annual dues, and no person shall be qualified to exercise any privileges of membership who is in default. Such dues shall be payable, and the payment thereof enforced, as may be provided by the by-laws. Members shall be entitled to receive all publications of the Association free of charge. The admission fee shall be three dollars, to be paid as the member is elected. The admission fee shall be in lieu of all dues for the first year.
BAR ASSOCIATION OF TENNESSEE

ARTICLE IX.

Adoption of Amendments of By-laws.

By-laws may be adopted or amended at any annual meeting of the Association by a majority of the members present.

ARTICLE X.

Committees.

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

2. On Judicial Administration and Remedial Procedure.
3. On Legal Education and Admission to the Bar.
4. On publication.
5. On grievances.
6. On Obituaries and Memorials.

A majority of those members of any committee, or of the Central Council, who may be present at any meeting of such committee or council, shall constitute a quorum for the purpose of such meeting. Vacancies in any office provided for by the constitution shall be filled by appointment by the President, and the appointees shall hold office until the next meeting of the Association.

ARTICLE XI.

Central Council.

The Central Council shall perform such duties as may be assigned to them by the President, or as may be defined by the by-laws, except as herein otherwise directed.

ARTICLE XII.

Meeting of the Association.

This Association shall meet annually, at such time and place as the Central Council may select, and those present at such meeting shall constitute a quorum. The Secretary shall give sixty days' notice of time and place of such meeting, either by publication in a public newspaper or by personal communication.

ARTICLE XIII.

Duties of the President.

The President shall open each annual meeting of the Association with an address, in which he shall communicate the most noteworthy changes in the statute law, on points of general interest, made in the State and by the Congress during the preceding year.
ARTICLE XIV.

Alterations or Amendments of the Constitution.

This constitution may be altered or amended by a vote of three-fourths of the members present at any annual meeting, but no such change shall be made at any meeting at which less than twenty members are present.

ARTICLE XV.

Duties of the Local Council.

Each Local Council shall perform such duties as it may be called upon to perform by the President, or as may be defined by the by-laws.

ARTICLE XVI.

Suspension of Members.

Any member of the Association may be suspended or expelled for misconduct in his relations to this Association, or in his profession, on conviction thereof, in such manner as may be prescribed by the by-laws.
BY-LAWS.

I.—PRESIDENT.

The President shall preside at all meetings of the Association, and in case of absence, one of the Vice-Presidents shall preside.

II.—SECRETARY.

The Secretary shall keep a record of all meetings of the Association, and of all other matters of which record shall be deemed advisable by the Association, and shall conduct the correspondence of the Association, with the concurrence of the President. He shall notify the officers and members of their election, and shall keep a roll of the members, and shall issue notices of all meetings.

III.—SECRETARY AND TREASURER.

The Secretary and Treasurer shall collect, and, under the direction of the Central Council, disburse all funds of the Association; he shall report annually, and oftener, if required; he shall keep regular accounts, which shall be at all times open to inspection of the members of the Association. His accounts shall be audited by the Central Council. Before discharging any of the duties of this office the incumbent shall execute a bond, with good and sufficient surety, to be approved by the President, payable to the President and his successors in office, in the sum of one thousand dollars, for the use of the Association, and conditioned that he will well and faithfully perform the duties of his office so long as he discharges any of the duties thereof.

IV.—CENTRAL COUNCIL.

The Central Council shall meet at least once every three months, and oftener if called together by the President. They shall have power to make such regulations, not inconsistent with the constitution and by-laws, as shall be necessary for the protection of the property of the Association, and for the preservation of good order in the conduct of its affairs. They shall keep a record of the proceedings, which shall be read at the ensuing meeting of the Association; and it shall be their duty to present business for the Association. They shall have no power to make the Association liable for any debts amounting to more than half the amount in the
Treasurer's hands in cash, and not subject to prior liabilities. They shall perform such other duties as are required of them by the constitution, or as may be assigned to them by the President.

ORDER OF BUSINESS.

At each annual, stated, or adjourned meeting of the Association the order of business shall be as follows:

1. Reading minutes of preceding meeting.
2. Address of the President.
5. Election, if any, to membership.
8. Miscellaneous committees.

The order of business may be changed by a vote of the majority of the members present.

No person in discussion shall occupy more than ten minutes at a time, nor be heard more than twice on the same subject.

The parliamentary rules and orders contained in Cushing's Manual, except as otherwise herein provided, shall govern all meetings of the Association.

VI.—MEMBERS ELECT.

If any person elected does not, within one month after notice of his election, signify his acceptance of membership by a letter to the Secretary to that effect, and by payment of his admission fee, he shall be deemed to have declined to become a member.

VII.—COMMITTEES.

In pursuance of Article X of the Constitution, there shall be the following standing committees:

1. A Committee on Jurisprudence and Law Reform, who shall be charged with the duty of attention to all proposed changes in the law, and of recommending such as, in their opinion, may be entitled to favorable consideration of the Association.

2. A Committee on Judicial Administration and Remedial Procedure, who shall be charged with the duty of the observation of the working of our judicial system, the collection of information, the entertaining and examination of projects for a change or reform in the system, and of recommending from time to time to the Association such action as they may deem expedient.
3. A Committee on Legal Education and Admission to the Bar, who shall be charged with the duty of examining and reporting what change it is expedient to propose in the system and mode of legal education, and of admission to the practice of the profession in the State of Tennessee.

4. A Committee of Publication, who shall be charged with the duty of examining and reporting upon all matters proposed to be published by authority of the Association, and pertaining to any of the subjects for the advancement of which the Association is created.

5. A Committee on Grievances, who shall be charged with the hearing of all complaints which may be made in matters affecting the interest of the legal profession and the practice of law, and the administration of justice, and to report the same to this Association, with such recommendations as they may deem advisable; and said committee shall, in behalf of the Association, institute and carry on such proceedings against offenders, and to such extent as the Association may order, the cost of such proceedings to be paid by the Treasurer, on the warrant of the Central Council, out of moneys subject to be appropriated by them.

VIII.—APPOINTMENT.

Each of the standing committees shall consist of five members, and shall be appointed annually by the President of the Association, and shall continue in office until the annual meeting of the Association next after their appointment, and until their successors are appointed, with power to adopt rules for their own government, not inconsistent with the constitution or these by-laws. Any standing committee of the Association may, by rule, provide that three successive absences from the meetings of the committee, unexcused, shall be deemed a resignation by the member so absent from his place upon the committee. Any standing committee of the Association may, by rule, impose upon its members a fine for non-attendance, and may provide for the disposition of the fines collected under such rule.

IX.—CHARGES AGAINST MEMBERS.

Whenever any complaint shall be preferred against a member of the Association for misconduct in his relations to this Association, or in his profession, the member or members preferring such complaint shall present it to the Committee on Grievances, in writing, and subscribed by him or them, plainly stating the matter complained of, with particulars of time, place and circumstances.

The committee shall thereupon examine the complaint, and if they are of the opinion that the matter therein alleged is of sufficient importance, shall cause a copy of the complaint, together with a notice of not less than five days, of the time and place when the committee will meet for the consideration thereof, to be served on the member complained of, either personally or by leaving the same at his place of business during the office hours, properly addressed to him. If, after hearing his explana-
tions, the committee shall deem it proper that there shall be a trial of the charge, they shall cause a similar notice of five days of the time and place of trial to be served on the party complained of.

The committee shall be furnished with a list of the witnesses, their names and place of residence, who it is proposed shall be examined to sustain the charge, which shall accompany the complaint when made to the committee; and when the day is set for trial the member complained of, upon his demand therefor, shall be entitled to a copy of said list of witnesses. At the time and place appointed for the trial, or at such other time as may be granted by the committee, the member complained of shall file a written answer or defense. Should he fail to do so, the committee may proceed thereupon to the consideration of the complaint.

The committee shall thereupon, and at such other times and places as they may adjourn to, proceed to hear the evidence adduced and try the complaint, and shall determine all questions of evidence.

The complainant, and the member complained of, shall each be allowed to appear personally and by counsel, who must be members of the Association; and the complainant, and the member complained of, shall each be competent witnesses. The witnesses shall vouch for the truth of their statements on their word of honor. The committee shall have power to summon witnesses; and if any such witnesses are members of the Association, a neglect or refusal to appear may be reported to the Association by the committee, and treated as a misconduct.

The committee, of whom at least four must be present at the trial, except that a less number must adjourn from time to time, shall hear and decide the allegations submitted to them; and if they find the complaint or any material part of it, to be true, they shall so report to the Association, with their recommendation as to the action to be taken thereon.

The decision of the committee shall be served on the member complained of, and if the decision be that the complaint, or any material part thereof, is true, and in that case only, the committee shall also serve a copy of the complaint, answer, if there be an answer, and decision on the President of the Association; and if requested, either by the member or members complaining, or the member complained of, shall annex thereto a copy of the evidence taken, which said document shall be regarded as a report of the committee to the Association.

Every such report shall be acted on only by the Association at an annual, stated or adjourned meeting of the Association, and of which the member complained of shall have due notice, to be served upon him by direction of the committee. The committee shall thereupon proceed to take such action on said report as they may see fit, provided only that no member shall be expelled unless by the vote of two-thirds of the members present and voting.

Whenever any trial shall be determined on, the member complained of may object, for cause, to any of the members of said committee, which said causes he shall state in writing and present to the committee. Thereupon the committee shall report the facts to the President, and inclose to
him a copy of the objection for cause; and the President shall forthwith summon the Central Council to meet with him and determine what weight, if any, the objections for cause are justly entitled to have; and if the President and a majority of the Central Council present and voting shall determine that the objections for cause are not well taken, and the same are overruled, the President shall so inform the Committee on Grievances; but if the President and a majority of the Central Council, as aforesaid, shall determine that any of said objections for cause, to any member of the Committee on Grievances is well taken, then the President shall so inform the said committee, and forthwith appoint another member or members to supply the temporary vacancy caused thereby; and the method herein provided shall be resorted to until a committee is obtained against whom the member complained of urges no just objection for cause.

If any member of the bar in the State of Tennessee shall collect money in his professional capacity for a client, and wrongfully fail or refuse to account for the same, it shall be the duty of the President, or any Vice-President of the Bar Association of Tennessee, on complaint being made to him by any person, to appoint a suitable committee from among the members of this Association to investigate the case, and report the facts to the officer appointing this committee; and if, in the judgment of that officer, a case can be made out against the offender, said appointing officer shall order same or another committee to prosecute the offender in the courts for disbarment.

If any member of the bar of Tennessee shall be guilty of any unprofessional conduct, for which he could, under the then existing laws of the land, be disbarred, it shall be the duty of the President and Vice-Presidents of the Bar Association of Tennessee to proceed to have him disbarred, as indicated in the by-law just preceding this.

All the foregoing proceedings shall be kept secret, except as their publication is hereinbefore provided for, unless otherwise provided for by this Association.

X.—NOMINATIONS AND ELECTIONS.

Nominations of candidates to fill the respective offices may be made at the time of election by any member, and as many candidates may be nominated for each office as members may wish to name, but all elections, whether to office or membership, must be by ballot. A majority of the votes cast shall be sufficient to elect to office, but five negative votes shall be sufficient to defeat an election to membership.

XI.—SUPPLYING VACANCIES.

All vacancies in any office or committee of this Association shall be filled by appointment of the President, and the persons thus appointed shall hold for the unexpired term of his predecessor; but if a vacancy occur in the office of President, it shall be filled by the Association at its first
stated meeting occurring more than ten days after the happening of such vacancy, and the person elected shall hold for the unexpired term of his predecessor.

XII.—ANNUAL DUES.

All annual dues of this Association shall be paid on or before the first day of March in each year, and any member failing to pay his annual dues by that time shall be in default, and, upon the order of the President, the Secretary shall strike the name of such member from the rolls of membership, unless for good cause shown the President shall excuse such default, in which last event the name of such member shall, upon the order of the President, be restored by the Secretary to the roll of membership.

XIII.—AMENDMENT OF BY-LAWS.

These by-laws may be amended at any stated, adjourned or annual meeting of the Association by a majority of those present.

XIV.—RESIGNATION OF OFFICERS AND MEMBERS.

Any officer may resign at any time upon settling his accounts with the Association. A member may resign at any time upon the payment of all dues to the Association; and from the date of the receipt by the Secretary of a notice of resignation, with an indorsement thereon by the Treasurer that all dues have been paid as provided, the person giving such notice shall cease to be a member of the Association.

XV.—SALARY OF SECRETARY AND TREASURER.

The annual salary of the Secretary and Treasurer shall be two hundred dollars, one-half of which shall be due on the first day of May, and the other half on the first day of November in each year, but may be paid earlier, or at other times, if the Central Council shall, in writing, so direct; but this shall be in full of all compensation to him. No other officer of the Association shall receive any salary or compensation.

XVI.—SPECIAL MEETING.

If the President and Central Council shall determine that it is necessary for the Association to hold any other meetings during the year than the regular annual meeting, the same shall be held at such time and place as the President and Central Council may fix, upon twenty day's notice of such time and place, to be given by the Secretary by publication in a newspaper; and the Secretary shall give this notice upon the order of the President.
BAR ASSOCIATION OF TENNESSEE

XVII.—NUMBER OF PAPERS.

Not more than six papers, in addition to the regular order of business, shall be read at each annual meeting, and not more than one at each of the sessions of the Association.

XVIII.—LENGTH OF PAPERS.

No paper read before the Association shall occupy more than thirty (30) minutes.

XIX.—CENTRAL COUNCIL TO FURNISH SUMMARY OF REPORTS.

It shall be the duty of the chairman of each standing committee of the Association to send to the Secretary of the Association at least thirty (30) days before each annual meeting the report and recommendations which his committee intends to present to the meeting. The Secretary shall, as soon as practicable after the receipt of same, print and distribute to the members of the Association a brief summary of the recommendations contained in said reports.

XX.—HONORARY MEMBERS.

All Chancellors and Judges of the Superior Courts of this State are honorary members of this Association, and they are relieved from the payment of admission fees and dues.
### LIST OF MEMBERS

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<tr>
<th>Name</th>
<th>City</th>
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<tr>
<td>Acklen, Jos. H</td>
<td>Nashville</td>
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<td>Ailor, J. R.</td>
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<td>Akers, Albert W</td>
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<td>Albright, Edward</td>
<td>Gallatin</td>
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<td>Anderson, J. M.</td>
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<td>Anderson, Milton J.</td>
<td>Chattanooga</td>
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<td>Aust, John R.</td>
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<td>Austin, R. W.</td>
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<td>Armstrong, C. A.</td>
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<td>Armstrong, W. C.</td>
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<td>Bachman, E. K.</td>
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<td>Baker, Lewis M. G.</td>
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<td>Banks, Lem.</td>
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Waller, Claude........................................Nashville
Walsh, H. F...............................................Memphis
Warriner, H. C..........................................Memphis
Washington, Jos. E.....................................Wessyngton
Watkins, Ed..............................................Chattanooga
Watson, Will J...........................................Chattanooga
Webb, T. S..............................................Knoxvoige
Webb, Thos. I., Jr......................................Nashville
Welcker, W. L..........................................Knoxville
White, George T........................................Chattanooga
Whitman, A. T..........................................Nashville
Williams, S. C.........................................Johnson City
Williamson, Wm. H.....................................Nashville
Wright, E. C.............................................Memphis
Wright, Jas. B..........................................Knoxville
Wright, John W..........................................Nashville
Wright, T. A..........................................Rockwood
Wright, W. D..........................................Knoxville
Young, D. K...........................................Clinton
Young, J. Y............................................Clinton
Young, Robert S.......................................Sweetwater
Young, Sam E...........................................Sweetwater
Zimmerman, Frank.....................................Memphis
LIST OF HONORARY MEMBERS.

Allison, John, Chancellor ........................................ Nashville
Allison, Judge M. M. ................................................... Chattanooga
Barton, Judge R. M., Jr. ............................................... Chattanooga
Beard, Judge W. D. ..................................................... Memphis
Bearden, W. S., Chancellor ......................................... Shelbyville
Bell, Judge B. D. ....................................................... Gallatin
Bond, Judge John R. .................................................. Brownsville
Burke, Judge George L. ............................................... Kingston
Caldwell, W. C. ......................................................... Trenton
Cartwright, Judge J. A. ............................................... Nashville
Childress, Judge John W. ............................................ Nashville
Colyar, A. S. ............................................................. Nashville
Cooper, John S., Chancellor ....................................... Trenton
Frazier, Hon. James B. ............................................... Nashville
Galloway, Judge J. S. ................................................ Memphis
Hawkins, A. G., Chancellor ......................................... Huntingdon
Haynes, Hal H., Chancellor ....................................... Bristol
Heiskell, F. H., Chancellor ......................................... Memphis
Higgins, Judge Joe C. ............................................... Fayetteville
Holding, Judge Samuel ............................................... Columbia
Houston, Judge W. C. ................................................ Woodbury
Hull, Judge Cordell ................................................... Gainesboro
Kyle, H. G., Chancellor ............................................ Rogersville
Lansden, D. L., Chancellor ....................................... Cookeville
Lurton, Judge H. H. .................................................. Nashville
Maiden, Judge R. E. .................................................. Dresden
Malone, Thos. H ........................................................ Nashville
McAlister, Judge W. K. ............................................... Nashville
McConnell, T. M., Chancellor .................................... Chattanooga
McHenderson, Judge G. ............................................... Rütledge
Moss, Judge John T .................................................. Memphis
Neil, Judge M. M. .................................................... Trenton
Shields, Judge John K. ............................................... Knoxville
Sneed, Judge Jos. W. ................................................ Knoxville
Stout, J. W., Chancellor ........................................... Cumberland City
Taylor, Judge John M ............................................... Lexington
Tyler, Judge A. J. ..................................................... Bristol
Wilkes, Judge John S ................................................. Columbia
Wilson, Judge S. F. .................................................. Gallatin
Woods, Judge Levi S .................................................. Lexington
Young, Judge J. P ..................................................... Memphis
OFFICERS OF THE AMERICAN BAR ASSOCIATION.

1905-1906.

President.

George R. Peck..................................................Chicago, Ill.

Secretary.

John Hinkle..................................................215 N. Charles St., Baltimore, Md.

Treasurer.

Frederick E. Wadhams.........................37 Tweedle Building, Albany, N. Y.

Vice-President for Tennessee.

W. B. Swaney..................................................Chattanooga

Member of General Council for Tennessee.

E. T. Sanford..................................................Knoxville

Local Council.

Henry H. Ingersoll.....................Knoxville

David K. Young............................Clinton

Robert Lusk.................................Nashville

J. W. Bonner.................................Nashville
PROCEEDINGS OF THE
TWENTY-FIFTH
ANNUAL MEETING

OF THE

BAR ASSOCIATION
of
TENNESSEE

Held at Lookout Mountain,
Tennessee, Aug. 8, 9 and 10,
1906
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BAR ASSOCIATION OF TENNESSEE.

PRESIDENTS SINCE ORGANIZATION.

1881-2.
W. F. COOPER..................................................Nashville

1882-3.
B. M. ESTES..................................................Memphis

1883-4.
ANDREW ALLISON........................................Nashville

1884-5.
XENOPHON WHEELER........................................Chattanooga

1885-6.
W. C. FOLKES................................................Memphis

1886-7.
J W. JUDD................................................Springfield

1887-8.
H. H. INGERSOLL.........................................Knoxville

1888-9.
L. B. McFARLAND..........................................Memphis

1889-90.
J. M. DICKINSON........................................Nashville

1890-1.
G. W. PICKLE...............................................Dandridge

1891-2.
M. M. NEIL................................................Trenton

1892-3.
ED. BAXTER...............................................Nashville

1893-4.
W. A. HENDERSON........................................Knoxville
JAMES H. MALONE ...................................................... Memphis
1894-5.

ALBERT D. MARKS ...................................................... Nashville
1895-6.

W. B. SWANEY ........................................................... Chattanooga
1896-7.

C. W. METCALF .......................................................... Memphis
1897-8.

J. W. BONNER ............................................................ Nashville
1898-9.

W. L. WELCKER ......................................................... Knoxville
1899-1900.

GEORGE GILLHAM ...................................................... Memphis
1900-1901.

J. H. ACKLEN ............................................................ Nashville
1901-1902.

R. E. L. MOUNTCASTLE ................................................. Morristown
1902-1903.

JNO. E. WELLS .......................................................... Union City
1903-1904.

EDWARD T. SANFORD .................................................. Knoxville

JOHN H. HENDERSON ................................................... Franklin
1904-1905.

EDWARD T. SANFORD .................................................. Knoxville
1905-1906.

F. H. HEISKELL ........................................................... Memphis
1906-1907.
OFFICERS FOR 1906-1907.

PRESIDENT.

F. H. HEISKELL ...................................................... Memphis

VICE-PRESIDENTS.

ROBERT BURROW ...................................................... Bristol
M. T. BRYAN ............................................................ Nashville
G. T. FITZHUGH ........................................................ Memphis

SECRETARY AND TREASURER.

R. H. SANSOM .......................................................... Knoxville

CENTRAL COUNCIL.

W. P. METCALF, Chairman ............................................. Memphis
WM. L. FRIERSON ...................................................... Chattanooga
C. C. TRABUE .......................................................... Nashville
ALBERT W. BIGGS ..................................................... Memphis
R. LEE BARTELS ....................................................... Memphis
STANDING COMMITTEES, 1906-1907.

JURISPRUDENCE AND LAW REFORM.

E. T. SANFORD, Chairman..................................................Knoxville
L. M. G. BAKER.................................................................Knoxville
R. E. L. MOUNTCASTLE......................................................Knoxville
C. C. TRABUE.................................................................Nashville
A. B. LAMB............................................................................Paris

JUDICIAL ADMINISTRATION AND REMEDIAL PROCEDURE.

JUDGE A. B. PITTMAN, Chairman.............................................Memphis
J. W. CANADA........................................................................Memphis
FRANK ZIMMERMAN................................................................Memphis
J. S. PILCHER.........................................................................Nashville
H. H. SHELTON.......................................................................Bristol

LEGAL EDUCATION AND ADMISSION TO THE BAR.

S. L. COCKROFT, Chairman..................................................Memphis
ROBERT BURROW..................................................................Johnson City
C. E. PIGFORD..........................................................................Jackson
E. T. SEAY.............................................................................Gallatin
FRANK SPURLOCK..................................................................Chattanooga

PUBLICATION.

JUDGE J. W. BONNER, Chairman..............................................Nashville
E. E. BARTHELL.......................................................................Nashville
T. A. WRIGHT.........................................................................Rockwood
S. E. YOUNG...........................................................................Sweetwater
ELIAS GATES..........................................................................Memphis
GRIEVANCES.

W. B. SWANEY, Chairman........................................Chattanooga
A. W. CHAMBLISS....................................................Chattanooga
ED. WATKINS..........................................................Chattanooga
X. Z. HICKS............................................................Clinton
W. M. BRANDON.......................................................Dover

OBITUARIES AND MEMORIALS.

HENRY H. INGERSOLL, Chairman..................................Knoxville
J. W. CALDWELL.........................................................Knoxville
H. J. LIVINGSTON.......................................................Memphis
J. O. PHILIPS..........................................................Rogersville
ROBERT LUSK..........................................................Nashville
SPECIAL COMMITTEES, 1906-1907.

COMMITTEE TO REPORT ON THE TORRENS SYSTEM OF REGISTERING DEEDS.

S. C. WILLIAMS, Chairman.................................................................Johnson City
JEROME TEMPLETON...........................................................................Knoxville
H. E. SMITH......................................................................................Nashville
J. W. JUDD......................................................................................Nashville
J. H. MALONE...................................................................................Memphis

COMMITTEE TO RECOMMEND TO THE LEGISLATURE THE MOVEMENT TOWARD UNIFORM LAWS.

J. H. MALONE, Chairman.................................................................Memphis
J. W. JUDD......................................................................................Nashville
C. J. ST. JOHN..................................................................................Bristol
At 10 o'clock A. M. the meeting was called to order by President Edward Terry Sanford, who stated that Mr. Robert Lusk, the Association's most efficient and courteous Secretary, was unavoidably absent, being detained at home by illness in his family, and that without objection Mr. S. C. Pilcher, who had been chosen to that end by Mr. Lusk, would act as Secretary in his stead, and there being no objection it was so ordered. The President then stated that the Association would, he knew, be glad to hear the words of welcome that would be extended the members by Chattanooga's talented mayor, honored citizen, and learned lawyer, the Hon. William L. Frierson, on behalf of Chattanooga and its bar. Mr. Frierson spoke as follows:

Mr. President, Ladies and Gentlemen:

The lawyers have for so long and so continuously honored this elevated suburb of the city of Chattanooga by coming here that we regard the annual meeting of the Tennessee Bar Association as one of our permanent institutions and attractions.

From year to year we look forward to seeing the faces which, through the joyous fellowship of these occasions, have become familiar.
When one of the old-timers, from failing health or advancing years, unwillingly plays truant and remains away, he is not forgotten, but he and his virtues are the theme of many a story told among his comrades. And, when such a one, after an enforced absence, returns, great is the rejoicing in Israel. If you will pardon me for being, perhaps, a little too personal, I remember that a year ago when we gathered here, instead of the genial, smiling face of my splendid—I had almost said venerable—friend from Memphis, Mr. Metcalfe, we were met with the announcement that the inexorable requirements of impaired health had banished him, for the time, to a distant state.

And I remember, too, the message we sent him bearing the greetings of this Association and our united hope for his recovery. I am sure that no greater pleasure awaits us now than that which we find in seeing him once more in his accustomed place, bearing upon his familiar countenance the visible evidence that our hope for his health has been realized, and armed, doubtless, with beautiful eulogies upon our dead which we will hear in the report of the Committee on Obituaries.

But his presence recalls another, who, for the first time, I believe, within my recollections, is absent.

For years the Memphis delegation to these meetings has consisted of Metcalfe and Malone, and those whom they brought with them. When Malone was elected mayor of Memphis I wrote him, tendering my congratulations and suggesting that the mayor of Memphis and the mayor of Chattanooga would have to celebrate. He replied that we would certainly celebrate at the Bar Association, if not sooner. But his position has proven a more strenuous one than mine, and instead of recognizing him among those to whom I am extending a welcome, I can only take occasion to express my regret that the cares of official life have sent him away in search of health. May I express the hope that next year we may be enlivened by the delightful companionship of both Metcalfe and Malone.

I am accustomed to give expression of a welcome on behalf of the city for whose people I have the honor to speak. But today, in greeting my professional brethren, I prefer to speak as an humble member of that profession whose brain guides the energies of those who are leaders in our wonderful material and industrial development, and, at the same time, that profession whose highest mission is to stand for and protect the rights of the weakest citizen against the unjust aggressions of the powerful. It is also my privilege to speak as the representative of a local Bar Association, among whose members the best of friendship and good fellowship prevail—an Association which, we believe, in its practical work, is, perhaps, more valuable and helpful to its members than any other in the state.

Speaking for such an Association, and as a lawyer to lawyers, I greet the Bar Association of Tennessee as an organization devoted to conserving and preserving the high ideals and noble traditions of a profession in which unyielding fidelity to every trust is the cardinal principle.
You have been watchful of our professional ethics and quick to protest against those methods and innovations which tend to detract from our dignity and usefulness as members of society. You have stood firmly against these modern methods of getting business which would degrade us to a mere commercialism. For this, all honor is due you. But if I may without violating the properties of the occasion, I would call attention to an even more dangerous and insidious form of commercialism. There is a serious menace to the just prestige of the legal profession in the tendency to obscure the line which separates our duties and obligations to our clients from our duties and obligations to the State and the public, which separates the sphere of the lawyer from that of the citizen. The plea which I would enter today for my profession is a plea for the independent citizenship of the lawyer. I would have him freed from thraldom, or the suspicion of thraldom, which in political affairs affecting the general public would make him the servant of any client. There is to me nothing more humiliating than the thought that the people are coming to look upon the political positions taken by lawyers not as reflecting their honest views as citizens, but as dictated by the selfish interests of some corporation known to pay them large salaries. It is a shame upon the profession that notoriously a candidate for office, having been assured of the support of a railroad company, claims at once that he has secured the influence of every local attorney employed by that company. It may be said to our honor that he is frequently disappointed. But what I am seeking to emphasize is that the public is inclined to take this view of us. The note of warning which I would sound is that if we would maintain unbroken our prestige we must resent the imputation that a contract for our professional services includes, in any measure, a bargain and sale of our citizenship. If we would not be regarded as mere appendages and belongings of the corporations that employ us we must be careful to let the public understand that, as counsellors and practitioners, we give to our clients the best that is in us, that our citizenship is our own and not for sale at any price, and that our course in public affairs is controlled alone by our honest convictions as to what is right and best for the general public.

I, have, perhaps, abused my privilege in digressing as I have. My only apology is that I have a right to speak plainly to my professional brethren and that I have attempted to say a word for the honor of the profession I love.

It is not necessary for me to extend any formal welcome. You are at home. You appreciate the attractions of this place more, perhaps, than those of us to whom they have become every-day affairs. The plain truth is that to Chattanooga lawyers the beauties and grandeur surrounding us are somewhat obscured by the more sordidly interesting fact that this mountain has been the source of more litigation and good fees than anything else in this vicinity. This and the fact that the Adams law has no application here make a natural meeting place for lawyers.

So, my friends, no words of mine can add any warmth to the simple statement that the bar of Chattanooga is glad to see you once more.
The address of welcome was responded to by Col. J. H. Holman, of Fayetteville, on behalf of the association, at the request of the President. Col. Holman very felicitously expressed the appreciation of the association and its membership for the very cordial words of welcome extended.

The minutes and proceedings of the last annual meeting of the Association having been printed in the 1905-1906 Annual and distributed by the Secretary among the members, the reading thereof was, on motion, dispensed with, and as thus printed and distributed the minutes were approved.

The annual address of the President, the first thing in the regular order of business, was then delivered by Mr. Edward T. Sanford, and was a most excellent paper, exhibiting every evidence of exhaustive research, and discriminating care in its preparation. It is replete with interest, and will be found in the Appendix.

The next in order, the report of the Secretary-Treasurer, Mr. Lusk, was presented and read as follows:

August 7, 1906.

To the President and Members of the Bar Association of Tennessee:

As Secretary and Treasurer of the Bar Association of Tennessee, I respectfully submit the following report for the year ending August 7, 1906:

**MEMBERSHIP.**

Active members ............................................................... 349
Honorary members ........................................................... 41

Total .................................................................................. 390

**RECEIPTS AND DISBURSEMENTS.**

**Receipts.**

Balance on hand as shown by report dated July 15, 1905............ $ 98.58
Receipts from admission fees and annual dues collected from July 15, 1905, to August 7, 1906........................................... 684.00

Total .................................................................................. $782.58

**Disbursements.**

Disbursements as shown by vouchers this day filed with the Central Council ................................................................. $723.06

Cash balance on hand August 7, 1906...................................... $ 59.52

Respectfully submitted,

Robert Lusk,
Secretary and Treasurer.
On motion this report was referred to the Central Council for audit.

The report of the Central Council was next presented and read by the chairman, as follows:

Mr. President:

The Central Council presents and recommends for membership the following gentlemen:

Albertson, Van. H. ......................................................... Knoxville
Anderson, J. H. .......................................................... Chattanooga
Atchley, J. Arthur ......................................................... Knoxville
Baxter, Sloss D. ............................................................ Nashville
Baxter, Perkins ............................................................ Nashville
Brown, R. A. ................................................................. Knoxville
Beaver, Chas. O. ............................................................ Chattanooga
Chandler, D. W. ............................................................. Harriman
Cate, H. N. ................................................................. Newport
Camp, H. N., Jr. ............................................................ Knoxville
Childress, Ben .............................................................. Pulaski
Cox, Thad A. ................................................................. Johnson City
Cantrell, John H. .......................................................... Chattanooga
Cooper, Wm. T. .............................................................. Chattanooga
Elkins, Robert A. .......................................................... Knoxville
Estick, E. E. ................................................................. Pulaski
Foster, E. G. ................................................................. Huntsville
Harrison, W. Morris ...................................................... Madisonville
Harris Daniel O. .......................................................... Harriman
Irwin, M. H. ................................................................. Coal Creek
Johnston, Roy A. .......................................................... Knoxville
Jones, R. M. ................................................................. Harriman
Kehr, Cyrus ................................................................. Knoxville
McConnell, T. G. .......................................................... Knoxville
McQueen, Ed. P. .......................................................... Loudon
Moore, J. N. ................................................................. Knoxville
Moses, Everett ............................................................ Knoxville
Noll, Fred A. ................................................................. Chattanooga
Peace, T. W. ................................................................. Madisonville
Penland, J. R. ............................................................... Knoxville
Rogers, John P. ........................................................... LaFollette
Sanders, Frank ............................................................ Knoxville
Scott, Jos. ................................................................. Harriman
Sizer, J. B. ................................................................. Chattanooga
Smith, L. D. ................................................................. Knoxville
Smithson, Noble .......................................................... Knoxville
Spilman, L. H. ............................................................. Knoxville
Respectfully submitted,

R. H. Sansom, Chairman,
J. R. Smith,
L. M. G. Baker.

On motion this report was adopted and the entire list of names therein recommended for membership, were unanimously elected.

The Central Council, upon its request, was accorded time within which to audit and make report upon the report of the Secretary-Treasurer.

On motion an adjournment was taken to 2:30 o’clock P. M.

AFTERNOON SESSION.

Convened by the President at 2:30 o’clock pursuant to adjournment order.

Hon. L. B. McFarland, the chairman of the Committee on Jurisprudence and Law Reform, being absent, the reports of this Committee, both majority and minority, were presented and read by Col. J. H. Holman, a member of the Committee. In the absence of any motion in relation to these reports and the subject-matter thereof, the President announced that they would take the usual course, that is, the reports would be filed and spread on the minutes, which is accordingly done in words and figures as follows:

REPORT OF COMMITTEE ON JURISPRUDENCE AND LAW REFORM.

To the Bar Association of Tennessee:

It appears from the report of proceedings of the Bar Association of Tennessee in 1905, that the report of the Committee on Jurisprudence and Law Reform made by the Chairman of that committee was an oral
one, and it was directed that this report be reduced to writing, and the
same filed with the Committee on Jurisprudence and Law Reform, to be
appointed for the year 1905-6, and that the association direct said committee
to prepare a bill, and submit to the next meeting in accordance with this
report.

Mr. J. H. Holman, the chairman of that committee, has filed with this
committee that report, and has accompanied the same by an act prepared
by him covering the matter in question. This act, this committee now
submits to this association for its action thereon, confessing that this
committee has not given this act that examination and study that the
importance of the subject demands before its approval or disapproval.
The whole matter is, therefore, submitted to this association.

Your committee further respectfully reports upon an examination
of the proceedings of the former meetings of this association, that so many
recommendations have been made to the various Legislatures, which have
been ignored or rejected, that it does not feel encouraged to submit at
present other recommendations.

The committee is impressed with the fact that the main evil in at-
tempts at law reform is in the passage of too many laws. Lord Coke
has said that "certainty is the prime dignity of the law." If the laws are
changed at every session of the Legislature, this certainty is lost. The
lawyers have scarcely learned what the law is, before, by enactment of
another Legislature, it ceases to be the law. How much less the people
at large.

This evil is more appreciable, and most deeply felt in those matters
which more generally and more vitally affect the people; such legislation
as pertains to election and taxation. Appreciating this evil, as we do, we
are not disposed to recommend action which will increase it.

There is one subject, however, that we present to this association for
its thought and consideration, not for present action, but for possible fu-
ture deliberation. That is, the change of the law as to exemption from
jury service so as to exclude from these exemptions young lawyers who
have not been licensed for say five years. We submit on this subject
that the experiences of mankind have demonstrated the utility of thorough
education in all branches and departments of any avocation in life. The
most efficient railroad presidents are those who have commenced in the
roundhouse, and gone by promotion through all the gradations of railroad
education and advancement. The most successful manufacturers are those
who began in the machine shop, and then up to management and owner-
ship. The most princeely of merchants are those who have commenced
with the broom, and thence the counter, and the desk and to proprieto-
ship.

We are of the opinion that no part of a lawyer’s education would be
of more use to him than service upon the jury, and in the capacity of a
juror, and in association with other jurors for a series of years before ac-
tive practice comes.
In addition to this, there is a period with most young lawyers when much of their time is unoccupied, and in which it is too often the case that "an idle brain becomes the devil's workshop." And to require him to serve upon the jury for one term every year would be useful as well as pleasant and profitable employment. This could be accomplished by amending Sec. 5816 of the Code by adding after the words "all practicing attorneys," the words, "who have been licensed and admitted to practice for five years."

Respectfully submitted,
L. B. McFarland, Chairman.
J. A. Susong,
Wm. L. Frierson.

Greeneville, Tenn., July 30, 1906.

L. B. McFarland, Esq.,
Memphis Trust Building,
Memphis, Tenn.

Dear Sir: I have signed the enclosed report of the committee on jurisprudence, as suggested by you, which I herewith enclose. There is one matter I wish to suggest for your consideration. I think an act should be passed, authorizing stenographers, who are not themselves officers authorized to take depositions, to be employed by the officer taking the depositions, and to authorize the depositions to be read upon the affidavit of the stenographer, that he correctly took down the testimony and transcribed it, supplemented by the certificate of the officer as to transmission, etc. The Act of 1899, ch. 276, only authorizes the taking of depositions in shorthand by officers authorized to take them otherwise. Most stenographers in my section of country are females, and cannot hold any official position authorizing them to take depositions. Usually, this matter can be handled by consent. But I regret that there are yet a few lawyers who seem to think it good practice, to obstruct litigation which they are defending, by refusing to agree, even in such simple matters as these. I have recently had this question made on me two or three times in my own practice, although the stenographer was regularly employed by the Clerk and Master; and the object of the objection was simply to delay the preparation of the case.

I think it doubtful whether the matter is worth bringing to the attention of the Bar Association. It is a small matter of practice, which it is my purpose to get our next Representative to endeavor to have passed. It may very properly be made an amendment to the Act of 1899.

Yours truly,

J. A. Susong.

To the Bar Association of Tennessee:

I do not concur in that portion of the report prepared by the Chairman which advises that no further recommendations shall be made by the Ten-
nessee Bar Association to the Legislature of the State of Tennessee in reference to the passage of new laws. While many of the recommendations made by this Association have been ignored by the Legislature, yet several laws have been passed by that body which originated with and were advocated by this Association and which have proved of great benefit to the public and still remain upon the statute books unchanged. The criticism in the report prepared by the chairman, to the effect that the Legislature passes too many laws is in part correct, but not so with reference to those laws which have been passed at the instance of this Association. The two subjects about which there has been so much legislation are taxation and elections. At nearly every session of the Legislature a new assessment law has been passed and it is almost impossible for the general public to keep informed on this subject. Our election laws are spread through our statutes to such an extent it is almost impossible to tell what the law is at the present time. I think this Association should recommend to the Legislature that a general assessment law be passed which will meet the demands of the public and which can stand the test without amendment by every new Legislature.

In reference to the election laws, the Legislature should be requested to cause all of the present laws to be arranged into one general act and all other acts repealed.

Respectfully submitted,

GEORGE RANDOLPH.

At the last meeting of the Tennessee Bar Association the undersigned, chairman of the Committee on Jurisprudence and Law Reform, made an oral report on the Quarterly County Court, and the most feasible method of reducing the membership of that body. The Association having directed that the report be reduced to writing, and be filed with the Committee on Jurisprudence and Law Reform to be appointed for the year 1905-6, respectfully submit the following:

REPORT.

Before entering upon a discussion of the most feasible and least objectionable method of reducing the membership of the County Courts of this State it may not be improper to first examine the state of our law as to civil districts into which the counties are divided.

The division of counties into Civil Districts was first ordained by the constitution of 1834, in the following language:

"The different counties of this State shall be laid off as the General Assembly may direct, into districts of convenient size, so that the whole number in each county shall not be more than twenty-five, or four for every one hundred square miles. There shall be two Justices of the Peace and one constable elected in each district by the qualified voters therein, except the districts including county towns which shall elect three Justices and two constables."
This part of the constitution of 1834 was re-ordained in Section 15 of Article VI of the Constitution of 1870.

It will be observed that this mandate of the constitution does not operate the General Assembly with the duty and labor of laying off the counties into Civil Districts, but that it is to be done "as the General Assembly may direct." The first General Assembly after the adoption of the Constitution of 1834, performed its legislative duty of directing how, and by whom "the different counties in the State should be laid off into districts of convenient size." See Chapter 1 Acts of 1835, and Shannon's Code, Sections 94 to 99, inclusive.

The duty of laying off the counties into districts of convenient size, of changing the boundary of any civil district, as well as the power to make new districts and redistrict a county entirely was committed to the County Court of any county, through the medium of commissioners appointed by such Court, or otherwise. The Commissioners appointed by the Court before entering upon the discharge of their duties are required to take an oath "to faithfully and impartially perform said service." See sections of the Code cited above. These sections of the Code are still the law, and in force, never having been changed or repealed by any act passed for that purpose. For nearly three-quarters of a century the County Court has performed its duty of laying off the Counties into districts of convenient size, making new districts, redistricting the counties and changing district lines. The constitutionality of the law under which it has acted has never been challenged. Because of their proximity to and their acquaintance with the sections to be affected the competency of the Justices for this service must be conceded, and in the past, it must be admitted that it has been performed with fidelity.

No evils or inconveniences have ever been complained of as resulting from the laying off of the counties into districts of "convenient size," as was done by the County Courts after the adoption of the Constitution of 1834. But there is an almost universal popular clamor for reducing the membership of the County Court. It is claimed, and experience has proven, that the Court, as at present constituted, is too large, too unwieldy, and too expensive a body; that it is incapable of proper deliberation, and wanting in the feeling of individual responsibility. That the Court should be reformed is scarcely debatable.

A popular misconception prevails, especially among Tennessee legislators, that the County Court must necessarily be composed of all the Justices of the County, therefore to reduce the body of which the Court is to be composed, it is necessary to make a corresponding reduction in the number of Civil Districts. Out of this idea arose the modern expedient of redistricting by legislative enactment, a county into few large, instead of laying off districts of convenient size as required by the Constitution.

It may not be amiss here, parenthetically, to notice the strange, if not ludicrous condition, that may be produced by the existence of two separate and independent bodies, exercising the power, and claiming the legal
authority to do the same thing. If the County Court of a county should be dissatisfied with the manner in which the General Assembly has changed the lines of the districts or redistricted the County, why may it not under its own authority proceed to restore the lines or again redistrict the county? And why may not the General Assembly still again redistrict, and so on ad infinitum, the one virtually repealing the Act of the other? The authority of the County Court is to be found in a general enactment, a public law as broad as the State, but neither the authority or competency of the Legislature to perform this service is visible to the naked eye, but they may be discovered by the aid of the judicial telescope.

The expedient of redistricting counties by legislative enactment so as to have large and few districts as advocated by some, to get rid of a majority of the justices and constables may not infract the letter, but it certainly does the spirit of the Constitution. Section 15 of Article 6 says:

"The different counties of this State shall be laid off as the General Assembly may direct, into districts of convenient size," and that "There shall be two Justices and one constable elected in each district." Under our system of government in rural communities the Justices and constables are the only conservators of the peace, and a wise public policy, as well as ancient usage dictated that these officers should be in close touch with the people of every community, and convenient to every inhabitant.

The Constitution did not create the Justices for the County Court, neither did it make the County Court for the Justices.

Section 1, Article 6 of the Constitution ordains that "The Judicial power of the State shall be vested in one Supreme Court, and such Circuit, Chancery and other inferior courts as the Legislature shall, from time to time, ordain and establish, in the judges thereof and in justices of the peace." This clause it will be seen, only invests Justices of the peace, as such, with judicial power. Such power as necessarily inheres in the office to try such civil and criminal cases as may come within their jurisdiction. But the last clause of that section provides that "Courts to be holden by Justices of the Peace may also be established." To establish Courts to be held by Justices of the Peace is not mandatory, only permissive. The quarterly sessions of the County Courts may be constituted of such number of Justices, or of other persons as the Legislature may deem expedient.

The judicial power of the County Court is exercised by the Judge or Chairman, and not by the justices in its Quarterly Sessions. The Quarterly Court is a Court in name only, attached to the County Court for convenience, for the transaction of miscellaneous non-judicial business. It has never been invested with the "Judicial Power" contemplated or within the meaning of the Constitution.

The constitutional provision that "Courts to be holden by Justices of the Peace may also be established," was evidently intended to apply only to such Courts as were invested with judicial power and necessarily exercised judicial authority, such as recorder's Courts, police Courts, etc.
Section 1, of Article 7 of the Constitution provides that: "There shall be elected for each County, by the Justices of the Peace, one coroner and one ranger. And Section 2 of the same Article provides that "Should a vacancy occur subsequent to an election, in the office of Sheriff, Trustee, or Register, it shall be filled by the Justices." It is plain that these officers must be elected, and the vacancies filled not by a Court, but by the Justices. The Justices would have performed this mandatory duty if no Quarterly Court had ever been established. This service can be rendered by the Justices without the functions of a Court, and without the exercise of judicial power.

It is believed and suggested, that the desired reform of the Quarterly Sessions of the County Courts can be had by a general law, or by special enactments for each county, the former being preferable, if the members of the General Assembly could agree upon a plan for the whole State.

Early in the year 1905, during the sitting of the last General Assembly, petitions were extensively circulated and signed asking the Legislature to redistrict Lincoln County into a few districts, so as to reduce the membership of the County Court. Many of the petitioners regretted the giving up of the conveniences of the existing Civil Districts, Justices of the Peace and constables, but were willing to make the sacrifice if that was the only method of reforming the County Court. It was then that some of the petitioners approached the writer asking if a bill could be drawn cutting down the Court without cutting down the Civil Districts, if so, they desired such a bill to be drawn. The writer drew a bill which seemed to meet popular approval. It was styled "An Act to Reorganize the Quarterly Sessions of the County Court of Lincoln County, to Consist of Seven Justices of the Peace," &c. * * * The first section enacted that the quarterly sessions of the County Court of Lincoln County, should consist of seven Justices of the Peace, to be chosen as thereafter provided. The second section, that for the purpose of effecting the objects of the Act, that Lincoln County should have seven territorial divisions, each division consisting of and embracing therein the existing Civil Districts (setting them out). Section three provides that the Justices of the County shall elect seven Justices, one from each division, who shall be designated as Quarterly Court Justices, and constitute said Quarterly Court, &c. The bill has ten sections, and for a full understanding of its provisions and the plan adopted, a copy of the same is herewith exhibited with this report.

The territorial divisions constituted by the bill are composed of contiguous Civil Districts and are as near equal in population as practicable to preserve the representative character of the members of the Court. It is believed that if a bill of this nature should become a law, it will be efficient and satisfy the public demand; but like all laws, must be tested by experience and subjected to its vicissitudes.

It may be asked what became of the proposed bill? Copies of it were sent to Lincoln County's representative and senator, with a prayer that it
become a law. Neither would father it nor introduce it, even by request. The representatives, being a Justice of the Peace and member of the County Court, resented the suggestion, and the senator it is said, not being able to see anything wrong in the proposed bill, thought that a wise public policy dictated that we should bear the ills of the present system, rather than incur the opposition of the Justice of the Peace representative.

But the proposed bill was not entirely devoid of fruits. While being circulated and examined by the members of the General Assembly, the Senator from Obion County, Hon. John Hugh McDowell, thinking it suggested the proper plan, and with a few verbal alterations introduced and had passed an act to reorganize the Quarterly County Court of Obion County, making the Quarterly County Court to be composed of nine Justices, one to be chosen from each of the nine territorial divisions constituted by the act, the same being chapter 494. Acts of 1905, to take effect on and after July 1, 1905.

No authentic information has been received as to how the act is working in Obion County. A recent letter received from Hon. John Hugh McDowell simply states that the "Justices are fighting it." An unconfirmed rumor, however, states that the Justices ignore the act and as a body refuse to recognize its validity—that they refuse to elect the nine Quarterly Court justices, and that they continue, as heretofore, to transact the business of the Court, and to exercise their ancient and "inalienable" prerogatives. Rumor also has it that much perplexity exists in Obion County as to what steps should be taken to vindicate the law and bring the recalcitrant Justices to an observance of their duty; that some suggest proceedings by Quo warranto, some mandamus, some injunction, and others actions of forcible and unlawful detainer, &c. While these may be only idle rumors, it is believed to be a fact that the justices of Obion County are still holding the fort.

In proposing measures for the reform of the County Court, experience has taught us that the Justices of the Peace must be reckoned with. It is true that many intelligent and broad-minded Justices are advocating reform, while others are moved to resist it from a laudable ambition to serve their country as well as to protect and bring happiness to their constituency; while not a few, unsuspected of selfishness or avarice, entertain a self-controlling conviction that wisdom in its purity cannot be heard, nor the power of knowledge displayed, except when their voices are thundering in the County Court. It is thus they achieve greatness, and, "Soul and body rive not more at parting, than greatness leaving off."

Respectfully submitted,

J. H. HOLMAN.

Fayetteville, Tenn.
AN ACT to reorganize the Quarterly Sessions of the County Court of Lincoln County, to consist of seven Justices of the Peace, to designate and define seven territorial divisions to be composed of existing Civil Districts, from each of said seven divisions one Quarterly Court Justice shall be elected by the Justices of said County, to designate the time and place of electing them and other County officers by the Justices, to prescribe the oath of qualification of said Quarterly Court Justices, to prescribe a quorum of Justices to elect certain County officers and the quorum of the Quarterly Court Justices for the transaction of business, to define the powers and jurisdiction of said Court, and to modify and amend all laws in conflict therewith.

SECTION 1. Be it enacted by the General Assembly of the State of Tennessee, that from and after this Act takes effect the Quarterly Sessions of the County Court of Lincoln County shall consist of seven Justices of the Peace, to be elected and chosen as hereinafter provided.

SEC. 2. Be it further enacted, that for the purposes of effectuating the objects of this Act, said Lincoln County shall have seven Territorial Divisions, each division consisting of and embracing therein the existing Civil Districts as follows:

The First Division shall be composed of the 1st, 2d, 19th and 20th Civil Districts.

The Second Division shall be composed of the 3d, 21st, 22d, 23d, 24th and 25th Civil Districts.

The Third Division shall be composed of the 4th, 5th and 7th Civil Districts.

The Fourth Division shall be composed of the 8th Civil District.

The Fifth Division shall be composed of the 6th, 9th, 10th, and 11th Civil Districts.

The Sixth Division shall be composed of the 12th, 13th, 14th and 15th Civil Districts.

The Seventh Division shall be composed of the 16th, 17th and 18th Civil Districts.

SEC. 3. Be it further enacted, that on the first Monday in July, 1905, the Justices of the Peace of said Lincoln County shall assemble at the Court House of said County and — the County Judge presiding — will proceed to elect seven of said Justices of the Peace, one from each of the Seven Divisions as constituted and defined in Section 2 of this Act, and when so elected and qualified, said Seven Justices shall be designated as Quarterly Court Justices, and shall constitute said Quarterly Court, and shall hold their offices as such until the next regular election of Justices of the Peace, and until their successors are elected and qualified.

SEC. 4. Be it further enacted, that after every regular election of Justices of the Peace, the said Justices of the Peace of said County, shall, on
the first day of the first regular term of the Quarterly Court, after said regular election of the Justices of the Peace, assemble at the Court House of said County and proceed as provided in Section 3 of this Act, to elect seven Quarterly Court Justices, one from each of the said Seven Divisions, to serve for six years and until their successors are elected and qualified.

Sec. 5. Be it further enacted, that before entering upon their duties as such, said Quarterly Court Justices, shall take the following oath: "I do solemnly swear that I will perform with fidelity the duties of the office to which I have been chosen, and which I am about to assume."

Sec. 6. Be it further enacted, That a majority of said Quarterly Court Justices shall constitute a quorum for the transaction of business, but no election, decision, or other action had by said Court shall be valid unless concurred in by four members, except to adjourn, which may be had by a majority of the members present.

Sec. 7. Be it further enacted, that should a vacancy occur in the membership of said Quarterly Court the same shall be filled at the next regular term of said Court thereafter, when the Justices of the County shall elect a Justice of the Peace from the same division in which the vacancy has occurred, to serve for the remainder of the unexpired term.

Sec. 8. Be it further enacted, that when a Coroner and Ranger are to be elected for said County, and should a vacancy occur, subsequent to an election in the office of Sheriff, Trustee or Register, the elections of said Coroner and Ranger, and to fill the vacancies occurring in the offices of Sheriff, Trustee, Register, or Quarterly Court Justice, shall be had as follows: When any of said officers are to be elected or any of said vacancies are to be filled by the Justices of said County, it shall be the duty of the Clerk, or, if there be no Clerk, his Deputy, and if there be no Clerk or Deputy, the County Judge, to give at least ten days notice to every Justice of the Peace of his County to assemble at the Court House of his County in order to fill such office or vacancy, and in filling of all such offices or vacancies all of the Justices of the Peace shall be entitled to attend and draw pay, but shall not draw pay for more than one day; and three-fifths of all, the Justices shall be necessary to constitute a quorum for said election. The County Judge shall preside over the said Quarterly Sessions of the Court and all assemblages of the Justices, and in his absence a Chairman pro tempore shall be chosen to preside.

Sec. 9. Be it further enacted, That said Quarterly Court shall represent said Lincoln County, and all business which cannot be lawfully done by the County Judge, shall be done at its quarterly sessions, to be held on the first Mondays of January, April, July and October of each year, and it shall appoint all County officers not elected by the people, not appointed by other Courts, and not elected by the Justices of the Peace as provided by this Act.

Sec. 10. Be it further enacted, that all laws and parts of laws in con-
flict with this Act be and the same are hereby modified and amended so as to conform to this Act, and that it take effect on and after July 1st, 1905, the public welfare requiring it.

The President at this juncture introduced one of the Association's distinguished honorary members, Gen. J. B. Heiskell, of Memphis, who read his strikingly able paper entitled "A Review of Coleman vs. the State of Tennessee," which will be found in the Appendix.

The Committee on Obituaries and Memorials made report through its very popular and gracious chairman, Judge C. W. Metcalf, and its report was, on motion, unanimously adopted and ordered spread on the minutes, which is done as follows:

REPORT OF COMMITTEE ON OBITUARIES.

To the Bar Association of Tennessee:

Your Committee deeply regrets that it is called upon to note the loss by death of so many as five members of the Association since its last meeting.

In respect of them we tenderly submit the following:

SAMUEL ALPHONSO CHAMPION.

He was born on a farm near Fulton, Ky., and moved in his early manhood to Paris, Henry County, Tennessee, where he read law in the office of the venerable James S. Brown, and there entered upon his profession. Although not a graduate from any college, his academic education and prolific reading qualified him for a useful life whether in business or professional lines. His sterling character and capacity was so soon recognized, that he was called upon in the midst of his early professional life to represent Henry County in the State Legislature. His fidelity to this his first trust was but the beginning of trusts, personal, professional, business and public, with which he was continuously honored until his death.

He removed to Nashville, Tennessee, in the year 1884, where he more actively engaged in the practice, becoming a member of the well-known firm of Champion & Head, and later on of the firm of Champion, Head & Brown, the latter being the son of his venerable tutor and exemplar in the practice of his profession. In 1899, when Mr. Head was elected Mayor of Nashville, the firm became Champion, Brown & Akers. Later, he became associated successively with John H. DeWitt and Bradley Walker, under the style of Champion & DeWitt, and Champion & Walker, the latter partnership continuing until January, 1906.

He was recognized by the Nashville bar and by the courts below and
appellate and supreme courts as an able lawyer, and painstaking in the
preparation of his cases. He was a safe and conscientious advisor and
an exemplary practitioner, maintaining always and under all circumstances
the highest standard. He dealt candidly with the courts and with lawyers,
and was always upright with his clients, and beloved alike by all who knew
him. What a noble life was this! Whether a lawyer becomes renowned,
whether he dies rich or poor, the highest ecomium of the bar must be that
he honored his calling, and was trustworthy throughout in professional
and clientage relations. Some succeed and some fail in the accumulation
of fortune or fame, but none fail in the esteem of the bench and bar
where such a life has passed before them without occasion for criticism
from any source.

The Committee dwells upon this only because it wishes the Association
to perpetuate in its records the fact that above fortune or fame (both of
which he had measurably attained) it prizes immeasurably a high standard
in the profession, emphasized in the first article of its Constitution, to-wit:
"The maintenance of the honor and dignity of the profession of law." Whether or not the Association has inaugurated and successfully procured
all needful legislation, which it has sought, with his aid for years, under
the other clause of that article, to-wit: "The promotion of improvements
in the law and the modes of its administration" (wherein it has done
much) we do know that Col. Champion has honored and exalted the
standard of our calling, attested by his active participation in all of its
efforts on these laudable lines.

After his removal to Nashville, he was again called upon to temporarily
suspend his practice, and to become one of the electors for the State at
large on the Democratic ticket, during the first candidacy of Mr. Cleveland
for the Presidency, and had the honor of being chosen a member of the
committee to notify him of his election. He was also called upon at times
to become a member of the State Democratic Executive Committee, and
discharged those duties efficiently, faithfully and with his usual integrity,
allowing no partizanship to warp or thwart his honest dealings with polit-
ical adversaries.

These notations are made in his public career as attesting not only his
success and ability as a lawyer, but his admirable qualities as a leader in
public affairs.

He was a successful business man, having been connected with and a
director of, prominent business enterprises, corporate and others, wherein
his conservative advice and practical, common sense was always esteemed
to be of the highest value.

In further evidence of the high regard in which he was held as a man
of business, as well as of refinement and culture he was made a member
of the Nashville Park Commission. The beautiful parks in the suburbs
of that city are additional monuments to his fidelity to public trusts.

He was a member of the Methodist Church, and at the time of his death
was one of the trustees of the old and well-known McKendree Church
of Nashville. Surely one who was called upon to occupy so many and diversified relations from time to time in the affairs of life must have been a man of no meager worth or ability.

Coming closer to our own bereavement, your committee would state that he was among its oldest members, having joined the Association as early as 1888.

The published proceedings of the Association since he became a member, bear evidence of the fact that he rarely failed to attend its meetings and rarely failed to make wise and progressive suggestions in all matters which came before it for discussion.

The proceedings of the Association testify that pre-eminently he exemplified and sought the maintenance of the standard of the Bar, to which end he participated in many of the discussions wherein efforts were made to induce the Legislature to co-operate in that work. He was among the prime movers to dislodge the iniquitous establishment of so-called law colleges in Tennessee, which ultimately resulted in the breaking up of such institutions in this state and elsewhere.

The Legislature was finally induced to pass an act creating a Board of Examiners and requiring more rigid qualifications for admission to the bar, whereupon he, without solicitation, was appointed by the Supreme Court a member of the Board. It is needless to remind the Association that his work was entered upon and pursued by him with his usual fidelity, capacity and zeal; and doubtless it has also been observed, or if the fruits have not yet ripened, it will be seen later on, that the standard of the profession has been elevated under his conscientious, intelligent and impartial administration in co-operation with the other members of the board. On his desk after his death was found an unfinished manuscript, evidently intended as an address to the school of applicants next to appear before the Board, from which we quote extracts:

"A lawyer may possess the requisite legal knowledge, proper degree of energy, but if he is wanting in that high sense of honor, necessary to constitute an officer of the Court, which a lawyer becomes when he is sworn as a member of the bar — if he is wholly wanting in these regards, he is a curse to any community. * * * We have often said to applicants for licenses that it is no credit to the Board, or benefit to the party to grant him license to practice law, unless he shows himself to be worthy, and worthy means, not only sufficient knowledge of the law and equipment otherwise, but also rectitude of character, moral stability and professional honor. When a license is granted to an applicant who is entirely wanting in these characteristics, he is advertised to the world as a lawyer, but is unable to sustain himself, and becomes discouraged and disappointed, and ultimately, a failure, whereas if he were refused a license, he might become a success in some other avocation, for it is not every man who has the ability, is adapted to the practice of law. * * * * We admonish lawyers, and especially the young men, to uphold the honor and dignity of
the profession, and never be guilty of unprofessional conduct in the manage-
ment of a lawsuit or in securing a case, for such methods always result
to the serious detriment of the party practicing them."

These were words of wisdom—the last golden utterances of one whose pen dropped from his earnest hand in the midst of his zealous work.

He was married in 1886 to Miss May Harding, a member of a promi-

tent Tennessee family, who now survives him. He left no children to bear the name and heritage of a life well spent. He died at his home in Nash-
ville on the 25th day of April, 1906, and was followed to his grave lamented by the community in which he lived; beloved by his brother lawyers who knew him best; honored by the State, and above all honored and lamented by the Bar Association of Tennessee, which had, during so many years, been the beneficiary of his continued membership. During eighteen years he has been prominent and earnest, and by his aid this Association, permit your committee to say, has attained and maintained high rank, among the Associations of other States—all alike engaged in the work of promoting fraternal relations, professional standards and ethics, and efficiency and uniformity in the advancement of jurisprudence and in the administra-
tion of the law. The Bar Associations of the States, and the American Bar Association have done and are doing great good on these lines, state, national and international. Brother Champion died in the midst of these labors which he loved, and in the midst of other commendable activities. To him a farewell! Lovingly and sadly written. His example and influ-
ence survive. A precious personal memory of him and his delightful cham-
psionship at our meetings will abide with us.

Your committee presents an inadequate tribute to his memory. Brief as it is, the outlines of such a life embodied in our records will serve some-
what to perpetuate the memory of a good lawyer and an honorable name.

JOHN HENRY BOWMAN.

The mere mention of his name to the Association awakens pleasure immediately to be followed with a sense of sorrow. So sudden was his death that the lawyers not only of his own section of the State, but through-
out Tennessee, and the members of the Association especially, realized that sunshine without the warning of a coming cloud, was suddenly ob-
scured forever by the shadow of death. Borrowed not in exact language but in sentiment, it was as though a morning in June had suddenly paused in the sky before meridian, and returned to the orient whence it came. He was only thirty-six years of age when he died. He was born in Wash-
ington County, East Tennessee. To a common school education was added a supplemental course at Emory and Henry College. Subsequently he read law under Judge S. J. Kirkpatrick, and thereafter became a member of the well-known firm of Kirkpatrick, Williams & Bowman, of Johnson City, and so remained until his death, contributing his share to the reputation and extensive practice of that distinguished co-partnership.
Mr. Bowman, though successful in jury trials, was a Chancery lawyer of remarkable adaptation and success. Herein he found the rugged rules of the common law, tempered by principles of equity completely in accord with his genial, just and generous nature.

He was a man of magnificent physique, six feet in height and portly built, without obesity. He was handsome, and well poised in his carriage, and all in all would attract attention in any gathering. Of him personally and professionally nothing could be more beautifully and truthfully stated than the following, which we quote from the resolutions adopted at a meeting of his beloved bar at Johnson City, at which were present members of the bar from other East Tennessee cities:

"He was an optimist, and scattered sunshine in all his walks. He laughed, and he made others laugh. It seemed as if pessimism never darkened his brow. He was uniformly courteous, and in his bearing so agreeable and pleasing that in all of his zeal for a client's cause, he never quarreled with a brother attorney. Generously, freely, he responded to the demands of his church for the support of the gospel and benevolence; and to charities he held an open hand. It was a positive pleasure to him to grant any request, in the bounds of reason, made by a brother at the bar. In his profession he was broad, and in his practice was liberal to the very verge of what his client's interests would allow. He was in very truth an honorable, a manly man. It was often said of him, and truthfully, too, that he was big-hearted.

"He had an incisive mind, and was a tireless worker; and had achieved a degree of success as a lawyer, rarely attained by one of his years in life and in his profession. He had an exalted opinion of his chosen profession, and sought to, and did, adorn it."

He had gone to Philadelphia for relief from a trouble which had insidiously grown to be serious, and there in the midst of a surgical operation, on October 30, 1905, his brilliant life suddenly went out, intelligence of which flashed over the wires, and brought precipitate sorrow to his home and to all of East Tennessee, where he lived and was loved. He had ten years prior to his death married Miss Jessie Kirkpatrick, the daughter of Judge S. J. Kirkpatrick, with whom later on he became associated as junior partner. His wife and two bright little boys survive. Whilst their grief is poignant as husband and father, ours is grievous in the loss of a lawyer to the Tennessee bar which he adorned, and to the Tennessee Bar Association, to which he had by his congenial presence and ready services contributed so much pleasure and profit. We commemorate his delightful companionship, his professional integrity and ability, and his invaluable aid to the Association, and request that a memorial page be set apart to his memory.

STOCKLEY DONALDSON HAYS.

The subject of this memorial had long been a member of the Association. In health and later on when infirmity scarcely justified the long and fatig-
ing journeys to our meetings, he never failed to be present. Many of us, who were at the meeting of 1904, the last which he was able to attend, will recall his physical feebleness; and his ceaseless devotion to the work of the Association was mentioned by every member then present.

He was born in Jackson, Madison County, Tennessee, April 4, 1851. His father, Richard W. Hays, and grandfather, Robert Hays, were among the earliest and most revered settlers in that county. Stockley Hays was a graduate from West Tennessee College in his native town. When about fifteen years of age he became an assistant in the office of the Supreme Court Clerk at Jackson, reading law during his clerkship, until he became qualified for the practice of the law. His first association in the practice was with Ernest L. Bullock under the style of Bullock & Hays, thereafter Pitts, Hays & Meeks, and finally Hays & Biggs, which latter firm continued until his death. He ranked high in the class of worthy practitioners, in that he was versed in the principles of law, sound in their application, and conspicuous always in his adherence to high standards in his practice. He was earnest and indefatigable, conscientious and trustworthy. He had both before and during his practice prepared himself for a calling which he was too conscientious to have entered upon, merely as a commercial avocation. His professional life was such that no lawyer or court could or ever did criticize. He died, esteemed by the bar of the city wherein he was born, reared, lived and died — revered by the community because of an upright, Christian life, and of his deeds of charity, and participation in all efforts along the avenues of public good. He left surviving him his wife and eight children, for whom he had provided a competency by his life of labor and love, always on the high plane of honest and noble endeavor. More than this he left to them the recollection of a husband and father whose life was indeed a benediction both to them, and to the community in which he lived. The Association was honored by his membership and now deeply laments his loss.

EDWARD FRAZIER MYNATT.

We adopt as a suitable and worthy memorial the following sketch taken from one of the leading papers of Knoxville, Tennessee, where he had lived and practiced his profession, and where he died May 17, 1906:

“Edward Frazier Mynatt was born near Hall’s Cross Roads in the Seventh District of Knox County, February 22, 1860, and was the son of Joseph A. and Melvina (Alley) Mynatt. He attended school at Powell’s Station and Walnut Grove Academies in Knox County until 1879, when he came to Knoxville, and studied law under Judges L. C. Houk and Henry R. Gibson and began practice in 1880. Since that time he has been a member of the Knox County bar. He was elected a member of the lower house of the Tennessee Legislature in 1886 for Knox County, and State Senator from Knox and Anderson Counties in 1888. He was elector on the republican national ticket for the Second Congressional District in 1892, and was elected Attorney General for Knox County in 1894. He served
in this capacity until 1900, when the Legislature reduced the number of judges and attorneys general and abolished his office. Since that time he practiced alone.

"On February 6, 1889, Mr. Mynatt was married to Miss Margaret Jeannette Haynes, daughter of the late Isaac and Elizabeth Haynes, and niece of the late J. P. Haynes. He is survived by his wife, and the following children: Benjamin Harrison, aged 15; Joseph Foraker, aged 9, and Charles Grady, aged 7.

"Fred Mynatt, as he was familiarly known, excelled as a jury and criminal lawyer, and in these capacities, had perhaps no superior in East Tennessee. He was essentially a self-made man and carved out his own fortune. He accumulated a considerable fortune by dint of industry and hard work and at his death was worth perhaps one hundred thousand dollars. He was genial and companionable and had friends in all walks of life. He was especially popular among members of the bar and his place among his fellow lawyers will be hard to fill."

He became a member of the Association only at its last session, and from the list of enrolled members we lament that his name must now so soon be found upon other pages whereon year by year those who have, because of death, ceased their membership of long activity and prominent usefulness are memorially transcribed.

THOMAS CURTIN.

In the death of Judge Curtin we have sustained in our membership the loss of a life, which for usefulness and efficiency cannot be easily supplied. Judge Curtin died at his home in Bristol, Tenn., August 17, 1905. He was born in Richmond, Va., April 12, 1852, of parentage, poor in worldly goods, but rich in noble blood. His father James Curtin was of a distinguished line of lawyers and statesmen, wherein was A. G. Curtin, Governor of Pennsylvania during the Civil War, and known in those days as one of the “War Governors” — an appellation then, but not now, of hateful import to the South, removed or mellowed as it has been by time and by the universal patriotism of the people of our common country. When the war was over and Governor Curtin’s love of the Union was satisfied in its preservation deemed by him to have been the essential purpose of the war, he promptly and earnestly supported Horace Greeley for the presidency, whose candidacy bore an olive branch, and who was the first to render aid to President Davis in his hour of remorseless imprisonment. Ex-Governor Curtin later, in venerable age, was three times elected to Congress, as a democratic representative, where he continued his mission of fraternity between the sections. He loved his whole country whether in war or in peace. Of such blood and patriotism was the paternal line of Judge Curtin.

His mother was Mary McCarthy, of Irish descent, closely related to Justin McCarthy, eminent as an author, and prominent as a statesman.
Thus favored as Judge Curtin was, he sought not to borrow lustre from distinguished ancestry—often borrowed and not repaid, but with or without illustrious lineage he in his earliest youth, presaged what his manhood would fulfill. His life indeed began heroic, continued masterfully and honorably, and closed without a blemish.

At the immature age of twelve, inspired by innate love of country, which he, in his youthfulness, regarded as embraced only within the boundaries of his Southland, and too young to understand the significance of the issues involved, whether real or factitious, he escaped from school in 1864, and joined the Confederate army, or more accurately speaking, too young to become an enlisted soldier, he became a courier in General McCauseland’s Cavalry Brigade in Virginia, bearing messages along the deadly front. Thereafter he participated as a youthful soldier in the battles of Winchester, Va., Cedar Creek, Fisher Hill and other battles, including Monaccassay Junction, Md., in which latter he was wounded.

Surviving the war, he returned as a boy to greet his parents, thence to engage in the stern, but not so tragic strife as heretofore, in the battle of civic life. His parents still poor, and further impoverished by the ravages of war, he must rely upon his own native strength, courage and manly resources. To him then “life was real, life was earnest.”

At the age of about fifteen he attended school during three short sessions under the tutelage of Professor McDonald at Wytheville, Va., assiduously applying himself during this brief period. He had thereafter no academic opportunities, and yet he omitted no reading or study wherewith to qualify himself for the high station in life to which he aspired. When only eighteen years of age, he began the study of law, under John E. Burson, and later under Wm. H. Fain and Judge W. V. Deaderick, of Blountville, Tennessee.

In 1876 he was admitted to the bar, not endowed with classic scholarship, but equipped with an integrity of character, exalted purpose, indomitable energy, and deeply grounded in the fundamental principles of law. He, as a poor boy, had laid the foundation for a life, destined to become solid in its construction, and approximately perfect in its completion—worthy indeed of imitation by any lawyer who must needs become the architect of his own fortune or fame. With an aptitude natural, and with a fitness acquired for the practice, he sturdily, studiously and intently entered upon his chosen calling, winning from the beginning, friends, clients, courts and brother lawyers by his attractive personality and upright life in every relation.

In 1880 he formed partnership with Judge Hal H. Haynes under the style of Curtin & Haynes. Upon the former’s retirement to become Chancellor, the firm of Curtin, St. John & Shelton was formed, which continued until the death of Judge Curtin, it meanwhile becoming one of the leading law firms in the State.

In 1892 he had been appointed by Governor Buchanan to preside in the First Judicial Circuit, during the illness of Judge S. D. Brown. He filled
that position with uniform urbanity, pleasing to litigants and lawyers, and with an ability, adequate to higher judicial offices; and yet it was manifest to his friends and to the bar that his aspirations and tastes were along a rugged highway which would lead, if possible, to eminence at the bar, rather than pre-eminence on the bench. He relished intellectual and exciting legal combats, wherein he could participate rather than sit as a silent spectator and arbiter of contests so earnest. As said, by C. J. St. John, who knew him best, in an eloquent tribute to his memory, delivered at Knoxville, at a bar meeting of the lawyers of East Tennessee:

"He loved the practice of law, as no other lawyer I ever knew loved it. The hotter the contest, the keener was his delight. When Curtin was in a case, it meant a fight, not an unseenly scramble, not a war of hot words and vituperative epithets, but a battle royal, conducted upon a high plane according to the highest standard of professional ethics, but nevertheless, a fight to the finish. When the verdict was rendered, if in his favor, he never wore the exultant smile of the winning attorney, but approached the other side, complimented them on the fight made, and suggested that he himself had another river to cross, upon a motion for a new trial or upon an appeal. If the case went against him, no man ever took defeat more gracefully. When he felt that he had done his full duty as a lawyer, and his client was defeated at last, it was not his habit to complain or censure the Court, but rather, to bow submissively, and tell his client, the law was against him."

This exceptional trait was strikingly illustrative of his nobility and generosity of character, for instead of vaingloriously asserting to his client that the Court remained in ignorance of the law, despite its clear and profound exposition by himself, he displayed the manhood and worth of a genuine lawyer, by a recognition of the fact that whether he concurred therein or not, the Court's pronouncement was the law of the case, and hence with manliness and without an attempt to disparage the judiciary, he was willing so to say to his client.

Again quoting from that beautiful eulogy:

"No part of his work was distasteful to him. Whether filing a bill, or an answer in Chancery, trying a civil or criminal case, appearing before a justice of the peace, taking depositions, in a remote part of the country, preparing assignments of error and briefs, appearing before the Court of Chancery Appeals, the Supreme Court, or the Federal Court, or preparing exceptions to the Master's report of a long and tedious account, it was all to him a labor of love."

Thus, so marked was his ability and so reliable his care and industry in the preparation of whatever he had in hand, we find that he was in 1893 appointed by Governor Taylor one of the attorneys on behalf of Tennessee, in the noted case of Virginia v. Tennessee, for the settlement of their boundary lines. How well this service was performed has already passed into the historical and judicial chronicles of these two sister states.
In 1902 he was appointed by Governor McMillin special Judge on the Supreme Bench to participate, owing to the disqualification of one of its members, in the hearing of the important case of Sheaffer v. Mitchell, involving many complex questions pertaining to land titles, grants, tax sales, &c. His lucid, logical and learned opinion in that case, if there was no other record, would suffice to place him among the leading lawyers of Tennessee—a position attained by his own ceaseless energy under circumstances of poverty and frailness of body, and other adversities inimical to ultimate success, save in one who was born to become a hero in endeavor. We quote, perhaps not with accurate phraseology, what a poet has said:

"Ah! who can tell how hard it is to climb
   The steeps where fame's proud temple shines afar?
   Ah! who can tell how many a soul sublime,
   Has felt the influence of a baneful star,
   And waged with fortune an incessant war."

This war was waged; these steeps he climbed with sure and steadfast step, until intercepted untimely on the way by a hand Supreme, which none can stay.

Loyal to friends, faithful to clients, courteous to lawyers, profoundly respectful to the Courts, ethical in his practice, devoted to his exalted profession, useful in citizenship and charitable to the limit of his means, devoted to his beloved wife, and two children of tender age, he untimely passed away in life's meridian. For two years with manly courage he was confronted with a lingering and painful malady, the fatal result of which he realized, but which with the same undaunted courage, conspicuous from his youth up, he combated, as he had all obstacles in his pathway to the goal which his aspirations had sought. Only a few months before his death, he poured his whole soul as an advocate and his supreme ability as a lawyer, in the trial of his last cause, said to be the strongest and ablest effort of his life, when his body was feeble, but his mentality and conception of the law and facts of the case were shown to be as strong and clear as when in former days he convinced a court by his learning or persuaded a jury by his earnestness, candor and eloquence. His success before juries was phenomenal—his achievements before the Courts was exceptional.

When the end came his surviving wife who had always been his helpful, happy and hopeful companion, was by his bedside in her continuous tenderness and care, with their two little children—one boy to whom he bequeathed his library, as though with prophetic vision he saw that he would further transcribe the name of Curtin in the annals of Tennessee and worthily complete the climax of a lawyer's unfinished life.

The bar of the entire Eastern division of the State, because of his distinguished character and attainments as a lawyer and beloved companionship and high standard as a brother, met at Knoxville, Tennessee to do
honor to his memory, whereat lawyers and Judges of the Supreme, Appel-
late, Circuit Courts and Chancellors paid noble tributes to his high char-
acter and splendid ability, and adopted resolutions which were spread upon
the minutes of the Supreme and other Courts.

The Bar Association of Tennessee joins in these tributes. The papers
which he has read, and the reports which he has made to the Association
as chairman of important committees, already recorded in our proceedings
are enduring testimony of his services to the Association, his acquirements
as a lawyer and of the high estimate entertained by him of the noble pro-
fession which he pursued. This memorial is now added and requested to
be placed as a wreath upon a monument built by himself alone, of solid
granite, whose foundation was laid in poverty, and whose construction
was being completed in the midst of physical infirmities. We extol, with-
out adulation, his honored name, and cherish without limitation his pre-
cious memory.

Respectfully submitted,

C. W. Metcalf, Chairman.
H. H. Shelton,
J. W. Caldwell,
G. A. Frazier,
M. B. Trezevant.

After an informal discussion of the matter it was resolved
that the banquet, announced on the printed program for Friday
evening, would be abandoned and dispensed with, and in lieu
thereof those members of the Association so desiring would be
given a trip to Missionary Ridge and Chickamauga Park in the
afternoon of Friday.

The President announced as further change in the pro-
gramme as printed, that the "Smoker" would be on this,
Wednesday evening, instead of Thursday, and the band concert
would be on Thursday instead of this, Wednesday evening, the
two being exchanged in place on the programme.

On motion, adjournment was had until 9:30 o' clock Thursday
morning.

SECOND DAY, THURSDAY, AUGUST 9.
MORNING SESSION.

Called to order by the President at 9:30 A. M., pursuant to
adjournment.

The Secretary being absent, on request, Mr. John M. Thorn-
burgh acted as Secretary Pro-tempore.
On motion of Mr. R. E. L. Mountcastle, the President appointed as a special committee to arrange details for the trip to Missionary Ridge and Chickamauga Park, Friday afternoon, Messrs. Frank Spurlock, chairman; James Maynard, Jr., and Chas. W. Rankin, and requested that all wishing to take this trip would give their names to this committee.

In his usual chaste and elegant manner the President then introduced Judge Selden P. Spencer, of St. Louis, Mo., the guest of the Association, who delivered his most excellent and eloquent address on the subject, "Law and Lawlessness," which will be found in the Appendix, and the reading and study of which will, it is believed, be productive of not only much interest, but substantial good.

Mr. James C. Bradford, of Nashville, was next presented by the President, and read to the Association his paper entitled "The Citizen and the State," evidencing deep research and thought upon grave problems of State. His paper will be found in the Appendix.

Prof. C. W. Turner, of the Law School, or Department, of the University of Tennessee at Knoxville, was then presented to the Association by the President and read a paper entitled "The Practice of Law in the Days of Littleton," a rare and splendid literary production, as will be seen and appreciated by reading it, as it appears in the Appendix.

This completing the morning programme, on motion an adjournment was taken until 2:30 o'clock P. M.

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AFTERNOON SESSION, THURSDAY, AUGUST 7.

Meeting called to order by Mr. Sanford, the President, at 2:30 o'clock, pursuant to adjoining order.

The President announced the presence with us of several gentlemen from Arkansas, who had in contemplation a joint meeting in 1907 of the Bar Associations of Arkansas, Mississippi and Tennessee, and whom he knew the Association would be pleased to hear. Mr. Ashley Cockrill, chairman of the executive committee of the Arkansas Bar Association, being the first introduced, in a short, clear-cut address, presented the outline
of the joint meeting being contemplated and planned for. He was followed by Mr. J. M. Slayton, the retiring president of the Bar Association of Arkansas, along the same lines, elaborating the pleasures and profits of such meetings.

Chancellor F. H. Heiskell then presented a resolution passed by the local Bar Association of Memphis on the subject of this proposed joint meeting, which resolution was endorsed and ordered spread of record, and is done as follows:

At a meeting of the Board of Directors of the Memphis Bar Association held August 4, 1906, the following resolution was adopted:

Whereas, It has come to our knowledge that a movement is on foot looking toward a joint meeting of the State Bar Associations of Arkansas, Mississippi and Tennessee, for the year 1907, the place of meeting to be in the City of Memphis;

Be it resolved therefore, that the Memphis Bar Association endorse this movement and request the State Bar Association of Tennessee to use its influence toward securing such meeting at Memphis.

Resolved further, That the Memphis Bar Association invite the respective State Bar Associations of Tennessee, Arkansas and Mississippi to hold their meeting jointly in the City of Memphis, during the year 1907.

Resolved further, That a copy of these resolutions be forwarded by the Secretary to the proper officers of the respective State Bar Associations of Tennessee, Arkansas and Mississippi.

R. L. Bartels, Sec'y.

On motion the following resolution offered by Judge C. W. Metcalf was unanimously adopted.

Resolved, That the Tennessee State Bar Association cordially entertain the suggestion of a tri-state bar meeting, and hereby invites the Bar Associations of Arkansas and Mississippi to meet with us at our next meeting, instead of a separate meeting, and hereby directs the Central Council, in connection with the President and Secretary that if this invitation be accepted by either one or both of said Associations, to make arrangements with said Association for such a meeting at such time and place and with such program as they shall deem appropriate.

The President then introduced Col. W. A. Henderson, the sage of the mountains of East Tennessee. Col. Henderson addressed the Association in a most munificent vein on "The Law of the Mountains," speaking off-hand, without notes, and in his accustomed magnetic way, entertained the assembly with a number of rare stories, choice anecdotes and personal reminis-
rences, connected with the law practice in the mountains in bygone days.

Col. Henderson was followed by Judge D. K. Young, of Clinton, in a like strain, who in turn was followed by Gen. J. B. Heiskell. The hour for reminiscences was then closed by a short talk by Judge S. J. Kilpatrick, of Jonesboro, most fitting to the occasion. This part of the programme proved a most interesting and entertaining feature.

The Central Council reported, recommending the following additional names. The report was adopted and their election made unanimous.

Neal, John R. .......................................................... Spring City
Swafford, J. B. .......................................................... Dayton
Fitzhugh, L. T. ......................................................... Memphis
Farley, J. W. ............................................................ Memphis
Carlock, L. H. .......................................................... LaFollette
Hogan, Chas. W. ...................................................... Chattanooga

The Central Council further reported, verbally, that it had checked and audited the Treasurer’s report and that same was accurate and true, and on motion this report was adopted.

On motion the Association adjourned until 9:30 o’clock Friday morning.

THIRD DAY, FRIDAY, AUGUST 10.

MORNING SESSION.

The meeting was called to order by the President at 9:30 o’clock pursuant to adjourning order.

Col. S. A. Champion, chairman of the Committee on Legal Education and Admission to the Bar, having departed this life since the last meeting of the Association, the report of this committee was presented and read by Hon. Robert Burrow, another of its members, and on motion it was ordered filed and spread of record, which is accordingly done as follows:

To the President and Members of the Bar Association of Tennessee:

The committee on Legal Education and Admission to the Bar has the painful and sad duty of announcing the death of its honored chairman, Col. S. A. Champion, which occurred since the last meeting of the Association.
The cause which demands a higher standard of legal education and of legal ethics never had a more zealous champion than Col. S. A. Champion. As chairman of this committee, and as President of the State Board of Law Examiners, he was ever alert and active in his efforts to raise the standard of the legal profession in Tennessee. He not only insisted that a candidate for admission to the bar should be well-grounded in the principles of the law, but also in the principles which are necessary to make a true man. It was almost a hobby with him that an applicant for law license should, above everything else, be a gentleman. Not long ago a young man from another State, who had been granted license by the Supreme Court, on the recommendation of the Board of Law Examiners, proved to be unworthy, and knowledge of his misconduct having come to Col. Champion, he promptly appeared before the Supreme Court and moved that the license be revoked. But while he was an impecunious foe of the trickster, the shyster, and the rascal, his heart was filled to overflowing with the milk of human kindness, and every poor, deserving young man, struggling against adverse circumstances to become a lawyer, had in him a staunch friend.

In the death of Col. Champion this committee and the cause which it represents has suffered a great loss.

Since the last meeting of the Bar Association the State Board of Law Examiners has had to consider one hundred and twenty-two applications for license to practice law. Of these, four were licensed on license from other States. Of the one hundred and eighteen who were examined, all but thirteen made the grade sufficient to enable them to pass, and have been given license. But it must not be supposed that all of these are to become practitioners in Tennessee. A large number of them are citizens of other States, and having graduated from some one of the law schools in this State, were examined for license here in the expectation of having their license recognized by their home State.

The rule adopted by the Supreme Court, which authorizes the licensing of lawyers from other States, is as follows:

"Every applicant for admission to the bar upon a license or other voucher showing his admission as an attorney at law in another State or foreign country, must present to the Board such license duly certified, or a copy of the record of the Court showing his admission to the bar, duly proved, as required by law for the authentication of the records of Courts of sister States, when offered in evidence in the Courts of this State. Such license or voucher must confer the right to practice in the highest courts in such State or foreign country. Such applicant shall not be admitted upon such license or voucher without examination by the Board, if it appears to the Court by certificate of said Board, that in the State or country in which the license was issued the requirements for admission to the bar were equal to those prescribed in this State. Or, if it should appear that the applicant has been engaged in active practice of law for a period of five years in courts of record under such license and provided further, that the Board is otherwise fully satisfied that the applicant is worthy.
The Board shall certify to this Court persons entitled to admission by virtue of having been admitted to the bar in such other State or foreign country."

The percentage of failures the past year has not been quite so large as in the year previous. This is attributable to the fact that few applicants now come before the Board who have not made thorough preparation. In fact, it is safe to say that seventy-five per cent of those who were examined during the past year were graduates of one of the law schools at Knoxville, Chattanooga, Lebanon or Nashville. Those who have little other qualifications than that of having served a term as Sheriff, Clerk, or Justice of the Peace, no longer apply.

The creation of the Board of Law Examiners has largely increased the attendance upon the law schools, and the law professors report that it has been a great incentive to study on the part of students. The law has met the approval of the profession generally throughout the State and its good effects are already being felt.

Respectfully submitted,

ROBT. BURROW,
For the Committee.

At this juncture the President received and read to the assembly the following telegram from Hon. M. T. Bryan:

KNOXVILLE, TENN., Aug. 8, 1906.

Hon. E. T. Sanford, Lookout Inn,
President Bar Association.

Absence makes the heart grow fonder; best wishes for success of meeting.

M. T. BRYAN.

Mr. Chas. W. Rankin, the chairman, read the reports, both majority and minority, of the special committee appointed at the 1905 annual meeting for investigation and report on the question of judicial salaries, which report was on motion received and ordered spread of record, and this is accordingly done as follows:

Mr. President and Gentlemen of the State Bar Association of Tennessee:

Your committee appointed at the last annual meeting of the Association, as a special one “to take up the question of an increase in the salaries of our judiciary, and report at the next meeting of the Association,” and pursuant to this resolution, they beg to report as follows:

At present Tennessee has five Supreme Court Judges and three Judges of the Court of Chancery Appeals, on salaries of $3,500.00 each; and twenty Circuit Judges, ten Chancellors, and five Criminal Judges on salaries of $2,500.00 each. This makes a total of forty-three judges with a salary account of $115,500.00. All are elected by the people for terms of eight years.
Your committee, from their investigations and consideration of our judicial system touching the question of salaries, feel that whatever else may be said with reference to it, it is faulty in at least two respects.

I.

1. The term of office is only eight years. This is a constitutional provision, and of course no change can be made except by a change of the Constitution. But since much has been said in recent years with reference to a Constitutional convention, it may not be out of place for your Committee to discuss the matter since it bears sharply on the question of salaries.

Any man, in any vocation, would accept more reasonable compensation for a life term than he would for a term of eight years. Much more is this true of the lawyer. Before he has had opportunity to demonstrate his fitness for the bench he must needs have spent many years in building up a clientage. When he accepts the judgship he immediately severs his relations of this character which have cost him much labor and long waiting, and the eight years that he serves his State are just sufficient to make the severance of a permanent character. The client has found himself another lawyer, and has placed his business in the new lawyer's hands for a long enough time to fasten it there.

This has two effects. First, it tends to deter the best lawyers from accepting a position on the bench. They are not willing to make the sacrifice of their clientele that would be required of them. And, second, if the lawyer in his desire for the honor that thus comes to him—for it is a great honor to be a good judge—should secure the consent of his mind to make the sacrifice required, he finds himself confronted with the alternative of leaving the bench at the end of his term and again trying to build up a practice which will yield a support for himself and those dependent on him, or else of seeking a re-election. The acceptance of this latter horn of the dilemma at once places the judge in an embarrassing and delicate attitude. There is never an election for the judiciary but that just prior to that time there are covert charges filling the air of political decisions. Whether these charges are true or untrue is not the question. They are always made. And it is true that the judge has constantly before him a temptation to use his office for the purpose of making political friends, which a life term would remove. Moreover, a judge making a personal canvass seeking votes necessarily loses to some extent, be it greater or less, his independence and his freedom from the possibility of improper suggestion or constraint in the exercise of his judicial functions.

But if the judge does not seek a re-election—and even after the most ardent seeking he sometimes fails—then he must needs return to his labors at the bar with the appalling knowledge that he has no clients, and must again work up from the bottom as he did when he first secured his license to practice, with the only difference that he has his reputation acquired on the bench to help him. This, too, he must do with the increased
expense of living, which a larger family and more responsible social position bring, combined with the fact that he has been able to save little from the munificent salary that has been paid him, and that withal he has no longer the fire and energy of his early manhood to sustain him in his efforts to reinstate himself at the bar. All these things conspire to make the lot of the ex-judge a very hard one.

If the office were of life tenure, as in England, Scotland, Ireland, the Federal Government of the United States, and also in Massachusetts and Rhode Island, and so practically in Vermont and New Jersey, then by giving a fair salary and making a provision for a pension in old age, the practitioner who surrendered his profession for the service of his State could be cared for. It is most difficult to recommend any salary basis for an eight-year term that will make the office desirable to the man best fitted for the place.

2. But taking our system as we find it under the Constitution with the term of eight years fixed upon it, the committee are unhesitatingly of the opinion that the salaries now paid the judges of Tennessee are too small. Subject of course to the embarrassing perplexities caused by the short term, this is a problem that the Legislature can deal with without waiting for constitutional reform.

A brief statement will suffice to give the operation and results under the present arrangement.

The salaries now paid our judges were fixed by statute of 1885. Since that time we have wonderfully grown in wealth and population, and have but just begun the development of our resources. At the same time, the cost of living has materially increased. Under the salaries as they now exist, your committee are of opinion that,

First, Where the men best fitted are on the bench, they are there at a personal financial sacrifice.

It may be freely stated that we have as some of the judges of this State men who are eminent lawyers, and who, in all respects, are the right men in the right place. That such men are serving the State at a financial loss to themselves each year it is believed will be demonstrated with sufficient clearness in the subsequent portion of this report to need no further discussion here.

Second, In many instances the men best fitted are not now on the bench. This is an immediate sequence of the first proposition. There are few men who feel that they can afford for the sake of the honor that is attached to the position to turn from a much more lucrative income to a smaller salary of a judge. Nor is it to be expected that their patriotism will carry them thus far. If we do not pay the salary that will command the services of the best lawyer we need not be surprised if we find that we sometimes have a second or third-rate lawyer—or even a judge who is no lawyer at all, but merely a politician wanting a job. As has been said before, we have some judges who are the best that could be gotten at any salary, and who are earning and richly deserve twice the amount they
receive. On the other hand, it is perhaps true that not all of the judges are of this class. The Hon. Simon Fleischmann, of the New York Bar, in January of 1905, read a paper before the State Bar Association of New York, in which he discussed the judiciary systems of the various States. Since this gives a summary of what others think of us, his reference to the judiciary of Tennessee is quoted here for such consideration as it may deserve. It follows:

1. Appellate judges elected by State for 8 years at salary of $3,500; Trial Judges by districts, for 8 years, at salary of $2,500.
2. Political activity and influence determine selection, except so far as political conventions may consider ability and character as requisites.
3. Judges are not as a rule, highly competent, and do not have that degree of confidence of bar and public which courts should command.
4. Men best fitted are not, as a rule, on bench.
5. Lawyers, as such, exert little influence in selection, either individually or through Bar Associations, and their support of a judicial candidate is used, often with success, by demagogues with a certain element of population to defeat him.
6. All agree that lawyers should exercise an influence in selection, but appear to regard it as infeasible.”

Mr. Fleischmann said this statement was compiled on the authority of six members of the bar of Tennessee, three Democrats and three Republicans.

Third, The lack of sufficient income has developed the reprehensible use of the pass by many of the judges.

It is generally asserted and believed that many of our judges use passes over the railroads. Your committee do not know that this is or is not true. But if it is true, it is a most baneful practice. The railroad is a heavy litigant with cases always before all the courts. The people themselves cannot well believe that these corporations which do not as a rule let go any of their assets without at least the hope of getting the full equivalent and more in return, give away year after year large amounts in free transportation to public officials without the hope at least that they will fare better at the hands of these officials than they otherwise would. Whatever the judge who uses a pass may himself feel as to his virtue and probity, its use raises questions in the public mind.

While the use of passes or the acceptance of any other gratuity by judges from litigants is criticised unhesitatingly, it is felt that the system which does not pay officials the full value of their services, and does not make provision for the payment of the expenses of those engaged in the public business, is also deserving of the severest censure. It is poor economy and much worse policy to let individuals or corporations pay the expenses of public officials, thus bringing them under obligation, and creating fear and distrust where there ought to be most unbounded confidence.

II.

Thus much for the present system and its results. Now to consider what should be done to better it.
In arriving at the proper amount of any salary two things are to be considered: 1st, the ability of the employer to pay; 2d, the value of the services to be rendered.

On the first proposition, neither space nor time will be consumed. No discussion is needed: We are abundantly able to pay to any public servant what his services are worth.

As to the second, we may be guided in our judgment by considering what value others similarly situated place on such services; then we may look to the character of man whose services are wanted; then to what amount such a man will command for his services in his own profession from which it is desired to take him; and finally, having due regard for these things and for the sacrifices he must make, what amount must be paid with expectation of getting this man—the man best fitted for the place—to leave his profession for a term and enter upon the service desired.

Beginning with the first suggestion, the committee investigated the salaries paid the judges of other States, of the United States, and of some foreign countries. An appendix is made a part of this report which shows, first, the terms of office and salaries of the judges of the different States arranged in alphabetical order; second, the highest salary paid any judge in each several State, beginning with the highest, New York, and continuing through to the lowest, Nebraska. In this latter list, there are thirty-nine States and Territories which lead Tennessee. Another part of the Appendix shows the salaries paid the judiciary in some foreign countries. The Honorable John A. Moon, member of the United States Congress, was exceedingly kind to your committee in getting this information through the State Department of the United States. This feature of the Appendix is peculiarly instructive as showing the estimate placed by the liberty-loving Anglo-Saxon on the value of the judiciary to be much greater than that of the people of other countries, if the salaries paid may be taken as a criterion. These figures would seem to indicate that the more freedom there is under the government, the greater the constitutional rights, the more the people seem inclined to protect them by a fearless judiciary made thoroughly independent by ample salaries. Or, conversely, that where the people do not know what constitutional liberty means, they do not appreciate the need of this feature of the government. And truth it is, that where a monarch’s will or whim is law, a judicial tribunal is a superfluity.

The committee have picked at random several States, East and West, to give a brief comparative statement showing the population, the wealth, the number of judges and salaries paid.

*Tennessee* has a population of 2,020,616. The combined total of the value of her farm property and the capital of manufactures is $413,016,063. She has five supreme judges, and three judges of Chancery Appeal, at salaries of $3,500, and thirty-five Circuit Judges, Criminal Judges and Chancellors at salaries of $2,500. *California*, with a population of 1,485,053, and value of manufactures and agriculture of $1,001,922,980, has seven Supreme Court Judges whose salary has been recently raised from $6,000 to $8,000;
nine judges of Courts of Appeal, recently inaugurated, at salaries of $7,000; and ninety-two trial judges with salaries of $2,000 to $6,000, according to size of counties; clerks, assistants, and all traveling expenses furnished by the State. New Jersey, with a population of 1,883,669 and value of manufactures and agriculture of $692,357,742, has one Chief justice at salary of $11,000, eight associate justices at salaries of $10,000, one Chancellor at salary of $11,000, seven vice-Chancellors at salaries of $10,000, four Circuit judges with salaries of $7,500, and twenty-one Circuit judges with salaries from $3,000 to $7,500, according to size of counties. Massachusetts, with a population of 2,805,346, and value of manufactures and agriculture of $1,005,910,991, has Chief Justice Supreme Court at salary of $8,500, six Associate Justices at salaries of $8,000, Chief Justice Superior Court at salary of $7,000, twenty-two Associate Justices Superior Court at salaries of $6,500. (All of said judges are allowed $500 for travel), two Judges of Land Court — Torrens system — at salaries of $4,500, also sixteen judges of Courts of Probate and Insolvency with Salaries from $3,500 down. Rhode Island, with population of 426,556 and value of manufactures and agriculture of $210,773,776, pays her Chief Justice $6,000 and five associates $5,500 each. The Superior Court Judges get: Chief, $5,500, Associates, $5,000. All necessary expense, travel and hotel, paid by State, and Judge may retire at age of sixty-five after ten years' service, on full pay. Montana, with a population of 243,329, and manufactures and agriculture valued at $158,805,669, has recently raised the salaries of her three Supreme Judges from $4,000 to $6,000 each, and of her fifteen District Judges from $3,500 to $4,000 each. Iowa, with a population of 2,231,853, and manufactures and agriculture of value $1,937,078,649, pays her six Supreme Judges $6,000, and her fifty-three District Judges, $3,500. She also has four Superior Judges. Connecticut, with her population of 908,420, and manufactures and agriculture aggregating $428,002,316, pays her Chief Justice $6,500, and four Associate Justices, $6,000 each, her ten Superior Court Justices, $6,000 each, and each of said judges is allowed $1,500 for expenses. Besides these there are the Judges of the Courts of Common Pleas.

Other States might be spoken of more at length if space would permit, but all may be seen in the Appendix.

Many States provide for stenographers or secretaries, others for actual mileage and hotel bills, and still others make a definite allowance in addition to the salary, to cover expense, varying from $500 in Massachusetts to $3,700 in New York. Maryland, in 1904, passed an act providing for a pension of $2,400 per annum for judges who attained the age of seventy years and met other conditions provided for in the act.

While these investigations and comparisons are instructive, it at last comes to a point of the kind of man wanted, and what salary it will take to get him.

For a judge, one should be honest, learned in the law, of sound judgment, discreet, keen of intellect, of broad mind, and withal a gentleman, whose life is above suspicion. The judge has our property rights, our liberties,
our lives — all our dearest interests, constantly in his hands. So long as civil rule is upheld, he is the final arbiter. If there be a man among us who stands above his fellows in probity, virtue, judgment, knowledge of the law, who has mixed in him all the judicial elements, he ought to be the judge. A corporation picks as its counsel—its representative, not the man who comes and seeks the position, but the ablest, most accomplished lawyer that diligence in selection and money can secure. Now the judge is the man selected by the people to uphold the right as against the wrong; he is the representative — in the last resort under civil rule, the sole representative of the people in their constitutional liberties. It follows that the people cannot only well afford to follow the example of the corporation in the selection of its counsel by getting the very best man that diligence and money can secure, but they are grossly negligent in the care of their constitutional liberties which have been handed down to them if they fail to do this.

Such men at their profession command much more than we now pay our judges. If this be true, and it is, then the State should promptly put the salaries of her judges at as nearly as practicable, an amount that will approximate what such men would earn at the bar, in addition, having due consideration for the other sacrifices made under an eight-year term. The State is not indigent. Her rule of payment should be quantum meruit. She should command in this her most trusted position the very best her citizenship affords, and she should pay therefor the full worth of the services received.

Further, in addition to an ample salary, a similar—that is, an equally ample provision should be made for the expenses of the judge. And inasmuch as it is hardly in keeping with the dignity of the judicial office that a judge should be required to carry a note-book in order to jot down and render each item of expense incurred, it would seem more fitting that an absolute allowance should be made, and that the allowance for the Supreme Judges and Judges of the Court of Chancery Appeals should be made larger than the allowance to Circuit Judges, Criminal Judges and Chancellors, so as also to provide secretaries for such judges.

III.

Your committee would further suggest that the raising of salaries alone will not in itself secure the best men for judges. Ample salaries will make it worth the while of the man best fitted for the place, but they will also make it even more worth the while of the venal politician and office-seeker. If this Association places itself on record as favoring an increase in salaries, then it immediately becomes its bounden duty to see that the right men get the salaries, else our last estate will be much worse than the first. It would seem that an organized movement ought now to be put on foot to work henceforward with insistent and persistent aim at getting the very best men possible in all vacancies hereafter made. The work will of necessity be slow. But it is one that ought to be done, and it cannot be begun too soon.
Moreover, the creation of new circuits for criminal or civil jurisdiction, should only be at the suggestion and with the approval of the lawyers. This Association, through its proper committee, which should be an active and fearless one, should be in immediate touch with every phase of the judicial department of the State. If we have too many Circuit Judges, Chancellors or Criminal Judges, this Committee should say so, and wage such a campaign as will bring about a reduction in number. If we have too few, then the Committee should work for more judges. The lawyers, and they alone, are familiar with the needs of litigation. They have the right to exercise a supervisory and controlling influence in all legislation, elections or appointments which in anywise affect it. But what is everybody's business is taken hold of by nobody. It is, accordingly, peculiarly the duty of this Association to see that all these matters are "followed up"—but closely and most intelligently held in hand by some one of its committees.

IV.

Your committee accordingly recommend that the Association:

1. Express its preference for the term of service of judges being extended to a term for life or during good behavior.

2. Use its utmost endeavor to secure the passage of an act by the next Legislature providing for judges hereafter elected or appointed, the salaries shall be as follows, viz.: Chief Justice of Supreme Court, $6,500; Associate Justices of Supreme Court, and Judges of the Court of Chancery Appeals, $6,000; Circuit Judges, Criminal Judges and Chancellors, $5,000; that Judges of the Supreme Court and Court of Chancery Appeal be allowed $1,200 for their expenses each year, this to include provision for a secretary, and that Circuit Judges, Criminal Judges and Chancellors be allowed $500 for their expenses each year.

3. Use its utmost endeavor to secure the passage of an act by the next Legislature providing that each quarter judges may present a statement of expense incurred for transportation in the discharge of their official duties, and be reimbursed therefor by the State, this act to be effective only as to judges now in office, and for their current term.

4. Use its utmost endeavor to secure the passage of an act in conjunction with the above, making it unlawful and a felony for a judge to accept and use for himself or any other, or for any one to give him for use for himself or any other, any free railroad pass, telegraph, telephone or other frank, and giving grand juries inquisitorial powers over the offense.

5. Instruct its committee on Judicial Administration and Remedial Procedure to look especially to the securing of the above legislation.

6. Instruct its said committee to have and exercise special oversight, over the creation and abolishment of judicial circuits, and over the election and appointment of all judges; working to that end through every agency
of the Association, through the local bars, and all other legitimate channels — the purpose of said committee to be to secure as judges the men that are best fitted for the place, and only so many as the needs of litigation may require when each judge is doing his full duty.

Respectfully submitted,

CHAS. W. RANKIN,
JAS. S. PILCHER.

Committee.

APPENDIX.

Salaries and Terms of Office of the Judges of the Several States of the United States.

<table>
<thead>
<tr>
<th>STATE</th>
<th>Term of Office</th>
<th>Salaries</th>
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<tbody>
<tr>
<td>Alabama</td>
<td>6 years...Chief Justice Supreme Court...........................................$ 3,600</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Associate Justices Supreme Court..................................................................3,600</td>
<td></td>
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<tr>
<td></td>
<td>Chancellors and Circuit Judges ......................................................................2,500</td>
<td></td>
</tr>
<tr>
<td>Arizona (Ter.)</td>
<td>4 years...Each Judge ................................................................. 3,500</td>
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<tr>
<td></td>
<td>Each Judge, for expense..............................................................................1,000</td>
<td></td>
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<tr>
<td>Arkansas</td>
<td>8 years...Supreme Judges ..........................................................................3,000</td>
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<tr>
<td></td>
<td>Chancellors ...............................................................................................2,000</td>
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<tr>
<td></td>
<td>Circuit Judges ............................................................................................2,000</td>
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<tr>
<td>California</td>
<td>12 years...Appellate Judges. .......................................................................8,000</td>
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<tr>
<td></td>
<td>6 years...Judges of District Courts of Appeal..........................................7,000</td>
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<tr>
<td></td>
<td>6 years...Judges Superior Courts, according to size of Counties, $2,000 to......6,000</td>
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<tr>
<td></td>
<td>Clerks and assistants and all traveling expenses paid by the State.</td>
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<tr>
<td>Colorado</td>
<td>10 years...Supreme Judges ..........................................................................5,000</td>
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<td></td>
<td>6 years...District Judges .............................................................................4,000</td>
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<tr>
<td>Connecticut.</td>
<td>8 years...Chief Justice Supreme Court....................................................6,500</td>
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<tr>
<td></td>
<td>Associate Justices Supreme Court................................................................6,000</td>
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<tr>
<td></td>
<td>Judges Superior Court ................................................................................6,000</td>
<td></td>
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<tr>
<td></td>
<td>Each of said Judges allowed for expense.....................................................1,500</td>
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<tr>
<td>Delaware.</td>
<td>12 years...Chief Justice and Chancellor, each.............................................4,500</td>
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<tr>
<td></td>
<td>Associate Judges .......................................................................................4,000</td>
<td></td>
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<tr>
<td>Dist. of Columbia</td>
<td>Chief Justice Court of Appeals..............................................................7,500</td>
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<tr>
<td></td>
<td>Associate Justices Court of Appeals.......................................................7,000</td>
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<td></td>
<td>Justices Supreme Court ..............................................................................6,000</td>
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<tr>
<td>Florida.</td>
<td>6 years...Supreme Judges ..........................................................................3,000</td>
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<tr>
<td></td>
<td>Circuit Judges ............................................................................................2,500</td>
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<tr>
<td></td>
<td>And traveling expenses.</td>
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<tr>
<td>State</td>
<td>Term of Office</td>
<td>Salaries</td>
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<tr>
<td>Georgia</td>
<td>6 years</td>
<td>Supreme Judges</td>
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<td>Superior Court Judges</td>
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<tr>
<td>Idaho</td>
<td>6 years</td>
<td>Supreme Judges</td>
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<td></td>
<td></td>
<td>Supreme Judges each allowed expense</td>
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<tr>
<td></td>
<td>4 years</td>
<td>District Judges</td>
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<td></td>
<td></td>
<td>And for traveling expenses, if necessary</td>
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<tr>
<td>Illinois</td>
<td>9 years</td>
<td>Supreme Judges</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Each allowed for Secretary, per year</td>
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<tr>
<td></td>
<td></td>
<td>Each has sleeping apartments in Capitol</td>
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<tr>
<td></td>
<td>4 years</td>
<td>Circuit Judges, Chicago</td>
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<tr>
<td></td>
<td></td>
<td>Circuit Judges, elsewhere</td>
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<tr>
<td>Indiana</td>
<td>6 years</td>
<td>Supreme Judges</td>
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<tr>
<td></td>
<td>4 years</td>
<td>Appellate Judges</td>
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<tr>
<td></td>
<td></td>
<td>Criminal Judges, $2,500 to</td>
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<tr>
<td>Indiana Ter.</td>
<td>4 years</td>
<td>Appellate and Trial Judges</td>
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<tr>
<td>Iowa</td>
<td>6 years</td>
<td>Appellate Judges</td>
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<tr>
<td></td>
<td>4 years</td>
<td>Trial Judges</td>
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<tr>
<td>Kansas</td>
<td>6 years</td>
<td>Supreme Judges</td>
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<tr>
<td></td>
<td>4 years</td>
<td>District Judges</td>
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<tr>
<td>Kentucky</td>
<td>8 years</td>
<td>Appellate Judges</td>
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<tr>
<td></td>
<td></td>
<td>Each Judge allowed a stenographer, the aggregate expense for the seven judges not to exceed $6,000</td>
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<tr>
<td></td>
<td>6 years</td>
<td>Circuit Judges</td>
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<td></td>
<td></td>
<td>Circuit Judges in Louisville and Covington</td>
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<tr>
<td>Louisiana</td>
<td>12 years</td>
<td>Supreme Judges</td>
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<tr>
<td></td>
<td></td>
<td>Allowed $2,000 for stenographers and $1,000 for law books.</td>
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<tr>
<td></td>
<td>8 years</td>
<td>Judges Court of Appeal, Parish Orleans</td>
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<tr>
<td></td>
<td>12 years</td>
<td>Dist. Criminal Judges (2) Parish Orleans</td>
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<td></td>
<td>12 years</td>
<td>District Judges (5) Parish Orleans</td>
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<td></td>
<td>4 years</td>
<td>Inferior Crim. Judges (2) Parish Orleans</td>
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<td></td>
<td>4 years</td>
<td>District Judges (30)</td>
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<tr>
<td>Maine</td>
<td>7 years</td>
<td>Judges Supreme and Trial Courts</td>
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<tr>
<td>Maryland</td>
<td>15 years</td>
<td>Appellate Judges</td>
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<tr>
<td></td>
<td></td>
<td>Trial Judges, Circuit</td>
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<td></td>
<td></td>
<td>Trial Judges (called Sup. Ct. Baltimore)</td>
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<tr>
<td></td>
<td></td>
<td>Pension of $2,400 a year to judges who attain age of 70 years and meet certain conditions.</td>
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<tr>
<td>Massachusetts</td>
<td>Life</td>
<td>Chief Justice Supreme Court</td>
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<td></td>
<td>Associate Justices Supreme Court</td>
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<td></td>
<td></td>
<td>Judges of Superior (Trial) Court</td>
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<tr>
<td></td>
<td></td>
<td>Each Judge allowed expense a year</td>
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<tr>
<td>State</td>
<td>Term of Office</td>
<td>Salaries</td>
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<tr>
<td>--------------</td>
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<tr>
<td>Michigan</td>
<td>8 years...Judges Supreme Court</td>
<td>7,000</td>
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<tr>
<td></td>
<td>Annual appropriation for clerical help of Supreme Court, $8,000.</td>
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<tr>
<td></td>
<td>6 years...Circuit Judges</td>
<td>2,500</td>
</tr>
<tr>
<td></td>
<td>Many counties give additional compensation and expense is reimbursed by the State.</td>
<td></td>
</tr>
<tr>
<td>Minnesota</td>
<td>6 years...Chief Justice Appellate Court</td>
<td>5,500</td>
</tr>
<tr>
<td></td>
<td>Associate Justices Appellate Court</td>
<td>5,000</td>
</tr>
<tr>
<td></td>
<td>District Judges</td>
<td>3,500</td>
</tr>
<tr>
<td>Mississippi</td>
<td>9 years...Judges Supreme Court</td>
<td>4,500</td>
</tr>
<tr>
<td></td>
<td>4 years...Circuit Judges and Chancellors</td>
<td>2,500</td>
</tr>
<tr>
<td>Missouri</td>
<td>10 years...Appellate Judges, Highest</td>
<td>4,500</td>
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<tr>
<td></td>
<td>12 years...Appellate Judges, Intermediate, $3,500 to...</td>
<td>5,500</td>
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<tr>
<td></td>
<td>6 years...Circuit Judges</td>
<td>2,000</td>
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<tr>
<td></td>
<td>And allowed $100 per month each to cover expenses.</td>
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</tr>
<tr>
<td>Montana</td>
<td>6 years...Supreme Judges, now $4,000, after 1-1-9</td>
<td>6,000</td>
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<tr>
<td></td>
<td>4 years...District Judges, now $3,500, after 1-1-9</td>
<td>4,000</td>
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<tr>
<td>Nebraska</td>
<td>6 years...Supreme Judges</td>
<td>2,500</td>
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<tr>
<td></td>
<td>4 years...District Judges</td>
<td>2,500</td>
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<tr>
<td>Nevada</td>
<td>6 years...Supreme Judges</td>
<td>4,500</td>
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<td>4 years...Trial Judges</td>
<td>4,000</td>
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<tr>
<td>New Hampshire</td>
<td>Chief Justice</td>
<td>4,200</td>
</tr>
<tr>
<td></td>
<td>(All until 70 yrs. old) Associate, Trial and Appellates Judges</td>
<td>4,000</td>
</tr>
<tr>
<td>New Jersey</td>
<td>7 years...Chief Justice</td>
<td>11,000</td>
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<tr>
<td></td>
<td>Associate Justices</td>
<td>10,000</td>
</tr>
<tr>
<td></td>
<td>Chancellor.</td>
<td>11,000</td>
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<tr>
<td></td>
<td>Vice Chancellors</td>
<td>10,000</td>
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<tr>
<td></td>
<td>5 years...Circuit Judges (4)</td>
<td>7,500</td>
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<tr>
<td></td>
<td>Circuit Judges (21), $3,000 to...</td>
<td>7,500</td>
</tr>
<tr>
<td></td>
<td>All judges usually reappointed, so that term is usually for life.</td>
<td></td>
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<tr>
<td>N. Mex. (Ter)</td>
<td>4 years...Appellate and Trial Judges</td>
<td>4,500</td>
</tr>
<tr>
<td>New York</td>
<td>14 years...Chief Justice of highest Appellate Court</td>
<td>10,500</td>
</tr>
<tr>
<td></td>
<td>Associate Justices</td>
<td>10,000</td>
</tr>
<tr>
<td></td>
<td>Each has annual allowance for expense</td>
<td>3,700</td>
</tr>
<tr>
<td></td>
<td>Trial Judges in New York and Brooklyn</td>
<td>17,500</td>
</tr>
<tr>
<td></td>
<td>Trial Judges elsewhere</td>
<td>7,200</td>
</tr>
<tr>
<td></td>
<td>Each has annual allowance for expense</td>
<td>1,000</td>
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<tr>
<td></td>
<td>Intermediate Appellate Judges</td>
<td>7,200</td>
</tr>
<tr>
<td></td>
<td>Each has annual allowance for expense</td>
<td>2,500</td>
</tr>
<tr>
<td>N. Carolina</td>
<td>8 years...All Judges</td>
<td>3,000</td>
</tr>
<tr>
<td></td>
<td>Each has annual allowance for expense</td>
<td>250</td>
</tr>
</tbody>
</table>
**PROCEEDINGS OF THE**

<table>
<thead>
<tr>
<th>STATE</th>
<th>Term of Office</th>
<th>Salaries</th>
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<tbody>
<tr>
<td>N. Dakota</td>
<td>6 years...Judges Supreme Court</td>
<td>5,000</td>
</tr>
<tr>
<td></td>
<td>Each has annual allowance for expense</td>
<td>1,200</td>
</tr>
<tr>
<td></td>
<td>4 years...J udges of District Courts</td>
<td>3,500</td>
</tr>
<tr>
<td>Ohio</td>
<td>6 years...Appellate Judges</td>
<td>6,500</td>
</tr>
<tr>
<td></td>
<td>6 years...Circuit Judges</td>
<td>6,000</td>
</tr>
<tr>
<td></td>
<td>5 years...Judges, Common Pleas, $4,000 to</td>
<td>6,000</td>
</tr>
<tr>
<td></td>
<td>And actual traveling expenses not to exceed $100.</td>
<td></td>
</tr>
<tr>
<td>Oklahoma</td>
<td>4 years...Chief Justice</td>
<td>5,000</td>
</tr>
<tr>
<td></td>
<td>Other Judges</td>
<td>4,000</td>
</tr>
<tr>
<td>Oregon</td>
<td>6 years...Appellate Judges</td>
<td>3,500</td>
</tr>
<tr>
<td></td>
<td>Trial Judges</td>
<td>3,000</td>
</tr>
<tr>
<td></td>
<td>10c a mile traveling expenses allowed.</td>
<td></td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>21 years...Supreme Judges, Chief</td>
<td>10,500</td>
</tr>
<tr>
<td></td>
<td>Supreme Judges, Associate</td>
<td>10,000</td>
</tr>
<tr>
<td></td>
<td>10 years...Judges Intermediate Appellate Court</td>
<td>9,000</td>
</tr>
<tr>
<td></td>
<td>Allowed mileage and actual expense incurred while holding Court.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Trial Judges, $5,000 to</td>
<td>8,500</td>
</tr>
<tr>
<td>Rhode Island</td>
<td>Life...Chief Justice Supreme Court</td>
<td>6,000</td>
</tr>
<tr>
<td></td>
<td>(But office may be declared vacant on vote.)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Associate Justices Supreme Court</td>
<td>5,500</td>
</tr>
<tr>
<td></td>
<td>Chief Justices Superior Court</td>
<td>5,500</td>
</tr>
<tr>
<td></td>
<td>Associate Justices Superior Court</td>
<td>5,000</td>
</tr>
<tr>
<td></td>
<td>All necessary expenses, travel and hotel, paid by State. Judges may retire at age of 65 after ten years' service, on full pay.</td>
<td></td>
</tr>
<tr>
<td>S. Carolina</td>
<td>4 years...Supreme Judges</td>
<td>3,000</td>
</tr>
<tr>
<td></td>
<td>Each Judge provided with secretary.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>4 years...Circuit Judges</td>
<td>3,000</td>
</tr>
<tr>
<td>South Dakota</td>
<td>6 years...Supreme Judges</td>
<td>3,000</td>
</tr>
<tr>
<td></td>
<td>Each Judge provided with a secretary.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>4 years...Circuit Judges</td>
<td>2,500</td>
</tr>
<tr>
<td>Tennessee</td>
<td>8 years...Supreme Judges</td>
<td>3,500</td>
</tr>
<tr>
<td></td>
<td>Judges of Court of Chancery Appeals</td>
<td>3,500</td>
</tr>
<tr>
<td></td>
<td>Circuit Judges and Chancellors</td>
<td>2,500</td>
</tr>
<tr>
<td>Texas</td>
<td>6 years...Judges highest Appellate Court</td>
<td>4,000</td>
</tr>
<tr>
<td></td>
<td>Judges Intermediate Appellate Court</td>
<td>3,500</td>
</tr>
<tr>
<td></td>
<td>4 years...District Judges</td>
<td>3,000</td>
</tr>
<tr>
<td>Utah</td>
<td>6 years...Supreme Judges</td>
<td>5,000</td>
</tr>
<tr>
<td></td>
<td>4 years...District Judges</td>
<td>4,000</td>
</tr>
<tr>
<td>Vermont</td>
<td>2 years Appellate and Trial Judges</td>
<td>3,000</td>
</tr>
</tbody>
</table>
Expenses, travel and hotel, paid by State.
amounts to term for life.)

Virginia .. 12 years...Chief Judge Appellate Court .................................. 4,200
            Associate Justices ................................................................. 4,000
            8 years... Trial Judges, $2,500 to ........................................ 3,500
            Mileage allowed.

Washington. ... 6 years...Supreme Judges .................................................. 4,000
               4 years...Trial Judges ......................................................... 3,000
               Latter receive traveling and actual expenses while holding Court in County other than place of residence.

W. Virginia ....12 years...Appellate Judges ................................................ 4,500
             8 years...Trial Judges .............................................................. 3,300
             Mileage allowed.

Wisconsin ......10 years...Appellate Judges .................................................. 6,000
              6 years...Trial Judges .............................................................. 4,000

Wyoming ...... 8 years...Appellate Judges .................................................... 3,000
              6 years...Trial Judges .............................................................. 3,000
              Latter allowed traveling and other expenses when absent from home in the discharge of official duties.


TERM, LIFE.

Chief Justice Supreme Court .......................................................... $13,000
Associate Justices Supreme Court .................................................. 12,500
Circuit Judges .................................................................................. 7,000
District Judges .................................................................................. 6,000
Chief Justice Court of Claims ......................................................... 6,500
Associate Judges Court of Claims .................................................. 6,000

Any judge, having held his commission at least ten years, and having attained the age of seventy years, shall during the remainder of his life receive same salary which was by law payable to him at the time of his resignation.

Each justice of Supreme Court furnished a stenographic clerk at salary not exceeding $1,600.

Any judge attending Circuit Court of Appeals at other place than where he resides, shall be paid his reasonable expense not exceeding $10 a day.

Any District Judge holding court outside of his district shall be allowed his reasonable expense not exceeding $10 a day.
Arranged According to the Highest Salaries Paid the Judiciary, the
Several States Come in the Following Order, Vis.:

New York and Brooklyn.... $17,500 and $1,000 for expense.
[New York (State) ........ 10,500 and $3,700 for expense.]
New Jersey ................. 11,000
Pennsylvania ................ 10,500 and expense.
Illinois ..................... 10,000 and $2,000 for secretary to Sup. Judge.
Massachusetts .............. 8,500 and $500 for expense.
California .................. 8,000 and clerks and traveling expense.
District of Columbia........ 7,500
Michigan ................... 7,000 and expense.
Connecticut ................ 6,500 and $1,500 for expense.
Ohio ....................... 6,500 and $100 for travel.
Indiana ..................... 6,000
Iowa ....................... 6,000
Montana ..................... 6,000
Rhode Island .............. 6,000 and expense. Retire at full pay.
Wisconsin ................... 6,000
Minnesota ................... 5,500
Missouri .................... 5,500 and $1,200 to Circuit Judge's expense.
Colorado .................... 5,000
Indian Territory ........... 5,000
Kentucky ................... 5,000 and stenographer.
Louisiana ................... 5,000 and stenographer and books.
Maine ....................... 5,000
North Dakota .............. 5,000 and $1,200 for expense.
Oklahoma ................... 5,000
Utah ....................... 5,000
Delaware ................... 4,500
Maryland .................... 4,500 and pension after 70.
Mississippi ................. 4,500
Nevada ..................... 4,500
New Mexico ................ 4,500
West Virginia .............. 4,500 and mileage allowed.
New Hampshire ............. 4,200
Virginia .................... 4,200 and mileage allowed.
Georgia .................... 4,000
Idaho ...................... 4,000 and $2,000 for expense Supreme Judge.
Texas ..................... 4,000
Washington ................ 4,000 and expense.
Alabama ................... 3,600
Arizona .................... 3,500 and $1,000 for expense.
Oregon .................... 3,500 and 10c a mile for travel.
Tennessee .................. 3,500
Arkansas ................... 3,000
Florida ... 3,000 and traveling expense to Circuit Judge.
Kansas ... 3,000
North Carolina ... 3,000 and $250 for expense.
South Carolina ... 3,000 and secretary.
South Dakota ... 3,000 and secretary.
Vermont ... 3,000 and expense.
Wyoming ... 3,000 and expense.
Nebraska ... 2,500.

Salaries Paid Judges in Foreign Countries Named, as Reported by the Consular Service of the United States.

ENGLAND.

Lords of Appeal in Ordinary (four) each receiving ........................................ $29,199.00
Judges Supreme Court of Judicature, His Majesty's Court of Appeal (five) each paid .................................................. 24,332.50
Master of Rolls .................................................. 29,199.00
Judges Supreme Court of Judicature, His Majesty's High Court of Justice (Chancery Division), Lord Chancellor ........................................ 29,199.00
Lord Chancellor, in addition, receives salary on the vote for House of Lords Offices .................................................. 19,466.00
Justices (Chancery Division), six, each paid .................................................. 24,332.50
Judges Supreme Court of Judicature, His Majesty's High Court of Justice (King's Bench Division), Lord Chief Justice .................................................. 38,932.00
Justices (King's Bench Division), fourteen, each paid .................................................. 24,332.50
Judges of County Courts, fifty-five, each paid .................................................. 7,299.85
Magistrates, Metropolitan Police Courts, Chief .................................................. 8,759.70
Ib., Magistrates, twenty-four, each paid .................................................. 7,299.75

When on circuit the Judges of the High Court have, in addition to their salaries, a house provided for them by the sheriff of the County where the Assize Court is sitting, and they each receive from the Crown, in addition to their traveling expenses, an allowance of about $36.50 per day to cover their expenses of board.

SCOTLAND.

Lord Justice General and President, Court of Session ........................................ $24,332.50
Lord Justice Clerk and President of the Second Division, Court of Session .................................................. 32,359.20
Judges (Associate), Court of Session, eleven, each paid ........................................ 17,519.40
Sheriffs, sixteen, each paid from $3,406.55 to ........................................ 9,733.00
Sheriffs Substitute, forty-seven, each paid from $2,676.57 to ............ 6,813.00

(The Sheriff Substitute sits as a Court of first instance, and the Sheriff or Sheriff Principal deals chiefly with appeals from the Sheriff Substitute. The sheriff principal is usually an advocate, and in most cases can and in fact does carry on his practice as advocate concurrently with his office of Sheriff. They hold, as do the other judges, ad vitam aut culpam.)
# IRELAND.

<table>
<thead>
<tr>
<th>Role</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Judges Supreme Court of Judicature, His Majesty’s Court of Appeal, two, each paid</td>
<td>$19,466.00</td>
</tr>
<tr>
<td><strong>His Majesty’s High Court of Justice—Chancery Division</strong></td>
<td></td>
</tr>
<tr>
<td>Lord Chancellor</td>
<td>38,932.00</td>
</tr>
<tr>
<td>Master of the Rolls</td>
<td>19,466.00</td>
</tr>
<tr>
<td>Justice (Associate)</td>
<td>17,032.75</td>
</tr>
<tr>
<td><strong>King’s Bench Division</strong></td>
<td></td>
</tr>
<tr>
<td>Lord Chief Justice</td>
<td>24,332.50</td>
</tr>
<tr>
<td>Lord Chief Baron of the Exchequer</td>
<td>22,448.84</td>
</tr>
<tr>
<td>Justices, eight, each paid</td>
<td>17,032.75</td>
</tr>
<tr>
<td>Master</td>
<td>9,246.35</td>
</tr>
<tr>
<td><strong>Land Commission</strong></td>
<td></td>
</tr>
<tr>
<td>Judicial Commissioner</td>
<td>17,032.75</td>
</tr>
<tr>
<td>Commissioners, two, each paid</td>
<td>14,599.50</td>
</tr>
<tr>
<td>Commissioner, one</td>
<td>12,166.25</td>
</tr>
<tr>
<td><strong>Inferior Courts</strong></td>
<td></td>
</tr>
<tr>
<td>Judges, one</td>
<td>12,166.25</td>
</tr>
<tr>
<td>Judges, two, each paid</td>
<td>9,733.00</td>
</tr>
<tr>
<td>Judges, two, each paid</td>
<td>7,299.75</td>
</tr>
<tr>
<td>Judges, fifteen, each paid</td>
<td>6,813.00</td>
</tr>
</tbody>
</table>

# CANADA.

<table>
<thead>
<tr>
<th>Role</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chief Justice of Supreme Court of Canada</td>
<td>$10,000.00</td>
</tr>
<tr>
<td>Puisne Judges, five, each paid</td>
<td>9,000.00</td>
</tr>
<tr>
<td>Judge of the Exchequer Court of Canada</td>
<td>8,000.00</td>
</tr>
<tr>
<td><strong>Ontario</strong></td>
<td></td>
</tr>
<tr>
<td>Chief Justice</td>
<td>8,000.00</td>
</tr>
<tr>
<td>Justices of Appeal, four, each paid</td>
<td>7,000.00</td>
</tr>
<tr>
<td>Chief Justice of King’s Bench</td>
<td>8,000.00</td>
</tr>
<tr>
<td>Judges of High Court of Justice, King’s Bench Division, two, each paid</td>
<td>7,000.00</td>
</tr>
<tr>
<td>The Chancellor of Ontario</td>
<td>8,000.00</td>
</tr>
<tr>
<td>Judges of the High Court of Justice, Chancery Division, two, each paid</td>
<td>7,000.00</td>
</tr>
<tr>
<td>Chief Justice of the Common Pleas</td>
<td>8,000.00</td>
</tr>
<tr>
<td>Judges of the High Court of Justice, Common Pleas Division, two, each paid</td>
<td>7,000.00</td>
</tr>
<tr>
<td>Chief Justice of the Exchequer Division</td>
<td>8,000.00</td>
</tr>
<tr>
<td>Judges of the High Court of Justice, Exchequer Division, two, each paid</td>
<td>7,000.00</td>
</tr>
<tr>
<td>Senior Judge of the County Court of York County</td>
<td>3,500.00</td>
</tr>
<tr>
<td>Judges of other County Courts and District Courts, sixty-seven, each paid during the first three years, $2,500.00, and after three years of service</td>
<td>3,500.00</td>
</tr>
<tr>
<td>Province</td>
<td>Position</td>
</tr>
<tr>
<td>---------------</td>
<td>-----------------------------------------------</td>
</tr>
<tr>
<td>Quebec</td>
<td>Chief Justice of King’s Bench</td>
</tr>
<tr>
<td></td>
<td>Puisne Judges of said Court, five, each paid</td>
</tr>
<tr>
<td></td>
<td>Chief Justice of Superior Court</td>
</tr>
<tr>
<td></td>
<td>Puisne Judges of said Court, seventeen, each</td>
</tr>
<tr>
<td></td>
<td>Puisne Judges of said Court, other sixteen, each</td>
</tr>
<tr>
<td></td>
<td>Puisne Judges of said Court, other two, each paid</td>
</tr>
<tr>
<td>Nova Scotia</td>
<td>Chief Justice of Supreme Court</td>
</tr>
<tr>
<td></td>
<td>Judge in Equity</td>
</tr>
<tr>
<td></td>
<td>Puisne Judges of said Court, five, each</td>
</tr>
<tr>
<td></td>
<td>Judge of Court for Divorce and Matrimonial Causes</td>
</tr>
<tr>
<td></td>
<td>Judge County Court, Halifax County</td>
</tr>
<tr>
<td></td>
<td>Judge County Court, District No. 7</td>
</tr>
<tr>
<td></td>
<td>Judge County Courts, other five, during first three years, each</td>
</tr>
<tr>
<td></td>
<td>and thereafter, each</td>
</tr>
<tr>
<td>New Brunswick</td>
<td>Chief Justice of Supreme Court</td>
</tr>
<tr>
<td></td>
<td>Judge in Equity</td>
</tr>
<tr>
<td></td>
<td>Puisne Judges of said Court, four, each</td>
</tr>
<tr>
<td></td>
<td>Judge of the Court of Divorce and Matrimony</td>
</tr>
<tr>
<td></td>
<td>Judge of County Court of St. John</td>
</tr>
<tr>
<td></td>
<td>Judges of County Courts, other five, each $2,500.00 during first three years, and thereafter, each</td>
</tr>
<tr>
<td>Prince Edward Island</td>
<td>Chief Justice of Supreme Court</td>
</tr>
<tr>
<td></td>
<td>Assistant Judge, Master of the Rolls</td>
</tr>
<tr>
<td></td>
<td>Assistant Judge, Vice-Chancellor</td>
</tr>
<tr>
<td></td>
<td>Judge of County Court of Queen’s County</td>
</tr>
<tr>
<td></td>
<td>Judges of County Courts, other two, each $2,500.00 during first three years service, and thereafter, each</td>
</tr>
<tr>
<td>Manitoba</td>
<td>Chief Justice of Court of King’s Bench</td>
</tr>
<tr>
<td></td>
<td>Puisne Judges of said Court, three, each</td>
</tr>
<tr>
<td></td>
<td>Judges of County Courts, six, each $2,500.00, during first three years’ service, thereafter, each</td>
</tr>
<tr>
<td>British Columbia</td>
<td>Chief Justice of Supreme Court</td>
</tr>
<tr>
<td></td>
<td>Puisne Judges of said Court, four, each</td>
</tr>
<tr>
<td></td>
<td>Judges of County Courts, ten, each</td>
</tr>
<tr>
<td>Northwest Territories</td>
<td>Chief Justice of Supreme Court</td>
</tr>
<tr>
<td></td>
<td>Puisne Judges of said Court, seven, each</td>
</tr>
</tbody>
</table>
# PROCEEDINGS OF THE

## CUBA.

<table>
<thead>
<tr>
<th>Position</th>
<th>Salary</th>
</tr>
</thead>
<tbody>
<tr>
<td>President of Supreme Court</td>
<td>$6,000.00</td>
</tr>
<tr>
<td>Associate Justices Supreme Court</td>
<td>5,000.00</td>
</tr>
<tr>
<td>President Superior Court</td>
<td>5,000.00</td>
</tr>
<tr>
<td>Presidents of Chambers</td>
<td>5,750.00</td>
</tr>
<tr>
<td>Presidents of Chambers, Superior Court, Habana</td>
<td>4,500.00</td>
</tr>
<tr>
<td>Judges of First Instance and Inquest, of 1st class (Habana), and Associate Justices of Superior Courts outside of Habana</td>
<td>4,000.00</td>
</tr>
<tr>
<td>Judges of First Instance and Inquest, of 2d class, and Correctional Judges of Habana</td>
<td>3,000.00</td>
</tr>
<tr>
<td>Correctional Judges of the 2d class</td>
<td>2,400.00</td>
</tr>
<tr>
<td>Judges of First Instance and Inquest, of the 3d class</td>
<td>2,000.00</td>
</tr>
</tbody>
</table>

## MEXICO.

<table>
<thead>
<tr>
<th>Position</th>
<th>Salary</th>
</tr>
</thead>
<tbody>
<tr>
<td>Judges Supreme Court, fifteen, each</td>
<td>$6,000.00</td>
</tr>
<tr>
<td>Federal District Judges, two, each</td>
<td>4,562.50</td>
</tr>
<tr>
<td>Federal District Judges, other ten, each</td>
<td>3,500.35</td>
</tr>
<tr>
<td>Federal District Judges, other thirteen, each</td>
<td>3,000.30</td>
</tr>
<tr>
<td>Federal District Judges, other six, each</td>
<td>2,500.25</td>
</tr>
<tr>
<td>Federal District Judges, other two, each</td>
<td>2,200.20</td>
</tr>
</tbody>
</table>

**State of Nuevo Leon**

<table>
<thead>
<tr>
<th>Position</th>
<th>Salary</th>
</tr>
</thead>
<tbody>
<tr>
<td>Three Supreme Judges and one Fiscal, each</td>
<td>2,700.00</td>
</tr>
<tr>
<td>Ten Judges of Civil and Criminal Courts, each</td>
<td>1,980.00</td>
</tr>
</tbody>
</table>

(Only statistics of the State of Nuevo Leon are at hand; they are given by the Consul-General, who states that the average salaries paid for judges of the other State courts are about the same.)

## PANAMA.

<table>
<thead>
<tr>
<th>Position</th>
<th>Salary</th>
</tr>
</thead>
<tbody>
<tr>
<td>Five Judges Supreme Court, each paid</td>
<td>$2,700.00</td>
</tr>
<tr>
<td>One Superior Judge</td>
<td>1,890.00</td>
</tr>
<tr>
<td>Five Circuit Judges, each paid</td>
<td>1,620.00</td>
</tr>
<tr>
<td>Two Circuit Judges, each paid</td>
<td>1,512.00</td>
</tr>
<tr>
<td>Four Circuit Judges, each paid</td>
<td>1,080.00</td>
</tr>
</tbody>
</table>

## NORWAY.

**The Supreme Court**

<table>
<thead>
<tr>
<th>Position</th>
<th>Salary</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Chief Justice</td>
<td>$2,572.80</td>
</tr>
<tr>
<td>The other Judges, each, $1,929.60 to</td>
<td>2,144.00</td>
</tr>
</tbody>
</table>

**The High Courts**

<table>
<thead>
<tr>
<th>Position</th>
<th>Salary</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Chief Justices, each, $1,554.40 to</td>
<td>1,608.00</td>
</tr>
<tr>
<td>The other Judges, each, $1,232.80 to</td>
<td>1,340.00</td>
</tr>
</tbody>
</table>

**The District Courts**

<table>
<thead>
<tr>
<th>Position</th>
<th>Salary</th>
</tr>
</thead>
<tbody>
<tr>
<td>The District Judges, each, $1,206.00 to</td>
<td>2,400.00</td>
</tr>
</tbody>
</table>
The Consul-General reporting on the Judicial salaries of France, says: “I have to report that all such salaries are notoriously low in this country, so low, indeed, that lawyers hesitate very seriously before accepting positions upon the bench, unless their special circumstances make them indifferent as to their compensation.”

**Cour de Cassation—(Highest Court)—**

<table>
<thead>
<tr>
<th>Position</th>
<th>Salary</th>
</tr>
</thead>
<tbody>
<tr>
<td>First President</td>
<td>$5,790.00</td>
</tr>
<tr>
<td>Chamber Presidents</td>
<td>4,825.00</td>
</tr>
</tbody>
</table>

**Court of Accounts—**

<table>
<thead>
<tr>
<th>Position</th>
<th>Salary</th>
</tr>
</thead>
<tbody>
<tr>
<td>First President</td>
<td>5,790.00</td>
</tr>
<tr>
<td>Chamber Presidents</td>
<td>4,825.00</td>
</tr>
</tbody>
</table>

**Courts of Appeal—(At Paris)—**

<table>
<thead>
<tr>
<th>Position</th>
<th>Salary</th>
</tr>
</thead>
<tbody>
<tr>
<td>First President</td>
<td>4,825.00</td>
</tr>
<tr>
<td>Presidents</td>
<td>2,653.00</td>
</tr>
</tbody>
</table>

**Department Courts—**

<table>
<thead>
<tr>
<th>Position</th>
<th>Salary</th>
</tr>
</thead>
<tbody>
<tr>
<td>First President</td>
<td>3,474.00</td>
</tr>
<tr>
<td>Presidents</td>
<td>1,930.00</td>
</tr>
</tbody>
</table>

**Tribunals of First Instance—(At Paris)—**

<table>
<thead>
<tr>
<th>Position</th>
<th>Salary</th>
</tr>
</thead>
<tbody>
<tr>
<td>President</td>
<td>3,860.00</td>
</tr>
<tr>
<td>Vice-Presidents</td>
<td>1,930.00</td>
</tr>
<tr>
<td>Section Presidents</td>
<td>1,737.00</td>
</tr>
<tr>
<td>Instruction Judges</td>
<td>1,930.00</td>
</tr>
<tr>
<td>Substitute Instruction Judges</td>
<td>96.50</td>
</tr>
<tr>
<td>Judges</td>
<td>1,544.00</td>
</tr>
</tbody>
</table>

**Tribunals of First Instance—(In cities of population 80,000 and over)—**

<table>
<thead>
<tr>
<th>Position</th>
<th>Salary</th>
</tr>
</thead>
<tbody>
<tr>
<td>Presidents</td>
<td>1,930.00</td>
</tr>
<tr>
<td>Vice-Presidents</td>
<td>1,351.00</td>
</tr>
<tr>
<td>Instruction Judges</td>
<td>1,254.00</td>
</tr>
<tr>
<td>Substitute Instruction Judges</td>
<td>96.50</td>
</tr>
<tr>
<td>Judges</td>
<td>1,158.00</td>
</tr>
</tbody>
</table>

**Tribunals of First Instance—(In cities of population 20,000 to 80,000)—**

<table>
<thead>
<tr>
<th>Position</th>
<th>Salary</th>
</tr>
</thead>
<tbody>
<tr>
<td>Presidents</td>
<td>1,351.00</td>
</tr>
<tr>
<td>Vice-Presidents</td>
<td>1,061.00</td>
</tr>
<tr>
<td>Instruction Judges</td>
<td>965.00</td>
</tr>
<tr>
<td>Substitute Instruction Judges</td>
<td>96.50</td>
</tr>
<tr>
<td>Judges</td>
<td>579.00</td>
</tr>
</tbody>
</table>

**Tribunals of First Instance—(In other cities)—**

<table>
<thead>
<tr>
<th>Position</th>
<th>Salary</th>
</tr>
</thead>
<tbody>
<tr>
<td>Presidents</td>
<td>965.00</td>
</tr>
<tr>
<td>Vice-Presidents</td>
<td>772.00</td>
</tr>
<tr>
<td>Instruction Judges</td>
<td>675.50</td>
</tr>
<tr>
<td>Substitute Instruction Judges</td>
<td>96.50</td>
</tr>
<tr>
<td>Judges</td>
<td>579.00</td>
</tr>
</tbody>
</table>
**Tribunals of First Instance—(In Tunisia, Tunis)—**

<table>
<thead>
<tr>
<th>Position</th>
<th>Salary (CHF)</th>
</tr>
</thead>
<tbody>
<tr>
<td>President</td>
<td>2,316.00</td>
</tr>
<tr>
<td>Vice-President</td>
<td>1,930.00</td>
</tr>
<tr>
<td>Instruction Judge</td>
<td>1,693.00</td>
</tr>
<tr>
<td>Judge</td>
<td>1,544.00</td>
</tr>
<tr>
<td>Substitute Judge</td>
<td>463.00</td>
</tr>
</tbody>
</table>

**Tribunals of First Instance—(In Tunisia, Sousse)—**

<table>
<thead>
<tr>
<th>Position</th>
<th>Salary (CHF)</th>
</tr>
</thead>
<tbody>
<tr>
<td>President</td>
<td>1,544.00</td>
</tr>
<tr>
<td>Instruction Judge</td>
<td>1,158.00</td>
</tr>
<tr>
<td>Judge</td>
<td>965.00</td>
</tr>
<tr>
<td>Substitute Judge</td>
<td>579.00</td>
</tr>
</tbody>
</table>

**Justices of the Peace—**

Salaries ranging from $405.00 to ........................................... 1,544.00

---

**Switzerland.**

**Canton of Berne—**

President, receives from $1,600.00 to ........................................... $1,800.00

Minor Judges receive from $1,000.00 to ........................................... 1,200.00

**Canton of Geneva—**

President, receives from $1,600.00 to ........................................... $1,800.00

Minor Judges receive from $1,000.00 to ........................................... 1,200.00

**Canton of Zurich—**

President .................................................. 2,000.00

Minor Judges .................................................. 1,436.00

**Canton of St. Gall—**

President .................................................. 1,400.00

Minor Judges .................................................. 500.00

**Federal Tribunal—**

President .................................................. 3,000.00

Twenty-two other Judges, each ........................................... 2,400.00

The Consul-General reports that “in the above quoted Cantons—Berne, Geneva, Zurich, St. Gall (to which may be allied Basel Stadt and Bassel-land and Lucerne, forming the industrial cantons of Switzerland) the Presidents and Judges must be jurists. But in the Cantons of Uri, Schwyz, Oberwalden, Nidwalden, Clarus, Zug, Fribourg, Appenzell (Ausser Roden), Appenzell (Inner Roden), Graubunden, Aargau, Thurgau, Valais, which are mostly agricultural cantons, there are no paid judges, and only the President of the Cantonal Court and the Schriftfuhrer or County Clerk must be jurists, and of these the County Clerk is the only one who has a fixed salary, and he receives from $300.00 to $700.00 per annum, the President and Judges receiving a small fee for every sitting.

“That in the near future the National Government intends to make a revision of the laws of Switzerland, making them as far as possible, uniform in every canton, and also establishing the salaries which will be paid to the Judiciary of the country.
"The above salaries are admittedly very low in comparison to the cost of living, and it must not be understood that such positions are taken with the idea that they will pay the expenses; they are considered posts of honor rather than posts of profit, the holders being elected by the vote of the people, and being generally prominent jurists who, in accepting office do so at a sacrifice to their private practice, in which the emoluments are many times greater than the salaries received."

BELGIUM.

Supreme Court—(Increase of $96.50 every 5 years)—
First President .................................................................................................................. $3,088.00
President of the Court ................................................................................................. 2,509.00
Judicial Advisers ......................................................................................................... 2,171.25

Court of Appeals—(Increase of $96.50 every 5 years)—
First President ............................................................................................................... 2,171.25
President of Court ...................................................................................................... 1,640.50
Judicial Advisers ......................................................................................................... 1,447.50

Tribunal of the First Instance—(Increase of $57.90 every 5 years)—
President, 1st class .................................................................................................... 1,147.50
President, 2d class ..................................................................................................... 1,351.00
President, 3d class ..................................................................................................... 1,158.00
Vice-Presidents, 1st class .......................................................................................... 1,254.50
Vice-President, 2d class ............................................................................................ 1,034.50
Judge of Instruction, 1st class .................................................................................... 1,034.50
Judge of Instruction, 2d class .................................................................................... 966.00
Judge of Instruction, 3d class .................................................................................... 868.00
Judges and Substitutes, 1st class ................................................................................ 966.00
Judges and Substitutes, 2d class ................................................................................ 868.50
Judges and Substitutes, 3d class ................................................................................ 772.00

Justices of the Peace—(Increase $57.90 every 5 years)—
1st Class, district of at least 70,000 inhabitants ..................................................... 1,351.00
2d Class, 50,000 inhabitants ...................................................................................... 1,158.00
3d Class, 30,000 inhabitants ...................................................................................... 965.00
4th Class, less than 30,000 inhabitants .................................................................... 772.00

Expenses—
When judges are called upon to go out of the town in which they reside, traveling expenses are allowed as follows—
Judges of Court of 1st Instance, per diem ................................................................. 2.31
Judges of Court of Appeal, per diem ......................................................................... 4.82

Term of all Judges for life, appointment by the King from lists prepared by the Senate and by the Court.

HAMBURG, GERMANY.

Supreme Hanseatic Tribunal—
1 President .................................................................................................................. $4,284.00
1 Second President ...................................................................................................... 3,808.00
<table>
<thead>
<tr>
<th>Position</th>
<th>Salary (USD)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Third President</td>
<td>3,808.00</td>
</tr>
<tr>
<td>1 Fourth President</td>
<td>3,808.00</td>
</tr>
<tr>
<td>1 Fifth President</td>
<td>3,808.00</td>
</tr>
<tr>
<td>2 Counsellors, each</td>
<td>3,332.00</td>
</tr>
<tr>
<td>23 Counsellors, each</td>
<td>3,094.00</td>
</tr>
</tbody>
</table>

**Superior Court—**

1 President .......................... 3,332.00
12 Directors, each .................. 2,856.00
50 Judges, each, $1,190.00—increased $238.00 every 4 years, until the maximum is reached of .................. 2,380.00

**District Court of Hamburg—**

1 Chief District Judge .............. 2,856.00
45 Judges, each, $1,190.00—increased $238.00 every 4 years until the maximum is reached of .............. 2,380.00

**District Court of Ritzebuettel—**

1 Judge, $1,190.00—increased $238.00 every 4 years, until the maximum is reached of .......... 2,380.00

**District Court of Bergedorf—**

2 Judges, each, $1,190.00—increased $238.00 every 4 years until the maximum is reached of ........ 2,380.00

**Court of Trade—**

1 President, $1,190.00—increased $238.00 every 4 years until the maximum is reached of ........... 2,380.00

**Court of Guardians—**

1 First President .................. 2,856.00
1 Second President, $1,904.00—increased $238.00 every 4 years until the maximum is reached of ........ 2,856.00

**COBURG, GERMANY.**

*Salaries paid the Judiciary of Saxe-Coburg-Gotha are as follows—*

1st to 3d year of service.......................... $ 714.00
4th to 6th year of service.......................... 809.20
7th to 9th year of service.......................... 904.40
10th to 12th year of service......................... 999.60
13th to 16th year of service........................ 1,071.00
17th to 20th year of service........................ 1,142.40
21st to 24th year of service........................ 1,237.60
25th year of service ................................ 1,309.00

**DRESDEN, GERMANY.**

Salaries of Judiciary of the Dresden Consular District range from $900.00 to $2,200.00, according to the length of service.
MUNICH, BAVARIA.

Judge of the Supreme Court (Oberst Landgerichtsrat), receives from $1,456.00 to $1,713.00
Judge of the Superior Court (Oberlandgerichtsrat), receives from $1,170.00 to $1,428.00
Judge of the City Court (Landgerichtsrat), receives from $885.00 to $1,142.00
Judge of the District Court (Amtsrichter), receives from $542.00 to $799.00

PRUSSIA.

President of the thirteen Superior District Courts, each $3,333.34

Each is also furnished a residence, or in lieu of one, a sum of money which amounts, in Berlin, of one, a sum of money which amounts, in Berlin, Breslau, Cologne and Frankfort-on-the-Main, to $714.29; in certain other places, $571.43; in certain others, to $500.00; and in another to $428.57 per annum.

President of the District Court No. 1, at Berlin, receives $2,619.05
51 Senate Presidents of the Superior District Courts, receive, each, from $1,785.71, to $2,619.05
306 Judges of the Superior District Courts, receive, each, from $1,285.71, to $1,714.29
93 Presidents of the District and Local Courts, receive, each, from $1,785.71, to $2,619.05
279 Directors of the District and Local Courts, receive, each $1,285.71 to $1,714.29
4245 Judges of the District and Local Courts, receive salaries as follows—

656, each 1,571.43
656, each 1,428.57
656, each 1,285.71
657, each 1,142.85
656, each 1,000.00
656, each 857.14
656, each 714.29

Several judges of German nativity in the district of the Superior District Court at Posen who speak and write Polish, receive in addition to their salaries above set out, each, $714.42.

All these judicial officers are entitled to pensions after 10 years of service. These pensions are graduated from 15-60 of the sum of salary and additional amount for residence, received at the time of pensioning, up to 45-60 thereof.

Federal Court of Germany—(Reichsgerricht)—

President of the Federal Court receives $7,142.90

He is also furnished a residence.
10 Senate Presidents, each receive ........................................ 3,333.34
They are also given, each, $214.29, for a residence.
79 Judges, each receive ....................................................... 2,857.14
They are also given, each, $214.29, for a residence.
All these officials are entitled to pensions.

AUSTRIA.

President of Supreme Court in Vienna ...................................... $8,000.00
Vice-President of Supreme Court in Vienna ................................. 4,800.00
Presidents of Courts of Appeal, each, from $4,000.00 to ............. 4,200.00
Vice-Presidents Courts of Appeal, each .................................... 2,800.00
Presidents of Courts of First Instance, each ............................. 2,640.00
Vice-Presidents of Courts of First Instance, each ....................... 1,920.00
Judges of Supreme Courts and Courts of Appeal, each, from
$1,408.00 to .............................................................................. 1,632.00
Judges Courts of First Instance, each, $1,072.00, to .................. 1,480.00
Judges District Courts, each, $816.00, to .................................. 1,120.00
Judges of lower rank, each, $640.00, to .................................... 840.00

After ten years of service, all judges are entitled to pensions varying
from $160 to $4,800 per annum, according to rank and term of service.
All judges contribute to the pension fund each year from $17 to $120, ac-
cording to their salaries. Widows of judges also receive pensions from
$240 to $1200, according to rank, and provision is besides made for each
child at the rate of one-fifth of the widow's pension, not to exceed $120,
however, and not to exceed the entire amount of the pension for all the
children together. These contributions toward the expense of the education
of the children are paid until they can take care of themselves, but must
cease when they reach the age of twenty-four.

HUNGARY.

<table>
<thead>
<tr>
<th>Grade</th>
<th>Salary</th>
<th>House rent</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Supreme Court—</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Presiding Justice</td>
<td>$5,075.00</td>
<td>$609.00</td>
</tr>
<tr>
<td>Deputy Presiding Justice</td>
<td>5,075.00</td>
<td>609.00</td>
</tr>
<tr>
<td>8 Council Presiding Justices, each</td>
<td>2,842.00</td>
<td>406.00</td>
</tr>
<tr>
<td>68 Supreme Court Justices, each</td>
<td>{2,354.80}</td>
<td>{406.00}</td>
</tr>
<tr>
<td>{1,948.80}</td>
<td></td>
<td></td>
</tr>
<tr>
<td>11 Superior Courts—</td>
<td></td>
<td></td>
</tr>
<tr>
<td>11 Presiding Justices, each</td>
<td>2,842.00</td>
<td>812.00</td>
</tr>
<tr>
<td></td>
<td></td>
<td>406.00</td>
</tr>
<tr>
<td>21 Council Presiding Justices, each</td>
<td></td>
<td></td>
</tr>
<tr>
<td>225 Superior Court Judges, each</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>?</td>
</tr>
<tr>
<td>66 Courts of Justice—</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3 Presiding Justices, each</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>(Same as Supreme Court).</td>
</tr>
</tbody>
</table>
The highest Court in Russia is a Department of the Senate.

Chief Justice of Highest Court receives $4,000.00
Senators (members of Highest Court), each 3,500.00
Secretary, or Chief Clerk 1,500.00
Assistant Secretary 1,000.00
Clerk 600.00

The second highest Court is known as the Court of Justice ("Palata").

Chief Presiding Officer receives 3,000.00
Chief of the Department receives 2,500.00
Chairman receives 1,750.00
Secretary receives 900.00

The third Court is known as the District Court.

President receives 2,250.00
Assistant to President receives 1,750.00
Chairman receives 1,350.00
Secretary receives 600.00

The lower Court is that of Justice of the Peace.

Justice of the Peace receives 1,100.00
Secretary of the Assembly of the Justices of the Peace receives 400.00
Clerk receives 300.00

The Senate is the highest court and compares with our Supreme Court of the United States. The Court of Justice (Palata) compares with our State Supreme Court, comprising in its district often two or more provinces, with the right of appeal to the Senate.

Justices of the Peace have jurisdiction in cases up to $250, and in criminal cases when the punishment is limited to one and one-half year imprisonment. Fourteen days are allowed for appeal to the Assembly of Justices of the Peace.

Italy.

First Presiding Judges of Courts of Cassation, each $3,000.00
Presiding Section Judges, each 2,400.00
Assistant Judges of Courts of Cassation, and Presiding Judges of Courts of Appeal, each 1,800.00
First Presiding Judges of Courts of Appeal, each 2,400.00
Assistant Judges of Courts of Appeal and Presiding Judges of Tribunals of 1st Category, each 1,400.00
Assistant Judges of Courts of Appeal and Presiding Judges of Tribunals of 2d Category, each........................... 1,200.00
Assistant Judges of Courts of Appeal and Presiding Judges of Tribunals of 3d Category, each........................... 1,000.00
Vice-Presiding Judge of Tribunals ............................................. 900.00
Judges of Tribunals .......................................................... 800.00

MINORITY REPORT.

To the Bar Association of Tennessee:

I concur, in the main, in the elaborate and exhaustive report of the majority of the Committee, but there are some features of said report to which I am constrained to dissent and to submit this minority report that the recommendations submitted by the respective reports may be fully considered by the Association.

(1)

Under our elective system, I do not believe the end and object so much desired in the report of the majority would be attained by a life tenure judiciary.

(2)

Instead of raising the salaries of the judges as recommended by the majority, I think that the salary of the Supreme Judges should be $5,000.00 each, leaving the position of Chief Justice one of honor merely, and that the Chancery, Circuit and Criminal Judges should receive $3,500.00 each instead of the amount suggested in the majority report. It will be seen from the tabulated statement accompanying the majority report that the salaries as above suggested would be in excess of the salaries paid in any other Southern State, except, perhaps, Louisiana. To attempt a greater increase of judicial salaries than as herein suggested, I think would be barren of any fruitful results, and that all the salaries herein suggested would be more consonant with salaries paid public officials generally.

(3)

In the third recommendation, I concur if it can be done under our constitutional provision with reference to increasing and diminishing salaries of the present incumbents, as to which I have not made such an investigation as would justify an opinion.

I herewith submit this minority report, without elaboration or statement of the reasons that actuate me to the conclusion expressed.

Respectfully,

THOS. E. HARWOOD,
Member of the Committee.
On motion of Judge R. M. Barton, Jr., of the Court of Chancery Appeals, Judge Selden P. Spencer, was by a rising vote, unanimously and enthusiastically elected an honorary member of the Association, and the cordial, hearty thanks of the Association were extended Judge Spencer for his splendid address.

On motion of Mr. A. W. Gaines a vote of thanks was tendered General J. B. Heiskell and Prof. C. W. Turner for their most interesting papers read before the meeting.

The report of the Committee on Judicial Administration and Remedial Procedure was read by the chairman, Mr. W. G. M. Thomas, and ordered spread upon the minutes, which is done as follows:

To the President and Members of the Bar Association of Tennessee:

The by-laws of the Association provide for "a Committee on Judicial Administration and Remedial Procedure, who shall be charged with the duty of the observation of the working of our judicial system, the collection of information, the entertainment and examination of projects for a change or reform in the system, and recommending from time to time to the Association such action as they may deem expedient."

Under these several heads, your Committee beg to submit the following report:

1.

The eyes of the commercial and industrial world are upon our Southland. Never before, in the history of our great country, has the South experienced such development as it is now passing into, and as it has had in recent years. We have a unique position on earth—a wealth of congenial climate above the surface; a richness of soil in the surface; and a treasure-house of riches beneath the surface. Daily, adding to this accumulation of material things that men desire to possess, we find streams from the outside pouring Southward an abundance of money, which is not only seeking investments among us, but finding them. The result is that we witness a marked activity everywhere.

There is an increase, too, in the business and labors of our courts. New questions arise out of new conditions; and, more and more, as our industrial development has moved forward, is it apparent that a place upon the bench in Tennessee is a most important position.

These considerations, together with the further fact that household and living expenses in every form have largely increased in recent years, move your Committee to recommend an advance of the compensation to be received by our judges. As is known to the bar of the State, the Justices of the Supreme Court and the Judges of the Court of Chancery Appeals,
receive a salary of $3,500, and the Judges of the Chancery, Circuit and
Criminal Courts, a salary of $2,500. No provision is made by law for
reimbursing our judges for their necessary expenses while engaged in
holding the Courts at points removed from their places of residence. The
members of the Supreme Court are away from home, and on expense,
during almost the entire twelve months of each year. On the other hand,
some of our Chancellors and Criminal or Circuit Court judges have no
official business to take them beyond their home county, while others have
large divisions or circuits composed of many counties. To analyze this
situation, we find that the net compensation received by our several judges
differ very widely in amount. Some have no traveling expense; others
have some traveling expense, and still others are subject to this expense
almost every day of every year of the eight-year term of their office. We
submit that this should not be. It is neither fair nor just; and a change
should be made.

It has been twenty-one years since Tennessee has taken any action on
the subject of judicial salaries. The history of this branch of our legisla-
tion is interesting. In 1865 (Chap. 2, Acts of 1865) the salaries of the
Judges of the Supreme Court were fixed at $3,000 per annum, and the
salaries of Chancellors and other Judges at $2,000. Two years later (Chap.
20, Acts of 1866-7) the Supreme Court Judges were raised to $3,500 and
the other judges to $2,500. One year later (Chap. 28, Acts of 1868-9) the
Supreme Court Judges were further increased to $4,000. Eleven years
then passed without any change—the members of the Supreme Court
receiving $4,000 and the chancellors and other judges $2,500. But in 1879
(Chap. 2 and 3, Acts of 1879) the judges of the Supreme Court were re-
duced to $3,000 and the chancellors and other judges to $2,000. The salary
account stood at these figures until 1885 (Chap. 97 and 143, Acts of 1885)
when the Supreme Court was put at $3,500 and the chancellors and circuit
and criminal judges at $2,500. During the past twenty-one years there
has been no change from those figures.

We assume it to be a fact that this salary legislation of 1885 was fair
alike to the people and judiciary of the State; but, if fair then, it is not fair
now. Our judges today perform more hard service by far, and living ex-
penses are by far higher than in 1885; and our State is far better able
today to pay salaries than it was in 1885. The figures from the State
Treasurer's office will abundantly support the truth of these propositions.
For the fiscal year ending December 19, 1885, the receipts in the treasurer's
office amounted to $1,333,869.20, while, for the year ending December 19,
1905, they amounted to $3,107,158.54. Thus the fact appears that Tennessee
received in 1905 $1,771,289.34 more than it did in 1885, yet she paid our
judges the same salary.

Your Committee, therefore, report and recommend that the following
resolution be adopted by this Association:

Resolved, by the Bar Association of Tennessee, That the time has come
when there should be the following readjustment of the salaries and compensation paid to our judges:

Chief Justice and Associate Justices of the Supreme Court......$5,000
Judges of the Court of Chancery Appeals.................................. 4,200
Chancellors, Circuit Court and Criminal Court Judges............. 3,600

Resolved, further, That, to equalize this salary among judges of the same class, the State should reimburse each judge and chancellor his actual railroad or livery fare and hotel bills while going to and from his courts and in holding his courts in counties other than the county of his residence—such expense items to be certified by the judge or chancellor quarterly to the Comptroller for payment by a voucher of the Treasurer.

Your Committee are in favor of this resolution, and we submit that the Bar Association of Tennessee should take a stand in these positions, and lend thereby the weight of its influence to obtain from the legislature the passage of these provisions into appropriate laws. The enactment increasing the salaries could not be made to apply to the existing terms of office; but we discover no just nor constitutional objection to legislation going into effect at once in so far as it provides for paying the expenses of the judges.

2.

The recent legislative enactments, under which the vacation powers of chancellors are enlarged, appear to be working advantageously. Your Committee see no good reason why similar reforms may not be carried into the Circuit Court. Under the present system, the filing of a motion, demurrer or dilatory plea stops all proceedings in the case until the next following term of the Circuit Court. There ought to be, we think, provisions made for disposing of these defenses in vacation.

There is another fact worthy of attention: The appearance term in the Circuit Court should be abolished. There is no sound reason, we submit, why the pleadings should be made up at one term and the trial postponed until the next term. This is one of the law’s delays, and an unnecessary delay. Our system presents this strange anomaly: John Doe can sue Richard Roe before a justice of the peace on a promissory note for $1,000. Doe can get a judgment, and Roe can appeal, and if the papers are filed in the Circuit Court five days or more before the first day of the Court, or even after the term commences (Acts 1905, Chapter 8), the case will stand for trial at that term. But, if Doe’s promissory note is for $1,001, or over, he must resort, in the first instance, to the Circuit Court, and if he sues and gets service of process five days or more prior to the beginning of the term, he must, nevertheless, wait until the second term of the court before he can have the case tried on the merits.

The Committee that reported last year, made, we think, a useful suggestion on this general subject. That Committee said: “Might not even greater uniformity, ease and effectiveness in judicial administration and
remedial procedure than now exists be attained through stated voluntary meetings of all the judges of all the Courts in the State?"

We recommend that this suggestion from a former Committee of the Association be put to a practical test, and that the President appoint a Committee of six members of the Association—two from each grand division of the State—whose duty it shall be to advise with the judges of the various courts of the State and arrange a meeting at which action may be had looking to appropriate change in judicial administration and remedial procedure. It is our opinion that such a committee, after conference with our judges, would be able to render to the State a most useful service.

To initiate an active co-operation between our Association and the bench of Tennessee, your Committee addressed a letter to each judge and chancellor in the State, and requested suggestions from them. The replies received are submitted as a part of this report.

Respectfully submitted,

W. G. M. Thomas, Chairman.
M. M. Allison.
Lewis M. Coleman.
Albert W. Biggs.
Henry E. Smith.

Committee on Judicial Administration and Remedial Procedure.

Mr. Albert W. Gaines, of the Chattanooga bar, read a very instructive paper upon "The Growth, Aggressiveness and Permanent Character of the Anglo-Saxon Laws and Institutions," which was much enjoyed and will be found in the Appendix.

The following preamble and resolution, offered by Mr. J. H. Acklen, was unanimously adopted and ordered spread of record:

The protection of the game and fish of our State is an economic and not a political question, and hence should receive the unqualified support of our citizens irrespective of party affiliations. We note with pleasure that both of the great political parties in their respective State platforms announce the doctrine of protection of game and fish by general legislation only, thus voicing in unmistakable language the inadequacy of local legislation on this subject.

Experience in this, as in other states, has proven the necessity and benefits of the warden and license systems; and the judicious administration of our game and fish laws through the Department of Game, Fish and Forestry has proven the wisdom of its creation. Public sentiment, however, is essential to the efficient enforcement of any law however beneficial the same may be. Therefore,

Resolved, That the members of this Association use their influence to instill in the minds of the people of our State the importance of protecting by general legislation our game and fish.
On motion the recommendations made in the report of the Committee on Judicial Administration and Remedial Procedure, submitted and spread of record as above stated, were adopted, with the following amendment offered by Mr. R. E. L. Mountcastle, which received the unanimous vote of the Association:

Provided, further, that all judges be prohibited from accepting free passes or transportation from any railroad company or other common carrier, or from accepting franking or other free privileges from any public utility corporation.

The report of the special committee appointed at the last meeting to examine into and report upon the best plan or method to increase the attendance at the annual meetings of the Association was read by the chairman, Judge C. J. St. John, and was on motion ordered spread of record, and is as follows:

To the Bar Association of Tennessee:

Your Committee appointed to take such action as might be deemed proper to increase the attendance at the meetings of the Bar Association beg leave to report as follows:

Last year circular letters were addressed to all the lawyers of the State, calling their attention to the importance of maintaining a Bar Association and the advantages to be obtained from attending its annual meetings. Letters were also addressed to each of the Judges and Chancellors of the State, requesting them to attend the meetings and not to hold any Court during the three days in which the meeting is held.

Considerable interest was awakened and a large attendance was secured at the last meeting. Many of the Judges agreed to adjourn their Courts during the three days the Bar Association was to be held.

Your Committee did not deem it necessary to again send out circular letters to all the lawyers and Judges, but had notices of the meetings inserted in the newspapers throughout the State, appointed sub-committees in the cities, and used their personal influence to obtain the attendance of as many lawyers as possible. Your Committee believes that the thorough work done last year has been fruitful of good results, in that a livelier interest has been awakened in the Bar Association than has heretofore existed.

Your Committee would suggest that the Legislature be asked to amend Sec. 5742 of Shannon's Code, so that the meeting of the State Bar Association shall be a lawful excuse for any Judge or Chancellor in failing to hold his Court for that week.

Respectfully submitted,

C. J. St. John,
R. M. Barton, Jr.,
Stuart C. Pilcher,
Committee.
On motion of Mr. Lewis M. G. Baker the incoming Central Council was requested to make effort to secure an adjournment of all Courts in the State each year during the week of the Association's annual meeting.

The President being the chairman of the special committee to recommend to the Legislature the movement toward uniform laws requested Judge J. W. Bonner to make report for the committee, which was done orally, Judge Bonner stating that no steps had been taken by the committee during the year last past, as there had been no session of the Legislature; that the committee had made earnest effort to secure the appointment of Commissioners on Uniform Laws by the Legislature, but found the pathway beset with difficulties and obstacles, the principal objection met with being the fear on the part of the Legislature that the commissioners would ultimately seek to obtain salaries, but the committee thought this apprehension not well founded, and believed the appointment of commissioners most desirable and thought that the work of this committee should be continued, and therefore recommended that the report of the committee be received, the committee discharged and that the incoming President be authorized and directed to appoint a new committee of those whose duty it should be to again memorialize the Legislature and seek the appointment of commissioners from Tennessee on Uniform Laws, which report was on motion unanimously adopted.

The special committee to report on the Torrens System of Registering Deeds having made no report at this meeting, on motion, said committee was continued as constituted, with request that it make report in the premises to the next meeting.

Judge Henry H. Ingersoll introduced the following resolution:

"Resolved, That By-Law No. 20 be amended by inserting the words 'and resident Judges of the Federal Courts,' after Judges of the State."

Which on motion was unanimously adopted.

Judge Ingersoll introduced the following further resolution:

Resolved, That it is the mind of the Association that the publication of the minutes of the proceedings of our annual meetings should not be delayed on any account longer than thirty days after adjournment."
This resolution was likewise adopted after being amended so as to substitute the word "ninety" for the word "thirty," the fourth from the last word therein.

The report of the Committee on Grievances, signed by the Chairman thereof, J. W. Judd, was submitted and ordered spread of record, and is in these words:

To the President and Members of the State Bar Association of Tennessee:

Your Committee on Grievances beg leave to report that nothing of the character requiring a report to the Association, has been called to its attention; and that after diligent inquiry, no grievance has been found that requires under our by-laws any report of a special character to this Association.

Respectfully submitted,

J. W. JUDD, Chairman.


On motion the matter of having printed for distribution copies of the report of the Special Committee on Judicial Salaries of the State, submitted by the chairman of said committee, Mr. Chas. W. Rankin, was committed to the Central Council with power to act.

On motion of Mr. H. H. Shelton it was expressed as the sense of the Association that hereafter the printed volumes of the minutes of the proceedings of the annual meetings of the Association be kept as nearly as practicable uniform for purposes of binding and preservation by members so desiring.

The next order of business was the election of officers for the ensuing year.

Chancellor F. H. Heiskell, of Memphis, was nominated for President, and there being no other nomination, on motion, the rules were suspended and the Secretary directed to cast the unanimous vote of the members present for Chancellor Heiskell, which was done, and he was declared unanimously elected, whereupon Mr. Sanford, the retiring President, gracefully surrendered the gavel to the President-elect, who on taking the chair made a short speech of thanks and acceptance.

The election of Vice-Presidents being next in order, the following nominations were made:

For East Tennessee—Robert Burrow.
For Middle Tennessee—M. T. Bryan.
For West Tennessee—G. T. Fitzhugh.
And there being no other nominations, the Secretary, on motion, and under a suspension of the rules, cast the unanimous vote of the members present for the gentlemen nominated, and they were declared duly and constitutionally elected Vice-Presidents of the Association.

R. H. Sansom was elected Secretary and Treasurer, Mr. Robert Lusk, the Association's most courteous and efficient incumbent of that office having in a letter read by the President, expressed his inability to further serve the Association in that capacity.

The following gentlemen were by unanimous vote chosen to constitute the Central Council: W. P. Metcalf, chairman, Memphis; Wm. L. Frierson, Chattanooga; C. C. Trabue, Nashville; Albert W. Biggs, Memphis; R. Lee Bartels, Memphis.

As delegates and alternates to the American Bar Association the following were selected by the unanimous action of the Association:

West Tennessee—Albert W. Biggs, delegate, Memphis; G. T. Fitzhugh, alternate, Memphis.

Middle Tennessee—G. N. Tillman, delegate, Nashville; M. T. Bryan, alternate, Nashville.

East Tennessee—Chas. W. Rankin, delegate, Chattanooga; J. A. Susong, alternate, Greeneville.

On motion a rising vote of thanks was tendered the bar of Chattanooga for the courtesies and hospitalities extended the Association and its members.

On motion the Association adjourned.
APPENDIX.

PRESIDENT'S ADDRESS.

BY EDWARD T. SANFORD, KNOXVILLE.

Gentlemen of the Bar Association of Tennessee:

We have again, in annual pilgrimage, ascended the battlements of Lookout by the dizzy pathway that is termed an "incline," yet seems in very truth to be a perpendicular, but which, like that "right path of a virtuous and noble education" described by Milton, is "laborious indeed at the first ascent, but else so smooth, so green, so full of goodly prospect and melodious sounds on every side, that the harp of Orpheus was not more charming," and, in the exercise of the right of "peaceful assembly" guaranteed to the people of these United States and to the citizens of Tennessee, by both the Federal and State Constitutions, subject, only, as has been pointed out by a learned author, to the common law liability for the hire of the room, have again met, in this our twenty-fifth annual session, to take our ease in this our Inn, and to further, in goodly fellowship and earnest purpose, the objects of our Association.

By the imperative mandate of our Constitution the President is required to communicate in his address the most noteworthy changes on points of interest that have been made during the preceding year in the statute law of the State and Nation; and to the discharge of this duty I proceed direct, without delay, deviation or dalliance.

While there has been no session of the General Assembly of Tennessee since our last meeting, the statutes enacted at the first session of the Fifty-Ninth Congress, on the other hand, are
unusual, both in their number and character, making many noteworthy changes in the body of substantive Federal law and the procedure of the courts, and involving, in some instances, constitutional questions of the highest importance and far-reaching consequence.

The most important of these changes, in matters directly concerning the lawyer as well as the citizen, are as follows:

**Amendment to Bankruptcy Act.**

By an Act, approved June 15, 1906, section 64 of the Bankruptcy Act of 1898, providing that wages due to workmen, clerks or servants which have been earned within three months before the commencement of proceedings, not exceeding three hundred dollars to each claimant, shall have priority in payment out of the bankrupt’s estate next after taxes and general court expenses, is amended so as to extend the same priority to wages due “traveling or city salesmen.”

**Amendment to National Banking Laws.**

By an Act approved June 22, 1906, section 5200 of the Revised Statutes, which formerly provided that the total liabilities to any National Banking Association, of any person, company, corporation or firm (including the liabilities of the several members of a company or firm), for money borrowed, should at no time exceed one-tenth of the paid in capital stock of such banking association, is amended so as to provide that such total liabilities shall not exceed one-tenth of the capital stock actually paid in and unimpaired and one-tenth part of the unimpaired surplus fund; and shall in no event exceed thirty per centum of the capital stock.

The amended section, however, retains the former provision that the discount of bills of exchange drawn in good faith against actual existing values or of commercial paper actually owned by the person negotiating it, shall not be considered as money borrowed.

**Appeal from Interlocutory Orders or Decrees as to Injunctions and Receivers.**

By an Act approved April 14, 1906, section seven of the Act of March 3, 1891, establishing United States Circuit Courts of
Appeals, which, as amended by the Act of June 6, 1900, formerly provided that when upon a hearing in equity by a district or Circuit Court, or a judge thereof in vacation, an injunction should be granted or continued or a receiver appointed by an interlocutory order or decree, an appeal might be taken from such interlocutory order or decree to the Circuit Court of Appeals, but only in causes in which under the Act of 1891 an appeal might be taken to such court from a final decree, is further amended so as to grant the right of appeal from such interlocutory order or decree in all equity causes whatsoever.

The other provisions and conditions of said section are, however, retained as heretofore, namely: Such appeal must be taken within thirty days from the entry of the interlocutory order or decree; the court below may require an additional bond as a condition of the appeal; the appeal shall take precedence in the Appellate Court; and the proceedings in other respects in the court below shall not be stayed unless ordered by the court, or the Appellate Court, or a judge thereof, pending the appeal.

Seal of United States Commissioners.

By an Act approved June 28, 1906, each United States commissioner is required to provide himself with an official impression seal to be prescribed by the Attorney-General, which shall be affixed to each jurat or certificate of his official acts, without increase of fees.

Amendment of Trade-mark Laws.

By an Act approved May 4, 1906, the Act of February 20, 1905, authorizing the registration of trade-marks, is amended so as to require the application for the trade-mark to contain a description of the trade-mark itself only when needed to express colors not shown in the accompanying drawing; to require the Commissioner of Patents to establish classes of merchandise for purposes of trade-mark registration and determine the particular description of goods comprised in each class; to permit a trade-mark, on a single application, to be registered, at the option of the applicant, for all goods, of the particular descriptions stated, upon which the mark has actually been
used, comprised in a single class of merchandise; and to accord
the same rights and privileges to persons having manufacturing
establishments within the territory of the United States, so
far as the registration and protection of trade marks on the
products of such establishments are concerned, as are accorded
by the Act of February 20, 1905, to owners of trade-marks dom-
iciled within the territory of the United States.

**Extortion by Officers, Clerks, Agents and Employees of the
United States.**

By an Act approved June 28, 1906, section 5481 of the Re-
vised Statutes which formerly provided that every officer of
the United States, except those otherwise differently provided
for, who should be guilty of extortion under color of his office,
should be punished by a fine of not more than $500.00, or im-
prisonment not more than one year, is amended so as to extend,
subject to the same exception, to every officer, clerk, agent or
employee of the United States, and every person representing
himself or assuming to act as such, who shall be guilty of extor-
tion under color of such office, clerkship, agency or employment,
or of such pretension or assumption thereof, and to every person
who shall attempt any act which if performed would make him
guilty of such offence, and the maximum punishment for such
offence is extended to both fine and imprisonment.

**Competency of Witnesses in United States Courts.**

Under section 858 of the Revised Statutes it was formerly
provided that in trials at common law and in equity and admi-
rality, in the courts of the United States, the laws of the State
in which the court was held should be the rules of decision as
to the competency of witnesses, except that no witness should
be excluded in any action on account of color, or in any civil
action because a party is interested in the issues tried, and that
in actions by or against personal representatives or guardians,
neither party should be allowed to testify against the other as
to any transaction with or statement by the decedent or ward
unless called thereto by the opposite party or so required by
the court.
By an Act approved June 29, 1906, this section is amended so as to read as follows: "The competency of a witness to testify in any civil action, suit or proceeding in the courts of the United States shall be determined by the laws of the State or Territory in which the Court is held."

By this Act the rule of conformity to local law is extended to Territories as well as States, and so as to include all classes of civil actions and suits, while the former specific exceptions are now eliminated from the section.

There are, however, two other sections of the Revised Statutes which are not referred to or in terms affected by this Act, namely, Section 1977, providing that "all persons within the jurisdiction of the United States shall have the same right in every State and Territory to give evidence as is enjoyed by white persons," and Section 5392, providing that any person convicted of perjury "in any case in which a law of the United States authorizes an oath to be administered," shall be incapable of giving testimony in any court of the United States until the judgment against him is reversed.

**Immunity of Witnesses.**

In the recent case of the United States vs. Armour & Co., et al., in the United States District Court at Chicago, in a criminal prosecution under the Sherman Anti-Trust Act, commonly known as the Beef Packers' case, it was held by Judge Humphreys, March 21, 1906, that the individual defendants were immune from prosecution by reason of information furnished by them to the Commissioner of Corporations, upon his demand, though not furnished either under subpoena or upon oath.

By an Act approved June 30, 1906, it is specifically provided that under the immunity provisions in the Act of February 11, 1893, relating to testimony before the Interstate Commerce Commission, the Act of February 14, 1903, establishing the Department of Commerce and Labor, the Act of February 19, 1903, to further regulate foreign and interstate commerce, and the Act of February 23, 1903, making appropriation for the enforcement of the Interstate Commerce Act, the Sherman Anti-Trust Act, and the Wilson Tariff Act, "immunity
shall extend only to a natural person, who, in obedience to a subpœna, gives testimony under oath or produces evidence, documentary or otherwise, under oath."

**Laws to Prevent Cruelty to Animals in Transit.**

Under sections 4386 to 4389 of the Revised Statutes it was formerly provided that no railroad company whose road formed part of a line over which cattle, sheep, swine or other animals were conveyed from one State to another, or the owners or master of a vessel by which they were so conveyed, should confine them in a car or vessel in which they did not have proper food, water, space and rest for longer than twenty-eight consecutive hours, including their time of confinement on connecting roads, without unloading them for rest, water and feeding for at least five consecutive hours, unless prevented by storm or other accidental causes, and that when so unloaded they should be properly fed and watered by the owner or custodian, or, in case of his default, by the railroad company or owner or master of the vessel, at his expense, for which a lien was declared upon such animals to be enforced by petition in a district court; and that any company, owner or custodian of animals failing to comply with these provisions should forfeit a penalty of not less than $100.00 nor more than $500.00, to be recovered by civil action in a circuit or district court; and that United States marshals should prosecute all violations of the Act coming to their notice.

By an Act approved June 29, 1906, these sections of the Revised Statutes are repealed and their essential provisions re-enacted in a revised form, with the following amendments:

Their provisions are extended to all railroads, express companies, car companies and common carriers other than by water, or their receivers, trustees or lessees, whose road forms part of a line over which such animals shall be conveyed in interstate commerce and the owners or masters of vessels transporting such animals in such commerce (Section 1.)

When such animals are not furnished proper food, water, space and opportunity to rest in the cars or vessels in which they are carried, after confinement for twenty-eight consecutive
hours, they must be unloaded, in a humane manner, into properly equipped pens, for rest, water and feeding, for at least five consecutive hours, unless prevented by storm or other accidental or unavoidable causes which cannot be anticipated or avoided by the exercise of due diligence and foresight; provided that upon the written request of the owner or custodian of the particular shipment, separate and apart from any printed bill of lading or other railroad form, the time of confinement may be extended from twenty-eight to thirty-six hours, and further, that sheep need not be unloaded in the night time, subject to the aforesaid limitation of thirty-six hours. (Section 1.)

The carrier shall not be liable for any detention of such animals, of reasonable duration, to enable compliance with the Act. (Section 2.)

The lien of the carrier for food, care and custody furnished the animals during such rest, shall be collectible at their destination in the same manner as the transportation charges (Section 2.)

It is made the duty of United States attorneys, instead of marshals, to prosecute all violations of the Act reported by the Secretary of Agriculture, or otherwise coming to their knowledge. (Section 5.)

**Common Carrier's Employer's Liability Act.**

By a far-reaching Act approved June 11, 1906, the fellow-servant rule is abrogated in cases of injury to the employes of any common carrier engaged in interstate, foreign, territorial, or District commerce, and the doctrine of comparative negligence established in such cases. This Act provides as follows:

"Every common carrier" engaged in commerce in the District of Columbia, or any territory, or between the several States and Territories and the District of Columbia, or with foreign nations, "shall be liable to any of its employes, or in the case of his death, to his personal representative for the benefit of his widow and children, if any, if none, then for his parents, if none, then for his next of kin dependent on him, for all damages which may result from the negligence of any of its officers, agents or employes, or by reason of any defect or in-
sufficiency due to its negligence in its cars, engines, appliances, machinery, track, roadbed, ways or works," (Section 1).

In all actions "brought against any common carrier" to recover damages for personal injuries to, or the death of, an employe, "the fact that the employe may have been guilty of contributory negligence shall not bar a recovery where his contributory negligence was slight and that of the employer was gross in comparison, but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employe. All questions of negligence and contributory negligence shall be for the jury." (Section 2.)

No contract of employment, insurance, relief benefit or indemnity for injury or death entered into by or on behalf of any employe, nor the acceptance of any such insurance, benefit or indemnity by the person entitled thereto, shall constitute any bar or defence to any action brought to recover damages for personal injuries to or death of such employe; but upon the trial the defendant may set off any sum it has contributed toward any such insurance, benefit or indemnity that may have been paid to the injured employe or his personal representative. (Section 3.)

No action shall be maintained under the Act, unless commenced within one year from the time the cause of action accrued. (Section 4.)

Nothing in the act shall limit the duty of railroad carriers or impair the rights of their employes under the safety appliance Act of March 2, 1893, and its amendments (Sec. 5); (this being an Act by which carriers engaged in interstate commerce are required to equip their trains with automatic couplers and other safety appliances, and under which any employe of the carrier injured by any locomotive or car in use contrary to the provisions of the act shall not be deemed to have assumed the risk thereof, although continuing in the employment after the unlawful use had been brought to his knowledge.)

Pure Food and Drug Law.

By an Act approved June 30, 1906, stringent regulations are made concerning the manufacture, transportation or sale of
adulterated, misbranded, poisonous or deleterious foods or drugs.

Manufacture.—The manufacture of any adulterated or misbranded food or drug within any Territory or the District of Columbia, including within the term "food" any article "used for food, drink, confectionery or condiment, by man or other animals," is made unlawful and punishable by fine not exceeding $500.00 or one year's imprisonment, or both, for the first offence, and a fine of not less than $1,000.00 or one year's imprisonment, or both, for each subsequent offence. (Sections 1 and 6.)

Transportation and Sale.—The introduction of any adulterated or misbranded food or drug into any State or Territory or the District of Columbia, or foreign shipment, is prohibited, and any person delivering or offering to deliver for shipment, for interstate or foreign commerce, any such adulterated or misbranded foods or drugs, or, having received same through interstate or foreign commerce, delivering or offering to deliver same to any other person, in original unbroken packages, or selling or offering same for sale in the District of Columbia, or any Territory, or exporting or offering to export same to any foreign country, shall be guilty of a misdemeanor and punishable by fine not exceeding $200.00 for the first offence, and by fine not exceeding $300.00 or imprisonment not exceeding one year, or both, for each subsequent offence; provided that an article intended for foreign export shall not be deemed misbranded or adulterated when prepared according to the direction of the foreign purchaser and containing no substance in conflict with the laws of such foreign country, and when not sold or offered for sale for domestic use. (Section 2.)

Examination of Specimens.—The Secretaries of the Treasury, Agriculture and Commerce and Labor are authorized to make uniform regulations for carrying out the provisions of the Act, including the collection of specimens of foods and drugs manufactured or offered for sale in the District of Columbia or in any Territory, or offered for sale in unbroken packages in any State other than that of their manufacture or production, or received from or intended for shipment to any foreign country, or submitted for examination by the chief health, food or drug officer
of any State or Territory or the District of Columbia, or at any
domestic or foreign port where such product is offered for in-
terstate or foreign commerce; which specimens shall be ex-
amined in the Bureau of Chemistry, or under its direction.
(Sections 3 and 4.)

Prosecution for Violation of Act.—If determined to be adul-
terated or misbranded the party from whom such sample was
obtained shall be notified by the Secretary of Agriculture and
given an opportunity to be heard, and if he appears to have vi-
olated the Act, the Secretary of Agriculture shall certify the
facts to the proper United States District Attorney, with a copy
of the examination, duly authenticated by the examiner under
oath, and each district attorney to whom any violation of the
act is so certified or to whom any health, food or drug officer
shall present satisfactory evidence of such violation, shall forth-
with institute proceedings in the courts of the United States
for the enforcement of the penalties provided. (Section 5.)

Publication of Judgment.—After judgment of the court, no-
tice shall be given by publication as may be provided by the
regulations of the Department Secretaries. (Section 4.)

Dealers' Immunity Under Guaranty.—No dealer shall be
prosecuted who establishes a guaranty signed by the whole-
saler, manufacturer or other resident of the United States from
whom he purchased the articles, designating the articles and
stating that they are not adulterated or misbranded and con-
taining the name and address of the seller, who in such case
shall be amenable to the penalties which would otherwise attach
to the dealer. (Section 9.)

Test of Adulteration.—Any drug shall be deemed adulterated
if sold under a name recognized in the United States Phar-
macoepia and differing from the standard therein laid down, unless
a different standard is plainly stated on the bottle or box, or if
it falls below the professed standard of quality under which it
is sold. (Section 7.)

Any food shall be deemed adulterated, if mixed with any
substance reducing or injuring its quality or strength, or if
any other substance has been substituted wholly or in part, or
any valuable constituent wholly or in part abstracted, or if so
prepared as to conceal the damage or inferiority, or if contain-
ing any added poisonous or deleterious ingredient, rendering it injurious to health (exclusive of preservatives in removable cover or package), or filthy, decomposed or putrid substance, or portion of an animal unfit for food, or if the product of a diseased animal. (Section 7.)

Confectionery shall further be deemed adulterated if containing terra alba or three other specific mineral substances, or poisonous coloring or flavor or other deleterious ingredient or liquor or drug. (Section 7.)

Test of Misbranding.—All drugs or foods shall be deemed misbranded whose package or label bears any false or misleading statement or device regarding its contents, or which is falsely branded as to the locality of its manufacture or production. (Section 8.)

Drugs shall further be deemed misbranded if in imitation of or offered under the name of another article, if any of the contents of the original package have been changed, or if the label fails to state the quantity or proportion therein of alcohol, morphine, opium, cocaine, acetanilide or six other drugs specified or their derivatives. (Section 8.)

Food shall further be deemed misbranded if in imitation of or offered under the name of another article, or so labeled as to deceive the purchaser, or if any of the original contents of the package have been changed, or the label fails to state the quantity or proportion therein of any morphine or other of the drugs above referred to, or their derivatives, or if the contents of a package of a stated weight or measure are not plainly and correctly given; provided that foods containing no added poisonous or deleterious ingredients, shall not be deemed adulterated or misbranded, if they are mixtures or compounds known as articles of food under their own names, and the label or brand state their place of manufacture or production, and if, being either a "compound," "imitation" or "blend," such fact is plainly stated on the package, and, further, that the proprietors or manufacturers of proprietary foods containing no unwholesome added ingredients shall not be compelled to disclose their trade formulas except in so far as necessary to secure freedom from adulteration or misbranding. (Section 8.)
Condemnation of Unlawful Goods.—Any food, drug, or liquor adulterated or misbranded, being transported in interstate traffic for purpose of sale, or after being so transported remaining unloaded, unsold or in the original unbroken packages, or sold or offered for sale in the District of Columbia or any Territory, or imported from a foreign country for sale, or intended for export to a foreign country, may be proceeded against in any district court of the United States where found and seized for confiscation by a process of libel for condemnation in the name of the United States, conforming to proceedings in admiralty, except that either party may demand trial by jury of any issue of fact, and if such article is condemned as being adulterated or misbranded, poisonous or deleterious, it shall be destroyed or sold as the court may direct, unless a sale shall be contrary to the provisions of the Act or the laws of the particular jurisdiction, and the proceeds, if sold, less costs, shall go into the United States Treasury; provided that upon the payment of all costs and the execution of a bond that such article shall not be sold or disposed of contrary to law, the court may direct the delivery of such articles to the owner. (Section 10.)

Exclusion of Unlawful Foreign Goods.—The Secretary of Agriculture shall, upon his request, receive samples of foods and drugs being imported into the United States or offered for import, giving notice to the owner or consignee, who may appear before him and introduce testimony and if such article appear to be adulterated or misbranded or otherwise dangerous to the health of the people of the United States, or of a kind forbidden or restricted in the country of its manufacture or export, or otherwise falsely labeled, it shall be refused admission, and any goods so refused delivery which are not exported by the consignee within three months, shall be destroyed; provided that they may be delivered to the consignee, pending the examination, under a penal bond for their full invoice value and duty. All charges for storage, cartage and labor on goods refused admission or delivery shall be paid by the owner or consignee and constitute a lien against any future importations made by him. (Section 11.)

The word "Territory" in this act shall include the insular possessions of the United States and the word "person" shall
include corporations, companies, societies and associations, and
the act or omission of any officer, agent or other person em-
ployed by any corporation, company, society or association
within the scope of his employment or office, shall be also
deemed its act or omission as well as that of the person. (Sec-
tion 12.)
This Act shall take effect January 1, 1907. (Section 13.)

Amendment to Naturalization Laws.

By an Act approved June 29, 1906, the Bureau of Immigra-
tion is to be hereafter designated the "Bureau of Immigration
and Naturalization," and is given charge, under the Secretary
of Commerce and Labor, "of all matters concerning the natural-
ization of aliens," (Section 1), and a comprehensive system
of rules and safeguards is provided for naturalization proceed-
ings, revising the former laws and rendering them in many re-
spects more stringent, with a provision for the cancellation of
citizenship illegally obtained.

Registry.—The commissioners of registration at the various
stations are required to register each alien arriving in the
United States, with various particulars as to his nativity, occu-
pation and the like, and to grant him a certificate of such regis-
try. (Section 1.)

Courts of Naturalization.—Exclusive jurisdiction to natural-
ize aliens is conferred upon all United States circuit and district
courts in any State and designated courts in the Territories
and District of Columbia, and upon all courts of record in any
State or Territory, having a seal, 'a clerk and jurisdiction, un-
limited in amount, in actions at law or equity, or both; and the
Bureau is required to furnish such courts, upon requisition,
with blank forms and with certificates of naturalization "con-
secutively numbered and printed on safety paper furnished by
said bureau." (Section 3.)

Hereafter "an alien may be admitted to become a citizen of
the United States in the following manner and not otherwise":

Declaration.—Unless he had made his declaration of inten-
tion under former laws, he shall, after reaching eighteen years
of age, declare on oath before the clerk or deputy clerk of a
court of naturalization, in the district of his residence, his intention to become a citizen of the United States, setting forth the various particulars required in his registry. (Section 4, sub-sec. 1).

Petition.—Not less than two years nor more than seven, after such declaration, he shall make and file, in duplicate, with the clerk of a court of naturalization within whose jurisdiction he resides, a written petition duly verified, giving like particulars as to himself and as to his wife and children, if any, and stating that he is not a disbeliever in organized government or believer in polygamy, that he intends to become a citizen and permanent resident of the United States and that he has not been previously denied citizenship or that the grounds of such denial have since been removed, together with every fact material to his naturalization. (Section 4, sub-sec. 2.)

The petition shall be "signed by the applicant in his own handwriting," unless he had filed his declaration of intention prior to the passage of the Act (Sec. 4, sub-sec. 2), and shall be verified by the affidavit of two credible citizens of the United States, stating their personal knowledge of the applicant's previous residence and good moral character and their opinion that he is qualified for citizenship. (Section 4, sub-sec. 2.)

There shall also be attached a certificate from the Department of Commerce and Labor as to petitioner's arrival in the United States, if after the passage of the Act, and his declaration of intention. (Section 4, sub-sec. 2.)

Public Notice.—The clerk shall immediately post conspicuously in his office or building, a notice of the name, nativity and residence of petitioner, the date and place of his arrival, the approximate date of the hearing and the names of his witnesses, and shall issue a subpoena for his witness upon receiving a deposit sufficient to cover their expenses. (Sections 5 and 13.)

Time of Hearing.—The petition may be filed during term time or vacation, but final action shall be had only on stated days to be fixed by rule of the court, and in no case shall the hearing he had within less than ninety days after the filing of the petition, or within thirty days preceding the holding of any general election. (Section 6.)
Proceedings at the Hearing.—On the hearing it must appear that immediately preceding his application the petitioner has resided continuously within the United States five years at least and within the particular State or Territory one year at least, and has behaved as a man of good character, attached to the principles of the Constitution and well disposed to the good order and happiness of the United States; there being required, in addition to the oath of the applicant, the testimony, as to these facts, of at least two witnesses, citizens of the United States, whose name, residence and occupation shall be recorded (Section 4, sub-sec. 4); except that where the petitioner has not resided in the particular jurisdiction for the requisite five years, he may establish by two witnesses, both in his petition and at the hearing, his requisite residence within the State, and prove the remainder of his five years’ residence within the United States by the deposition of two or more citizens taken upon notice to the Bureau and the United States attorney for the district of their residence. (Section 10.)

The United States shall have the right to appear before the court to cross-examine the petitioner and his witnesses, and to call witnesses, produce evidence and be heard in opposition to the petition. (Section 111.)

No person who disbelieves in or opposes organized government or is a member of any organization teaching such disbelief or opposition, or who advocates the unlawful assaulting or killing of any officer of the government of the United States or any other organized government, because of his official character, or who is a polygamist, shall be naturalized (Section 7); and no person who had not prior to the Act declared his intention to become a citizen under former laws shall be hereafter naturalized who cannot speak the English language, except those who are physically unable so to do or who shall declare their intention to become citizens and make homestead entries upon the public lands and comply with the laws in regard thereto. (Section 8.)

Before being admitted to citizenship the petitioner shall furthermore take in open court the oath of allegiance to the United States and renunciation of foreign allegiance and fidelity, and if he bears any hereditary title or any order of nobility shall
make renunciation thereof in the court, which renunciation shall be recorded. (Section 4, sub-secs. 3 and 5.)

The final hearing shall be had in open court, before a judge or judges thereof; the applicant and witnesses shall be examined under oath in the presence of the court; and the final order "shall be under the hand of the court and entered in full upon a record kept for that purpose." (Section 9.)

Records.—Every clerk is required, under a penalty of twenty-five dollars, to keep on file a duplicate of each declaration of intention made before him; and a stub of each certificate issued; to furnish the Bureau a duplicate of every petition filed and every certificate issued; to report to the Bureau every alien denied citizenship; and to furnish it certified copies of other proceedings and orders as required. (Section 12.)

Clerks are responsible for all blank certificates of citizenship and required to account therefor, under a penalty of $30. (Section 12.)

All declarations of intention and petitions for naturalization shall be bound in chronological order in separate volumes, indexed and numbered and made part of the records, and each certificate of citizenship shall show the place of record of the petition upon which it was issued and of its stub. (Section 14.)

Fees.—The clerk is allowed to retain one-half of the fees received in any year, not exceeding $3,000.00; the remainder to be paid over quarterly to the Bureau, unless additional clerk hire is allowed by the Secretary of Commerce and Labor. Section 13.)

Forms.—The Act contains a set of forms which are required to be substantially followed in all proceedings. (Section 27.)

Copies.—Certified copies of all documents and records required under the act shall be admitted in evidence equally with the original in all proceedings under the Act and in all cases in which the originals might be admissible as evidence. (Section 23.)

Penalties.—The forging of a certificate of citizenship is made a felony, punishable by imprisonment for not more than ten years, or a fine of not more than $10,000, or both, and heavy penalties, of varying degree and amounts, are imposed upon the unlawful engraving of any plate designed for printing a
certificate of citizenship, or having the same unlawfully in custody, the printing of a likeness of a certificate, the sale of a certificate, the unlawful bringing of a certificate into the United States, the unlawful possession of the distinctive paper adopted for such certificates, the unlawful issuance by the clerk of a certificate of citizenship, the unlawful possession by any person of a blank certificate, the neglect of a clerk to account for money received, the extortion of unlawful fees, false certifying by a clerk, the knowing procurement of illegal naturalization, the giving of false testimony, the making of a false affidavit, the aiding in, abetting or procuring various of the foregoing offenses and other like matters. (Sections 16 to 23.)

The limitation for prosecution under the Act is five years after the commission of the crime. (Section 24.)

Cancellation of Certificate of Citizenship Illegally Obtained.
—United States Attorneys shall, upon affidavit showing cause, institute proceedings in any court of naturalization, in the judicial district in which a naturalized citizen may reside, for the purpose of cancelling his certificate of citizenship on the ground of fraud or illegal procurement, whether obtained under this or any prior act: such party to have sixty days personal notice, or if absent, notice by publication in accordance with the laws of the locality. (Section 15.)

In such proceedings the fact that an alien has within five years after securing naturalization taken permanent residence in a foreign country is made prima facie evidence of his lack of original intention to become a permanent citizen of the United States, sufficient, if not counterbalanced, to authorize the cancellation of his certificate of citizenship, and the diplomatic and consular officers of the United States in foreign countries are required to furnish the Department of Justice from time to time the names of persons having thus taken permanent residence in foreign countries, such statements, duly certified, being made admissible in all proceedings to cancel certificates. (Section 15.)

Wherever any certificate of citizenship is cancelled, the court shall send a certified copy of the order of cancellation to the Bureau, and if such certificate was originally issued by another court shall direct the clerk to transmit a copy of such
order to such other court, whose clerk shall record it, cancel
the original certificate upon the record and notify the Bureau
thereof. (Section 15.)

Widow and Children of Deceased Declarant.—When any
alien who has declared his intention dies before he is actually
naturalized his widow and minor children may by complying
with the other provisions of the act be naturalized without mak-
ing any declaration of intention. (Section 4, sub-sec. 6.)

Naturalization of Persons Owing Allegiance to the United
States.—All applicable provisions of the naturalization laws
shall apply to and authorize the admission to citizenship "of
all persons not citizens who owe permanent allegiance to the
United States, and who may become residents of any State, or
organized Territory of the United States"; their previous resi-
dence within the jurisdiction of the United States, owing
such permanent allegiance, to be regarded in such case as resi-
dence within the United States within the five years' residence
clause. (Section 30.)

Repeal of Previous Acts.—Certain specific provisions of the
Revised Statutes, namely: Sections 2165, 2167, 2168 and 2173,
containing previous general requirements of naturalization and
relating specifically to minor residents and the widows and
children of declarants, and Section 39 of the Act of March 3,
1903, relating to disbelievers in organized government, the
form of certificates of naturalization and various offences
against the naturalization laws, together with all Acts inconsis-
tent with or repugnant to the Act of June 29, 1906, are re-
pealed by it (Section 26), except that all previous naturaliza-
tion laws are to remain in full force for the purpose of pros-
ecuting offences committed against them prior to the passage
of the Act. (Section 25.)

[Various other Statutes, however, including those relating
to the naturalization of persons honorably discharged from
military service or from the Navy or Marine Corps and of
seamen; forbidding the naturalization of Chinese and alien
enemies; providing for the citizenship of children naturalized
under certain laws; and various penal provisions as to false
personation in procuring naturalization, the using of a false
certificate for purpose of voting, the false claiming of citizen-
ship, and the like, are not referred to in the Act of June 29, 1906, or purported to be repealed by it. See Sections 2166, 2169, 2172, 2175, 5395 and 5424 to 5429 of the Revised Statutes; Chap. 126, Sec. 14 of the Act of May 6, 1882; and Chap. 165 of the Act of July 26, 1894.]

The general provisions of this Act are to take effect ninety days after its passage. (Section 31.)

Validation of Certain Naturalization Proceedings.

By Section 39 of the Act of March 3, 1903, regulating the immigration of aliens, it was formerly provided that all certificates of naturalization should show on their face that the affidavits of the applicant and his witnesses as to the truth of every material fact requisite for naturalization has been duly made and recorded, and that all certificates failing so to show, should be null and void.

By an Act approved June 29, 1906, it is provided that naturalization certificates issued under the Act of 1903, which fail to show these facts, but were otherwise lawfully issued, shall be as valid as if they complied with said section; provided that application shall be made for new naturalization certificates, and when granted, upon compliance with the provisions of the Act of 1903, they shall relate back to the defective certificates, and citizenship be deemed to have been perfected at the date of the defective certificate. (Section 1.)

Inspection of Meat Food Products.

By an Act approved June 30, 1906, making appropriations for the Department of Agriculture rigid provisions are made to prevent the use in interstate or foreign commerce of meat and meat food products which are unsound, unhealthful, unwholesome or otherwise unfit for human food.

Examination of Animals.—The Secretary of Agriculture may cause to be made by inspectors appointed for that purpose, an examination of all cattle, sheep, swine and goats before being allowed to enter any slaughtering, packing, meat-canning, rendering or similar establishment in which they are to be slaughtered and the meat and food products used in interstate or foreign commerce, and all such animals found to show symptoms
of disease shall be set apart and slaughtered separately and their carcasses shall be subject to a careful examination and infection.

Examination of Carcasses.—The secretary shall cause to be made by inspectors a post mortem examination of the carcasses of all such animals to be prepared for consumption at any slaughtering or similar establishment for transportation or sale as articles of interstate or foreign commerce, which examination shall include all carcasses and parts of carcasses, or the meat or meat-products thereof, which may be brought into any such establishment, and shall be had before the carcasses are allowed to enter any department where they are to be prepared for food products, a re-inspection to be also made when necessary, and such carcasses and parts of carcasses as are found sound, healthful, wholesome and fit for human food shall be marked "inspected and passed," and such as are found unfit shall be marked, "inspected and condemned," and shall be destroyed for food purposes in the presence of an inspector to all.

Inspection of Meat Food Products.—The secretary shall cause to be made by inspectors an examination of all meat food products prepared for interstate or foreign commerce in any slaughtering or similar establishment, and for the purposes of any examination or inspection the inspectors shall have access at all times, by day or night, to every part of the establishment, whether the establishment be operated or not, and they shall mark as "inspected and passed" all products found to be sound, healthful and wholesome and containing no dyes, chemicals, preservations or ingredients rendering them unsound or unfit for human food, and shall mark as "inspected and condemned" all products found to be otherwise, and all such condemned products shall be destroyed for food purposes; provided that the provisions in regard to preservatives shall not apply to products for export to any foreign country which are prepared according to the direction of the foreign purchaser, when no substance is used in conflict with the laws of the country to which they are to be exported and when they are not in fact sold or offered for domestic consumption.

Removal of Inspectors from Establishments.—The secretary
may remove inspectors from any establishment which fails to
destroy any condemned carcass, or meat food products.

Labelling of Cans, Etc.—When any meat or product that has
been "inspected and passed" is placed in any can or other cov-
ering in any establishment when inspection is maintained, a
label shall be attached to such covering, under the supervision
of the inspector, stating that the contents have been "inspected
and passed," and no such inspection shall be complete until
such can or covering has been sealed or inclosed under such
supervision; and no such meat or products shall be sold or
offered under any false or deceptive name, except that estab-
lished trade names usual to such products and not false or de-
ceptive or permitted when approved by the secretary.

Inspection of Premises.—The secretary shall cause to be made
by competent inspectors such inspection of all the aforesaid
slaughtering or other establishments as may be necessary to
inform himself concerning their sanitary condition and to pre-
scribe sanitary regulations therefor, and when the sanitary
conditions of any establishment are such that the meat and food
products are rendered unclean or otherwise unfit for human
food he shall refuse to allow such meat or products to be
marked as "inspected and passed."

Night-Time Inspection.—The examination of animals and
food products shall be made during the night time as well as
day time when the slaughtering or preparation of food products
is carried on in the night time.

Transportation.—After October 1, 1906, no person, firm or
corporation shall transport or offer for transportation, and no
carrier of interstate or foreign commerce shall transport or re-
ceive for transportation to any other State or Territory or the
District of Columbia or to any place under the jurisdiction of
the United States or to any foreign country, any carcasses,
meat or food products thereof, which have not been inspected
and marked "inspected and passed," in accordance with the act
and the regulations prescribed by the secretary, provided that
meat and products on hand on that day at establishments
where inspection has not been maintained, or which have been
inspected under former laws, shall be examined and labeled un-
der regulations prescribed by the secretary and may be then sold in interstate or foreign commerce.

Use of Identification Devices.—The forging, simulation, wrongful use, defacement or destruction of any mark, label or other device or of any certificate required by the Act or the regulation of the Secretary is forbidden.

Inspection of Animals and Meats Offered for Export.—The Secretary shall cause a careful inspection to be made of all such animals offered for export to foreign countries and of all carcasses of such animals, the meat of which is offered for such foreign export, and the inspectors shall give official certificates of the sound and wholesome condition of such animals and carcasses, one copy of which shall be filed in the Department of Agriculture, one furnished the shipper and one delivered to the chief officer of the vessel on which they are shipped, and no clearance shall be given any vessel having on board such animals or carcasses until the shipper has a certificate from the inspector showing that such animals are sound and healthy, or such carcasses sound and wholesome, unless the secretary has waived such requirement for the country to which they are to be exported.

Transportation and Sale.—No person, firm or corporation engaged in the interstate commerce of meat or its food products shall transport or offer to transport, sell or offer to sell same within the jurisdiction of the United States, other than in the State, Territory, District of Columbia or place under the jurisdiction of the United States, in which the slaughtering or other establishment is located, until all the provisions of the Act have been complied with.

Penalties.—Any person, firm or corporation, or officer or agent thereof, violating any provision of the Act shall be guilty of a misdemeanor and punishable by fine not exceeding $10,000.00 or imprisonment not exceeding two years, or both.

Inspectors and Regulations.—The Secretary shall appoint all inspectors and shall make such rules and regulations as are necessary for the efficient execution of the act.

Bribery of Inspectors.—The bribery of any inspector or other officer by use of any money or thing of value is made a felony, punishable by fine of from $5,000.00 to $10,000.00 and imprison-
ment from one to three years, and the acceptance of a bribe by an inspector or other officer is made a felony punishable by fine of from $1,000.00 to $10,000.00 and imprisonment for one to three years.

Farmers, Butchers and Retailers.—The provision requiring inspection shall not apply to animals slaughtered by any farmer on the farm and sold and transported as interstate or foreign commerce, nor to retail butchers and retail dealers in meat and meat food products, supplying their customers; provided, that any person selling or offering for sale or transportation for interstate or foreign commerce any meat or meat food products which are diseased, unsound, unhealthful, unwholesome or otherwise unfit for human food, knowing that such products are intended for human consumption, shall be guilty of a misdemeanor and punishable by fine of not exceeding $10,000.00 or imprisonment for not exceeding one year, or both, and provided also that the secretary may maintain the inspection provided for at any slaughtering or similar establishment notwithstanding that the persons operating the same may be retail butchers and retail dealers or farmers.

Expenses.—Three million dollars are appropriated for the expenses of inspection provided by the Act.

Hepburn Act Amending the Interstate Commerce Act and Elkins Act.

By an act approved June 29, 1906, commonly called the Hepburn Act, the Interstate Commerce Act of Feb. 4, 1887, is amended and enlarged and the powers of the Interstate Commerce Commission greatly increased, and the Elkins Act of Feb. 19, 1903, is also amended and made more stringent.

Pipe Lines, Express and Sleeping Car Companies Included. —Section 1 of the Interstate Commerce Act is enlarged so as to apply to any corporation or person engaged in the transportation of oil or other commodity, except water or gas, by means of pipe lines, either wholly or partly by railroad or water, who are declared to be common carriers, and to any common carrier, specifically including express companies and sleeping car companies, engaged in the transportation of passengers or prop-
erty wholly by railroad, or by railroad and water when both are used under a common control or arrangement for a continuous carriage, not only in interstate and foreign commerce, as specified in the Interstate Commerce Act, but also in commerce within a territory. (Section 1.)

The term "railroad" is enlarged so as to include not only all bridges and ferries and the road in use by any operating corporation, as heretofore, but also all switches, spurs, tracks, terminal facilities, freight depots, yards and grounds. (Section 1.)

The term "transportation" is enlarged so as to include cars and other vehicles, all instruments and facilities of shipment or carriage, irrespective of ownership or any contract for their use, and all services in connection with the receipt, delivery, elevation, transfer, ventilation, refrigeration, icing and handling of property transported. (Section 1.)

Carrier's Duty to Furnish Transportation, Establish Through Routes and Just and Reasonable Rates.—In addition to the former general provision that all charges for any service rendered in transportation shall be "just and reasonable," every carrier subject to the Act (hereinafter designated as the carrier) is required "to provide and furnish such transportation upon reasonable request therefor, and to establish through routes and just and reasonable rates applicable thereto." (Section 1.)

Limitation of Free Passes and Penalty for Violation.—No carrier shall, after January 1, 1907, directly or indirectly, give any interstate free pass or transportation for passengues, except to its employees and their families, its officers, agents, surgeons, physicians and attorneys-at-law, and to ministers, traveling secretaries of railroad Young Men's Christian Associations, inmates of hospitals and charitable institutions, persons exclusively engaged in charitable work, indigent, destitute and homeless persons, and such persons when transported by charitable societies or hospitals and necessary agents employed in such transportation, inmates of Soldiers’ and Sailors’ Homes and boards of managers of such Homes, necessary care-takers of live stock, poultry and fruit, employees on sleeping cars and
express cars, linemen of telephone and telegraph companies, railway mail service employes, postoffice inspectors, newsboys on train, baggage agents, witnesses attending any legal investigation in which the carrier is interested and persons injured in wrecks and their attending physicians and nurses; provided that carriers are not prohibited from the interchange of passes for their officers, agents and employes and their families, nor from carrying passengers free in cases of general epidemic or other calamitous visitation. (Section 1.)

Any carrier violating this provision or any person unlawfully using such free transportation shall be guilty of a misdemeanor and subject to a penalty of not less than $100.00 nor more than $2,000.00 for each offence. (Section 1.)

Railroads Forbidden to Transport their Own Product for Use of Others.—It is made unlawful, after May 1, 1908, for any railroad company to transport in interstate commerce or to any foreign country any article other than timber and its manufactured products, manufactured, mined or produced by it, or under its authority, or owned by it, in whole or in part, or in which it has any interest, except articles for its own use in the conduct of its business. (Section 1.)

Connections With Lateral Lines and Private Side Tracks.—Any carrier, upon the application of any lateral line of railroad, or of any shipper tendering interstate traffic, is required to construct and operate, upon reasonable terms, a switch or connection with any lateral line or private side track where such connection is both reasonably practicable and safe, and to furnish cars for such traffic without discrimination; and if any carrier fails to install and operate such connection on written application by any shipper, he may make complaint to the Interstate Commerce Commission, which shall determine as to the safety, practicability, justification and reasonable compensation, and may make an order directing the carrier to comply with such provision, which shall be enforced as all other orders of the commission except those for the payment of money. (Section 1.)

Public Schedules of Rates.—Section 6 of the Interstate Commerce Act is amended as follows:
Every carrier shall file with the Commission and print and keep open to public inspection schedules showing not only the rates, fares and charges for transportation between different points on its own route, as heretofore, but also between all points on any through route, when a joint rate has been established, or if not, its separate rate applied to such through transportation; and such schedules shall state, in addition to former requirements, all terminal storage and icing charges and other charges which the Commission may require, all privileges and facilities granted and any rules and regulations in any wise affecting the value of the service rendered. (Section 2.)

Thirty Days' Notice of Change in Published Rates.—The former provisions requiring ten days' notice of any advance and three days' notice of any reduction in rates is changed to a general provision that no change shall be made in any rate or charge, joint or otherwise, except after thirty days' notice to the Commission and like posted notice to the public; provided that the Commission may allow changes upon less notice or modify the requirements as to posting and filing of tariffs, either in particular instances or by a general order applicable to special conditions. (Section 2.)

Compliance Required with Published Rates.—No carrier shall engage in the transportation of passengers or property unless the rates and charges have been filed and published, or demand or collect different compensation from the published tariff, or remit or refund any portion thereof, or extend to any shipper or person any privilege in transportation not specified in the tariff, except facilities given to military traffic at the request of the President, in time of war. (Section 2.)

Rebates Further Punishable by Imprisonment.—Section 1 of the Elkins Act is amended so as to provide not only that any carrier or shipper who shall knowingly offer or grant or solicit or receive any unlawful rebate, concession or discrimination, shall be punished by a fine of not less than $1,000.00 nor more than $20,000.00, as heretofore, but also that any person, or officer or director of any corporation subject to the act, or receiver, trustee, lessee, agent or person acting for such corporation, convicted of such offense, shall, in addition to such
fine, be liable to imprisonment in the penitentiary for not exceeding two years, or to both such fine and imprisonment. (Section 2.)

Receiver of Rebate Further Liable to Three-Fold Forfeiture. — Any person or company delivering property for interstate transportation to a carrier or for whom as consignor or consignee, any carrier shall transport property from any State or Territory or the District of Columbia in interstate or foreign commerce, who shall knowingly, by any means or device, receive from such carrier any money or other valuable consideration as a rebate from the published tariff, shall in addition to any other penalty provided, forfeit to the United States three times the amount of the money and of the value of the other consideration so received; and the Attorney General of the United States, whenever he has reasonable grounds, shall institute in any Court of the United States of competent jurisdiction, a civil action to collect such sum, in which all such rebates or other considerations received for six years may be included. (Section 2.)

Commission Authorized to 'Fix a Just and Reasonable Maximum Rate.—Sections 15 and 16 of the Interstate Commerce Act are materially amended, such amendments constituting the crucial changes made by the new Act.

By these sections of the original Act it was formerly provided that if the Commission found that the Act had been violated or damage sustained, it should cause a copy of its report to be delivered to the carrier, with a notice to desist from such violation or make reparation (Section 13), and that if the carrier failed to obey the order, either the Commission or any interested person might apply by petition to the Circuit Court of the United States and the matter should be heard and determined by the Court on reasonable notice to the carrier, the findings of fact in the Commission's report to be prima facie evidence of the matters therein stated. (Section 16.)

Under the new Act these sections are expended and greatly changed.

The Commission is empowered and required, whenever after hearing a complaint made against or by a carrier, it is of the
opinion that any rate or charge demanded or collected by any carrier for the transportation of persons or property, or any regulations or practices of the carrier affecting such rates, "are unjust and unreasonable, or unjustly discriminatory, or unduly preferential or prejudicial or otherwise in violation of any of the provisions of this Act, to determine and prescribe what will be the just and reasonable rate or rates, charge or charges, to be thereafter observed in such case as the maximum to be charged; and what regulation or practice in respect to such transportation is just, fair and reasonable to be thereafter followed," and to make an order that the carrier shall desist from such violation, and not thereafter demand or collect any rate or charge in excess of such maximum, and conform to the regulation or practice prescribed. (Section 3.)

Effect of Commission's Order.—All Orders of the commission, except for the payment of money, shall take effect within such reasonable time, not less than thirty days, and shall continue in force for such period, not exceeding two years, as shall be prescribed in the order, unless suspended, modified or set aside by the Commission or by a Court of competent jurisdiction. (Section 4.)

Commission Authorized to Apportion Joint Rate, and Establish Through Rates.—Whenever carriers fail to agree among themselves upon the apportionment of joint rates or charges, the Commission may after hearing make a supplemental order prescribing the just and reasonable proportion of such joint rate to be received by each carrier. (Section 4.)

The Commission may, also, after hearing on a complaint, establish through routes and maximum joint rates and prescribe their division, and the terms and conditions of operating such routes, when same is necessary and the carriers have not voluntarily established such through routes and joint rates and no reasonable or satisfactory through route exists, and this provision shall apply when one of the connecting carriers is a water line. (Section 4.)

Commission Authorized to Fix Reasonable Charge for Services Rendered by Shipper.—If the owner of any property transported renders any service connected therewith, or furn-
ishes any instrumentality used therein, his charge shall be no more than is just and reasonable, and the commission may determine what is a reasonable charge as the maximum to be paid by the carrier therefor and fix the same by appropriate order, which shall be enforced as the orders above provided for. (Section 4.)

Service of Orders.—Every order of the Commission shall be forthwith served by mailing a copy to any one of the principal officers or agents of the carrier at his usual place of business; the registry mail receipt to be prima facie evidence of its receipt in due course of mail. (Section 5.)

Forfeiture for Violation by Carrier of Commission’s Order.—Every carrier, its agents and employees shall observe and comply with such orders so long as they remain in effect, and any carrier, officer, representative or agent of a carrier, or any receiver, trustee, lessee or agent of either of them, who knowingly fails or neglects to obey any order made upon the foregoing provisions shall forfeit to the United States the sum of $5,000.00 for such offence, every distinct violation to be a separate offence, and in case of a continuing violation each day to be deemed as a separate offence. (Section 5.)

Suit to Enforce Forfeiture.—Such forfeiture shall be recoverable in a civil suit brought in the name of the United States in the district where the carrier has its principal operating office, or in any district through which its road runs, and shall be prosecuted by the district attorney, under the direction of the Attorney-General; but the Commission may, with the consent of the Attorney-General, employ special counsel in any proceeding under the act, paying the expense out of its own appropriation. (Section 5.)

The Commission Authorized to Award Damages.—If the Commission shall determine that any complainant is entitled to an award of damages, it shall make an order directing the carrier to pay complainant the sum to which he is entitled on or before a day named. (Section 5.)

Suit to Enforce Award of Damages.—If the carrier does not comply with such order within such time, the complainant, or any person for whose benefit such order was made, may file in
the Circuit Court of the United States for the district in which he resides, or in which is located the principal operating office of the carrier, or through which the road of the carrier runs, a petition setting forth the causes for which he claims damages and the order of the Commission, which shall proceed as other civil suits for damages, except that the findings and order of the Commission shall be prima facie evidence of the facts therein stated, and that the petitioner shall not be liable for costs in the Circuit Court nor for any subsequent costs unless they accrue upon his appeal, and if the petitioner finally prevail, he shall be allowed a reasonable attorney's fee, to be fixed as part of the costs. (Section 5.)

All complaints for the recovery of damages shall be filed with the Commission within two years from the time the cause of action accrues, and a petition for the enforcement of an order for the payment of money shall be filed in the Circuit Court within one year from the date of the order; provided, that claims accrued prior to the passage of the Act may be presented within one year. (Section 5.)

In such suits all parties in whose favor the Commission may have made an award for damages by a single order may be joined as plaintiffs, and all of the carriers parties to such order as defendants, and such suit may be maintained in any district where any of such joint plaintiffs could maintain such suit against any of such joint defendants; and service of process against any defendant not found in such district may be made in any district where such defendant has its principal operating office. The judgment may be in favor of any plaintiff against the defendant liable to him. (Section 5.)

Suits to Enforce Orders of the Commission Other than for the Payment of Money.—If any carrier fails to obey any order of the Commission other than for the payment of money, while the same is in effect, any party injured thereby, or the Commission in its own name, may apply to the Circuit Court of the district where such carrier has its principal operating office, or in which the disobedience of such order happened, for its enforcement, by a petition which shall be served upon the carrier as the Court may direct, and the Court shall prosecute
such inquiries and make such investigations, through such means as it shall deem needful in the ascertainment of the facts at issue or which may arise upon the hearing. If it appears that the order was regularly made and duly served, and that the carrier is in disobedience the Court shall enforce obedience by a writ of injunction, or other proper process, mandatory or otherwise, to restrain such carrier, its officers, agents or representatives from further disobedience of such order or to enjoin obedience of the same; and in the enforcement of such process, shall have those powers ordinarily exercised in compelling obedience to its writs of injunction and mandamus.

From any action upon such petition an appeal shall lie by either party to the Supreme Court of the United States and in such court the case shall have priority over all other causes except criminal causes, but such appeal shall not vacate or suspend the order appealed from. (Section 5.)

Venue of Suits Against the Commission.—The venue of suits brought in any of the Circuit Courts of the United States against the Commission, to enjoin, set aside, annul, or suspend any of its orders or requirements, shall be in the district where the carrier against whom such order was made has its principal operating office and may be brought at any time after such order is promulgated, and if made against two or more carriers then in the district where any of said carriers has its principal operating office, "and if the carrier has its principal operating office in the District of Columbia then the venue shall be in the district where said carrier has its principal office"; and "jurisdiction to hear and determine such suits is vested in such courts." (Section 5.)

Hearing as to Injunction.—No injunction, interlocutory order or decree suspending or restraining the enforcement of an order of the Commission shall be granted except on hearing after not less than five days' notice to the Commission. (Section 5.)

Appeal from Injunction Orders.—An appeal may be taken from any interlocutory order or decree granting or continuing an injunction in any suit, if taken within thirty days, but shall lie only to the Supreme Court of the United States and shall there take like precedence. (Section 5.)
Writs of Mandamus Authorized.—The Circuit and District Courts of the United States are given jurisdiction upon application of the Attorney General at the request of the Commission, to issue writs of mandamus commanding any common carrier to comply with the provisions of the Interstate Commerce Act, or any amendment thereto. (Section 7.)

Expediting Suits.—The provisions of the Act of February 11, 1903, to expedite suits in equity are made applicable to all such suits, including the hearing on an application for a preliminary injunction and also to any proceeding in equity to enforce any order of the Commission, or any of the provisions of the Interstate Commerce Act, or its amendments. (Section 5.)

Schedules and Reports as Prima Facie Evidence.—The copies of schedules and tariffs of rates, fares and charges, and of all contracts or arrangements between common carriers filed with the Commission and the statistics and figures contained in the annual reports made by carriers to the Commission shall be preserved as public records in the custody of its secretary and received as prima facie evidence for the purpose of investigations by the Commission and in all judicial proceedings, and copies or extracts certified by the secretary under its seal shall be received in evidence with like effect as the originals (Section 5.)

Annual and Special Reports of Carriers; Forms or Accounts and Records and Penalties.—Section 20 of the Interstate Commerce Act, relating to the annual reports made to the Commission by carriers, is amended so as to require that such reports shall also show, in addition to the details formerly required, "the accidents to passengers, employes, and other persons, and the causes thereof," shall cover the twelve months ending June 30th of each year, and shall be made under oath and filed with the Commission by the 30th day of the following September; to provide a forfeiture of $100.00 for each day of default in filing such report or failing to give specific answers therein; to authorize the Commission to require carriers, under like penalty, to file monthly reports of earnings and expenses, or special reports; to authorize the Commission to prescribe forms of all accounts and records kept by carriers of the movement
of traffic, as well as of receipts and expenditures of money; to make it unlawful to keep any other accounts and reports; to provide in case of the carrier's failure to keep its accounts and records as required, a forfeiture of $500.00 for each day's continuance of such offence; and to make the keeping of false and imperfect records and accounts, or their destruction or mutilation a misdemeanor, punishable by a fine of not less than $1,000.00 nor more than $3,000.00 or imprisonment for not less than one year nor more than two years, or both. (Section 7.)

Special Examiners—The Commission is authorized to employ special agents or examiners, with power to administer oaths and receive evidence; and any examiner who divulges any information coming to his knowledge in the course of such examination, except as directed by the commission or by the Court, is subject to a fine of not more than $5,000.00 or imprisonment for not exceeding two years, or both.

Liability for Loss or Injury on Other Lines.—Any carrier receiving property for transportation in interstate commerce shall issue a receipt or bill of lading therefor, and shall be liable to the holder for any loss or injury to such property caused by it or any carrier over whose line such property may pass, and no contract, receipt, rule or regulation shall exempt such carrier from such liability; but the carrier issuing such bill of lading shall be entitled to recover from the carrier on whose line the loss or injury was sustained, such amount as it shall be required to pay the owner. (Section 7.)

Increase in Number of Commission.—The Interstate Commerce Commission is enlarged so as to consist of seven members holding for terms of seven years each, at an annual compensation of $10,000.00; not more than four of the Commissioners to be appointed from the same political party. (Section 8.)

Witnesses and Testimony.—All existing laws relating to the attendance of witnesses and the production of evidence and compelling of testimony under the Interstate Commerce Act and its amendments, shall apply to any and all proceedings and hearings under this act. (Section 9.)

Repeal of Other Acts, Pending Suits.—All laws in conflict with the provisions of this act repealed; but the amendments
made shall not affect causes now pending, which shall be prosecuted to a conclusion in the manner heretofore prescribed. (Section 10.)

Date of Taking Effect.—By joint resolution approved June 30, 1906, this Act is to take effect sixty days after its passage.

From the extended debate over the provisions of this Act in the Senate of the United States, in which Constitutional arguments of great force were presented by distinguished lawyers in a manner worthy of that high forum, it is evident that in its enforcement there will be presented for determination questions of the greatest moment.

A settlement of these weighty questions will undoubtedly be made at an early date by that august tribunal which constitutes the sure bulwark of law and order and liberty under the Constitution, administering justice between the Nation, the State and the citizen with equal and exact regard for the rights of each, and to whose impartial determination every lawyer and lover of his country may with confidence submit the momentous issues that are involved.
A REVIEW OF COLEMAN vs. THE STATE OF TENNESSEE.

BY J. B. HEISKELL.

Coleman, the defendant, was an enlisted soldier in active service of the United States in the Civil War. On the 25th of October, 1865, he committed a wanton murder on a citizen of Tennessee, Mourning Ann Bell, within the territory of that State, then occupied by the Federal forces, within their military lines, and within the civil jurisdiction of the military government.

Coleman was tried by court martial and condemned to death, but the sentence was not executed.

The war being ended, in 1876 he was indicted in the State Court for the same murder and condemned to death. From this judgment he appealed to the Supreme Court of Tennessee, where the judgment was affirmed. Pending the appeal the defendant was brought by writ of habeas corpus before the Circuit Court of the United States and ordered to be discharged. This order was presented to the Supreme Court of Tennessee and held to be a nullity for want of authority in that United States Court to make it. The case was then taken to the Supreme Court of the United States where it was held that the order of the Circuit Court was valid.

It was then, as now, a settled principle of law that a person by the same act may commit an offense against the State and against the United States, and that each may punish him for the breach of its own law, without violation of the Constitution, which forbids him to be twice put in jeopardy. This therefore was not in the way of the State proceeding against him.

It was conceded and expressly decided by the Court that the power to punish the soldier in active service by the court martial was not exclusive of the right of the State to punish him for the same offense, if the State was adhering to the United States in the war. But it was held that this power was exclusive where the offense was committed in a hostile State occupied
by the United States forces under a military Governor, on the
ground that this was enemy's country.

And this exclusion, to protect the defendant, must have
operated not only on the inimical civil authority of the State
pending the war, but on the friendly authorities of the recon-
structed State when the normal relations had been restored.

This result was not produced by any provision in the act of
Congress to punish soldiers for crime, for the words of the act
did not in any wise discriminate between states in harmony
with, and those in opposition to the United States. The only
allusion this part of the act of Congress made to States was to
make the law of the State the measure of the penalty inflicted
for the several offences enumerated, among which was murder.
The question is therefore by the decision, put upon the foot-
ing that it depends upon the fact of enemy's country as the
locus in quo of the crime.

The question was undoubtedly difficult of solution but it
seems to me that it does admit of proof that the decision of that
high Court was reached by a course of reasoning that is demon-
strably incorrect and on several distinct grounds:

1st. The writ of habeas corpus in such a case, was not
authorized by any act of Congress.

2d. The act of Congress made no distinction between States
as to the status and jurisdiction of the Military forces over
the offences named.

3d. The results of Military occupation by a hostile power
upon the laws of an occupied Country deduced from the deci-
sion of the Supreme Court in the case of The Exchange, 7
Cranch, are not properly deducible from the decision in that
case or its reasoning.

4th. The matter is political and diplomatic and not judicial.

5th. The position of the State of Tennessee in 1874, was that
of victor in a civil war, and not that of a vanquished party.

In Coleman vs. Tennessee, 97 U. S., 509; the Court said: "The
act of 1863, March 3d, does not make jurisdiction of the Military
tribunals exclusive of that of the State Courts. Previous to its
enactment, the offences designated were punishable by the
State Courts, and it contains no words indicating an intention
on the part of Congress to take from them the jurisdiction in this respect, which they had always exercised. No such intention should be ascribed to Congress in the absence of clear and direct language to that effect. No such exclusive jurisdiction is ("by that act"), invested in Military tribunals mentioned. No public policy would have been subserved by investing them with such jurisdiction, and many reasons may be suggested against it. Persons in the military service could not have been taken from the army by the process of the State Courts without the consent of the Military authorities, and therefore no impairment of this efficiency could arise from the retention of jurisdiction by the State Courts, to try the offences. Interference with the army would thus have been impossible, and offences committed by soldiers, discovered after the army had marched to a distance or discovered after the war was over and the army disbanded, would not go unpunished.

This matter quoted from the Coleman opinion, is used by the Court to avoid giving to the act of Congress an effect in the loyal states, which would be calculated to antagonize their view of State's rights, but it puts upon the Court the absolute necessity of deriving the exclusive right of the Military, from the laws of war, and admits the uselessness of implying such effect.

For this purpose they use the argument of C. J. Marshal, in The Exchange, 7 Cranch, as the basis of the argument from which the conclusion is drawn.

The case of The Exchange involved the right of a private person to proceed in the Circuit Court of the United States against a schooner, "The Exchange," a French ship of war, on the allegation that she belonged to the claimant; had been captured by the French, contrary to the law of nations, and was still the property of claimant.

The Supreme Court of the United States held that she was exempt from seizure and ordered her release.

The case involved no right or law of a state, but only those of the United States as a nation, and the claimants as already stated, sued in a United States Court.

The Court, Marshal C. J. delivering the opinion says: "It
seems to the Court, to be a principle of public law, that national ships of war, entering the port of a friendly power open for its reception, are to be considered as exempted by the consent of that power from its jurisdiction."

"Without doubt, the sovereign of the place is capable of destroying this implication. He may claim and exercise jurisdiction, either by employing force, or by subjecting such vessels to the ordinary tribunals. But until such power is exerted in a manner not to be misunderstood, the sovereign cannot be considered as having imparted to its ordinary tribunals a jurisdiction, which it would be a breach of faith to exercise.

Those general statutory provisions therefore, which are descriptive of the ordinary jurisdiction and the judicial tribunals, which gives an individual whose property has been wrested from him, a right to claim that property in the Courts of the country in which it is found, ought not, in the opinion of this Court, to be so construed as to give them jurisdiction."

"The arguments in favor of this opinion which have been drawn from the general inability of the judicial power to enforce its decisions in cases of this description, from the consideration that the sovereign power of the nation is alone competent to avenge wrongs committed by a sovereign, that the questions to which such wrongs give birth are rather of policy than of law, that they are for diplomatic rather than legal discussion are of great weight, and merit serious attention. But the argument has already been drawn to a length which forbids a particular examination of these points." The Exchange 7th, Cranch 145.

It is incredible in the nature of things that a sovereign State in allowing the troops of a foreign State to pass through her territory abrogates and repeals *pro tanto* any laws of her own, so that the authority of that State no longer can, under any exigency, assume or exercise any jurisdiction to punish an atrocity of any member of that alien army, and the court does not so assert in the Cranch case.

Of course comity demands that no interference with that army shall be allowed to interrupt their free passage or the exercise of the authority of its officers over that army in matters
even of life or death to the soldiers. But it is impossible to comprehend that any State would actually subject herself to an abject surrender of all authority, under all possible contingencies, to put in operation her judicial machinery to deal with an atrocity committed by a soldier of that force. Suppose that a body of soldiers should mutiny and turn to marauding in that hospitable territory and the exigencies of that army; the reverberation of the guns of battle; should demand their abandonment of any pursuit of the mutineers—it is conceivable that any sovereign State would hesitate to arrest and punish crimes committed by such marauders. Comity might demand an offer to surrender such criminals to the military power of their own country—but comity is something yielded not of strict right. Suppose the country of the soldier arrested declined the offer, and even asked the hospitable State to deal with the offenders under their own laws, is it conceivable that any enlightened government would reply they have committed no infraction of our law, our law was non-existant, abrogated, abolished, as to them nullified, canceled, destroyed and we have no right to say that a law which did not exist was broken. Would it not be much more in the line of reason to construe the act of consenting to the passage of troops, to be an agreement to allow them an unmolested passage with the right to exercise all the powers over the soldiery that they would have at home, without an absolute surrender of powers of which exigencies might demand the exercise.

On the theory of the Coleman decision an officer or person arresting such criminal under warrant in due form, would be a trespasser and the act would authorize the soldier to kill in resistance of his unlawful arrest. The civil officer would be liable for damages for presuming to act under a law which was null.

The most wild and adventurous courtesy of the Spanish Hidalgo might imagine such a surrender, as framable in unmeaning words of compliment, but no sane diplomat would make such an offer or expect it.

Besides what power in a State is capable of renouncing the obligation of a law; of dispensing with a law. The want of
such a power was so well settled in England by the declaration of rights and the bill of rights that I believe that it was never inserted in American constitutions and the right to abrogate or renounce a power inherent in government cannot be presumed to exist in any civilized country; while an undertaking to refrain from putting in active and aggressive operation the laws of the State, against the guests of the State, seems entirely compatible with the power and duty of that executive branch of a government which deals with foreign affairs. At the same time since the exercise of such power is sufficient to answer all the demands of comity and the further concession is wholly needless and possibly dangerous it is clearly not to be implied. Indeed it may be safely stated that no surrender of an inherent power of a free State can ever be implied. Certainly there is nothing in the opinion of C. J. Marshall in the Cranch case, "The Exchange," that suggests the need or the possibility of any such implication. That opinion on the contrary clearly recognizes the continuing power of the occupied State to violate its promises of immunity.

This case is the authority on which the Coleman case is based, but the effect deduced goes far beyond the implication in the case of the Exchange. It requires instead of immunity from the exercise of jurisdiction absolute abrogation of the power to entertain jurisdiction; elimination of the law creating an offence against the occupied State and this by implication and without any act of the Legislature of the occupying State the United States or of the military authority thereof, and without any conceivable reason why such consequence should be implied from a hostile more than from a permissive occupation and with the same reason against it.

The only difference seems to be in the case of passing by permission the passing body has no authority over the law of the land and that in the case of hostile occupation the invader possibly has the power to legislate for the occupied territory and possibly to divest the occupied territory of any right to regard itself as an existing entity or as possessing any independent authority to be offended against.

In a State of savagery such a result might seem natural, but not to a people in an age of civilization. But here was no
statute of the United States which purported to authorize such action and no action by any military authority. It is left to be implied by the Court.

Is the act of an invader the exertion of physical power or the exercise of a strictly legal function? The law of nations recognizes facts. It is a deduction from what exists. It can say that an invader has the power to prevent a conquered province or country from interfering with military operations, and its control is physically supreme, but it cannot say that a mere invader can change permanently the law of the province or State. That may be done by treaty at the end of the war if the occupier succeeds or by legislation if the country is reduced to subjection, but it does not assume that military methods are constitutional or legal in the ordinary sense.

Neither Congress, nor the President, nor the United States Courts, nor can the three combined, nor anything short of an amendment to the Constitution of the United States repeal a law of Tennessee without her consent. Physical force can suspend its power as against military prohibition, to execute the law and so far the law of nature and of nations concur, but neither can rationally assert that might makes right, in the sense that it makes it constitutional or legal or ethically obligatory in the ordinary acceptation of those terms. "Inter arma leges silent" is true as a physical fact, but military force does no more than suspend the power to execute the functions of the Courts. It repeals no laws and extinguishes no right. The laws of war do recognize the power of an invader to dictate terms to an occupied province or State enforcible so long as his occupation continues and its force maintains itself, but upon his evacuation it is not the perfection of reason to assert that the once occupied, now evacuated country, is bound to execute the edicts, decrees or judgments of the late invader.

Treating of the decree of a prize Court in Mexico, which the President of the United States assumed to create as an act of military power during our military occupation of that country the Supreme Court of the United States held the decree void, and said, martial law is the law of the moment and of the bayonet. Its stability is limited by the one, its authority by the other, Jucker vs. Montgomery, 13 How. 498.
The result of a promise, express or implied, and the implication from force, is essentially different. The implied friendly permission is a continuing obligation, in point of time, beyond the passing of the occasion which gives rise to it. The implication from force, is unwilling submission to superior power, as long as the vis major continues. Obedience to force ceases when compulsion is withdrawn, it does not result therefore, a fortiori, that the same result is produced by the two. Force may be the stronger reason while it lasts, but the obligation is different in nature and in motive. The conclusion is therefore a non sequitur.

A man pays an honest debt from a feeling entirely different and unlike that which he hands over a like amount to a robber who has the drop on him. If he chances to get the drop on the robber or if aid comes, no scruple prevents him from regaining his purse.

We use the name, "United States," in two different senses. We apply it usually to the three departments at Washington, which perform the national functions — Congress, the Executive and the Judiciary. Again we use it to include the States with their reserved rights as well as the other, making up the whole composite UNION and composing the whole nation, I propose to use the words United States in this paper in the first of these senses and the word Union to indicate the whole composite nation.

The government of a nation and its laws consists of two classes of functions and laws — national and local. The laws of a nation include both. In ordinary governments these are concentrated in a central authority. In our composite government the laws of the State cover the local branch or department, and the laws of the United States, the remainder; and the two constitute the laws of the United States in the sense of the Union. In this sense the laws of the States are as much the laws of the United States as the laws of Congress. Each are the laws of the Union and not of a subordinate part but of co-ordinate departments.

Tennessee is a department of the United States, not as the judicial department is, but a territory set apart, a department, with complete local autonomy. The laws of Tennessee for the
purposes of this argument are as much laws of the United States, in the sense of the complete and complex Union, composed of States and Federal components, forming together a national body, as the law of France in force in every department is the law of each department and of the nation, and the Courts of Tennessee were in the Coleman case enforcing the law of the Union in exactly the same sense as the Courts of a department in France would have been in a like case, with this difference only, that in France the central authority had the right to control the prosecuting officers of the local Courts, whereas here the State is the supreme department of the Union designated to act for the Union with no control deputed to Congress, or to the executive, or judicial branches of the government at Washington to control her action. Tennessee was simply executing the law of the United States.

When the House of Representatives judges of the election of its own members it exercises a function of the United States Government which no other body can exercise; in which it is supreme; subject to no review or control, Tennessee in her sphere of action executes a function of the United States Government, and in so doing is as completely beyond rightful control by any other section of the combination — the Federal section, i. e., Congress, President and Judges, as the United States in either sense is free from the control of Tennessee.

The question presented here could not possibly arise in any other country, as no other has such a distribution of powers and functions as has the United States. In any other country where the whole authority is centered in a consolidated body, the victor in a civil war has and exercises the power to punish offences committed by a soldier of the vanquished body in places held by them as well as those held by the victors. But in the case of the United States the division of powers between the Federal authority and the State places the restored State in the same position as a portion of the complex Union, as the conquering sovereignty, which the successful dynasty holds in a centralized monarchy. It is a part of the United States Government with all its powers reserved but those granted, by the adoption of the constitution, to the Federal body, and the latter has in this normal condition no powers except those
granted by the constitution. The limited powers granted to it, the United States Government, no more authorize it to exercise the powers retained by the States, than it allows the judiciary to exercise the powers assigned to Congress.

The position of the State and its laws after the war was strictly analogous to that of a department in France after the civil war and the appointment of new civil authorities by the successful government, in that war, with the same power to administer the law of the country to violators of that law; the only difference being that in that case the central government had the right by executive action to direct what prosecutions her Procureurs General should institute and pursue, whereas neither the Washington executive, nor its judicial corps, had any such right over the State delegated to them by the Constitution, nor has the Congress attempted to usurp that power, or to obtain it by any of the various amendments then provided for.

The laws of the several States are as much a part of the system of the laws of the Union as are the laws and statutes of the United States authoritative to the same degree in their respective jurisdictions and the Federal branch of the United States Government has no authority to enact, repeal or modify or suspend any law of the State except so far as the States have delegated to the United States Government that right. This was a matter in which the State of Tennessee had the political executive discretion to direct the executive officers of their judicial department, and the absolute right to execute her own laws to the extent which that discretion approved, and as to this neither her executive nor judicial department was in any wise subordinate to United States Congress or Courts, but strictly co-ordinate and equal; each, in its own sphere, supreme.

The matter is diplomatic not judicial. If after the close of the war between independent nations one of the countries concerned should arrest and proceed against a former soldier of the late invading force of the late enemy who had during an invasion committed some atrocity against the laws of war and of the invaded country, the matter could be reached only by diplomatic measures, and at the instance of the nation concerned and
no nation could decently concede nor could any decently demand the concession, that hostile occupation not only suspended the power to execute her laws but subverted the laws for the punishment of such offenders.

The question in such a case between independent nations being diplomatic, how could it become judicial in the United States? Only by virtue of some clause in the Constitution of the United States, or some statute or treaty of the United States. Neither of these exist. The opinion of the Court expressly holds that the statute did not abrogate the law of Tennessee to punish murder but that the result was brought about by military occupation alone, without even military order. The Courts of the United States, if this was a consolidated government, would have no power or jurisdiction over the foreign government, and no authority to institute negotiations. It would belong exclusively to the executive. It is no less then executive function when it arises between a State and the United States. We have had numerous cases in which the State courts have prosecuted natives and citizens of foreign countries in which the United States has found it impracticable to stay the State proceedings.

In the apportioned powers and departments of government in the United States over the local affairs and territory of a State the power of the State is supreme as is that of the United States over the matters ceded by the States to it, the United States.

The facts do not give jurisdiction to the United States Court under the Constitution (Art. 3, sec. 2). It is not a case arising under the Constitution or any treaty of the United States. Does it arise under a law of the United States? It is admitted that the statute of the United States does not make the jurisdiction of the military court exclusive of the civil. It is the law of nations which, according to the opinion, operates to exclude the jurisdiction of the State court. A case arising under the law of nations is not one of the cases which the Constitution enumerates as within the judicial powers of the United States.

The purpose of the exemption being to protect the army from loss of service of one of its members, the military alone could put in operation the machinery to secure his service.
The right involved in the Coleman case was the right of the United States, not the right of Coleman. It was the right of the army to his services, not his right to commit a crime without liability to be punished for it. It is founded on the idea that the service of a soldier in war is paramount to any civil obligation and so must be beyond the control of the civil authority. The fate of an army might depend upon the service of a specialist or a leader whose place no other could fill. Therefore the military must have unlimited discretion. But that discretion implies the power to waive the claim as well as to insist upon it. The military authority only could assert the right, it alone could set up the claim to prevent the civil authority from exercising its normal jurisdiction. The criminal could not be the judge in his own case, that he was so indispensable to the army that the ordinary course of justice should be turned aside. The law would regard even the demand of the military, if made on any ground but that of the public need, as a wrongful exercise of power to which it would reluctantly yield. The decision of the court takes no notice of this point, though it clearly shows that the exemption pertains alone to the need of the army for protection from molestation of one of its indispensable parts. Of course the right to demand the soldier for service ends with his discharge from the army or the end of his term of service, but neither the executive nor the military was a party to the proceeding against Coleman, or moved in his behalf.

It seems clear then that the right to punish, the concurrent jurisdiction is not even suspended and a fortiori not destroyed.

There seems to be no good reason to suppose that in any country in Europe if a soldier of an invading army was caught by the civil authorities and proceeded against for an offence not connected with his duty as a soldier and the military found it not convenient to try him, and so chose to leave him to be dealt with by the civil courts of the invaded country, there would be anything in the law of nations to prohibit the courts of that enemy's country from executing its laws upon him.

* The converse of this was held in the case referred to by Halleck at page 782 of his work, related by Ortolan, of a Frenchman who was charged with a crime in a French Court committed in Spain during the military occupation of that country by France in 1811. The jurisdiction of the French court was denied, as will be seen by looking into the trial, upon the ground that the courts of Catalonia alone had jurisdiction.
If this be so it is clear that by the occupation of the enemy’s country the law is not abrogated, but the power of execution is merely suspended or rendered impracticable by circumstances — by circumstances not affecting the law, but interposing obstacles in the way of its execution, obstacles dependent upon military exigencies and subject to military discretion to set up or remove.

The same doctrine was held by Attorney General Toucey in the case of Captain Foster for a homicide committed in Mexico during the military occupation of that country by the armies of the United States.

See 5th Volume of Attorney General’s opinions, 55, 56.

Marshall, C. J., in the decision of the Cranch case recognizes the right of a nation to punish an ambassador who by the gross infraction of the laws of the country to which he is accredited, has forfeited the privileges accorded to him by the law of nations* and his privilege is of a character more nearly personal and of a much higher dignity than that of the soldier. He held that “The Exchange” had come into the American territory under the implied promise that while necessarily within it and demeaning herself in a friendly manner, she should be exempt from the jurisdiction of the country.

The gist of the opinion is contained in a single sentence which I now quote, “The laws of Tennessee with regard to offences and their punishment, which were allowed to remain in force during its military occupation did not apply to the defendant as he was at the time a soldier of the United States, and subject to the articles of war. He was responsible for his conduct to the laws of his own government only, as enforced by the commander of its army in that State.” The opinion admits further on that if caught by the adversary forces he might be summarily tried and executed and the United States could not have complained. But suppose that the military adversary had handed him over to the civil authority while they temporarily held the line or during a longer restoration of Confederate authority he had been tried and executed by the civil authori-

* See some discussion of this point in Ld. Campbell’s Lives of the C. Js., Vol. 1, page 347, in the matter of Don Panteleon Sa, brother of the Portuguese Ambassador, executed by Cromwell for murder.
ties, for the civil offence, would that have been judicial murder? If not this is as clear as possible an admission that the law remains in force though impossible of execution by reason of the paramount power of the occupying forces.

Coleman had committed no offence against the laws of the Confederate States in the national capacity they sought to establish. He was not subject to the laws for the regulation of the Confederate army, the articles of war, for he was not a soldier of that army. For a murder on his own private account, how was he responsible to the Confederate military power otherwise than any other citizen who had committed a like offence upon some private grievance? What privity existed between him and the Confederate force different from the position of a private citizen of whom the Confederate military had no jurisdiction or control? True, the United States could not complain if he had been hung by the Confederate military with or without trial, nor could they if a private citizen was executed for a like offence in the same summary way.

All that seems to be involved therefore in this position appears to be that the Confederate force might execute him without fear that the United States would retaliate by summary execution of some innocent Confederate prisoner. But what more right in this view of the matter, would they have to complain if the Confederates had handed him over to the civil authorities and they had hung him after a trial under the sanctions and safeguards of a civil judge, an impartial jury and a well defined law pre-ordained for all such cases.

But suppose the result of the war had been different and the Confederate States had been established, would it then have been murder for Tennessee to have hung Coleman under the law that "did not apply to him."

Perhaps as conclusive a test as can be applied is this: The Confederate soldier was on principle as completely within the protection of the laws of war and of nations as the Federal soldier. Suppose one of Morgan's men had committed rape or murder in Ohio, and had been caught after peace was restored, and punished by civil power. Would it ever have occurred to anyone that he was exempt from punishment by that law for
his acts done not as a soldier, but in violation of his military as well as his social duty!

War has too many horrors as its necessary consequence to allow to be withdrawn any of the restraints upon atrocities forbidden by its rules, but not preventable by its discipline, unless for predominating reasons.

Note.—This case of Coleman is cited as authority in the case of Dow vs. Johnson, 10 Otto, 158. That case, however, stands upon grounds that are much stronger than the Coleman case. General Dow was sued and judgment obtained in a Louisiana Court during the war, and while Louisiana was occupied by United States forces, on the allegation that a subordinate Captain Snell had under secret verbal order from General Dow taken private property of the plaintiff Johnson, not properly seizable by the laws of war. This judgment was held to be void for want of jurisdiction by the civil authorities over the army. As it was rendered during the war and the hostile occupation of the State by the United States army, the question involved differed widely from that in Coleman's case, in which the judgment was rendered after the war ended in the Court of a State in amity with the United States, and occupying the same relation to the Union that she held before the war. The difference between the temporary suspension of the right to exercise jurisdiction during hostile occupation, and permanently dispensing with the law, between the right to enforce the law on the one hand and the existence of the law on the other goes to the root of the whole matter.
LAW AND LAWLESSNESS.

BY JUDGE SELDEN P. SPENCE.

Gentlemen of the Bar Association of Tennessee:

I cannot refrain from expressing the real pleasure which I have in attending this meeting, and may I say that the subject which I have selected, "The Crime of Evasion," can, in my judgment, have no better place for its presentation than in the Southern States of our Union, where the commercial spirit of the age in its avarice and greed has as yet the weakest hold upon our profession, and where it is still remembered that "Happy is the man that findeth wisdom, and the man that getteth understanding. For the merchandise of it is better than the merchandise of silver, and the gain thereof than fine gold."

It is the South who gave us Thomas Jefferson and the Declaration of Independence; James Madison and the Constitution; and John Marshall, the interpreter thereof, a mighty triumvirate of lawyers without whom, humanely speaking, constitutional law could never have existed as it does in this land.

THE CRIME OF EVASION.

There is a lawlessness of evasion as well as of violation. A lawlessness that seeks and too often secures the sanction of the lawyer that is the burden of my theme.

In this day the disregard of law most dangerous in these United States is not the crime of the brutal criminal who robs or murders or burns; for watching him with constant vigilance are the officers of the law, empowered to arrest at once on the commission of the crimes, and moreover the evidences of his criminal act are so open and the evil effect upon the community so immediate that from the moment of the wrongful act, if indeed not before, the criminal himself becomes an outcast, hiding and hunted.

Concerning this class of crimes in general, confined as they are to the ignorant and the degenerate; to those who are without
either moral, social or financial responsibility, I have at this time nothing to say.

The lawlessness — none the less dangerous — to which I direct your attention, is that disregard of law on the part, perhaps of those who are of gentle birth; who have had the advantage of a liberal education; whose fortunes have been accumulated and preserved by virtue of the power of the very law which they despise; of those who with righteous indignation would proceed, as to a public duty, against the common thief or thug, who may have deprived them of their money or trespassed upon their persons and property.

There is a treachery in the time of war, and the guilty traitor is promptly hung. There is as well a traitor in the time of peace; he it is who by his speech or counsel or conduct debauches the law of the land.

Lawlessness such as forms the subject of this paper has not the excuse of ignorance; it is conceived in selfishness and greed, and is too often brought forth with legal mid-wifery and is possible only because of and where exists a low regard for the dignity and power of the law on the part of those who are either the immediate transgressors or on the part of those who, mainly of our profession, by counsel and assistance, abet the crime.

The lawlessness of evasion exalts gold above character, and is more concerned about the amount of gain than with the manner of its getting.

It regards law not with respect, but rather as the burglar views the lock that separates him from his loot or locates the watchman that awaits his egress — as something to be overcome or avoided.

Strange as it may seem this lawlessness of greed believes in the strict enforcement of the law against the unfortunate or the victim of evil association and protests violently against leniency in such cases in either prosecution or pardon, but when the law comes in conflict with the lust of gold or is invoked for the protection of the people either to prevent restraint of trade or to restrict monopoly in regard to articles generally used or to prohibit discrimination in favor of the rich and powerful and against the weak or to enforce the assessment and payment of
taxes, in an instant the law thus invoked has lost its majesty and is alleged to have become at once an instrument of oppression to be resisted or evaded by every means which money, friendship, brain or technicality can suggest.

In this land of ours where every citizen — as the Supreme Court of the United States has put it — is a constituent part of the sovereignty itself, the man who earns his living with his hands has the right to expect and demand that every corporation, engaged in quasi public business shall transport people or freight or accept employment from all who desire it at the same price and on the same terms for one as for the other, and that merely because a shipper or trader may be rich or powerful he should not be allowed greater favors or reduced rates which are not as well open and known to everyone who has need of this public service, and his right to thus expect and demand in principle is as firmly and righteously established as is the right of him who has acquired a fortune to firmly insist that it be preserved from theft or trespass.

Laws preventing discrimination in freight and passenger rates that apply to railroads.

Laws concerning mercantile and manufacturing companies that restrict dangerous combinations or prohibit unfair monopolies, or regulate the payment of capital stock or the operation of the business of the company.

Laws that provide when and how arrests may be made or property seized.

Laws that prohibit false testimony or collusion either to secure licenses or to obtain decrees or to evade taxation, and that thus give force to the oath which binds the taker not only to tell the truth, but to tell the whole truth and nothing but the truth, are all laws clad with the same majesty; deserving of the same respect; entitled to the same enforcement as are the laws upon the statute books concerning murder or rape or arson.

The difference is one of degree, not of principle; both merely because they are laws, if for no other reason, have a right to respect and enforcement.

There is a law against rebates, direct, or indirect. The railroads must ship for anyone a carload of meat at the same price
for which it will ship to the same destination a carload of similar merchandise for any other shipper.

The law is equipped with penalties. What can be said in defence of the practice, now admitted, whereby all bills of lading for similar shipments bear, it is true, upon their face the same amount of freight, but where the favored shipper finds on his desk, or in his mail the morning after the shipment a sum of money, without evidence, it is true, as to what account it is to be credited, but with its source and purpose well known to the recipient.

Or what can be said of the other practice by which the meat packers owning their own cars were charged, it is true, the same price for the shipment of a carload of meat that the independent butcher was charged, but who in fact were paid a rental for the use of the car three times what would have been charged or paid to any other railroad or car company for the use of a similar car and which resulted therefore by a simple subterfuge in a mere reduction of freight charge to the favored shipper.

That the attempt to evade or disregard is constantly and often boastfully and too frequently successfully accomplished needs no proof — miserabile dictu — before a company of lawyers.

For over forty years of their history the railroads of this land have been free from regulation on the part of the State, and for over fifty-seven years from regulation on the part of the Federal government, and so long accustomed to unbridled license, it may be natural enough, but is no less wrong, for them to believe that their rights are infringed when regulation is proposed and that therefore they may evade and disregard the law and they may yet have to learn by a more bitter experience that in our jurisprudence there cannot be a vested right in a wrong.

Nor less ridiculous is it for them to vehemently assert, when seeking either reduction in taxation or a greater exercise of the right of eminent domain, how public is the character of their service, and how useful and servient it is to the people, only to deny with even greater vehemence that same public
character of service when State or Federal regulation or supervision is suggested.

They are, like Sir John Fortescue, who, when Lord Chancellor, during the War of the Roses, wrote an elaborate treatise to support the House of Lancaster, and who when Edward was at length firmly established, secured his pardon only by the writing of an equally elaborate and conclusive treatise in support of the House of York.

Better far were the banking institutions of this law advised by our profession.

Once they were active in politics, opposing by every means in their power any attempt to regulate or supervise them.

Credit, said they, is too fragile a thing for publicity.

They are now where every public or quasi public corporation ought to be — out of politics, obedient to the law, and prospering under the very regulations which once they fought, and which by reason of their acquiescence have developed not as a whip to punish or drive them, but after conference and with consent, into a means to increase their stability and usefulness.

Aside from the lawlessness of the act it is myopic in the extreme to attempt to evade or to disregard the law, for every evasion, often successful though it be, in due time brings sterner regulation until the people justly indignant at repeated violation are apt to exact laws overharsh in the effect of their operation, but which are caused entirely by the lawlessness of those whom they affect.

A stream can oft be guided and its channel changed to accommodate the wish of an abutting owner, but woe be to him who attempts to resist the steady flow that for the moment seems so powerless.

The very hour of his seeming victory, as he looks at the obstruction that for the time has stopped the river's course brings him nearer to his overthrow.

It were well in these days if the burning demand of Cicero in his arraignment of Cataline, could be applied in regard to the laws of the land: "sit denique inscriptum in fronte unius cuisque civis quid de republica sentiat," and that there might be written in letters clear enough for all to read what every citizen thinks concerning the enforcement of law.
My brothers of the bar, ours is an exalted profession; next to that vocation which has to do with the eternal welfare of mankind and which brings "good tidings of great joy which shall be to all the people," is to be ranked the calling to which we have devoted our lives, and that has to do with the life and liberty as well as with the property of mankind.

Those great words of Thomas Hooker are true today: "Of law it must be acknowledged, she hath her seat in the bosom of God; her voice is the harmony of the world. All things in heaven and earth do her homage. The very least as needing her protection, and the very greatest as not exempt from her power."

It may be that in verse or satire, as in the days of superstition and ignorance or in the fantastic schemes of visionary writers, that the lawyer has been, as indeed he is often in this day, held up to ridicule or persecution.

When the Germans exterminated Varus and his Roman legions they cut out the tongues of the advocates and sewed up their mouths in order that, as they said, the vipers might cease to hiss.

The barebones parliament called lawyers the "Sons of Seraiah," and suspended for a month the high court of Chancery which escaped absolute abolition only by the casting vote of the speaker.

Peter the Great, when in England, was taken to Westminster Hall, and curiously inquired who were those in black robes who talked so much. Upon learning that they were lawyers, he remarked, "I have two in my empire, and when I return home I will hang one of them."

Jack Cade, the Irish rebel, when he had possession of London in 1450, said: "The first thing to do is to kill all lawyers."

Coleridge in his "Thoughts of the Devil," writes: "He saw a lawyer killing a viper on a dung hill hard by his stable. The devil smiled, for it put him in mind of Cain, and his brother Abel."

Tennyson speaks of the "lawless science of the law." That codeless myriad of precedent; that wilderness of single instances, through which a few by wit or fortune led, may beat a pathway out to wealth and fame."
Shakespeare says: "In law what plea so tainted and corrupt but being seasoned with a gracious voice obscures the show of evil."

Plato in his Republic; Moore in his Utopia, and Edward Bellamy in his "Science of Government," all relegate the lawyer to either obscurity or disgrace.

But in the great events of life; in the hour of the Magna Charta; in the day of the Bill of Rights; in the formation of our own Declaration of Independence, and Federal Constitution, of which Gladstone said, it is "the most wonderful work ever struck off at a given time by the brain and purpose of man," and more important yet in the years of its interpretation and enforcement the lawyer has been the brain and character and power that has made these great achievements possible.

Governor Colden wrote to the British Crown when the subject of taxation without representation was the righteous plea of an outraged colony that "the lawyers are the authors and conductors of the present sedition," and when that "present sedition" had in the providence of God developed into a free and independent nation, power was given to the lawyer greater than to any other calling in the administration of government.

In the legislature the lawyer always has been and always will be prominent; in the executive department of government he has ever held a high place, for every president of these United States with one exception, has either been a lawyer or a soldier, or both, and out of twenty-five Presidents, nineteen of them have been lawyers.

In the acquisition of territory; in treaties with foreign nations; in laws that involve great questions, constitutional or political, the lawyer both as legislator and executive has held commanding positions.

But in the judicial department of government the lawyer is supreme, for when the lawyers as advocates have presented their respective views upon the question at issue, and the lawyers as judges have finally, in a court of last resort, decided the question, no power on earth, either legislative or executive can alter or destroy the ruling.

New laws may necessitate different decisions, but these new laws in turn come before the same legal tribunal for final ap-
proval. One of the three great divisions of government is thus confined exclusively to our profession.

Such power is vested in the bar in no other country upon earth. In some an hereditary body of peers, perhaps without legal training, have the power of final decision, in matters criminal and civil; in others the Court and the advocates as well are the creatures and the tools of their royal rulers; with us no man can even enter our profession without the approving judgment of those with whom he seeks to be associated, and with us alone through every step of the way from the first proceeding to the final decision is every question concerning the life, liberty and property of mankind in both civil and criminal litigation, subject to the lawyer, and to him alone for determination.

And more than this, so well satisfied have the people been with the fair exercise of the power vested in the bar by the Constitution that of the fifteen amendments adopted, only one (the eleventh) is any limitation upon the judiciary, and that limitation had its origin not in the lack of confidence in the Courts, but in the pride of State which sought to prevent any sovereign state from being the defendant in any suit in law or equity, commenced or prosecuted against any one of the United States by citizens of another State, or by citizens or subjects of any foreign State,” and to the glory of our profession may it be said that of the large number who by appointment or election have been called to sit upon the bench, Federal or State, Appellate or Nisi Prius, they have with exceptions so rare as to need no comment, upheld the dignity of the profession by the impartial and honest conduct of their office.

They have differed in ability; of some of them as of Chief Justice Marshall, it might be said as Mr. Justice Buller wrote of Lord Mansfield: “Certain judgments of his are of such transcendent power that those who knew them were lost in admiration at the strength and stretch of the human understanding,” of all of them with pride it can be said (and it is a tribute to the profession from which they are chosen) that their judgments were ever above personal influence and never intentionally in violation of right or justice.

Well may John Adams have written, “At the bar is the scene
of independence. Integrity and skill at the bar are better supporters of independence than any virtue, talent or eloquence elsewhere."

And true is the observation of Justice Miller in the Garland case: "Lawyers are by the nature of their duties the molders of public sentiment on questions of government."

The lawyer of today, the true lawyer, true to the history of his profession, to its high purpose and its noble aim, is the man, found more often in the town and country than in the city, who counsels and pleads for what is right, not for what is only expedient or desired; who can be found ever ready to assist in the preventing or remedying of wrong, never in the accomplishing of it; who regards his duty to God, to his country, to his profession as above purchase; who acts for his clients' rights, not as their hired slave; in whom character, above even learning or genius or eloquence, is the great balancing power of his life.

Who like John Adams in defending the British soldiers accused of murder because of the Boston massacre are brave enough if need be to stand against popular clamor, even if unlike John Adams they fail to see public indignation against them turned to public praise. Of this profession, my brethren, to whom so much has been entrusted, much is rightly required. The glorious history which is its pride has lost its virtue if it remains only a record of a great past without force as an incentive for the future.

I have thus spoken of lawlessness and the lawyer, because without the lawyer, the lawlessness is practically impossible. Men instinctively seek the advice of those learned in the law before they actively attempt to disregard its plain provision or to guard against the effect of its violation.

Insurance companies do not attempt to influence legislatures without legal advice.

One single company is shown to have paid to a single lawyer one hundred thousand dollars annually for the past seven years for no other purpose than to influence the various legislatures, and he boasts of his employment in a printed defense, saying: "The mass of proposed legislation upon insurance topics, including taxation, was annually increasing in such volume that
unless concerted action was taken the companies might be practically legislated and taxed out of existence.'"

We feel that if a secret service was a permissible government agency, a confidential service would be the only effective, and at the same time, proper plan for the welfare of the most extensive commercial interests in the world, the life insurance business of the State of New York. This confidential secret service was decided upon as the only feasible plan of protection," and then he naively continues, "By this plan I was able to have as my representative frequently men who would not have accepted the retainer were it known that they were interested in legislation for insurance." A comparison between secret service and confidential service, which, as Mr. Lehman well pointed out in his recent address at the University of the State of Missouri, can only be understood on the theory that legislators are seeking to do wrong, for the secret service of the government is aimed at law breakers, while the confidential service of the insurance companies was created to deal with law makers.

Nor do railroads arrange rebates, and drawbacks and private concessions to large or favored shippers, nor does any great combination of capital take form either as to the actual value of what goes to pay up its capital stock or as to the purpose and manner of its future operations, nor do witnesses play fast and loose with truth, nor clients regard affidavits as legal technicalities without the counsel and assistance of members of our profession.

Can members of our profession still retain their standing among their brethren if their occupation in whole or in part is that of a professional lobbyist, appearing for hire, not before committees or at the bar of the house in open support of or antagonism to any proposed measure, but secretly, by personal influence or by use of the pass, or by political power, if not indeed by the coarser means of the bribe, seeking to either accomplish or kill legislation, an employment which, whether in violation of an express statute or not, is a flagrant disregard of the fundamental principles of a representative government?

Is it true today that the lawyer who will not counsel the doing indirectly of that which cannot lawfully be done directly is
regarded as either a crank in character or inefficient in ability for modern practice?

Must a man be half a knave to be a successful lawyer?
Is ability to be measured alone by fees and not by character?
Is commercialism to dominate the practice of law?

Such is not the history of our profession; nor is it consistent with its purpose, or its aim. The doctor who gives drugs only because drugs are wanted, who helps to preserve or destroy embryonic life as children, are either desired or despised by his patient is a charlatan or abortionist.

What shall be said of the lawyer who counsels or assists his client, not according to the law, but in direct violation of it, and who has himself before God solemnly sworn that he will faithfully demean himself in practice and to the best of his ability and understanding will support and uphold the Constitution and the laws of his State and his country.

They love truth best who to themselves are true,
And what they dare to dream of, dare to do.

Let him who plans a burglary try to obtain from any member of our profession counsel as to how he may best cover the tracks of his nefarious undertaking, or so complicate the circumstances as to prevent his detection or conviction, and he will speedily discover, as well he ought in how high esteem is held the law which it is attempted to violate, and in how great contempt is held the criminal; but let him, with high character in the community and with high standing at the bank, who plans to disobey the law concerning rates of interest, or regulating the payment of capital stock in a corporation or forbidding rebates, discriminations or draw-backs to shippers or any other law that stands squarely in the way of his desire for business or for gain apply for legal help, and how many are there in our profession who listen to his case without hesitation and who counsel without shame, and profit without regret from their participation in the lawlessness of their employer.

In truth it may well be doubted whether the average practitioner takes time to "first endure, then pity," before he eagerly embraces both the employment and its emolument.
The receiver of stolen goods will obtain from our profession no aid or comfort in planning for his dishonesty, but the receiver of rebate from the railroad, who in childlike innocence asks his counsel whether he may legally employ a man to look after his shipments and then safely retain large sums of money that are handed to him secretly by this same employe, coming he knows not whence, a pretended, purposeless and unknown donation, is too apt to receive legal advice according to his liking; the lawless advice of a lawless lawyer.

The lawyer cannot be less honest in professional career than in private life, nor can he counsel the evasion of one law, and the keeping another without inciting the spirit of lawlessness and degrading the dignity of law without which law is either obeyed only by brute force or becomes absolutely ineffectual.

The Chinese are notoriously corrupt in public life, and conspicuously honest in mercantile pursuits. They cannot always be both. As a nation either commercial integrity will redeem official dishonesty, or the corruption in public life will become prevalent in trade.

It does not follow that the lawyer can rightly be identified with only good causes or be engaged only on behalf of a thoroughly innocent man.

Judge Ellsworth, afterwards chief justice of the United States, once said to Jeremiah Evarts, who was anxiously inquiring as to the right of a lawyer to maintain the side of a law suit that was doubtful or wrong, "any cause that is fit for any court to hear is fit for any lawyer to present on either side," for neither judge nor lawyer can with certainty determine the real right of a cause until both sides are heard, and even then the weakness and the wrong which clings to every thought and act and judgment of man too frequently prevents complete justice.

Sir Matthew W. Hale in the early years of his practice, had much misgiving about undertaking causes in which he did not thoroughly believe, but lived to change his opinion as case after case which he had refused to consider were finally decided to be abundantly good.

A lawyer may well undertake a doubtful case, but never can he righteously advocate what he knows is not law nor can
he counsel or assist in the evasion or disregard of law. It is one thing to secure for a client his rights concerning a past transaction, to insist that his guilt be legally proven, to claim in his behalf all that to which he is by law entitled. It is another thing to counsel and assist concerning a future course of action, which either evades or disregards the law.

The bar of the United States containing perhaps 100,000 members, many times greater in number than that of any country in the world is doing more work today and better work than ever before in its history.

The time when months could be given to the preparation of opinions by the bench, or days devoted by the advocate to argument, and weeks to conference, belongs, except in unusual cases, to the past. Things must be done in every vocation and trade of life not less well, but far more quickly and the lawyer is no exception to this rule. In a sense he has of necessity changed somewhat with the times and has taken to himself more of business than once he had, but with it all there is in the practice of law something far greater than mere financial gain. It is not and never can be a mere commercial pursuit. The profession that has come down to us is laden with its trophies of rights maintained, wrongs overthrown, liberties secured and preserved, innocence established, guilt punished, and it can in our day have no greater glory than to uphold and maintain the law of the land, and refusing to counsel or assist in its evasion or violation thus establish by practice and counsel as well as by precept among the people that general respect for the law which in a government like ours, of the people and by the people, as well as for the people, is absolutely essential.

Note.—This address was a re-delivery, by request, of an address delivered before the joint meeting of the Bar Associations of Arkansas and Texas, at Texarkana, July 11, 1906.
THE CITIZEN AND THE STATE.

BY JAMES C. BRADFORD.

What are the true functions of Government and the proper limitations of its authority? Or, to state it differently, how far may the citizen conduct his private business and regulate his private conduct free from the interference of the State? This is a question of great practical importance, and is intimately connected with and vitally affects the prosperity, happiness and well being of the State and its citizens. Probably no other question of Government has had the more thoughtful attention of statesmen or philosophers, or has been more fruitful of discussion, or has occasioned wider differences of opinion.

Individualism is the antithesis of Absolutism or Paternalism. Organized Society or the State, of necessity, implies that the citizen has surrendered something of that wild and unrestrained liberty which he possessed in a state of Nature, if any such state ever existed. Government, as we moderns now understand it, is of laws and not of men. Every member of organized society is, therefore, born into it, or becomes by adoption a member of it stripped and shorn of the power to do whatever he pleases, or to do things allowable or permitted in whatsoever manner he desires.

Individualism, either as a theory or as a practical rule of government, is not of great antiquity, but is comparatively modern. It is of English birth and origin, and became a potent factor in British political thought and action only after the Revolution of 1688.

It had no place in the politics of the Greek or the Roman Republics. In those States the individual was nothing, the State was everything, and from it he could withhold nothing — neither life nor property; there were no limitations on the power or authority of the State.

In Rome, in all the revolutions and endeavors after reform, there was no attempt to impose limitations on the State — there was never any effort to assert the so-called rights of the indi-
individual in contradistinction to the State. Revolts and revolu-
tions were frequent for restrictions of the powers of Magis-
trates, but it was always admitted and allowed that the com-
munity or State was supreme, and the people ought not to gov-
ern but be governed. And the same was true of the Greek
Republics.

The fundamental political principle of both was, that there
was no limit to the omnipotence of the State, or to the area of
its activities, and that the individual citizen had and could
claim no rights, either of person or property, which were not
held in complete subordination to the will of the community.

The same principle of absolutism came, by natural descent,
through the Empire, to those European States which were
erected on its ruins.

In France, until the Revolution, it was recognized as axiom-
atic, that all the powers of the State were concentrated in the
Sovereign, and that he was the overlord of all his subjects,
who had no rights other than his complaisance and favor al-
lowed. The celebrated phrase of Louis XIV, "L'etat, c'est
moi," sententiously expressed the conception of the State which
was generally recognized on the Continent at the time it was
uttered, and for nearly a century later.

In France, during the second quarter of the eighteenth cen-
tury, a few men of the type of Montesquieu and D'Argenson
inquired into, speculated upon and wrote about government, but
it was reserved to the brilliant Rousseau in 1762 to give to
Frenchmen and to the world a theory of the rights of man,
clothed in such attractive and fascinating garb, as to give an
impetus to thought and action that did not stop short of the
most tremendous social upheaval and revolution recorded in
the annals of history. The publication of the Contrat Social
marks an epoch in the history of France and of the world.

Conditions in France at the time favored the quick and eager
espousal and adoption of the doctrine of Rousseau. French
society then contained two large groups of people to whom his
writings especially appealed. The first was an upper stratum
of educated men, among them many of the nobility, who were
jealously excluded from active participation in political affairs;
and the other was the body of the people, who for centuries
had suffered the cruelties, indignities and humiliations, to say
nothing of hunger and poverty, which a luxurious and autocratic Court, and a proud and selfish nobility heaped upon and
burdened them with.

The publication of Rousseau's doctrines, and their eager
acceptance by the masses of the French people accelerated the
Revolution of 1789, and proved a potent factor in reconstructing
the political system of that country. "Liberte, Egalite and
Fraternite," are three words which greet the eye of every traveler in France, and they are written upon every public building,
monument or memorial. They are the visible expression of
French political thought and aspiration, if not of accomplish-
ment.

Rousseau teaches that men's first, or natural, estate was that
of perfect individual freedom; but in the course of time a point
was reached at which obstacles to his continuance in the nat-
ural condition became insuperable; and that from necessity
they unanimously entered into a social compact under which
the State, Society or Community was formed. The effect of
forming the State was the absolute alienation or surrender by
every individual of his person and all his rights to the aggre-
gate community. The Community or State then becomes sov-
ereign and all powerful. The State or Community may be dis-
solved by the people as it is their creation, or they may continue
it and appoint other agents to conduct its affairs. The people
act in open assemblages, and not through representatives.¹

"Undoubtedly," says Mr. Huxley, "Rousseau's extremely at-
tractive and widely read writings did a great deal to give color
of rationality to those principles of '89, which even after the
lapse of a century are considered by many good people, to be
the Magna Charta of the human race. 'Liberty, Equality and
Fraternity,' is still the war-cry of those, and they are many,
who think with Rousseau, that human sufferings must needs
be the consequences of the artificial arrangements of society,
and can all be alleviated or removed by political changes. The
intellectual impulse which may thus be fairly enough connected
with the Genevese dreamer has by no means spent itself in the

century and a half since it was given. On the contrary, after a period of comparative obscurity (at least outside France), Rousseauism has gradually come to the front again, and at present promises to exert once more a very grave influence on practical life.\footnote{1}

And Sir Henry Maine\footnote{2} observes, that the strictly juridicial axiom of the Roman lawyers (omnes homines naturæ æqualis sunt) after passing through the hands of Rousseau and being adopted by the founders of the Constitution of the United States, returned to France endowed with vastly greater energy and dignity, and that of all the principles of 1789 it is the one which has been least strenuously assailed, which has most thoroughly leavened modern opinion, and which promises to modify most deeply the Constitution of societies and the policies of States.

Much of Rousseau's political philosophy was not original with him, but was borrowed from Hobbes and Locke, with whose writings he was undoubtedly familiar. Thomas Hobbes, who was a thinker and writer of marvelous power, assumed the "natural equality" of men, and a primary "state of nature" in which every man strove for the full exercise of his "natural rights" and which was, therefore, a state of war of each against all. He further assumed that, in order to obtain the blessings of peace, men entered into a contract with one another, by which each surrendered the whole of his natural rights to the person or persons appointed by common consent, to exercise supreme dominion or sovereignty over each and all the members of the Commonwealth constituted by the contract. The authority of the Sovereign (whether one man or many, monarch or people) to whom this complete surrender of natural rights was made, was thus absolute and unquestionable. From the time of the surrender, the individual member of the Commonwealth—the citizen—possessed no natural rights at all, but in exchange for them he acquired such civil rights as the sovereign despot thought fit to grant and to guarantee by the exercise of the whole power of the State, if necessary. Civil
law, sanctioned by the force of the community, took the place of natural right, backed only by the force of the individual. It followed that no limit is or can be set to state interference.¹

It will be observed that, according to both Hobbes and Rousseau, the individual rights of the citizen are absorbed by the State, which was created by their consent, and he has no choice but to obey such laws and prescriptions as the sovereign power, the State, may create.

The a priori assumptions of a "state of nature" and the "natural rights" of man, were a great advance on the ancient and prevailing doctrine that Kings rule by divine right, and that their subjects had no rights, natural or otherwise, save those that flowed from the grace of the Sovereign.

These assumptions and their corollary, the contractual basis of the State or the community, admitted and allowed, the advance to limitations on State action and the possession by the citizen of certain rights and liberties with which the State could not interfere, was natural and easy.

John Locke is the founder and father of Individualism, and it was he who first announced and stated the doctrine in such form as to become a practicable and vital principle of government.

His views were published at a time when their acceptance by the English people was easy and necessary. The Revolution of 1688 had expelled James II from the throne, and had substituted William and Mary. Jacobite intrigues were rife, and treasons were so numerous that, according to Macaulay, they crossed each other on the Channel.

Adherents of James insisted on the doctrine of "divine right of Kings," and it became necessary for the party of William and Mary to oppose it with principles of greater liberality, more consistent with liberty.

Locke, as did Hobbes before and Rousseau after him, assumed a primitive state of Nature, and the contractual origin of the polity; but with respect to the authority of the State, he diametrically opposed them, and declared, that the surrender of

¹ Philosophical Rudiments, Chapa. VI., VII.
natural rights which took place when the social compact was made was not complete, but on the contrary, was most strictly and carefully limited.

Political and social conditions in England favored the acceptance and growth of Locke's doctrine of the limitation of the authority of the State; and later on, under the widespread influence of Adam Smith's Wealth of Nations, Individualism became a potent factor in practical politics. Wherever the principles of free trade prevailed and were followed by industrial prosperity, Individualism acquired a solid fulcrum from which to move the political world. Liberalism tended to the adoption of Locke's definition of the limits of State Action.

It is needless to say, that in America, the principle of Absolutism or the omnipotence of the State was never accepted or tolerated.

Accepting as fundamental the principle that government rests upon the consent of the people, the American Common-wealths and the Federal Government were created with powers more or less limited.

In the Declaration of Independence, we find this statement of the rights of the people and the powers of government: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable rights, that among these are Life, Liberty and the Pursuit of Happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed — that whenever any form of government becomes destructive to these ends, it is the right of the people to alter or abolish it, and to institute new government, laying its foundation on such principles and organizing its powers in such form as shall seem most likely to affect their safety and happiness."

These principles are English in their origin, and were derived by our forefathers from the Mother Country, and brought with them to the New World.

They are the foundation upon which our State and Federal governments rest. The Constitutions of our American States are aptly said not to be "the beginning of a community nor the origin of private rights; • • • they are not the cause, but
consequence of personal and political freedom; they grant no rights to the people, but are the creatures of their power, the instruments of their convenience; * * * and are necessarily based upon the pre-existing conditions of laws, rights, habits and modes of thought.'"1 And Mr. Webster said that "Written Constitutions sanctify great principles, but the latter are prior in existence to the former."2

Our Constitutions, State and Federal, presuppose the existence of certain private rights, which are natural and inherent, and which are not derived from and do not depend upon Constitutional sanctions. Those instruments contain restraints upon government, which are intended to protect and guarantee them from enroachment and violation.

The difficulty has been of the extent and limitations of the power or authority of Society or the State. Naturally there have always been and always will be differences of opinion. It would be impossible to formulate with scientific accuracy the exact line beyond which the State should not go in the performance of its just and proper functions.

The principle has been stated in general terms by Sir William Blackstone. He says, "That Constitution or frame of government, that system of laws, is alone calculated to maintain civil liberty, which leaves the subject entire master of his own conduct, except in those points wherein the public good requires some direction or restraint."3

The "public good" is a variable quantity, and what one may hold to be the "public good," or necessary, will be rejected by another.

Insusceptible of exact measurement or definition, as in the very nature of things it is, government interference in England and the United States has been greater or less according to circumstances.

In England, Individualism received a powerful stimulus from the establishment of free trade, and from the support of such advocates as Adam Smith and John Stuart Mill. In both these great thinkers and philosophers, the doctrine of Individualism

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1 Hamilton v. St. Louis County, 15 Mo. 13.
2 Webster's Works, 2 Vol. 392.
3 Blackstone's Commentaries, p. —
had powerful advocates, and their writings produced profound and lasting impressions on their countrymen. Their views harmonized and were in accord with the industrial conditions in England at the time, and the rise of democracy, and the decay of monarchical and oligarchical control of public affairs gave them strong support.

In the early period of our national life, no other theory of government was practicable. The nation was young, its population sparse, and its internal and foreign trade and commerce was small and inconsiderable. Manufacturing was confined to artisans and handicraftsmen mainly, and did not begin to develop to any considerable extent until after the War of 1812, and then principally in the New England States.

The ideas of Jefferson were generally accepted. The sum of good government, he said, in substance, was equal and exact justice to all men; freedom of religion; freedom of the press; freedom of person; the restraint by the State of men from injuring one another, and leaving them otherwise free to regulate their own pursuits of industry and improvement.1

The progress of our country, its great industrial development, and its advancement to its present station among the great nations of the earth is due in great measure to these liberal and beneficent principles.

The citizen, left free to regulate his own conduct, unhindered by the meddlesome interference of the State, was enabled to achieve for himself larger rewards for his labor and enterprise, than he could have done under a less liberal system. The prizes of life were his, if he possessed the courage and enterprise to strive for them. Special privileges were there none, but equal opportunities for all. The humblest man could look forward to the enjoyment of the fruits of his labor, without the fear of its being snatched from him by some powerful lord, or by a tyrannical government.

The stimulating effects of individual freedom became apparent in all the walks and departments of life.

Agriculture, commerce and manufacturing, and all the arts of peace were cultivated with energy, zeal and hope; and the

1 Jefferson's First Inaugural.
nation grew from the beginning of its existence in wealth and power. Hardy men, animated by the principles of liberty upon which their government was founded turned their faces to the West and subdued the wilderness, and, in an incredibly short space of time, founded new States and added them to the original thirteen. Great and populous States, large and prosperous cities, and a nation, surpassing all others in wealth and the happiness and prosperity of its citizens were built by their individual efforts and enterprise.

Englishmen also raised their country to a position of power and prosperity, unexampled except by our own, in the history of the world. That country surpassed all others until recently, in the richness and extent of her commerce and manufactures, and extended her dominion to every quarter of the globe. Many of her colonies founded by the enterprise of her people have become great and self-supporting nations. Canada and the Australasian Colonies are all, except in name, self-governing republics. The great Empire of India was acquired by the individual efforts and enterprise of a company of English merchants, who conquered and annexed it to the Crown of Great Britain.

These great achievements by Britons and Americans would not have been possible under any system of government other than that which allowed the greatest personal liberty and the freest scope to individual conduct.

Spain originally discovered, and, at one time, owned the larger share of the American Continent and islands.

France owned Canada, and all that part of the United States bounded by the Ohio, the Great Lakes and the Mississippi River, and what we know as the Louisiana Purchase. She also had the first foothold in, and claim upon, India.

Today the Spanish flag does not float over a foot of American territory, and the Great Empire of India and her American possessions passed from the control of France.

The causes of the losses of these great Empires by those two countries are easily understood. Their governments were despotisms; all power resided in the Crown; the people had no voice or share in the administration of public affairs; and they had nothing to do with the laws except to obey them as they
were prescribed by the sovereign. Individual freedom was unknown. The people were subjects, in fact as well as in name, and their lives and property were never secure from the oppressions and exactions of their rulers. Those most fundamental of natural rights—liberty of conscience, freedom of religion, freedom of person from tyrannical abuse, security of property, and its immunity from unjust tribute and confiscation—were unknown. Individual enterprise could not exist under such a system. Men feared to act for themselves—they lacked initiative and self-confidence, and business enterprise depended upon the favor of government.

Little wonder then, that these fairest portions of the earth were seized and appropriated by the people of those two nations whose characters had been moulded, and whose daring and enterprise had been sharpened and whetted by the system of government which restrained individual conduct only so far as to prevent the injuring of one by another and for the public good.

That the happiness of the American people and the wide diffusion of prosperity among them have been in great part attributable to the freedom of individual activity from the restraints and repressions of government, is undeniable; but it is equally true that this great prosperity is attended by, or has developed some dangers and some evils which have caused apprehension and alarm.

These evils and dangers, real and apprehended, which will be presently adverted to, have caused a reaction, to some extent, from the individualistic theory of government. The great development of the natural resources of the country and the very abundance of its prosperity, have generated economic and social conditions, which, it is apparent, require and call for a larger degree of governmental supervision and control. It is self-evident that in a progressive community, changed and changing conditions will influence and bring about either directly or indirectly, corresponding alterations in its functions and in its policies. A nation, like the United States, must, of necessity, alter its public policies, and, if necessary, change its laws to conform to altered conditions. A nation whose Constitution and laws are rigid and inflexible would soon find itself in a
state of arrested development. We need only point to China for example. Almost the earliest in the field of civilization and invention, it for centuries has remained stationary, because of the inflexibility of its laws and the fixity of the habits and opinions of its people.

Every civilized State of modern times has been obliged, within the last century, by reason of changed and changing economic and social conditions, to alter its Constitution and laws. Of all the European governments, none have remained stationary except Spain and Russia, and these two, within the past few years, have shown the ferment and impulse of democratic ideas and of economic and industrial progress.

In the United States, most of the changes in conditions and laws have been wrought by peaceful means. The additions to the organic law of our Union were brought about by the Civil War; but the amendments to the Constitution have affected but slightly the relations of the individual citizen to government.

Both the State and the General Government have been busy of late years in enacting legislation designed to restrict or control, to a greater extent than formerly, the freedom of individual conduct. The impulse to this species of legislation was first felt by the States, and, later, by the General Government.

This legislation has taken a wide range, and is based upon the theory and principle that the power of government extends to the protection of the lives, limbs, health, comfort and quiet of all the persons, and the protection of all the property within the State; and that persons and property are subject to many restraints and burdens in order to secure the general comfort, health and prosperity of the State.¹

The movement to larger State control emanated from the people themselves, and Mr. Bryce, the author of The American Commonwealth, says that the tendency of American democracies to resort to the policy of larger governmental control is one of the political phenomena of modern times.

The first in the field of restrictive legislation were the States; and after them the general Government; and this was so upon

¹ Beer Company v. Massachusetts, 97 U. S. 25, 33.
the theory that the States, being closer to the people, might the more easily and effectively deal with those subjects that required supervision or control.

Some of the subjects upon which the States have legislated are here noted.

Probably the first, and certainly that which appealed the most strongly to the popular conscience, was the sale and use of intoxicating liquors. The evils of intemperance have hardly been exaggerated by the most strenuous advocates of temperance legislation. The mischievous activity of the liquor interests in politics, and the offensive manner in which they too often conduct their business, gave a strong impulse to the movement. Some of the States enacted prohibitory laws which put an end, so far as legislative enactments could do, to the traffic in and consumption of alcoholic liquors. Such extreme measures, however, did not commend themselves to the greater number of States and they have been contented with such laws as tended to regulate the business and to minimize its evils. Popular sentiment in favor of legislation on this subject has grown very rapidly and there are now few of the States which have not enacted laws designed either to destroy the liquor traffic absolutely, or to restrict it within narrower and safer bounds.

Other instances of legislation of this nature, but by no means all, are the following:

Regulations concerning the public health, such as quarantines, the sale of drugs and patent medicines, the preparation by manufacturers of foods, and the like.

The regulation and sale of fertilizers manufactured for agricultural purposes.

The regulation of hunting and fishing, so as to preserve game and fish from destruction.

The preservation of forests, by restricting the cutting of trees, and providing for the doing or not doing of such things as will result in the destruction of timber growth.

The imposition of taxes on dogs, designed to diminish the number of canines, and to promote sheep industry.

Regulation of the use of vehicles of travel and locomotion,
and the speed at which they are run, particularly the "deadly" automobile.

The prohibition of the importation of cigarettes into the State, that the use of them may be discouraged.

The shortening of the hours of labor, and factory laws designed to prohibit the employment of children of tender years.

The prohibition of combinations in restraint of trade, trusts and monopolies.

The requirements of railroads to fence their tracks, to prevent the intrusion of live stock and their injury or destruction.

The regulation of rates chargeable by common carriers of freight and passengers.

The requirement of the adoption and use of safety devices, such as the air-brake, in the operation of railroads, designed to protect the lives of employes.

It will be noted that the domain of this species of legislation has been extended far beyond these subjects, like the public health and the liquor traffic, which were admittedly within the sphere of government regulation.

The present year has been fruitful of very drastic legislation by the Congress of the United States on subjects which hitherto have either been left to State control, or have been left untouched by the States.

I refer, of course, to the bill regulating freight rates of common carriers and enlarging the jurisdiction of the Interstate Commerce Commission over them, to the Pure Food Bill, and to the Meat Inspection Law.

This legislation by Congress is but another evidence of the strong tendency and purpose of the American people to confer upon government larger control over the business affairs and conduct of its citizens.

What, it may be asked, is the cause of this great change in public sentiment, of this strong reaction from the non-interference theory of government?

As has been stated, changed social and economic conditions bring about alterations and modifications of the laws of a country.

In that period of our history prior to the Civil War, the population of the country was sparse, its commerce and manufac-

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turing industries were comparatively small, and the latter were mainly controlled and conducted by individual means and enterprise.

In 1855 there was not more than twenty-eight millionaires in the whole country. Then the largest estate was that of Stephen Girard, whose fortune was said to be seven millions of dollars. The wealth of the country was more evenly distributed and the conditions of life were less difficult and complex.

Since then an immense transformation has occurred. By a very natural process, capital has been combined and concentrated, and there are relatively fewer persons engaged in business of various kinds on their own account than formerly. Corporations have been multiplied, and every species of business, from a peanut stand up to a railroad, are now conducted by them.

The railways of the country were, for the most part, independent lines and operated in competition with each other. Since the Civil War, and within recent years, by a process of combination, the railways of the country have been concentrated into a few great systems, traversing thousands of miles of territory and employing armies of men.

There are now in the United States more than five thousand millionaires, two thousand of whom live in the city of New York. Their fortunes range from one million to hundreds of millions. Some of them are placed at such figures that the sum is too vast to be comprehended.

One corporation alone, with a capitalization of one billion, practically owns seventy-five per cent of all the iron ore of the United States and produces the largest per cent of the output of steel and iron. This immense corporation with its great power over production, inevitably controls the prices of its products and the products of all the other iron and steel manufacturers of the country.

The sugar manufacturing interests of the country are dominated by one corporation, which with its vast capital and influence controls the prices of the raw and refined article.

So also the tobacco industry is practically within the grasp and under the control of one corporation.

Almost every department of industry is, to a greater or less
degree, dominated and controlled either by one, or a few such corporations.

Necessarily, this great revolution in the industries of the country has affected, either favorably or adversely, every private citizen and has wrought profound changes in the conditions of life.

One of the great problems of modern industrial life is distribution — how food stuffs and manufactured products may be so distributed as to reach and supply the needs of consumers. This question, it is apparent, concerns every citizen of the country and affects his comfort and happiness.

By the concentration of the transportation and the railroad interests of the country into the hands of a few corporations, the power exists to levy a tax or tribute upon production and consumption, that, if unwisely exercised, will bring about serious and even disastrous consequences.

By the concentration or the combination of great branches of industry, as, for example, the manufacture of steel and iron, a like dangerous power is vested in the hands of a few men whose fortunes may be greatly augmented at the expense of the public, by the selfish or unwise exercise of their power.

The population of the country, now approaching one hundred millions, is no longer homogeneous, but in a number of the States is composed of peoples which have come in large numbers from almost all the nations of the globe.

The greatest disparity between the fortune of the capitalistic class and the masses of the people, has produced a line of cleavage which is unwholesome and dangerous.

There has grown up a great laboring class, numbering many millions, whose interests are at war with their employers.

They have themselves formed powerful societies which are thoroughly organized, and are under the direction and management oftentimes of officers of great ability. These societies, by their control of large numbers of laborers, have been able to cope, on more than equal terms, with the owners of the industries in which they are engaged. They have proved victorious in their contests more often than they have failed. But their methods are not always peaceful or lawful. Too often is the contest marked by unlawful aggression, destruction of prop-
erty, and even murder. In the past dozen years we have seen labor strikes which tied up and paralyzed the operations of not only one, but of many railroad systems, which closed up all the coal mines in half a dozen States, and produced a fuel famine, which threatened the comfort of millions of people and the business prosperity of the whole country.

When these conflicts occur, such conditions of confusion and disorder and bloodshed ensue, that to preserve life and property and restore law and order, the military power is often called into requisition. It will be recalled that during the great railroad strike in Chicago, some years ago, the mob laborers and their sympathizers could not be checked in their career of destruction, until the troops of the United States were sent to the scene of the conflict. And in Tennessee, some years ago, a strike occurred at the Coal Creek mines in the Eastern part of the State which finally assumed, on the part of the strikers, the form of armed conflict with the military, and open rebellion against the State, and to suppress which, the State was burdened with an expense of nearly three-quarters of a million of dollars.

These are some of the conditions now existing which did not prevail in the first seventy-five years of the history of the country. Necessarily, they have presented for solution problems of the gravest character.

If all men were born equal, if the moral precept, "do unto others as you would have others do unto you," was a rule by which social and business relations were governed, and had the force and sanction of positive law, there would be little need of the supervising authority of the State.

But men are not born equal: they differ in strength, force and aggressiveness, and in their moral and intellectual qualities. Neither has the Golden Rule, now or at any other time, exercised an influence of power beyond that of a purely moral precept.

The struggle for wealth and power arouses the savage instinct to overcome and destroy.

The conditions of society are at best, strife and conflict. In the great struggle, that law of nature, "red in tooth and claw," the survival of the fittest, prevails. The weak succumb and
the strong rise to wealth and power; and too often the battle is unfairly won.

The old theory of individualism and *laissez faire* cannot, it is believed, be safely maintained in its original vigor; but to preserve peace and order, to protect the weak from the aggressions of the strong, to secure the comfort and the happiness of the masses of the people from the oppressions of power exercised by their fellowmen, some greater authority, some restraining hand must exist somewhere.

The great inequalities of fortune, the concentration of wealth and the power that wealth gives, in the hands of a comparatively few men, have been the result of the operation of the law of individual freedom and non-interference of government; and as we have seen, conditions have been created and dangers have resulted which can only be corrected or prevented by some sensible limitation of individual freedom and some wise and conservative enlargement of governmental authority.

The States have proved their inability to cope with and solve many of the problems which existing conditions have created. This results from the fact that the jurisdiction of the several States extends only to business and commerce of an intra-state nature. Almost every business and almost every corporation of any magnitude extends its operations beyond the borders of the particular State in which they are located into other States and foreign countries. Under the Constitution of the United States a State has no authority to legislate upon, or in any manner control or interfere with foreign and interstate commerce. It has, therefore, been impossible for the several States to control or regulate freight rates charged by railroads or common carriers where the transportation extended beyond the limits of the State. Upon purely intra-state transportation, the States have undertaken to act, but this limited control of transportation has proved disappointing and has effected but little good. State railroad Commissions and regulatory legislation having failed in large measure to accomplish the purposes intended, the public naturally sought some other more efficient agency. The powers of the National Government, under the Interstate Commerce clause of the Constitution, were, therefore, called into exercise by congressional legislation.
Another instance of the inadequacy of State authority is Pure Foods. Almost all the States, in response to popular demand, enacted legislation to protect the public health from the dangers resulting from the use of patent and proprietary medicines and manufactured foods. The manufacturers of such articles were in great measure immune from the effects of State legislation, because of the fact that the distribution and sale of their products fell within the domain of Interstate Commerce. The evils and dangers attending the unrestricted production and sale of such articles were real, and were not exaggerated in the public mind. It became necessary, therefore, for the National Government to intervene; and at its last session, Congress, after fifteen years of incubation, passed an act which, it is hoped, will effect the objects intended, and secure to the people immunity from dangerous and poisonous medicines and impure or noxious foods.

Another instance of congressional intervention, was the prohibition of the transmission, by mail or through the agencies of Interstate Commerce, of lottery tickets. It will be recalled that the Louisiana State Lottery for a number of years conducted a successful business in New Orleans and reaped great profits by the sales of its tickets throughout the States of the Union. The State of Louisiana was either unwilling, or unable to suppress the lottery company. The evils and demoralization resulting from this species of gambling were so great that the moral sense of the people revolted against it. It was impossible for the several States, by legislation, to efficiently prevent the introduction and sale of lottery tickets within their territories, but it was possible for the National Government to do so. Accordingly, it was, by the National Government, made illegal to transmit lottery tickets through the mail and through the agencies of Interstate Commerce. The result was that the Louisiana Lottery was unable to conduct its business in such manner as to be profitable, and it has passed out of existence.

Still another illustration of the exercise of National authority where the States proved inefficient and powerless, was the so-called Sherman Act, or the act which prohibits contracts, combinations and conspiracies in restraint of trade. It is probable that no State in the Union has failed to pass acts prohibitory
of trusts, monopolies and combinations. In Tennessee, we have on the statute books two acts, both very severe and highly penal in their character; yet, in the face of such State legislation, and in defiance of it, great combinations of manufacturers were formed which were designed to and did fix and regulate production and prices. By such combinations, the volume or quantity of manufactured products and the prices at which they were sold were arbitrarily fixed, and the public was believed to have suffered in consequence.

Yet another instance of the exercise of Federal power where the States failed, is found in the Meat Inspection Bill recently passed by the Congress of the United States.

The exercise by the National Government of its constitutional powers over the subjects mentioned, has augmented the authority of that government beyond what, in the early days of the Republic, it was believed to possess.

This does not mean, however, that the States will cease to possess and exercise all those powers necessary and requisite for local government. The domain of State authority still remains unimpaired over the great majority of matters which the most nearly concern and affect the people; and it is only where their power and vigor are too feeble or too circumscribed that they are supplemented and reinforced by National authority.

The framers of the Federal Constitution did not, and in the nature of things could not foresee the changes that a century would bring. Much as they might cherish and indulge the hope of a great and splendid future for the Republic they were creating, they did not dream of those great discoveries of science and invention, the steamboat, railroad and telegraph, or the growth of a nation whose commerce, industries and wealth would in so short a time surpass those of all the other countries of the earth; but they "built better than they knew." The Constitution they wrote possessed both the elements of strength and flexibility. It proved strong enough to bear the strain of a great war and to preserve the Union which it created; and it has proved susceptible of adaptation to all the conditions which have since arisen.

By a natural process of interpretation and expansion, it has
proved sufficient to allow legislation and action by the Federal Government of such scope and breadth as to enable it both to supplement State legislation, and to fix a firm control and restraining authority over most of the conditions which have made such restraint and control necessary.

It is manifest that the larger share of authority over such matters must be exercised by the Federal Government.

There are now few of us who retain the same fear, as formerly, of the assumption and exercise by the National Government of larger powers and authority. The fact is, that old beliefs on this subject have, to a great degree, faded away in those parts of the country where they formerly prevailed in their greatest vigor. Political parties have also, in a measure, reversed their ideas, and many of the firmest adherents of the old so-called States’ Rights principles are now the most strenuous advocates of larger national authority.

The revolution in political opinion on this subject has been as remarkable as the industrial and economic transformation of the country. The fear is, that popular sentiment may swing too far in the opposite direction.

The habit of resorting to legislation to correct admittedly wrong things is apt to grow, and under the stimulus of popular demand, the activities of government may be extended beyond the limits of prudence and safety.

Already we see growing up among certain classes a sentiment which calls for the extension of the authority of government to matters which had best be left to individual control.

Great numbers of our countrymen, a few years ago, under the pressure of great industrial depression, sought to have the government of the United States erect granaries and warehouses for the reception of the agricultural products of the farmers, and the loaning of money thereon by the government. The idea was, that it was the proper function of government to become a great banker and use its funds for the accommodation of the farmers and agricultural class.

We hear much in these days of the governmental ownership of so-called public utilities, such as railroads, street railroads, gas plants and the like.

An American State — one of the original thirteen — has
turned saloon-keeper. No private person is allowed to engage in or sell alcoholic liquors; the State has taken to itself the right to do this, and excludes from the business all persons except itself. It has hundreds of bar-rooms which it euphemistically calls Dispensaries. It was claimed that, by monopolizing the business, the evils of intemperance would be lessened and the morals of the people promoted; but it appears that the pecuniary profits, incidental to this great and moral philanthropic movement were not overlooked.

Not very long ago, a public man of great eminence and ability, and the acknowledged leader of one of the great political parties, announced that he would have his party adopt, as one of its principles, the purchase and ownership by the States of the railroads within their respective territories. He opposed National, but favored State ownership.

Several years ago, the Democratic party of New York, in convention assembled, announced that it favored the taking over by the National Government of the anthracite coal mines of the country. This was done under the stress of a coal famine then prevailing as the result of a great strike.

In time we shall probably hear of some plan of Life Insurance and Old Age Pensions conducted and financed by the State, or of some scheme for placing a limit on the amount of individual acquisition or accumulation. Such acts or schemes, on the part of Government, are distinctly socialistic and carry the idea or principle of governmental control farther than is consistent with the correct notion of State functions, and farther than is safe or wholesome.

It has been shown that, under the system of unrestricted personal freedom, conditions have been created and antagonisms and conflicts between capital and labor have been generated that, in the judgment of the American people, could best be ameliorated and corrected by the intervention of Government.

It is also true that these same conditions, conflicts and antagonisms have promoted the growth of ideas which are distinctly socialistic in character and tendency.

Many thoughtful people believe that the appetite for larger State supervision and restraint will grow by what it feeds
upon, and that the slightest departure from the principles of individualism and laissez faire means to commit the State to a policy which invites the reckless, improvident and tyrannical exercise of State authority and which will endanger personal liberty and the rights of private property.

It is not to be denied that there are dangers from both points of view. But was there ever a time when an enlightened, patriotic and progressive country did not have difficult problems, and many of them, to solve? Surely the American people have had their share, and, in the main, they have settled each question that has presented itself, sensibly and wisely.

Can they be trusted to do so in the future? I see no reason to doubt it; and, at any rate, I indulge the hope that we of our generation, and those who succeed us will act with a wisdom and moderation not unworthy of our forefathers.

If we do not have faith in the character, integrity, intelligence and patriotism of the citizens of our country, then there is no hope of its future; for after all, it is upon the people— their intelligence, wisdom and patriotism—that the permanency and freedom of their governments must rest. Written Constitutions and statutory laws alone cannot preserve the liberties of a Nation; it is the spirit, character and patriotism of the people that give them strength and vitality.

Government is a difficult science. The very best that a country has in intellect, morals, patriotism and experience are necessary for the wise and practical administration of its public affairs. In our country, a higher quality of citizenship, both in morality and intelligence, is required than perhaps in any other country of the world. We have in this Republic a dual system of government, National and State, each operating in the same territory and upon the same persons, and yet working without collision, because their functions are different. There have arisen during the past thirty years new conditions, which have evoked the exercise of the powers of government in a manner and to an extent hitherto unknown.

To preserve the even balance between the State and National governments, so that the one may not encroach on the other; to give government all the authority necessary to defend the country from foreign aggression, and guarantee to every citizen
the equal protection of the laws, are the sacred duties of the American people; and these great objects cannot be secured unless they maintain the very highest standard of citizenship.

*Dulce et decorum est pro patria mori.* If it is sweet to die for one's country, so also is it sweet to live for it. The duties and responsibilities of citizenship are sacred and imperative, and vicious legislation, corrupt administration, and all the other ills of bad government are largely traceable to the careless performance and negligent disregard of those obligations.

These are some of the things that are necessary in a country in which the people rule: the diffusion of knowledge among, and the education of the masses of the people; the purity of the ballot; honest public officials; the maintenance of a high standard of honesty in public affairs; the cultivation of the love of liberty; and the existence of a spirit of patriotism which will influence and insure the performance by the people of the duties and obligations of citizenship, in peace as well as in war — without which good government cannot be attained.
THE PRACTICE OF LAW IN THE DAYS OF LITTLETON.

BY CHARLES W. TURNER.

There exists, scattered among the libraries of England, original letters and legal documents belonging to a family of lawyers named Paston, who lived during the period 1419 to 1506. Many of these papers have been collected and published in an edition of three volumes, by James Gardner of the English Public Record Office. Their value to students of general history has long been recognized, but they will be found to hold a special interest for any lawyer who wishes to make real to himself the legal institutions described in Coke upon Littleton.

They are not difficult to read, though the orthography is varied and distinctly original, as may be realized by the fact that one writer wrote the word fished with the spelling "physched," and that the word it may be found in a single document expressed by yt, hyt, hit, ytt, itt and it.

This independent orthography is so ingenious that the reader is sure to divine amusement as well as instruction from his task.

When we remember that the period covered by this correspondence is that in which Littleton was at the bar and Sir John Fortesque on the bench and the law of real property had reached a development which was to be practically unchanged, except by the Statute of Uses and the Statute of Wills, to the time of Blackstone, and when we discover that nearly every document in the collection relates to a contest over the title to some land, or to some proceeding in chancery, or in the criminal court, we have a right to expect from a study of these papers, an historical setting for many an old doctrine not yet obsolete.

We will soon also realize that these papers will enable us to place ourselves in imagination in the office of an English lawyer during the War of the Roses, observe his practice, read some of his pleadings, and, invisible to him, look over his shoulder and peruse, without breach of politeness, the letters which he
writes to his clients and to his wife a hundred miles away, and
their replies. His office or chambers are in the inner temple,
but his home is a long way off in the County of Norfolk.

The first thing that we discover is the universal knowledge
by all educated people of legal doctrines now considered, at
least by students in law schools to be rather abstruse. The law-
yer's wife seems to know nearly as much law as he does and
holds a very high opinion of its value.

Agnes Paston writes thus in 1445 to her son Edmund:

"To my Well Beloved Son: I greet you well and advise you to
think once a day of your father's counsel, to learn the law:
for he said many times that whosoever should dwell at Paston
should need con the law to defend himself."

Thirteen years later the same lady sent a message to the law
tutor of another son named Clement, that if the latter "had
not done well and would not amend, she wished that he would
truly belash him, as did his last master, and the best that ever
he had at Cambridge."

Margaret Paston, wife of another lawyer, cautions her son
after the death of his father to keep carefully the latter's
papers, and uses this language: "Your father, whom God
assoil in his trouble season, set more by his writings and evi-
dence than he did by any of his moveable goods. Remember
that if they were had from you, you could never get no more
such as they be."

The Pastons were large land-owners, as well as lawyers, and
while it was John Paston's duty to conduct a law practice.
and incidentally to protect his property from lawsuits, his
wife Margaret Paston had the harder task of collecting the
rents and defending the land against forcible entries.

One of the Paston agents informs his master that he could
never get at a certain tenant to distrain him unless, as he said,
"I would a distrained him in his mother's house and there I
durst not for her cursing."

It seems as though there was no such thing known as a title
which could not be disputed. It was also extremely rare to
take title in one's own name. If John Paston bought some
land, the conveyance was not made directly to him, but to
various feoffees, often as many as thirteen, to hold to his use. These feoffees, or trustees, as we would call them, were so selected that it would be almost impossible for all to be, at the same time, guilty of treason by taking part in any of the insurrections by which the country was often disturbed.

One or more of these feoffees were usually selected from the clergy, who naturally were non-combatants. As the title was one in joint tenancy, so long as one feoffee should keep out of trouble, the title would be preserved, for such of the Paston family as remained alive. In fact two of John Paston's sons fought on the losing side in that great battle where Warwick the King maker was defeated by Edward IV, and one of the same sons fought by the side of Richard III in the Battle of Bosworth field. Neither of them suffered any harm from the victorious party, and we find that the same John Paston who fought for Richard III, was in a short time high in favor of his successful rival, Henry VII, became in a few years sheriff, and carried the fortunes of the Paston family to their highest development.

This doctrine of uses kept family property safe from the king, but caused fearful confusion as to title. The person for whose use the property was held might convey it orally or might devise it orally or by a nuncupative will, while the holder of a legal title could not devise it at all, as the Statute of Wills had not yet been passed. But an oral conveyance of the use as an oral will was easy to contest, and the largest litigation described in these letters, as well as the most important one, is over the nuncupative will of Sir John Fastolf, the historical person from whom Shakespeare got his Sir John Falstaff. Fastolf left most of his vast real property to John Paston. There were three or four unsigned wills, but he had signed nothing. The question whether in his last days he had orally transferred the use to Paston, and if so, on what trusts, if any, was before the courts during the rest of Paston's life, sent him several times to the Fleet prison, probably for contempt, wore out his tough, litigious constitution and was finally compromised by his son five years after his death, when the costs had eaten up most of its value. The fictitious chancery suit of Jarndyce v. Jarndyce...
-lyce described in the pages of a modern novel, is a petty business by the side of this mediaeval lawsuit. While the large number of depositions or affidavits taken by each side and preserved with the Paston letters, surprise a modern reader in two ways, first that so many of the common class of people could read and write, and second, that some of them could lie with so much vigor, circumstance and directness. But while titles might thus become confused through difficulty of proof of conveyance of the use, the feoffees to use often made trouble. If their fees were not paid, or if they quarreled among themselves or with the owner of the use, they or some of them would make livery of seizin to some nobleman who would collect a gang of retainers and try to drive the equitable owner out by force and if they succeeded, laugh at the Justice of the Peace with his process of forcible entry and writ of possession. Young John Paston, aided by four hired soldiers and about twenty personal friends, at one time held an embattled manor house or castle belonging to his brother, for several weeks, against an army of 3000 men sent by the Duke of Norfolk. He surrendered because as he said in a letter, of "lack of vitayls, gunpowder, men's hearts, and surety of rescue." It is pleasant to discern that a little later, on the death of this Duke of Norfolk without leaving male issue, the Pastons re-entered and got back their estate, which they kept for nearly a hundred and fifty years afterwards.

The Duke seems to have had no title whatever except a deed from one or two of the thirteen feoffees who held the legal title and who gave the deed only because of dislike to the Pastons. The four professional soldiers who helped John Paston in this siege were sent down from London by his brother who describes them in a letter as "proved men, cunning in war, and can well shoot both guns and cross-bows and devise bulwarks and keep watch and ward. They be sad and well advysed, saving one of them which is bald, but yit he is no brawler. Ye shall find them gentlemanly comfortable fellows, and that they dare abide by their tackling."

The mother, Margaret Paston, was not present during the siege. She had been through sieges before in her husband's
lifetime, but excused herself this time to her son, upon the ground that she had grown too old to 'govern sowdiers.' A sequel to this forcible entry introduces us to an obsolete legal institution which seems curious.

Two of the men of the Duke of Norfolk's army who were killed, left widows surviving them. These widows sued out what were called appeals, against John Paston for causing the death of their husbands. Apparently these appeals, though criminal prosecutions, could not be barred by a pardon from the king, then easily obtained, and were used for the purpose of obtaining damages for the loss of the consortium of the deceased husbands, much like our statutory suits for death, by wrongful act. John Paston was evidently troubled about these appeals for some time. It appears, however, to have been the law that such a proceeding would abate if the widow should remarry before judgment, and Paston's brother writes him thus:

"Item I pray you, let some witty fellow, or else yourself, go to the towns where these two women dwell, and inquire whether they be married again or not, for I believe the things have wedded, and if they be then the appeals were abated thereby. I remember not their names. Ye know them better than I. Ye can find them in the sheriff's book."

This advice was followed and it does not much surprise us that the next letter, which is by a detective, or agent, who signs only by initials, discloses that the suspicion was well founded, that the appeals had abated, and that one of the ladies denied that she had ever sued Paston and expressed great indignation against one Maister Southwell, counsel for the Duke of Norfolk, who had induced her to remain a widow for a whole year by making her in his office certain promises of a financial nature which remained in great part unfulfilled." It may interest us to notice that this Paston who had such a low opinion of the capacity for continuous widowhood possessed by these women and so clear a knowledge of the law of procedure, had enough celebrity as a knight to be selected as one of three to keep the lists with King Edward and his brother-in-law against a number of celebrated opponents. His letter thus describes the occasion:

"My hand was hurt at the tourney at Eltham upon Wednes-
lay last. I would that you had been there and seen it, for it was the goodliest sight that was seen in England this forty years. There was upon the one side within, the King, my Lord Seales, myself and Sellenger, and without, my Lord Chamberlyn, Sir John Woodryle, Sir Thomas Montgomery and John Aparre, &c.

This surely was the age of the lawyer and the soldier, and the two professions were not only marks of social distinction and leadership, but were interchangeable.

I will now ask you to follow one litigation, as disclosed by this correspondence, with some particularity. Some time about 1440, William Paston bought the manor of Gresham from Thomas Chaucer, a son of Chaucer, the celebrated poet. We may think of a manor as roughly resembling a Southern plantation of the old days, having upon it quite a large group of persons whose ancestors had been slaves, and who were themselves villeins or tenants of small farms, paying rent in grain or labor. William Paston died seized of this manor, about 1445, and his eldest son, John Paston, who like his father, was a lawyer, succeeded to a title which had never been disputed, and was regarded as indisputable.

Nevertheless, a nobleman named Lord Moleyns (Mullens) pretended in 1448 to be the legal owner, and entered upon the manor, put an agent named Partridge in possession of the manor house and proceeded to collect rents from the tenants. This Lord Moleyns was evidently a favorite of the King Henry VI, and felt that the king's friendship would enable him to do what he pleased.

The next two years seem to have been taken up with correspondence and interviews by which Paston hoped to get back his property by the voluntary act of Lord Moleyns. Interviews were had between Paston and Lord Moleyns's counsel in which their respective titles were exhibited and the counsel for the lord agreed to inform him and did inform him that Paston had the better title.

Lord Moleyns continued, however, to occupy the manor house and collect the rents, in the meantime making no repairs, and allowing the property to decay.
At last Paston's patience became exhausted and he determined, before adopting legal proceedings, to re-enter upon some part of the manor and establish and retain a possession there. He carried out his purpose and placed twelve men in a house on the estate and his wife Margaret Paston took charge of the defence of this possession, while her husband was away at London at his office in the Temple. It is evident from the following letter that a fight was anticipated:

"Right Worshipful Husband: I recommend me to you and pray you to get me some cross bows and guards, for your house here be so low that there may no man shoot out with no long bow, though we had never so much need."

In the same letter she stated her discoveries as to the enemy, as follows: "Partridge and his fellowship are sore afeared that ye will enter again on them and they have made great ordinance within the (manor) house as it is told me. They have made bars to bar the doors cross wise, and they have made wickets on every quarter of the house to shoot out at, both with bows and with hand guns, and the holes that have been made for hand guns, be scarce knee high from the floor, and of such holes there have been made five. There can no man shoot out at them with no hand bows." As in the same letter she asks for a pound of almonds and two pounds of sugar, and some black broadcloth for a hood and some "frieze to make your child a gown," and informs her husband at what shops in London he can get these articles to best advantage. It is evident that, though prepared for and anticipating war, both offensive and defensive, she did not propose to neglect meanwhile the arts of peace.

However, grim-visaged war did not delay its steps. Lord Moleyns's men to the number of a thousand besieged the house defended by the plucky wife of John Paston and her twelve servants.

A Justice of the Peace was on the scene to protest against such an open violation of the Statutes of Forcible entry, but the Squire raised his voice in vain. Margaret Paston would not surrender, and so the enemy, as it is described, "mined down" the walls and "drave out the twelve persons," and mined
down "the walls of the chamber wherein (Margaret) was and bare her out at the gate." They committed at the same time depredations on the property, as it was claimed, to the amount of £200, which would be about $800.00, or $4,000.00 in the currency of our day.

John Paston was not the man to submit tamely to such treatment, and the next step seems to have been a long petition to parliament in which Paston calls attention to his wrongs in very vigorous language, says that he is not "able to sue at the common law in redressing of this heinous wrong for the great might and alliance of the said lord," and intimates that the common people of Norfolk are so stirred up over this outrage that they are likely to rise in insurrection unless he obtains justice.

It is impossible to determine what, if anything, was the effect of this petition to parliament, but shortly after Paston invoked the power of the chancery court and filed a Bill in Equity, which I take the liberty to give substantially verbatim.

"Unto the right reverend father in God and my right gracious lord, the Cardinal Archbishop of York, Primate and Chancellor of England."

"Besucheth meekly John Paston, that whereas Robert Hungerford Knight, Lord Moleyns, late with force and strength and great multitude of riotous people, to the number of a thousand persons and more, gathered against the King's Peace, in riotous manner entered upon your beseecher, and others enfeoffed to his use in the manor of Gresham, with the appurtenances, in the Shire of Norfolk; which riotous people brake, despoiled and drew down the place of your said beseecher in the said town, and drave out his wife and servants there being, and rifled, took and bare away all the goods and chattels that your said beseecher and his friends had there, to the value of £200 and more: And the said manor, after the said riotous entry kept, with strong hand, in manner of war, as well against your beseecher and his feoffees, as against one of the King's Justices of the Peace in the said shire, that came thither to execute the statutes ordained and provided against such forcible entries and keeping of possessions with force, as it appeareth by record.
of the said Justice certified into the chancery: and yet the said Lord Moleyns the said manor keepeth with force and strength against the form of the said statutes:

Please it your reverend Fatherhood and gracious Lordship, these premises considered to grant unto your said beseecher for his feoffees by him to be named, a special assise against the said Lord Moleyns and others to be named by your beseecher, and also an oyer and determiner against the said Lord Moleyns and other of the said riotous people in like form to be named to inquire, hear and determine all trespasses, extortions, riots, forcible entries, maintenances, champerties, embraceries, offenses and misprisnions, by them or any of them done, as well at suit of our sovereign Lord the king, as of your said beseecher and his said feoffees and every of them or of any other of the King's lieges:

At reverence of God, and in way of charity, the bill was filed in September, 1450. The special assise prayed for was in effect a writ of restitution, and an oyer and terminier was a special commission to certain judges to hear such complaints as arose from some violent disturbance of the public peace.

The first part of Paston's prayer appears to have been granted before any answer was filed, for we find a letter from him to James Gresham, his counsel, in which he says: "I pray you labor forth to have answer to my bill," while he adds, a little further on, "Divers men of my friends advise me to enter by force of my writ of restitution, which I will not do because the manor is so decayed by Lord Moleyns's occupation."

It is evident that by this time Lord Moleyns had had enough of the Pastons. His agent Partridge made a polite call on Margaret Paston. She refused to allow him to enter her premises, and reported to her husband, that as they remained outside the gate, "I came out to them and prayed them that they would hold me excused, that I brought them not in to the place. I said inasmuch as they were not well willing to the good man of the place I would not take it upon me to bring them in to the gentlewoman."

They expressed much regret for their former violence, and a determination to do nothing thereafter which would displease
the lady. She evidently did not believe them, but it is certain that soon after this interview the servants of Lord Moleyns were withdrawn from the manor and the Pastons resumed possession of it.

But though Paston got back his property, he still followed up his claim for damages. He wrote thus to his counsel:

"I pray you heartily labor ye so to my Lord Chancellor that either he will grant me my desire or else he will deny it. And let me have answer from ye in writing how ye speed. If my Lord Chancellor hath lost my bill that I delivered him, whereof I send you a copy, that then ye put up to him another of the same taking a copy to yourself." This language indicates that even the Chancellor would favor so great a man as the defendant, and would intentionally lose papers so as to have an excuse for not acting on them. There must, however, have been a positive order passed requiring Lord Moleyns to answer by a certain date, for the next paper in the collection is a letter from King Henry VI addressed "To our trusty and well beloved John Paston, Esquire, informing him that, "Our right trusty and well-beloved Lord Moleyns" was about to go to a distant unnamed locality on business for the king. The letter concludes with these words: "We therefore desire and pray that ye will respite anything attempting against him or any of his servants until such time as he shall be present to answer thereunto; wherein ye shall minister unto us cause of pleasure and, over that, deserve of us right good thanks. Given under our signat at our Palace of Westminster." This is very politely expressed, but was in fact an order upon Paston to postpone proceedings against the favorite. A little later we find a friend advising Paston to secure the help of Richard, Duke of York, the representative of the White Rose, whose influence was then rapidly increasing. It appeared that he was not fond of Lord Moleyns and was therefore likely to favor Paston.

We learn nothing more directly of the chancery suit, but evidently Paston was not idle, for within a few months there was an anonymous letter from some one in the King's Palace stating that Lord Moleyns had been heard using "large language" and saying that he "should come to Norfolk and do much
thing” against “them that had indicted him and his men,” and also for the “prisoning of his men at Norwich.” It is evident therefore that such indictments were pending. The next strategic move in the contest is a bit of information that the counsel for Lord Moleyns had said that he meant to spend £1000 if necessary, in order to secure a sheriff to his liking for the following year. He probably succeeded in his purpose because in the next spring Paston’s lawyers in Norfolk, who sign themselves by the firm name of Debenham, Tymperly and White, wrote him that the sheriff is “not so whole as he was.” That he informed them that he had a “writing from the King that he shall make a panel to acquit Lord Moleyns.” They added that they believed he also meant to have Lord Moleyns’s men acquitted, and they advised Paston to come on at once.

The next paper evidently written about the same time as the one just referred to, is a letter from a personal friend to Paston:

“Right Worshipful Sir: Your good cousin and friends advise you to come to Walsingham, and that ye be there tomorrow betimes at six on the clock; for the Lord Moleyns offered a treaty for the good and amends to be made before he goeth out of this country, and if it be not taken his men shall justify. Whereupon your title might be hurt.”

It is probable that Paston did not attend the court, and it is certain that Lord Moleyns and his men were acquitted by the jury.

We should naturally expect that this would end the matter, but it was then possible to bring a proceeding called an attaind against a jury which had violated their oaths by rendering a verdict plainly against the law and the evidence. Judge Yelverton who heard the case indirectly advised Paston to proceed against this jury and he did so. We have no account of the early stages of this case, but a letter written in 1456, states that it was to have been heard before Chief Justice Markham and all the judges, but that the Chief Justice postponed the hearing to the next term, “Notwithstanding we called thereupon and had at the bar Chooke, Littleton, Jenney, Idyngworth, John Jenney and Dyne and remembered the long hang-
ing and truth of the matter with the great hurt of the party in the time." This is the last allusion to the matter in the Paston collection. Chief Justice Markham was an able Judge and Paston's array of counsel included not only Littleton, but other names eminent at the bar, but it is evident that a King's favorite could procure indefinite delays from the highest court in the kingdom. It is well for us to note that the summer of 1450, when Lord Moleyns was working his forcible disseizin upon Paston, was the same summer in which the common people of Kent rose and marched to London under the leadership of Jack Cade, and one of the grievances for which they demanded redress was the forcible appropriation of their lands by the great lords of the King's household. The whole period was one of contest between these nobles and the country gentlemen and lawyers. It is a period in the history of the legal profession to which its present members may look back with pride. The lawyers used every weapon which the law gave them, and taught even nobles, that on the whole, it paid best to respect the legal rights of others.

We do not discover that Lord Moleyns ever tried again to appropriate land belonging to an English lawyer. Though he escaped conviction on the indictment and perhaps, though this is not certain, paid no damages, he failed in his attempt to secure the title.

It may well be that his conduct toward Paston was one of the causes which led the people of Norfolk to take the side of the White Rose and the York family when the Civil War began.

In conclusion, it may be truthfully said that the Paston correspondence can only be appreciated by a lawyer. To him its legal phrases have a meaning which the ordinary student cannot discover. Before him these lawyers of the fifteenth century, their wives and children and clients, though they sleep beneath the dust of 450 years, may live again in his imagination, as learned, as persistent, as bold, and as full of humour as in days of Littleton.
THE GROWTH, AGGRESSIVENESS AND PERMA-
NENT CHARACTER OF ANGLO-SAXON
LAWS AND INSTITUTIONS.

BY A. W. GAINES.

Not far from the shores of the Baltic Sea, along the lower
waters of the Weser and the Elbe, in the early centuries of
the Christian era, dwelt those warlike, barbarous tribes known
as Angles, Saxons and Jutes.

They were a Teutonic people, possessing neither Christian
nor Roman ideas, worshiping Woden, their god of war, and
Thor, the god of thunder; gods, whose characteristics well por-
trayed the turbulent, rough and restless spirit of their wor-
shipers, for they were rude, hardy, half-civilized, bold and
courageous—those blue-eyed barbarians of the Baltic. They
hunted, went to battle, and, as bold, buccaneering pirates,
infested the eastern and southern coasts of Britain and the
northern parts of Gaul—“Sea Kings, who had never slept
under the smoky rafters of a roof; who had never drained the
mead-horn by an inhabited hearth:” who braved the tempestuous
storms of the North Sea in their two-sailed barks, bent on pil-
lage and robbery: who sacrificed prisoners to their god of war,
and who believed and acted upon the principle, that, dying in
battle, they would be transported to lands of delight, where
would be granted to them the ineffable joy of forever drinking
ale from the skulls of their enemies.

Well might it be asked: Could any good thing come out of
this Nazareth?

These people, though rude and but half civilized, possessed
a principle of independence and a love of personal liberty, to
which they clung with all of the tenacity of their determined
natures. Contrary to the rule of ancient governments, they rec-
ognized the rights of the individual. Their system of govern-
ment reached down from the chief to the individual through
logically constituted divisions. A number of families composed
the township, the lowest territorial division; several townships united to form the hundred; several hundreds made up the shire and several shires united to form the kingdom. The Chief, who was the head of the kingdom, was elected from the royal family, the selection being based upon the most fitting qualifications and not upon arbitrary choice nor any right of primogeniture. To the Chief, although believed to be descended from Woden, there was no servile submission. He possessed no arbitrary authority. He was simply the first among citizens, exercising limited powers. The old pagan pirates tolerated a chief of their own making, but with it they recognized and practiced that most important principle—individual political rights. Their government was "made for the people, made by the people, and answerable to the people."

Towards the middle of the fifth century of our era, when Rome had abandoned Britain, the warlike Picts and Scots, noting the absence of the Roman legions, descended upon the Celtish inhabitants for purposes of plunder, pillage and conquest.

While in itself this incursion was not of special importance, the results flowing from it changed the history of the British Isles.

The Britons, knowing their inability to cope with these northern barbarians, sent a Macedonian cry for help to the Angles, Saxons and Jutes.

The Teutons came willingly, and, having successfully driven back the Picts and Scots, and being in a land, whose shores they had often ravaged, concluded to remain. The invited guests refused to go home. The old pagan pirate was pleased with the "precious stone set in a silver sea," and concluded to remain and appropriate its blessings. Thereupon ensued a series of war between the Briton and the Teuton, which continued for more than a century and a half, furnishing many examples of courage and patriotic devotion and giving to English literature a rich legacy in the legendary accounts of Prince Arthur and his famous knights of the Round Table.

But the Briton was driven back foot by foot into Cornwall and Wales and the land was occupied by the Anglo-Saxon.
The victory over the Britons was a Teutonic, heathen conquest complete. The Teuton displaced the ancient inhabitant; Christianity gave way to paganism; the Roman law yielded to the Teutonic; the Welsh language was displaced by the English; Britain went out, England came in; everything Celtish or Roman was swept away; the Lares and Penates of Germania came to guard the firesides of Anglicised Britain.

The Anglo-Saxon laws, customs, religion, society and institutions, the township, the hundred, the shire and the kingdom were firmly established, and on English soil was implanted that independent spirit which the Anglo-Saxon had ever exercised in his ancestral land; that consciousness that every individual is a member of the commonwealth and has rights as such.

When the Danes overran England in the ninth century for purposes of pillage and plunder; when later they made local settlements in Britain and established local Danish dynasties, and, even when in the eleventh century, Sweyn, King of Denmark, mounted the English throne, and when the great Canute and other Danish kings ruled in England, the independent spirit of the Anglo-Saxon was ever alive and alert, and, on the death of Hardicanute in 1042, reasserted itself, threw off the Danish yoke and placed Edward, the English prince, upon the throne.

When the Anglo-Saxon came into Britain, Anglo-Saxon laws and institutions displaced the Roman — all was Anglo-Saxon. When the Dane overran the British Isle and Danish kings ruled all England, we would naturally suppose that Danish laws would displace the Anglo-Saxon, but not so. The northern conqueror made practically no impression upon existing institutions, but himself swallowed up by the subjugated English. Anglo-Saxon laws, customs, language, religion and institutions survived the Danish Conquest.

But encroachments upon Saxon laws soon appeared from an unexpected quarter. The new king, though born in England and of English blood, was reared in Normandy, and, having imbibed Norman ideas, soon showed his foreign sympathies by surrounding himself with Norman courtiers and favorites, whom he installed in places of trust and honor.
The contest between the king and the people who resisted his normandizing schemes resulted in the convening of a most important National Assembly. To this Assembly came the Anglo-Saxon people from the townships, hundreds and shires; the English Nation, the "people in the gristle," assembled. They banished a Norman Archbishop and other Normans, and taught the king and his courtiers that the old Teutonic Constitution was alive and that the Anglo-Saxon freeman had never relinquished his ancient laws and institutions.

Thus the control of the government of England would probably have remained permanently in the hands of the Anglo-Saxon, had not the Court of Heismes, afterwards Robert, Duke of Normandy, chanced to see in the running brook the pretty feet of Harlotta, the beautiful daughter of a furrier of Falaise, and made her the mother of William, the Bastard, the Conqueror, the Great.

How slight the causes which change the course of history! An invitation from the Celt makes Britain an Anglo-Saxon kingdom; a chance meeting of an amorous nobleman with a fair damsel brings about the Norman Conquest.

With the coming of the Norman, Anglo-Saxon laws and institutions were put to the test. Then began a most memorable contest between the Norman king, battling for sovereign, absolute power; the Norman barons, striving to preserve their prestige; the Church, trying to maintain its ecclesiastical privileges and temporal possessions and the Anglo-Saxon people contending for their laws securing liberty and personal rights to all. The Saxon was pitted against the Norman; the Common law in conflict with the Civil law; Saxon institutions battled with Norman polity and independence in religion fought in deadly conflict with the papacy.

The contest was most unequal. The Conqueror, after the custom of the sovereigns of continental Europe, had assumed and exercised almost absolute power. He established feudalism, and, taking the lands of the Anglo-Saxon, he bestowed them upon his Norman followers. In 1086, he required all of the holders of land, small and great, to appear before him and do homage and acknowledge him the lord paramount, of whom
they held their lands. They all became feudal tenants of the crown, bound to do military duty.

The Norman barons, although tenants of the crown, were, nevertheless, a highly privileged class, owning the landed interests of the realm, controlling many feudal followers, who did homage to them as lords of the fee, and composing, with the lords spiritual, the Witan, or legislative assembly, which made laws, imposed taxes, concluded treaties and even assumed to depose kings.

The Church represented, perhaps, the highest intellectual culture of the realm. The archbishops and bishops, besides being members of the Witan, exercised a potent influence in the ecclesiastical and temporal affairs of their dioceses.

Those who would uphold the Anglo-Saxon laws had the least show of success. Subjugated, deprived of their lands, debarred from official positions, denied the exercise of political rights, tenants and feudal vassals of the landed gentry, treated as an inferior people and their very name made a reproach in the land, it would seem that there was but little chance for the success of those laws and institutions, which the Anglo-Saxon had brought from the shores of the Baltic.

No sooner had the Conqueror established himself upon the throne, made himself absolute master and begun his tyranny over the Anglo-Saxon people, than there arose from that people a clamor for the restoration of the Anglo-Saxon laws, a clamor which was persistently and effectively repeated and reëchoed down the years to come.

The king yielded to the requests of the people for the laws of Edward, the Confessor, who granted a commission to be selected from each shire composed of twelve men, or as it was expressed: "anglos nobiles sapientes et in lege crudites ut corum consuetudines ab ipsus audirect."

It is evident that the Conqueror did not intend to grant concessions, which he would permit to be exercised; but, while the old Anglo-Saxon laws were not put into force under this concession, the Saxon people, nevertheless, had scored a victory, for it marked the beginning of concessions by the king to a subjugated people, a concession, which recognized the princi-
icles of Anglo-Saxon polity. It was a precedent to a people, to whom precedent was ever almost sacred. Upon the death of the Conqueror in 1087, William Rufus, probably in recognition of the services of the Anglo-Saxon people in his contest with Robert, Duke of Normandy, for the crown of England, promised to lend an attentive ear to the clamors for the restoration of Anglo-Saxon laws, but when he was firmly established upon the throne, he not only neglected to redeem his promises of relief, but proved himself a tyrant, regardless of the rights of his subjects.

When, upon the death of the Red King, his brother, Henry, "put his brows within a golden crown and called himself a king," he listened to the people's appeal for redress, not probably because he was born in England, nor because he had married a Saxon wife, nor yet in recognition of the timely aid rendered him in his contest with the Duke of Normandy, but because, having grave doubts of his right to the throne, he desired the good will of the people, whose assistance he might again need to enable him to hold the crown.

He granted a liberal charter, which was thoroughly Anglo-Saxon in tenor, in which he made liberal concessions to barons, church and people, which tended to abridge the power of the king and which became the groundwork of Magna Charta.

The granting of this charter, although violated by the king, was an important advance, and by it inroads were made upon the claimed prerogatives of the crown.

Stephen, the Usurper, confirmed the charter, violated it and ended his despotic reign in 1154, much to the relief of his alienated subjects.

Pausing at the close of the strictly Norman dynasty to observe the status of the struggle, we find that during the reigns of William, the Conqueror, and his two sons and grandson, while Norman barons held the lands, offices and places of trust, while Norman kings ruled arbitrarily and despotically, while Norman kings, barons and prelates exercised the executive, legislative and judicial functions of the government, they not only made no inroads upon Anglo-Saxon polity, but a recognition of Anglo-Saxon laws had been forced, and that,
too, at the hands of a people having neither lands nor official positions, looked upon by the Normans as inferiors and occupying the position of feudal vassals. The Anglo-Saxon had not become Norman nor assimilated Norman ideas, but had practically absorbed his Norman conquerors and maintained the kingdom as thoroughly English.

In 1154, the first of the long line of Plantagenet kings ascended the throne in the person of Henry II. His descent from Edmund Ironsides inspired the Anglo-Saxon with the hope that his reign would be characterized by just dealings with his English kinsmen. In this, however, they were mistaken. He confirmed the charter of Henry I, but his confirmation was "as sounding brass and a tinkling cymbal," as his promises were speedily followed by repeated violations of the charter.

While the king trampled under foot the rights of the people, he found his master in the Pope of Rome. In the year 1164 were passed the Constitutions of Clarendon, which were aimed at the clergy and the Roman See, forbidding the clergy to appeal to any power outside of the realm without the king's consent, or to go out of the realm without the king's license. Upon the murder of Becket, the king was promptly excommunicated, which act brought him a penitent to Rome where he submitted to being scourged by the bishops, being literally brought to the feet of the Pope, where in humiliation he atoned for his rashness by kissing the Pope's great toe.

Henry II was succeeded by his rebel, un-English son, Richard I, that

``Richard who robbed the lion of his heart,
And fought the holy wars in Palestine.''

Richard's romantic reign may be characterized as a crazy combination of crusades and chivalry.

Spending but four months of his time in his kingdom, he cared nothing for his English subjects, except to extort from them money with which to defray the expenses of his crusades and pilgrimages. He resorted to all the various methods of arbitrarily enforcing the payment of money into his coffers. The revenues and manors of the crown were sold, offices of
trust were disposed of for a consideration, taxes were often levied without the consent of the Great Council, and he openly announced that he "would sell London, if he could find a chap-
man." He did not hesitate, on his return from his pilgrimages to turn out the officers who had purchased their places.

It would appear, therefore, that during the reign of the Lion Heart, Anglo-Saxon laws had suffered a decline. But, while Richard made no concessions, and while he and his foreign soldiery ruled with arbitrary and despotic power, the people were quietly insisting upon their rights, and the manner in which they emphasized their demands during the next reign showed that they had taken no backward step in their deter-
mination to secure their ancient rights.

Sometimes a bad king is a good thing — an arbitrary ruler a benediction. So it proved with John Lackland, who came to the throne in 1199. He lost Normandy to France, incurred the enmity of the barons by arbitrarily levying taxes against them, quarreled with the clergy, drove the monks from the abbeys, seized their treasures, despoiled their altars, appropriated crosses, images and other sacred relics, and defied the Vatican, boldly declaring that "no Italian priest should tithe or toll in his dominions."

Thus it was that the people were able to enlist both barons and church in their crusade for their rights; and in 1213 the king thought it advisable to listen to their clamors, and he directed that the sheriff should summon to the General Council four discreet men from each shire to come and speak with the king about the affairs of the realm, "ad loquendum nobiscum de negottiis regni nostri."

While this summons, as stated, was only for the purpose of consultation, and did not, it seems, recognize the right of the people to legislate, it was important because it was a summons. The matter of a personal summons was of vital importance to the Saxon people, for the lords temporal and the lords spiritual had ever claimed the right of personal summons to all assem-
blies. Summons was the essence of the peerage. It was so in the Witan when William the Conqueror gathered his assembly at Salisbury in 1086; and the Witan, composed of lords claim-
ing the right of summons, gradually grew into the House of Lords, carrying the right of summons with them, but it was not conceded since the Norman Conquest that the people had the right to insist upon being personally summoned. Hence, when King John in 1213 issued a summons for men from each shire, it was a victory for the old Anglo-Saxon laws.

But the Anglo-Saxon was not satisfied with the object of the summons. He wanted to be summoned, not merely to consult and advise—he insisted upon the Saxon laws of Edward the Confessor and the charter of Henry I., and in the year 1215 his persistence was rewarded when King John granted the Magna Charta at Runnymede.

This charter did not spring up voluntarily, nor was it a concession to an impromptu demand. It was based upon the Anglo-Saxon laws, which had been kept alive in the hearts of the English people, and was the answer to their continued, unremitting struggle for their ancient rights.

We are not ignoring the Norman influence in shaping the destinies of England. The Norman blood improved the Anglo-Saxon, and the infusion of the Norman French into the English language enriched it; but the liberties of England were founded upon the Saxon laws. It was the Saxon who clamored to the Norman king for the restoration of Anglo-Saxon laws. The Saxon laws of Edward the Confessor were confirmed by the charter of Henry I., which became the groundwork of Magna Charta. The Great Charter was, therefore, the legitimate descendant of the Saxon laws imported from the shores of the Baltic. King John's arbitrary and despotic treatment of the barons and the church thus made possible the enlistment of both by the people in their struggle for their ancient rights. But John was a shrewd politician. He foresaw that he could not successfully contend against barons, church and people combined, and when the Pope had excommunicated him and had called upon Philip of France and other Christian princes to punish the wicked John, he became seemingly quite penitent, and in a fit of apparent piety, granted a charter, in which, for the remission of his sins and those of his family, he resigned England and Ireland "to God, to St. Peter, and St. Paul and to Pope Innocent and his successors in the Apostolic Chair"
Then, although he had signed the Great Charter, he appealed to the Apostolic See, and the Pope, now considering himself the feudal lord of all England, proceeded to issue a bull annulling and abrogating the whole charter, as unjust and as obtained under compulsion, and as derogatory to the dignity of the Apostolic See. He prohibited the barons from executing it, the king from observing it and excommunicated all who should attempt to carry out its provisions, and absolved all from oaths they had taken to maintain it.

In Magna Charta, however, there was too much Anglo-Saxon law, and in the people there was too much Anglo-Saxon blood, to submit to the unwarranted attempt to make England a fief of the Holy See. The insolent mandate of the Pope was disregarded, and the bulwark of English liberty stands today a beacon shedding its light to all the shores of time.

King John died the year following the granting of the charter, leaving behind him a character caustically portrayed by the historian when he wrote: "Foul as it is, Hell itself is defiled by the fouler presence of John."

Henry III. was an extortionate beggar, cared nothing for his subjects' welfare, and trampled their rights under foot. However, Anglo-Saxon laws were to some extent recognized, as in 1224 each shire sent to the assembly four knights chosen by the milites et probi homines, and in 1254 royal writs issued for two knights from each shire, but it is probable that these knights were empowered only to advise as to the affairs of the realm. Certain it is that in 1258, when, under the Provisions of Oxford, the Barons took charge of the government, each shire was directed to select four knights who would inquire into the condition of their respective shires and report to a parliament to be held next year.

But these summonses were not what the Saxon wanted. The barons grew tyrannical, and under pressure from the people, in 1265 the Earl of Leicester issued summonses for two knights from each shire and two burghers from each town.

The contest with Henry II., which resulted in the call of knights and burghers to parliament, is generally alluded to as the Barons' War. While much credit is due to the rebel earl,
and, while some of the barons aided him, the barons generally leaned rather to the king, and the main dependence of the Earl of Leicester was upon the Anglo-Saxon people, and the call to parliament was largely in response to their continued clamors for their ancient laws and institutions. This call of knights and burghe rs was the beginning of popular representation in parliament. It was the birth of the House of Commons, and the House of Commons was the child of Anglo-Saxon laws. During the reign of Edward I., sometimes styled the English Justinian, matters rapidly turned toward a recognition of Anglo-Saxon polity. In 1295 the king summoned knights and burghe rs to parliament, and it is to be noted that they were summoned from the old Anglo-Saxon shire-moots, and that they were summoned to make laws, ad faciendum, and not merely for the purpose of discussing the affairs of the realm, ad loquendum, as the summons of King John read in 1213.

It is interesting to note the character of the legislation after the Anglo-Saxon took hold. In 1290 was passed that famous statute commonly known as the Statute Quia Emptores, which abolished sub-feudation and was the entering wedge toward untrammeled alienation. In 1297, the Confirmatio Cartarum was wrung from the king, taking away from him all rights of arbitrary taxation, and enacting that “no manner of aids, tasks or prizes should be taken, except by the common assent of the realm.”

In 1306 the great Statute De Tallagio Non Concedendo was passed, enacting that “no talliage nor aid shall be imposed or levied by the king or his heirs without the will and assent of the archbishops, bishops, and other prelates, earls, barons, knights, burgesses or other freemen of the realm.” During the reign of Edward II. a statute was passed distinctly asserting the right of the Commons to be heard on all matters touching the general welfare of the realm, declaring that “the matters to be established for the estate of the king and his heirs, and for the estate of the realm and of the people, should be treated, accorded and established in Parliament, by the king, and by the assent of the prelates, earls, and barons, and the commonalty of the realm, according as had before been accustomed.”
The Commons now sat as a separate body, and their assent was required to all enactments, including taxation.

It was about this time that the Commons began to insist upon the right not only of voting upon all tax legislation, but of initiating all laws having for their object the raising of revenue. They recovered the power of the purse as anciently exercised by the Anglo-Saxons, and this Anglo-Saxon law is the key to the almost absolute power of the House of Commons today, since the withholding of revenue from the king makes it impossible for him to carry on wars or administer the affairs of the government. As early as 1309 the Commons began to attach to bills granting money to the crown petitions for the redress of grievances. If the bills granting money became a law they carried with them the redress of grievances.

During the reign of Edward III. the Commons became invested with another important right, namely the right of impeachment. The House of Lords, besides being a legislative body, exercised the functions of the highest court in the land. The Commons had no such judicial powers, and by reason of this fact and because they had been a petitioning body, they now became accusers, asserting their right to denounced the ministers of the crown and to petition for and demand their dismissal. This right rapidly ripened into an impeachment by the House of Commons and a trial by the House of Lords.

That the Anglo-Saxon had now assumed direct control of the government is attested by the passage of the statute during the reign of Edward III. requiring all court proceedings to be in the English language.

During the reign of Richard II. in 1379 a poll tax was imposed on every man in the kingdom from duke to peasant. In 1380 the tax was extended to all persons over fifteen years of age. The Peasants' War followed, the barons quarreled with the king, and in 1399 parliament again triumphed over the royal power by deposing the last of the Plantagenets and placing on the throne Henry Bolingbroke, the first ruler of the House of Lancaster.

It will be seen that during the reigns of the Plantagenet kings, Anglo-Saxon laws had been recognized under the con-
firmation of the charter of Henry I., and under Magna Charter; the ancient right of summons had been recovered, first for purposes of consultation and advice and later of legislation; representation in parliament had been secured; the House of Commons sat as a separate body, and their vote was essential to all legislation affecting the general welfare of the realm; much progress had been made towards untrammeled alienation; the House of Commons, embodying the old Anglo-Saxon spirit, had grown from a petitioning body to the most important branch of parliament, had assumed and exercised the right of impeaching the ministers of the crown and, together with the House of Lords, had regained the power formerly exercised by the Saxon Witan of deposing kings and enthroning their successors.

It may be said that at the accession of Henry IV. the people had triumphed over the royal prerogative, but their vantage ground was all but lost during the reigns of the Lancastrian kings and those of the House of York, during foreign complications, civil dissensions and the bloody Wars of the Roses. The cause of the people was sacrificed "to the fire-eyed maid of smoky war."

Although, when that "nimble-footed mad-cap, Prince of Wales," riotous Prince Hal, became King Henry V., a law was passed to the effect that nothing should be enacted to the petitions of the Commons contrary to their asking whereby they should be bound without their assent," and, although during the "perpetual minority" of the unfortunate Henry VI., the Commons, wearied of the abuses of the officers of the crown in changing the enactments granted in answer to their petitions, began to bring in bills, which they passed themselves, yet the crown recovered its all but absolute supremacy.

When the fortunes of the White Rose went down on the field of Bosworth in 1485, and the crown of the Crook-back King was placed upon the head of the Earl of Richmond, the founder of the House of Tudor found himself in possession of almost absolute power.

In the course of his reign he became avaricious, levied a "benevolence" on his subjects and filled his coffers at their expense. His reign but presaged the arbitrary rule of the House of Tudor.
The reign of that royal Bluebeard, Henry VIII., was arbitrary and despotic. When not engaged in marrying, divorcing, and beheading his wives, he occupied his time in robbing his subjects. He despoiled monasteries, confiscated the property of the church and emptied the "bags of hoarding abbots," doubtless shielding himself behind the heartless sophistry of Julian, the Apostle, to the effect, that, as the kingdom of heaven was promised to the poor, the church would advance with more diligence and certainty in the paths of virtue and salvation when relieved of their temporal possessions.

During the reigns of all the Tudors the rights of the people were trodden under foot, and the outlook for personal liberty was gloomy. Anglo-Saxon laws were again put to the test and came forth triumphant, for just as during the reigns of the Norman kings, the Anglo-Saxon people were holding their rights in reserve to burst forth during the twelfth century, so during the reigns of the Tudors, the reserved liberty of the people was only dormant and was ready to awaken and reassert itself during the reigns of the House of Stuart. Dormitur aliquando jus, moritur nunquam.

The sovereigns of the House of Tudor were as despotic and as tyrannical as were those of the House of Stuart, but they had the gift of knowing the limits to which they could safely go. They knew that they could neither legislate nor impose taxes without the consent of Parliament, and they knew when they were approaching the danger line of royal prerogative and stopped. They occasionally oppressed an individual, but when they attempted to oppress the masses of the people they took warning from the defiant attitude of their subjects and desisted. They could, under the guise of "benevolences" and loans, sometimes succeed in exacting contributions, but when they presumed to enforce a tax attempted to be laid by the royal prerogative alone, the frowns of the sturdy yeomanry of England were a sufficient admonition to the cautious Tudor. While Henry VIII. could marry, divorce and behead his wives at will, when he attempted to levy a tax amounting to one-sixth of his subjects' goods, the storm of popular indignation warned him to desist, and, tyrant though he was, he retracted and
apologized for his acts. And, while Good Queen Bess could, with impunity, send to the scaffold Essex or the Queen of Scots, when she assumed the right, without the consent of parliament, to grant patents of monopoly, by which the prices of the commodities of life were raised, she was confronted by an indignant House of Commons, supported by a determined, angry people, and she knew that she had reached a limit. She not only cancelled the patents, but thanked the Commons for their earnest protecting care of the rights of the people.

The Tudor discretion was wholly wanting in the reckless House of Stuart. The latter, having no standing army to enforce its mandates, put forward the claim that the Creator himself had ordained hereditary monarchy, and that all power was vested in the king, who was privileged to dole out to his subjects such liberties as he saw fit and to resume them at pleasure: in short, that the monarch was absolute, and that

"Not all the water in the rough, rude sea
Can wash the balm off from an anointed king."

This doctrine of the jus divinum regum struck the people of England with consternation and alarm. It precipitated the contest to settle the question of the source of political power, to determine who should rule, the king or the people.

The House of Commons resolutely asserted its rights as against the exactions of the king, and showed a determination to entertain no compromise of the popular cause. The struggle of the people reached a crisis in 1628 when there was wrung from the king the famous Petition of Rights, acknowledging the illegality of martial law in times of peace, the wrong of billeting soldiers on private houses, and admitting the illegality of forced loans, which had been exacted by a system of punishments inflicted by pressing into the navy the common people who refused and imprisoning gentlemen per speciale mandatum regis.

The Commons in their quarrels with the House of Stuart were not bent on revolution, but they were determined to enforce a redress of grievances and to place a limit upon absolute royal power. That they were obliged to resort to arms was
probably not their fault. They had become strong enough to throw down the gauntlet and openly battle with the king, barons and church combined. They arose in their might, overthrew the House of Lords and the church and hung the king.

The House of Commons, that child of Anglo-Saxon laws, had now risen to power and had accomplished the object for which the Anglo-Saxon had contended for centuries. They soon added to their right of initiating tax bills, the right of controlling the expenditures of the revenue; they passed the Act of Habeas Corpus and swept away the iniquitous Star Chamber and the High Commission. By the revolution of 1688 and the deposition of James II, the Bill of Rights was granted, guaranteeing security to the liberties of the people and establishing constitutional monarchy on a firm foundation.

While the Commons had triumphed over the nobility, the church and the crown, the representation in parliament, being largely controlled by great land owners, the nobility and the king, was not yet that direct representation demanded by the people.

The struggle to perfect their right of direct representation, to take away the influence of the nobility and the crown, and to put an end to rotten boroughs, reached a crisis in the Reform Bills of 1832 and 1867-1868, when popular representation in parliament was permanently established.

The triumph of the House of Commons was simply the triumph of Anglo-Saxon laws, and the supremacy of the Commons shows how complete has been that triumph. The House of Commons originates all bills to raise revenue and regulates its expenditure; it impeaches officers of the crown; it has the power, by withholding appropriations for the annual budget to disband the army and navy of the kingdom, while the king sits by a helpless "looker on in Vienna"; by its mere vote of want of confidence in the Ministry, the Ministry must resign or parliament must be dissolved and an appeal made to the people.

"A germ of political and social life was brought into Britain in the keels of Hengist, which changing from generation to generation but never itself exchanged for any other system, borrowing from foreign sources, but assimilating what it bor-
rowed with its own essence, changing its outward shape, but abiding untouched in its true substance, has lived and grown through fourteen hundred years into the law, the constitution and social being of England.’” Looking back over the centuries we see the Anglo-Saxon laws and institutions survive the Danish Conquest; we see those laws advocated only by a subjugated people and antagonized by a powerful Norman conqueror, emerge triumphant over the arbitrary rule of despotic kings, over lordly feudal barons, and over a narrow but powerful ecclesiastical authority, and we are driven to the conclusion that such laws and institutions must possess an indestructible character; and we feel that too much cannot be said in praise of that old Teutonic pagan, whose pirate accents are now heard in all the busy marts of the world; to whom is largely due the greatness of that “power, which has dotted over the surface of the whole globe with her possessions and her military posts; whose morning drum-beat, following the sun and keeping company with the hours, circles the earth with one continuous and unbroken strain of the martial airs of England;” and to whom is mainly due the glory of that liberty-loving people, “Time’s noblest offspring,” whose dominions stretch from sea to sea, under whose direction and control rest the affairs of a hemisphere, in whose hands is the key to the industrial world, and to whom in time to come the nations of the earth will look, as they once looked to Greece, to learn the arts and sciences, and will turn, as they once turned to Rome, to drink in the inspiration of military glory.
CONSTITUTION.

ARTICLE I.

Objects.

The objects of the Association are to foster legal science, maintain the honor and dignity of the profession of law, to cultivate professional ethics and social intercourse among its members, and to promote improvements in the law and the modes of its administration.

ARTICLE II.

Election of Members.

All nominations for membership shall be made by the Local Council of a county or Bar Association when such Local Council or Bar Association exists; when there is no Local Council or Bar Association in any county, nominations for such county shall be made by the Central Council. All nominations thus made or approved shall be reported by the council to the Association, and all whose names are reported thereupon become members of the Association; provided, that if any member demands a vote upon any name thus reported, the Association shall thereupon vote thereon by ballot. Five negative votes shall be sufficient to defeat any election for membership. But interim, the Central Council, upon recommendation of any Local Council, shall have the power to elect applicants to membership.

ARTICLE III.

Membership.

Any person shall be eligible to membership in this Association, who shall be a member of the bar of this State, in good standing, and who shall also be nominated as herein provided.

ARTICLE IV.

Officers.

The officers of this Association shall consist of one President, three Vice-Presidents, a Secretary and Treasurer, a Central Council, who shall be the Board of Directors, under the charter, to be chosen by the Association. One of the members of the Central Council shall be its chairman.
Each of these officers shall be elected at each annual meeting for the next ensuing year, but the same person shall not be elected President for two years in succession. All such elections shall be by ballot. The officers elected shall hold office until their successors are elected and qualified according to the Constitution and By-Laws.

**ARTICLE V.**

*Central Council.*

The Central Council shall consist of five members, and shall be, at all times, an advisory board for consultation and conference, when called on for that purpose by the President, or any Vice-President who may, for the time being, be acting as President.

**ARTICLE VI.**

*Local Council.*

The President, by and with the advice and consent of the Central Council, may establish a Local Council in any county in the State by issuing a warrant to that effect, naming therein the persons composing such Local Council. Each Local Council shall consist of not less than three nor more than seven members. No person shall be eligible to appointment as a member of any Local Council who is not at the time a member of this Association.

**ARTICLE VII.**

*Election of Members.*

All members of this convention signing the charter, and all members elected as herein provided shall become members of the Association upon the payment of the admission fee as herein provided for. But after the adjournment of this convention all nominations for membership shall be made as herein provided.

**ARTICLE VIII.**

*Annual Dues.*

Each member shall pay three dollars to the Treasurer as annual dues, and no person shall be qualified to exercise any privileges of membership who is in default. Such dues shall be payable, and the payment thereof enforced, as may be provided by the By-Laws. Members shall be entitled to receive all publications of the Association free of charge. The admission fee shall be three dollars, to be paid as the member is elected. The admission fee shall be in lieu of all dues for the first year.
BAR ASSOCIATION OF TENNESSEE

ARTICLE IX.

Adoption of Amendments of By-Laws.

By-Laws may be adopted or amended at any annual meeting of the Association by a majority of the members present.

ARTICLE X.

Committees.

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

2. On Judicial Administration and Remedial Procedure.
3. On Legal Education and Admission to the Bar.
5. On Grievances.
6. On Obituaries and Memorials.

A majority of those members of any committee, or of the Central Council, who may be present at any meeting of such committee or council, shall constitute a quorum for the purpose of such meeting. Vacancies in any office provided for by the constitution shall be filled by appointment by the President, and the appointees shall hold office until the next meeting of the Association.

ARTICLE XI.

Central Council.

The Central Council shall perform such duties as may be assigned to them by the President, or as may be defined by the By-Laws, except as herein otherwise directed.

ARTICLE XII.

Meeting of the Association.

This Association shall meet annually, at such time and place as the Central Council may select, and those present at such meeting shall constitute a quorum. The Secretary shall give sixty days’ notice of time and place of such meeting, either by publication in a public newspaper or by personal communication.

ARTICLE XIII.

Duties of the President.

The President shall open each annual meeting of the Association with an address, in which he shall communicate the most noteworthy changes in the statute law, on points of general interest, made in the State and by the Congress during the preceding year.
ARTICLE XIV.

Alterations or Amendments of the Constitution.

This Constitution may be altered or amended by a vote of three-fourths of the members present at any annual meeting, but no such change shall be made at any meeting at which less than twenty members are present.

ARTICLE XV.

Duties of the Local Council.

Each Local Council shall perform such duties as it may be called upon to perform by the President, or as may be defined by the By-Laws.

ARTICLE XVI.

Suspension of Members.

Any member of the Association may be suspended or expelled for misconduct in his relations to this Association, or in his profession, on conviction thereof, in such manner as may be prescribed by the By-Laws.
BY-LAWS.

I.—PRESIDENT.

The President shall preside at all meetings of the Association, and in case of absence, one of the Vice-Presidents shall preside.

II.—SECRETARY.

The Secretary shall keep a record of all meetings of the Association, and of all other matters of which record shall be deemed advisable by the Association, and shall conduct the correspondence of the Association, with the concurrence of the President. He shall notify the officers and members of their election, and shall keep a roll of the members, and shall issue notices of all meetings.

III.—SECRETARY AND TREASURER.

The Secretary and Treasurer shall collect, and, under the direction of the Central Council, disburse all funds of the Association; he shall report annually, and oftener, if required; he shall keep regular accounts, which shall be at all times open to inspection of the members of the Association. His accounts shall be audited by the Central Council. Before discharging any of the duties of this office the incumbent shall execute a bond, with good and sufficient surety, to be approved by the President, payable to the President and his successors in office, in the sum of one thousand dollars, for the use of the Association, and conditioned that he will well and faithfully perform the duties of his office so long as he discharges any of the duties thereof.

IV.—CENTRAL COUNCIL.

The Central Council shall meet at least once every three months, and oftener if called together by the President. They shall have power to make such regulations, not inconsistent with the Constitution and By-Laws, as shall be necessary for the protection of the property of the Association, and for the preservation of good order in the conduct of its affairs. They shall keep a record of the proceedings, which shall be read at the ensuing meeting of the Association; and it shall be their duty to present business for the Association. They shall have no power to make the Association liable for any debts amounting to more than half the amount in the Treasurer's hands in cash, and not subject to prior liabilities. They shall perform such other duties as are required of them by the Constitution, or as may be assigned to them by the President.
V.—ORDER OF BUSINESS.

At each annual, stated, or adjourned meeting of the Association the order of business shall be as follows:

1. Reading minutes of preceding meeting.
2. Address of the President.
5. Election, if any, to membership.
8. Miscellaneous committees.

The order of business may be changed by a vote of the majority of the members present.

No person in discussion shall occupy more than ten minutes at a time, nor be heard more than twice on the same subject.

The parliamentary rules and orders contained in Cushing's Manual, except as otherwise herein provided, shall govern all meetings of the Association.

VI.—MEMBERS ELECT.

If any person elected does not, within one month after notice of his election, signify his acceptance of membership by a letter to the Secretary to that effect, and by payment of his admission fee, he shall be deemed to have declined to become a member.

VII.—COMMITTEES.

In pursuance of Article X of the Constitution, there shall be the following standing committees:

1. A Committee on Jurisprudence and Law Reform, who shall be charged with the duty of attention to all proposed changes in the law, and of recommending such as, in their opinion, may be entitled to favorable consideration of the Association.

2. A Committee on Judicial Administration and Remedial Procedure, who shall be charged with the duty of the observation of the working of our judicial system, the collection of information, the entertaining and examination of projects for a change or reform in the system, and of recommending from time to time to the Association such action as they may deem expedient.

3. A Committee on Legal Education and Admission to the Bar, who shall be charged with the duty of examining and reporting what change it is expedient to propose in the system and mode of legal education, and of admission to the practice of the profession in the State of Tennessee.

4. A Committee of Publication, who shall be charged with the duty of examining and reporting upon all matters proposed to be published by
authority of the Association, and pertaining to any of the subjects for the advancement of which the Association is created.

5. A Committee on Grievances, who shall be charged with the hearing of all complaints which may be made in matters affecting the interest of the legal profession and the practice of law, and the administration of justice, and to report the same to this Association, with such recommendations as they may deem advisable; and said committee shall, in behalf of the Association, institute and carry on such proceedings against offenders, and to such extent as the Association may order, the cost of such proceedings to be paid by the Treasurer, on the warrant of the Central Council, out of moneys subject to be appropriated by them.

VIII.—APPOINTMENT.

Each of the standing committees shall consist of five members, and shall be appointed annually by the President of the Association, and shall continue in office until the annual meeting of the Association next after their appointment, and until their successors are appointed, with power to adopt rules for their own government, not inconsistent with the Constitution or these By-Laws. Any standing committee of the Association may, by rule, provide that three successive absences from the meetings of the committee, unexcused, shall be deemed a resignation by the member so absent from his place upon the committee. Any standing committee of the Association may, by rule, impose upon its members a fine for non-attendance, and may provide for the disposition of the fines collected under such rule.

IX.—CHARGES AGAINST MEMBERS.

Whenever any complaint shall be preferred against a member of the Association for misconduct in his relations to this Association, or in his profession, the member or members preferring such complaint shall present it to the Committee on Grievances, in writing, and subscribed by him or them, plainly stating the matter complained of, with particulars of time, place and circumstances.

The committee shall thereupon examine the complaint, and if they are of the opinion that the matter therein alleged is of sufficient importance, shall cause a copy of the complaint, together with a notice of not less than five days, of the time and place when the committee will meet for the consideration thereof, to be served on the member complained of, either personally or by leaving the same at his place of business during the office hours, properly addressed to him. If, after hearing his explanations, the committee shall deem it proper that there shall be a trial of the charge, they shall cause a similar notice of five days of the time and place of trial to be served on the party complained of.

The committee shall be furnished with a list of the witnesses, their names and place of residence, who it is proposed shall be examined to sustain the charge, which shall accompany the complaint when made to
the committee; and when the day is set for trial the member complained of, upon his demand therefor, shall be entitled to a copy of said list of witnesses. At the time and place appointed for the trial, or at such other time as may be granted by the committee, the member complained of shall file a written answer or defense. Should he fail to do so, the committee may proceed thereupon to the consideration of the complainant.

The committee shall thereupon, and at such other times and places as they may adjourn to, proceed to hear the evidence adduced and try the complaint, and shall determine all questions of evidence.

The complainant, and the member complained of, shall each be allowed to appear personally and by counsel, who must be members of the Association; and the complainant, and the member complained of, shall each be competent witnesses. The witnesses shall vouch for the truth of their statements on their word of honor. The committee shall have power to summon witnesses; and if any such witnesses are members of the Association, a neglect or refusal to appear may be reported to the Association by the committee, and treated as a misconduct.

The committee, of whom at least four must be present at the trial, except that a less number must adjourn from time to time, shall hear and decide the allegations submitted to them; and if they find the complaint or any material part of it, to be true, they shall so report to the Association, with their recommendation as to the action to be taken thereon.

The decision of the committee shall be served on the member complained of, and if the decision be that the complaint, or any material part thereof, is true, and in that case only, the committee shall also serve a copy of the complaint, answer, if there be an answer, and decision on the President of the Association; and if requested, either by the member or members complaining, or the member complained of, shall annex thereto a copy of the evidence taken, which said document shall be regarded as a report of the committee to the Association.

Every such report shall be acted on only by the Association at an annual, stated or adjourned meeting of the Association, and of which the member complained of shall have due notice, to be served upon him by direction of the committee. The committee shall thereupon proceed to take such action on said report as they may see fit, provided only that no member shall be expelled unless by the vote of two-thirds of the members present and voting.

Whenever any trial shall be determined on, the member complained of may object, for cause, to any of the members of said committee, which said causes he shall state in writing and present to the committee. Thereupon the committee shall report the facts to the President, and inclose to him a copy of the objection for cause; and the President shall forthwith summon the Central Council to meet with him and determine what weight, if any, the objections for cause are justly entitled to have; and if the President and a majority of the Central Council present and voting shall determine that the objections for cause are not well taken, and the same
are overruled, the President shall so inform the Committee on Grievances; but if the President and a majority of the Central Council, as aforesaid, shall determine that any of said objections for cause, to any member of the Committee on Grievances is well taken, then the President shall so inform said committee, and forthwith appoint another member or members to supply the temporary vacancy caused thereby; and the method herein provided shall be resorted to until a committee is obtained against whom the member complained of urges no just objection for cause.

If any member of the bar in the State of Tennessee shall collect money in his professional capacity for a client, and wrongfully fail or refuse to account for the same, it shall be the duty of the President, or any Vice-President of the Bar Association of Tennessee, on complaint being made to him by any person, to appoint a suitable committee from among the members of this Association to investigate the case, and report the facts to the officer appointing this committee; and if, in the judgment of that officer, a case can be made out against the offender, said appointing officer shall order same or another committee to prosecute the offender in the courts for disbarment.

If any member of the bar of Tennessee shall be guilty of any unprofessional conduct, for which he could, under the then existing laws of the land, be disbarred, it shall be the duty of the President and Vice-Presidents of the Bar Association of Tennessee to proceed to have him disbarred, as indicated in the by-law just preceding this.

All the foregoing proceedings shall be kept secret, except as their publication is hereinbefore provided for, unless otherwise provided for by this Association.

X.—NOMINATIONS AND ELECTIONS.

Nominations of candidates to fill the respective offices may be made at the time of election by any member, and as many candidates may be nominated for each office as members may wish to name, but all elections, whether to office or membership, must be by ballot. A majority of the votes cast shall be sufficient to elect to office, but five negative votes shall be sufficient to defeat an election to membership.

XI.—SUPPLYING VACANCIES.

All vacancies in any office or committee of this Association shall be filled by appointment of the President, and the person thus appointed shall hold for the unexpired term of his predecessor; but if a vacancy occur in the office of President, it shall be filled by the Association at its first stated meeting occurring more than ten days after the happening of such vacancy, and the person elected shall hold for the unexpired term of his predecessor.

XII.—ANNUAL DUES.

All annual dues of this Association shall be paid on or before the first day of March in each year, and any member failing to pay his annual dues
by that time shall be in default, and, upon the order of the President, the Secretary shall strike the name of such member from the rolls of membership, unless for good cause shown the President shall excuse such default, in which last event the name of such member shall, upon the order of the President, be restored by the Secretary to the roll of membership.

XIII.—AMENDMENT OF BY-LAWS.

These by-laws may be amended at any stated, adjourned or annual meeting of the Association by a majority of those present.

XIV.—RESIGNATION OF OFFICERS AND MEMBERS.

Any officer may resign at any time upon settling his accounts with the Association. A member may resign at any time upon the payment of all dues to the Association; and from the date of the receipt by the Secretary of a notice of resignation, with an indorsement thereon by the Treasurer that all dues have been paid as provided, the person giving such notice shall cease to be a member of the Association.

XV.—SALARY OF SECRETARY AND TREASURER.

The annual salary of the Secretary and Treasurer shall be two hundred dollars, one-half of which shall be due on the first day of May, and the other half on the first day of November in each year, but may be paid earlier, or at other times, if the Central Council shall, in writing, so direct: but this shall be in full of all compensation to him. No other officer of the Association shall receive any salary or compensation.

XVI.—SPECIAL MEETING.

If the President and Central Council shall determine that it is necessary for the Association to hold any other meetings during the year than the regular annual meeting, the same shall be held at such time and place as the President and Central Council may fix, upon twenty days' notice of such time and place, to be given by the Secretary by publication in a newspaper; and the Secretary shall give this notice upon the order of the President.

XVII.—NUMBER OF PAPERS.

Not more than six papers, in addition to the regular order of business, shall be read at each annual meeting, and not more than one at each of the sessions of the Association.

XVIII.—LENGTH OF PAPERS.

No paper read before the Association shall occupy more than thirty (30) minutes.
XIX.—CENTRAL COUNCIL TO FURNISH SUMMARY OF REPORTS.

It shall be the duty of the chairman of each standing committee of the Association to send to the Secretary of the Association at least thirty (30) days before each annual meeting the report and recommendations which his committee intends to present to the meeting. The Secretary shall, as soon as practicable after the receipt of same, print and distribute to the members of the Association a brief summary of the recommendations contained in said reports.

XX.—HONORARY MEMBERS.

All Chancellors and Judges of the Superior Courts of this State, and resident Judges of the Federal Courts, are honorary members of this Association, and they are relieved from the payment of admission fees and dues.
**LIST OF MEMBERS.**

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Staples, Jno. W. .................................................. Harriman
Steger, T. M. .................................................... Nashville
Steger, Will ..................................................... Nashville
Sternberger, Aaron .............................................. Brownsville
St. John, C. J. ................................................... Bristol
Stickley, R. H. ................................................... Madisonville
Stockell, A. W. ................................................... Nashville
Stokes, Jordan ................................................... Nashville
Stokes, Walter ................................................... Nashville
Strang, S. Bartow ................................................. Chattanooga
Susong, J. A. .................................................... Greeneville
Swaney, W. B. .................................................... Chattanooga
Swafford, J. B. ................................................... Dayton
Sweeney, John C. .................................................. Paris
Taylor, E. R. .................................................... Morristown
Templeton, Jerome ............................................... Knoxville
Templeton, Paul E. .............................................. Knoxville
Thomas, W. G. M. ................................................. Chattanooga
Tilman, A. M. .................................................... Nashville
Tilman, G. N. .................................................... Nashville
Tipton, John W. .................................................. Elizabethton
Thornburgh, Jno. M. .............................................. Knoxville
Trabue, C. C. .................................................... Nashville
Trezevant, M. B. ............................................... Memphis
Trewitt, A. H. .................................................... Chattanooga
Trim, L. H. ...................................................... Greeneville
Trimble, J. M. .................................................... Chattanooga
Turley, E. R. .................................................... Memphis
Turney, John E. ................................................... Nashville
Turney, Woodson ................................................ Winchester
Turner, W. B. .................................................... Columbia
Tyne, Thos. J. .................................................. Nashville
Vaughn, Robert ................................................... Nashville
Vertrees, John J. .................................................. Nashville
Vertrees, W. O. .................................................. Nashville
Wagner, T. H. .................................................... Chattanooga
Walker, Bradley .................................................. Nashville
Wallace, J. H. ................................................... Clinton
Waller, Claude ................................................... Nashville
Walsh, Edward F. ................................................. Knoxville
Walsh, H. F. ...................................................... Memphis
Warriner, H. C. ................................................... Memphis
Washington, Jos. E. ............................................. Wessyngton
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1. Allison, John, Chancellor ........................................ Nashville
2. Allison, Judge M. M. ........................................ Chattanooga
3. Barton, Judge R. M., Jr. ........................................ Chattanooga
4. Beard, Judge W. D. ........................................ Memphis
5. Bearden, W. S., Chancellor .................................... Shelbyville
6. Bell, Judge B. D. ................................................ Gallat'n
7. Bond, Judge John R. ............................................ Brownsville
8. Burke, Judge George L. .......................................... Kingston
9. Cartwright, Judge J. A. ......................................... Nashville
10. Childress, Judge John W. .................................... Nashville
11. Clark, Judge C. D. .............................................. Chattanooga
12. Colyar, Judge A. S. ............................................ Nashville
13. Cooper, John S., Chancellor ................................ Trenton
14. Everett, Judge S. J. ................................................ Jackson
15. Frazier, Hon. James B. ...................................... Nashville
16. Galloway, Judge J. S. ........................................ Memphis
17. Hawkins, A. G., Chancellor ................................ Huntingdon
18. Haynes, Hal H., Chancellor ................................ Bristol
19. Heiskell, F. H., Chancellor ................................ Memphis
20. Higgins, Judge Joe C. ........................................ Fayetteville
21. Holding, Judge Samuel .......................................... Columbia
22. Houston, Judge W. C. ........................................ Woodbury
23. Hull, Judge Cordell ............................................. Gainesboro
24. Kyle, H. G., Chancellor ....................................... Rogersville
25. Lansden, D. L., Chancellor ................................ Cookeville
26. Laughlin, Judge H. W. ......................................... Memphis
27. Lurton, Judge H. H. ............................................... Nashville
28. Maiden, Judge R. F. ............................................... Dresden
29. Malone, Judge Walter .......................................... Memphis
30. Malone, Thos. H. ................................................ Nashville
31. McAlister, Judge W. K. .......................................... Nashville
32. McCall, Judge John R. .......................................... Memphis
33. McConnell, T. M., Chancellor ................................ Chattanooga
34. McHenderson, Judge G. ........................................ Rutledge
35. Moss, Judge John T. ............................................ Memphis
36. Neil, Judge M. M. .............................................. Trenton
37. Pittman, Judge A. B. ............................................. Memphis
38. Richardson, Judge Jno. E. ................................... Murfreesboro
39. Shields, Judge John K. ........................................ Knoxville
40. Sneed, Judge Jos. W. ............................................ Knoxville
41  Spencer, Judge Selden P. ............................................St. Louis, Mo.
42  Stout J. W., Chancellor .............................................Cumberland City
43  Taylor, Judge John M. ..............................................Lexington
44  Tyler, Judge A. J. ....................................................Bristol
45  Wilkes, Judge John S. ................................................Pulaski
46  Wilson, Judge S. F. ..................................................Gallatin
47  Woods, Judge Levi S. ................................................Lexington
48  Young, Judge J. P. ....................................................Memphis
F. H. HEISKELL,
PRESIDENT 1906-1907
Bar Association of Tennessee
and
Arkansas Bar Association

And Separate Sessions of Bar Association of Tennessee

HELD AT MEMPHIS, TENN., JUNE 1, 5, AND 6, 1907.
PROCEEDINGS
OF THE JOINT MEETINGS

OF THE

Bar Association of Tennessee
and
Arkansas Bar Association

And Separate Sessions of Bar Association
of Tennessee

HELD AT MEMPHIS,
TENN., JUNE 4, 5 and 6
1907
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PROCEEDINGS
OF THE
JOINT MEETING OF THE BAR ASSOCIATION OF TENNESSEE AND THE ARKANSAS BAR ASSOCIATION
HELD AT
Memphis, Tennessee, June 4, 5 and 6, 1907

FIRST DAY, TUESDAY, JUNE 4.
MORNING SESSION.

The Bar Association of Tennessee and the Bar Association of Arkansas met in joint session in the Goodwyn Institute Building at Memphis, Tennessee, on June 4, 1907. From 9:30 to 10 o'clock A.M., while the members of the two Associations were assembling in the auditorium, a choice musical program was rendered by one of Memphis' leading orchestras.

At 10 o'clock A.M. the joint meeting of the Associations was called to order by Hon. F. H. Heiskell, President of the Bar Association of Tennessee. President Heiskell introduced Hon. James H. Malone of Memphis, who delivered the address of welcome on behalf of the City of Memphis and its Bar. Mr. Malone's remarks appear in appendix.

Hon. Joseph W. House, President of the Bar Association of Arkansas, introduced Hon. O. N. Killough of Wynne, Arkansas, who responded to the address of welcome on behalf of the State of Arkansas and its bar in most pleasing terms. Mr. Killough's remarks appear in appendix.

President Heiskell of the Tennessee Bar Association introduced Hon. John H. Henderson of Franklin, Tennessee, who
responded to the address of welcome on behalf of the members of the Bar of Tennessee. His remarks appear in the appendix.

President Heiskell of the Tennessee Association, next introduced the Hon. Joseph W. House, President of the Bar Association of Arkansas, who delivered his annual address which will be found in the appendix.

Mr. R. G. Brown, Chairman of the Entertainment Committee, announced that a Smoker and Dutch lunch would be given at 9 o'clock this evening for the pleasure and refreshment of the members of the Bar Associations.

President House of Arkansas Association, introduced Hon. F. H. Heiskell, President of the Bar Association of Tennessee, who delivered his annual address, which appears in the appendix.

On motion an adjournment was taken to 2 o'clock P. M.

AFTERNOON SESSION.

President F. H. Heiskell of the Tennessee Association called the meeting to order at 2:30 o'clock. President Heiskell announced that Judge A. H. Whitfield, Chief Justice of the Supreme Court of Mississippi, was unable to be present at the meeting of the Associations on account of illness. The absence of Judge Whitfield was a source of regret to all who know him, as they had looked forward with pleasure to his expected address on "Criminal Law Reform."

Mr. Albert W. Biggs of the Memphis Bar, introduced by President Heiskell of the Tennessee Association, read a paper entitled "The Practice of Law; A Trade or a Profession," which evoked a spirited discussion by members of the Association, and which will be found in the appendix.

President House of the Arkansas Association announced that Hon. Jesse Turner of Van Buren, Arkansas was unable to be present on account of illness. He then introduced Hon. Joseph M. Hill, Chief Justice of the Supreme Court of Arkansas, who read the paper written by Hon. Jesse Turner, entitled "A Page from English State Trials," which appears in the appendix.

President Heiskell of the Tennessee Association, announced the meeting open for discussion of the papers read during the afternoon session. Mr. W. H. Arnold of Arkansas, Mr. W. A.
Percy of Memphis, Col. G. N. Tillman of Nashville, discussed some of the questions considered in the papers read during the afternoon. The remarks of Mr. W. A. Percy and Col. G. N. Tillman and W. H. Arnold touching Mr. A. W. Biggs' paper appear in the appendix.

SECOND DAY, WEDNESDAY, JUNE 5, 1907.

From 9:30 to 10 o'clock A. M. a musical program was rendered by the orchestra.

At 10:00 o'clock the meeting was called to order by Hon. Joseph W. House, President of the Bar Association of Arkansas, and he at once introduced Hon. Yancy Lewis of Dallas, Texas, who addressed the meeting on the subject of "Institutional Changes." This was a most able address, showing deep study and thought, and is given in full in the appendix.

Mr. W. A. Percy, Chairman of the Banquet Committee, announced that a banquet would be tendered the members of the Associations at 8 o'clock P. M. Thursday.

Mr. R. G. Brown, Chairman of the Entertainment Committee announced for the pleasure of the members of the Associations and their wives, an automobile parade leaving Goodwyn Institute Building at 4 o'clock this afternoon, thence proceeding through the Parks of the City to the Country Club House where luncheon would be served at 6 o'clock P. M.

On account of the illness of the Hon. Joshua W. Caldwell of Knoxville, Tennessee, and his inability to be present on Wednesday, the original program for Wednesday and Thursday was somewhat changed as appears from the minutes of the meetings.

President F. H. Heiskell of the Tennessee Association introduced the Hon. E. F. Ware of Topeka, Kansas, who read a paper entitled "Ancient Lawyers." This very learned paper showed much study and exhaustive research, and at the same time was filled with humor. The paper appears in the appendix.

On motion the meeting of the Joint Associations adjourned until 9 o'clock A. M. Thursday. Each Association held separate sessions in the afternoon.
THIRD DAY—THURSDAY, JUNE 6, 1907.

The Orchestra rendered a 15 minute musical program beginning at 9 o’clock.

At 9:15 o’clock President House of the Arkansas Association called the meeting to order and introduced Hon. T. D. Crawford of Little Rock, Arkansas, who read a paper entitled, “The Court Reporter,” which appears in the appendix.

Mr. R. G. Brown, Chairman to the Entertainment Committee, announced that a luncheon would be given at the Country Club at 2 p. m. as a courtesy to the ladies in attendance on the meetings of the Bar Association.

President F. H. Heiskell of the Tennessee Association introduced Hon. Hannis Taylor of Washington, D. C., who read a paper on the subject of “The Growing Importance of the Fourteenth Amendment,” which appears in full in the appendix.

Hon. Joshua W. Caldwell of Knoxville, Tennessee, introduced by President Heiskell of the Tennessee Association, delivered a forceful address on the subject of “Local Government.” This address will be found in the appendix.

President Joseph W. House of the Arkansas Association introduced Hon. N. W. Norton, of Forrest City, Arkansas, who read a paper on “The Progress of the Law as Compared with Other Professions,” which appears in the appendix.

On motion the joint meeting adjourned sine die. Separate meetings of each association were held in the afternoon.

Note:—It should be stated in this connection that all the entertainments announced at both the joint and separate meetings of the Associations were carried out and greatly enjoyed by the members of the Associations present, being the Dutch Lunch and Smoker, the first evening, Automobile Parade and Luncheon at Country Club the afternoon of the second day, and Luncheon for the Ladies at Country Club afternoon of last day and the Boat ride on river same afternoon and Banquet that evening.
APPENDIX

ADDRESS OF WELCOME ON BEHALF OF MEMPHIS BAR

BY JAMES H. MALONE.

Mr. President and Gentlemen of the State Bar Associations of Arkansas:

It is with unfeigned pleasure that on behalf of the Memphis Bar, I extend to you a most hearty and sincere welcome in our midst. Usually the Tennessee State Bar Association meets upon Lookout mountain, where the magnificence of the scenery and the historic interest of all its surroundings make it an ideal spot for recreation, as well as a place of reunion for the lawyers of the State.

We are accustomed also to change from time to time the usual place of meeting, and to gather in the various cities of the State, so as to bring the association nearer to the lawyers of the State, and thereby quicken an interest in the profession, leading it from the toils and thoughts of the every day struggle, and inculcating the highest ideals of the brotherhood which has so ennobled its history of the past.

Once again it has happily fallen to the city of Memphis to act as host for the lawyers of the State. Happily also we have the pleasure of entertaining the State Bar Association of Arkansas, our great neighbor to the West, and separated from our shores only by the waves of the Mississippi river.

The great agricultural, horticultural and mineral resources of Arkansas are scarcely appreciated by even her own people, but in all that goes to make up a great State, there is nothing lacking, and it is fast commanding the attention of the whole country.

When we remember such Arkansas lawyers as C. J. English, A. H. Garland and U. M. Rose, not to mention a host of others, the present members of the Arkansas State Bar Association have reason to be proud of the great State from which they come, and we certainly esteem it a great honor to have them with us upon this auspicious occasion.

It is a matter of profound regret that owing to illness Chief Justice Whitfield of Mississippi can not meet with us. If the roll
of the Memphis Bar was called this morning, a large per cent. of its members would be found to hail from the common-wealth of Mississippi, and all of them are glad to recall the name and fame of such great lawyers as Sharkey, George LaMar, Campbell and many others who have enriched the jurisprudence of the whole country with the wealth of their learning.

And Memphis is a common meeting place, and the metropolis of the larger portions of the three States of Arkansas, Mississippi and Tennessee, and a more fitting place than Memphis we do not think could be chosen, for the lawyers of this great territory to gather for social and professional intercourse.

We are glad to have with us our professional brethren of Tennessee, even to the uttermost parts of East Tennessee, where the stone walls of the Unaka, or Great Smoky mountains, form the boundary line separating us from North Carolina and Virginia.

Tennessee possesses a wonderful variety of climate, soil and productions. It is cut across the grain, so to speak, commencing in the mountains of East Tennessee, with a flora and fauna nearly similar to that of Canada and extending and descending to the rich plateau and blue grass region of Middle Tennessee, and finally coming down gradually to West Tennessee, where the deltas along the Mississippi grow to perfection many of the subtropical plants.

But from the furthest confines of the East Tennessee mountains to the waters of the great Mississippi all of us are Tennesseans.

We are most happy to have you with us in Memphis—Memphis, named after the most ancient city in the history of the world. For ages in the dim light of the almost prehistoric past she sat upon the banks of the Nile, in the great delta of the continent of Africa, the mistress of the world.

And now we are in modern Memphis, sitting upon the banks of the Mississippi, the inland ocean of the continent of America, the Queen of the Mississippi Delta, and in her name once more I extend to all of you a most hearty and sincere welcome to Memphis.
JOINT SESSIONS

RESPONSE TO ADDRESS OF WELCOME ON BEHALF OF ARKANSAS ASSOCIATION

BY O. N. KILLOUGH, WYNNE, ARKANSAS.

Mr. Chairman, Ladies and Gentlemen:

As a citizen of Arkansas, who has during practically his whole life been intimately acquainted with the gentleman who has done me the honor to introduce me, I say to you that it is with the profoundest appreciation that I bow my head in humble acknowledgment to the flattering words placed upon me by this gentleman.

Any citizen of Arkansas may well feel proud to have Joe House place his hands upon his head, and say "You are a worthy citizen." In other words, in the common parlance of Arkansas that means "He'll stand hitched."

We appreciate the invitation and the opportunity to attend the joint meeting of the associations of the two states. It has been my pleasure on a former occasion to attend a convention in this particular hall. We had upon that occasion a meeting of the great Drainage Association of the five states a few weeks ago, and I desire to say to you now that the body which gathered here on that occasion was as determinedly and utterly and inimically opposed to water in any shape, manner, or form, as the association now assembled here.

If I had prepared, Mr. President and Gentlemen, a set speech for this occasion it would be the third one that I ever prepared in my life. I forgot the first one and lost the other, so I made up my mind that I would never undertake it again.

We Arkansas people, more particularly those of us who live close to the border line, are no strangers to Tennessee hospitality. We have had it dealt out to us in various forms and on various and sundry occasions, and we remember it I am most happy to say with pleasure, and practically no tinge of regret. I speak for my State when I say that if there is one spot in my humble judgment where an Arkansas citizen feels at home when outside of his State it is when he grasps the hands of a Tennessee citizen on this side of the river. We are glad to be with you on any and every occasion. We feel that we are one of you. In fact it has always been an opinion of mine that Tennessee
came awfully close to being a good State—that is, it was next
door to one, and there is no reason in the world why with con-
stant practice and constant attention to your duties in this State,
that after while you should not rival, if not equal the State across
the river.

We know that you have a good citizenship and we
know that you have handsome ladies here. I desire to say to
you that you may look out over this crowd and you will see that
the good looking gentlemen of this convention are all citizens
of Arkansas. I want to say to you that almost every handsome
lady in this audience comes from the State of Arkansas. There
are ninety-nine ladies present and one hundred handsome ones.

I say we are glad to be with you on this occasion. We
have held our convention in various places in our State, and
we have from a very humble beginning managed, after a few
years of constant attention, to get together a very respectable
Bar Association, in numbers, to say the least of it, and it is
growing. We feel that we are greatly benefitted by this com-
unity of spirit, and by the associations we have had at these
meetings. We feel that the fact that we assemble with you
and hold our convention with you will be of great benefit to
the lawyers of our State, and perhaps to some of the lawyers
of this State. I don't know of any place where a convention
could be held or I don't know of any body of lawyers in the
United States where that feeling of harmony and good will
would any more exist than between the lawyers of the States
of Arkansas, Tennessee and Mississippi.

Why the State of Arkansas is a brother-in-law to the State
of Tennessee. Almost nine out of ten men in Arkansas have
Tennessee school teachers for wives. It is a violation of the
Arkansas Statutes for a Tennessee girl to teach school in Arkan-
sas longer than six months. Some husky bachelor takes her and
runs off with her before the term is out, and I say that is one
thing we have against your State—our children are coming
up almost in ignorance because of that fact. We have to change
teachers about every week and import new ones to take the
places of those that come over and captivate our young men. I
don't know whether that is because they like Arkansas or whether
it is because you have such onery men in Tennessee, but I know
they are mighty nice girls that you send over there. I have seen a good many of them.

And now, Mr. President and Gentlemen, in behalf of Arkansas and in behalf of the lawyers in attendance here, and I am glad to see that we have a goodly number here to enjoy this convention, I wish to say that we will enter into the spirit of this meeting, and we will all do our utmost to make it a success. We appreciate your invitation. We feel at home in Memphis, and as one gentlemen remarks, who is prominently connected with this Association, the trip to Memphis, alone, is a liberal education on the part of some people. I thank you.

RESPONSE TO ADDRESS OF WELCOME ON BEHALF OF TENNESSEE ASSOCIATION

BY J. H. HENDERSON, OF FRANKLIN, TENN.

Mr. President, Ladies and Gentlemen:

I do not know just how to express for the Tennessee Bar Association proper appreciation of the words of welcome so kindly spoken by our brother Malone; and this is especially the case after having heard our distinguished friend respond on behalf of the Bar Association of Arkansas. While the assuring words of our brother may be well calculated to make us feel at ease in coming into your midst, those of you who were here on a similar occasion six years ago do not need anything of the sort, for we know from delightful experience, the memory of which still lingers, just what a Memphis Welcome means.

We are glad of this opportunity to know our brethren from across the river. You here at Memphis, from your close proximity, have already had that pleasure, and now we from the inland are brought into close association with them on this delightful occasion. In boyhood I became acquainted with the “Arkansaw Traveller” and have loved him ever since. My State has by legislation protected us against the “Arkansas Toothpick,” an adornment for which our friends will have no use while in our midst. Now we are to personally know the Arkansas Lawyer, the greatest representative of that great State.
The program which you have arranged, Mr. President, for this occasion, promises much, a rare and delightful treat for the ensuing three days. We regret to learn from Mr. Malone that Judge Whitfield will be unable to be with us. I hope none of the others will disappoint us. I trust you will not be in the unfortunate predicament of a gentleman I once heard of. He was master of ceremonies on the occasion of a banquet—an event of his life. He had been at great pains to arrange his program, had his speakers all invited and they accepted, and he had prepared his impromptu remarks for the introduction of each speaker. He had lived up to that time. The table was spread, guests invited, and all was ready. It was at a time of high waters and wash-outs on the railroads. On the last day, late in the day, he received a wire from his principal speaker saying “Can’t come, wash-out on line.” In his desperation, seeing that the main attraction of the occasion was about to fail him, he hurriedly wired “Borrow a clean shirt and come anyhow.”

Knowing something of the trouble you have had in arranging your most interesting program, I hope you will not have such experience, and that at least the most of your speakers will be here, and properly attired.

Tennessee is a great State. In the language of the politician, she extends from Carter to Shelby.” The more prosaic would say “From Greasy Rock to Reel-Foot Lake.” And the sophomoric orator in his grandiloquent style says “That while she rests her head on the cloud capped mountains of the East, she bathes her feet in the Great Father of Waters six hundred miles away.” I do not like that simile at all. I am not ready to admit that East Tennessee is our head. I am unwilling that my own section should be accorded a mediocre place or middle position; and surely no one will concede that Memphis is the foot.

We are one great harmonious whole, and neither section can say it has no need of the other. There is East Tennessee with her classic mountains, her beautiful scenery, her exhilarating atmosphere; her sturdy pioneers opened up the advance of western civilization, and added a romantic lustre to the history of the Nation. There is Middle Tennessee with her rich blue valleys, her intellectual giants, familiar in the council of the
Nation, which latter can be said of the three sections. There is West Tennessee with her snow white plains, her strong men, and beautiful women with the incomparable Memphis on the bluff.

To our brothers from Arkansas I say, let's wipe out the State line; let's unite these two great States into one, and with the inimitable, matchless, peerless, transcendent, unrivaled, surpassingly excellent Memphis as the hub, let's for the next three days and nights, with unrestrained freedom, revolve around this attractive centre.

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PRESIDENT'S ADDRESS—ARKANSAS' ASSOCIATION.

BY JOSEPH W. HOUSE, OF LITTLE ROCK.

COLLECTIVISM AND INDIVIDUALISM.

These are distinct and antagonistic terms, and when considered in their broadest sense the one involves the idea of a trust or combination of capital for the purpose of controlling the means of production and to regulate the price of the necessaries of life, or a combination of labor to better the condition of the laborer by enabling him to secure higher wages for less service, while the other conveys the idea of individuality or independence in thought and action as opposed to associate action or common interests.

While trusts, as they are now usually understood, are of modern origin and growth, yet the principles upon which they are based, and upon which they have reached their gigantic proportions, are as old as civilization, and perhaps as old as the races. Wherever traffic and trade have been found, there will always be those who seek to take advantage of the poor. Long before the Christian Era Solomon said, "He that with-holdeth corn the people shall curse him, but blessings shall be upon the head of him that selleth it."

In this sense it is said that Greece and Rome were no mean rivals of the originators of the modern trusts. Zeno, Emperor of the east, issued an edict as far back as A. D. 483, to the effect
that no one should create a monopoly in clothing, food, and in many other necessaries of life, and that no contractors for building should combine or federate together to prevent others from carrying on the work which they had begun, but that every one should be permitted to work without fear of molestation from others, and those who engaged in such unlawful pursuits should be condemned to perpetual exile. This form of trust became a subject of legislation in England as early as the days of Edward VI. During his reign and the reign of those who immediately followed him, it was quite usual for the king to endow his favorites with special privileges which would enable them to create monopolies. During the reign of Elizabeth monopolies by special grant of the Sovereign were dispensed to those who had distinguished themselves in war and peace, those who had distinguished themselves by some great service to the country, but when these privileges or monopolies had grown and increased in numbers to such an extent as to become exceedingly oppressive, there came a general clamor from the people that no such privileges should be further granted and that those already in existence should be withdrawn or abolished. As an evidence of the sentiment of the people of that time, Sir John Culpepper, while a member of the memorable Long Parliament, in a speech used the following vigorous and emphatic language: "They are a set of wasps, a swarm of vermin which have overswept the land. Like the frogs of Egypt they have gotten possession of our dwellings, and we have scarce a room free from them; they sip in our cup, they dip in our dish, they sit by our fire. We find them in the dye-fat, in the wash bowl, in the powdering tub, they share with the butler in his box. They will not bate us with a pin."

"In the edict of Louis XVI, in 1776, giving freedom to trades and professions, prepared by his minister, Turgot, he recites the contributions that had been made by the guilds and trades companies, and says: 'It was the allurement of these fiscal advantages undoubtedly that prolonged the illusion and concealed the immense injury they did to industry and their infraction of natural right. This illusion had extended so far that some persons asserted that the right to work was a royal
privilege which the king might sell, and that his subjects were bound to purchase from him. We hasten to correct this error and to repel the conclusion. God, in giving to man wants and desires rendering labor necessary for their satisfaction, conferred the right to labor upon all men, and this property is the first, most sacred, and inprescriptible of all.' * * * He therefore, regards it 'as the first duty of his justice, and the worthiest act of benevolence, to free his subjects from any restrictions upon this inalienable right of humanity.'"

Legislation upon the subject of trade unions in almost every civilized country, has existed for more than a century. However, it has varied in different countries, but it was all intended to reach substantially the same result, that is to extend to the individual laborer the greatest degree of personal freedom, so as not to infringe upon the rights of others or to affect the public interest, at least this is true of recent years. Legislation upon this subject has not been satisfactory, at least it has not been attended with satisfactory results. In England, Ireland and France, they have their unions and associations. In the early part of the nineteenth century, in fact from 1800 to 1864 trade unions and combinations were unlawful under the law of France. It was unlawful for the members of any trade union or association to engage in a strike or lock out, or to become members of such unions.

This was likewise the law in England from 1800 to 1824. In 1824 the Act of 5 Geo. IV, c, 95 repealed all then existing laws relating to combinations of laborers, and provided that they should not, by reason of combinations as to hours, wages or conditions of labor, induce others to refuse to work or to depart from work, or to regulate the mode of carrying on manufacture, trade or business, or the management thereof, and any one violating this law should be liable to prosecution for a conspiracy under the statute or the common law. The Act of 1825, 6 Geo. IV, c, 129, repealed the old statutes and provided summary penalties for the use of violence, threats, intimidations, molestations or obstructions by any person for the purpose of forcing a man to alter his mode of business, or a workman to refuse or leave work, or of forcing any person to comply or sub-
scribe or conform to any association, but it exempted from all liability or punishment a mere meeting of masters or workmen for settling conditions as to wages and hours on which a person present at the meeting would consent to employ or serve.

There is a stricking analogy between the French combination law from 1864 to 1884 and the English combination law from 1825 to 1875, especially in this; in each country it was sought to establish free trade in labor. It allowed both to the employer and to the employee a certain amount of combined action, such as was deemed necessary to insure the freedom of trade, and in each country the law punished various unlawful acts, such as assaults, threats, when used for the purpose of interfering with the individual's right to carry on his business in such a manner, or to work on such terms as he pleased. In other words, the effect of the combination was limited whenever it interfered with freedom of trade, and while the law in England, as in France, did not make strikes unlawful per se, but in each country it penalized any act of oppression in assaulting or intimidating others from carrying on the work which had been begun by others.

In England in 1884 to the close of the nineteenth century and even down to the present time, the law has legalized labor and other associations for the promotion or protection of the interest of any profession or trade. All acts had been repealed which tended to restrict their freedom of action. In France, since 1864, combinations and labor unions have been recognized as lawful as long as they are properly conducted. In both countries a trade union or a combination of labor is a lawful organization. It does not need the sanction of the government. In both countries the masters and the workmen stand upon the same footing. They have the right to combine on complete equality for the purpose of regulating the terms of labor contracts, and in each country the law protects the liberty of the individuals by imposing penalties on any person guilty of unlawful acts, such as assaults, intimidations and the like, for the purpose of interfering with his neighbors' freedom of action. In other words, the law of each country punishes acts of coercion likely to be committed in furtherance of a strike.
While the laws relating to trades unions are of comparatively recent date, except to a limited degree, the means for securing the ends for which they were organized and the methods employed by them are essentially modern. They are the natural outgrowth of the industrial conditions; cases where the rights of labor unions were involved have not often arisen until the last quarter or half a century. A few cases in England are to be found antedating the nineteenth century. The first case of this kind in this country arose in Pennsylvania in 1821, Commonwealth v. Carlisle. In that case it was held, "A combination is criminal when the act to be done has a necessary tendency to prejudice the public or to oppress individuals by unjustly subjecting them to the power of their confederates, but in a case of more recent date, State v. Stewart, 59 Vermont, 273, the rights and powers of such unions were more fully and correctly stated. The court in that case said: "In England and here it is lawful, and it may be added, commendable, for any body of men to associate themselves together for the purpose of bettering their condition in any respect, financial or social. The very genius of free institutions stimulate them to higher levels and better fortunes. They may dictate their own wages, fraternize with their associates, choose their own employers and serve men and mammon according to the dictates of their own consciences, and while the law accords this liberty to one it offers a like liberty to every other one, and all are bound to so use and enjoy their own liberties and privileges as not to interfere with those of their neighbors."

It is not our purpose, however, in discussing these questions to undertake to discuss in detail the rise and progress of these conflicting ideas, or the rise and progress of the one and the decline and fall of the other, but recognizing the injunction of the divine Master, "Sufficient unto the day is the evil thereof" we shall consider them as we find them today, and endeavor to point out the remedy for evils growing out of the extremes in each.

In the creation of the universe it was so arranged that all of its parts would move in their respective orbits so as to maintain the beauty and harmony of the whole; So, in the formation
of our government it was created with their respective departments, the executive, the judicial and the legislative. These departments are co-ordinate and the one can not infringe upon the powers of the other without marring the beauty and impairing the entire machinery. Each department is supposed to be supreme in its respective sphere, limited only by certain constitutional restrictions, or to certain granted powers. Our State governments are similarly formed; they have their separate departments and the powers of the State are likewise supreme, controlled only by certain constitutional limitations and restraints. The powers of the Federal and State governments are separate and distinct. The one can not invade the powers of the other.

The Constitution, like the Statute of a State or an Act of Congress, must receive construction by the highest court of the land before its provisions can all be understood. In the Dartmouth college case, reported in 4 Wheaton at page 629, Chief Justice Marshall, the peer of any lawyer in any country, who perhaps more than any other judge gave the Constitution of the United States robust power and breathed into it the spirit of immortality, said: "The framers of the Constitution did not intend to restrain the States in the regulation of their civil institutions, adopted for internal government, and the instrument they have given us is not to be so considered."

Since the judiciary act of August 13, 1888, the Federal courts have been more inclined to recognize the powers of the States in the matter of the regulation of their own internal affairs. The States have unlimited power to prescribe the conditions under which foreign corporations can do business within their respective limits. The Anti-trust Act of Texas of 1899 sought to prohibit combinations to restrict trade or to in any way limit competition in the production or sale of articles, or to increase or reduce prices in order to preclude an unrestricted competition.

In the case of the *National Cotton Oil Company v. Texas*, reported in 197 U. S. 115, the Oil Company undertook to evade the provisions of this statute upon the ground that it was in violation of the Fourteeth Amendment to the Constitution, and its effect was to deprive the Company of its property without
due process of law and to impair the liberty of contract involved in acquiring, using and dealing with property, but the court upheld the statute.

We are perhaps indebted to Thomas Jefferson more than to any other one man for this form of government. Some have gone so far as to ascribe this idea of a government to inspiration, but we neither deny nor affirm this proposition further than to say that all great deeds and action of men come from a source of inspiration or example. It is not important, however, to enter into a discussion of the separate powers of the Federal and State government. This would occupy too much time, and for this discussion would perhaps serve no useful purpose; but we shall endeavor to show that when the Congress of the United States and the Legislatures of the several States have exercised all their legitimate functions, and the laws enacted by them are made effective through the courts or the judicial department, they will be sufficient to meet every demand and furnish protection to all the people without regard to class or condition. We do not mean by this, however, to say that we shall be able to reach perfection in governmental affairs. Government is only a concensus of the will of the people expressed in some form. People are human—the laws are human—we can not therefore expect to reach perfection. We can only hope to attain the nearest approach to perfection.

Congress has the power to regulate commerce with foreign nations and among the several States and with the Indian tribes; that is to say, it has the power to enact laws to prevent trusts, combinations and conspiracies in restraint of trade and commerce. The States can enact laws for their internal government; they can enact laws to prevent the organization of trusts, combinations and conspiracies for the purpose of increasing the price of the necessaries of life.

In ex parte, Siebold, 100 U. S. Page 395, the court said: "We hold it to be an incontrovertible principle that the government of the United States may, by means of physical force exercised through its official agents, execute on every foot of American soil the powers and functions that belong to it."
This necessarily involves the power to command obedience to its laws, and hence the power to keep the peace to that extent.

This power to enforce its laws and to execute its functions in all places does not derogate from the power of the State to execute its laws at the same time and in the same places. The one does not exclude the other except where both can not be executed at the same time. In that case the words of the Constitution itself show which is to yield. "This Constitution, and all its laws which shall be made in pursuance thereof, shall be the supreme law of the land."

_In re_ Debbs, 158 U. S. at pages 577 and 578, the court said: "Two questions of importance are presented: First, are the relations of the general government to interstate commerce and the transportation of the mails such as to authorize a direct interference to prevent a forcible obstruction thereof? Second, if authority exists, as authority in governmental affairs implies both power and duty, has a court of equity jurisdiction to issue an injunction in aid of the performance of such duty?"

"First, what are the relations of the government to interstate commerce and the transportation of the mails? They are those of direct supervision, control and management. While under the dual system which prevails with us the powers of the government are distributed between the State and the Nation, and while the latter is properly styled a government of enumerated powers, yet within the limits of such enumeration it has all the attributes of sovereignty, and, in the exercise of those enumerated powers, acts directly upon the citizen, and not through the intermediate agency of the State.

"The government of the Union then, is, emphatically and truly, a government of the people. In form and in substance it emanates from them. Its powers are granted by them, and are to be exercised directly on them, and for their benefit."

Under the Constitution of Pennsylvania, which is similar to that of the other States, it has been held that the right of the laborer to the free use of his hands can neither be restrained by the State nor by trade unions. This case is reported in 63 L. R. A. 534, _Erdman v. Mitchell_. It was also decided in that case that a union for reasons satisfactory to its members, may
cease to work, but a combination by it to prevent others from obtaining work, by threats or otherwise, or to prevent an employer from employing others by threats of a strike is unlawful. But why should we quote these authorities? The principle here announced is only a declaration of the common law, and this doctrine has been upheld wherever the question has been directly presented. The principle is elementary. The Constitution guarantees to every citizen the right to enjoy and to defend life and liberty, and to acquire, possess and protect property. Under this constitutional provision every man has a right to work for such employer as he may choose, for such wages as he may be willing to accept, and other persons can not interfere with this right by intimidating either him or his employers.

With this, the constituted and recognized power vested in Congress and the several States, with courts organized and created to enforce the law, it is somewhat remarkable that there should ever be for any great length of time a demand upon the part of the people for legislation and a due and proper enforcement of the law, without a response to such demand. Yet we know there are evils which demand, and have demanded, legislation for many years, and likewise there is a demand that such laws as we already have be enforced. Among the evils which have arisen under the doctrine of collectivism are the combination of railroads and other means of transportation in the matter of freight rates; the trusts and combination of capital for the purpose of creating a monopoly and increasing the price of the necessaries and conveniences of life. The word "trust" has come to signify any combination, whether of producers or vendors of a commodity, for the purpose of controlling prices and suppressing competition. All contracts, agreements and schemes, whereby those who are competitors combine to regulate prices are "trusts": = Cook on Corporations, sec. 503 a. We refer to the trusts and combinations in the offensive sense, but not such combinations of capital as are organized for legitimate purposes. In a great growing country like ours certain combinations of capital are necessary to meet the demands of the people and develop our resources; hence the combination of capital for purely legitimate purposes should be encouraged. The legisla-
tion throughout the country, especially in the South and the West, which seeks to restrict the free use of capital for legitimate purposes, is a result of that spirit of socialism and communism which pervades the public mind and should be condemned. We need more money; we want more money. Its free circulation should be encouraged, and thereby both capital and labor will be benefited. Banks are necessary to carry on the business of the country; manufacturing industries give employment to labor and are essential to the development of our resources; railroads are great civilizers. They serve to bring the business and commercial world in close touch. They give employment to labor and they have done much to develop and civilize the country. It requires a combination of capital to establish banks, to build manufactories, and to construct and operate railroads, and many industrial corporations which serve a useful purpose. So it is with insurance, mercantile and other associations. But the combination of capital which the law should put its condemnation upon is the so-called modern trust which is organized in various ways, most frequently for the control of several corporations under one direction. This is done by the stockholders of two or more corporations transferring a majority of the stock to a central committee or board of trustees. The stockholders receive certificates which entitle them to participate in the profits of the trusts, although they have parted with their stock and the right to vote. The whole business of such corporations is committed to the trustees who will make directors without reference to the amount of stock they may own. In this way they are empowered to regulate production, defeat competition and increase the price of the necessaries of life.

The trusts are sometimes created by a combination of those engaged in the same business, by delegating to some central authority the right to dictate the terms and policy of each, and whether created in the one way or the other, they all seek the same object and purpose, that is, to defeat competition and to create a monopoly and thereby increase the price of the conveniences and necessaries of life. They are criminals under the law, and ought to be punished as such. They are not like the proud eagle who snatches his prey from the living, but like vul-
tures, they feed and fatten upon the hard earnings of the people. Their extortion is from the weak and the ignorant. They do not seek those who revel in wealth and affluence, they seek the victim of poverty and distress. This is a deplorable condition. Capital thus organized has become a power and a menace to good government. In economic and industrial affairs it assumes to be the dictator, striking down every industrial pursuit which does not yield obedience to its demands. Labor, realizing the strength of organized capital, and reeling and staggering in the very throes of beggary and want, began to organize labor unions for the purpose of self preservation, until now, almost every one engaged in the industrial pursuits belongs to some union or association. The conductors, the engineers, the firemen, the brakemen, the switchmen, the mechanics, the brick masons, the stone cutters, the plumbers, the tailors and others have their unions for the purpose of counteracting the power of organized capital and securing greater wages for a less amount of service. These unions like combinations of capital, have their virtues and their sins. So long as labor is organized for legitimate purposes it serves a good end. Those engaged in labor have the right to join a labor union or association. They have a right, by argument or persuasion to induce others to join them, and they doubtless serve a good purpose so long as they are obedient to the law and recognize the rights of others. The fact of coming together, where matters pertaining to one's profession or calling is discussed, will make better and more capable men. We even go further and say that labor unions have a right to strike or stop work if they see proper to do so; unless they are engaged in some public service. In such case the individual interest should be subordinated to the public good. However, it would be much better for them to arbitrate their differences, but if they do strike or stop work, they have no right to take the law into their own hands and assault and beat others who are anxious to do the work. They have no right to interfere with the inalienable rights of citizens. Whenever they do this they become violaters of the law, and ought to be punished.

In *Carroll v. Greenwich Insurance Company*, 199 U. S. at page 410, the court said:
"It is only on the ground that the right to combine at will is a fundamental personal right that it can be held to be protected by the Fourteenth Amendment from any abridgement by the States. *Cincinnati Street Railway Company v. Snell*, 193 U. S. 30, 36. Many State laws which limit the freedom of contract have been sustained by this court, and therefore an objection to this law on the general ground that it limits that freedom can not be upheld. There is no greater sanctity in the right to combine than in the right to make other contracts. Indeed Mr. Dicey, in his recent work on Law and Public Opinion in England during the Nineteenth Century, indicates that it is out of the very right to make what contracts one chooses so strenuously advocated by Bentham, that combinations have arisen which restrict the very freedom that Bentham sought to attain, and which even might menace the authority of the State."

I can not conceive of a condition more pitiable than the poor man struggling for a living, who can not follow his trade without consulting others. This is un-American and tends to lower the estimate the man puts upon himself, yet this conflict between capital and labor has been going on for years. They have become mighty giants in the industrial and economical world, carrying on their battles with unabated fury, with but little or no regard for the balance of mankind, who are largely in the majority. Just how to bring these mighty giants to a sense of duty and to subordinate them to the consciousness of, and obedience to law, is now the problem which confronts the American people. This can only be accomplished by legislation and a rigid enforcement of the law. Many statutes have already been passed, both by Congress and the States, looking to the suppression of these evils. The Anti-trust Act, commonly known as the Sherman Act of July 2, 1882, was intended to punish those who are engaged in combinations and conspiracies in restraint of trade, but the trouble about that act is that it does not go far enough in the matter of defining what shall constitute an offense and inflicting a penalty commensurate with the offense. They are criminals and ought to be sent to the penitentiary. The poor fellow or a wayward boy who, perhaps in dire distress, forges an order for ten, fifty or one hundred dol-
lars, or who appropriates ten, fifty or one hundred dollars of his employer's money, is hastily put upon trial, hastily convicted and hastily sent to the penitentiary for a period of from one to five years, while those who are engaged in the trust or combination to rob and plunder the people out of untold millions, are let out on a small fine. What does the Standard Oil Company care for a prosecution which only results in a fine of a few thousand dollars. It can increase the price of its oil a cent per gallon and pay any fine which has been imposed upon it in ten days' time. This law merely enacts that which was already the common law. Under the common law such combinations were illegal. It has been held by the highest courts of this country that the Sherman Act was only intended to make the common law effective, and perhaps the State or the individual aggrieved has as complete remedy under the common law as he has under this act, unless it is to the extent that the individual is entitled to treble damages where he has been injured by any act of a combination or a conspiracy. Notwithstanding the common law has always been in force in all the States and the Sherman Act has been in force for fifteen years, yet the trusts have grown and fattened for the last twenty or thirty years, more rapidly perhaps than in any other country. There is hardly an item of common use or convenience or necessity, such as sugar, coffee, tobacco, oil, cotton and wollen fabrics, steel, iron, and even the beef that we eat, that is not practically controlled by the trusts. This has been done in such a secret and clandestine way that we hardly know how or when it has been done, but we have great faith in the virtue and patriotism of our people. We believe the time is approaching when this evil will be cut down, and in this connection we wish to say of Mr. Roosevelt, while we do not belong to the same political party, yet he has commenced a good work, and with the means at his hands and under his control he has already accomplished much, and with his personal character and his self will and determination he will accomplish a great deal more before his term of office expires, although some papers of his own political creed are now hounding at his heels and seeking to turn the tide of popular sentiment against him, simply because he has dared to put himself in the breach as
against the trusts and combinations. This they can not do. The good work has just commenced and will continue. Mr. Roosevelt will live in name and fame and history, while those who are seeking to traduce him will be lost in the deepest shades of oblivion. We hope the National government has commenced this prosecution in good faith. Public sentiment has grown rapidly against illegal combinations. All legislation necessary for their control and overthrow will be demanded, and the public mind is equally as strong that courts shall enforce the law and bring the criminals to justice and a proper sense of the rights of others. This reformation, in my opinion, will come, though it may come slowly as great reforms always do.

The doctrine of individualism, as originally understood, likewise has its extremes. Government is necessary to enforce obedience to law. Law is necessary to secure the right of one person against the encroachments of others. In every compact, whether political, social or religious, the individual must yield some personal right in order to maintain the supremacy of the government of the whole. The very strength and power of the government grows out of the fact that each member or individual citizen has surrendered some part of his personal freedom. There must be some restraint upon the passions of men, otherwise chaos and disorder would follow and the lives and the liberties of the people would be endangered. The right to contract has some limitations; public policy must always enter into every economic and industrial question. At one time it was argued by many of the wisest statesmen that to penalize a usurious contract was in violation of the inherent right to make a contract. This is true in a limited sense, but its limitation only serves to strengthen the doctrine of individualism. Public policy demands that the poor should be protected against the rich, the weak against the strong. A man who has money to lend should not be permitted to demand and receive the most usurious rate of interest from his neighbor because his necessities are such as to require relief. If a doctor is called to see a patient, and he finds the amputation of a limb is necessary, that it must be done at once, can it be said that the doctor could demand a contract and promise to pay five times as much as would ordinarily be
charged for such services? Should a man be permitted to extort from his neighbor a contract which would enslave him for life? If a man, under these circumstances, were permitted to enter into such contract, it would thwart the most substantial right of the individual. It would be fatal to the individual freedom which is sought to be obtained.

In Sharswood’s Blackstone, in a note at page 126 several definitions of civil liberty are given:

First. “The liberty of doing everything which a man’s passions urge him to attempt, or his strength enables him to effect is savage ferocity. It is the liberty of a tiger and not the liberty of a man.”

Second. “Civil liberty is well defined to be that of a member of society, and is no other than natural liberty so far restrained by human laws as is necessary and expedient for the general advantage of the public.”

Third. “Civil liberty is the great end of all human society and government, is that State in which each individual has the power to pursue his own happiness, according to his own views of his interests and the dictates of his conscience, unrestrained, except by equal, just and impartial laws.”

The individual must yield obedience to law. He must not invade the social, political and religious rights of others. The individual must have freedom of thought and action so far as he does not interfere with the rights of others. He should only be limited and restrained in this to such an extent as will subserve the interests of the public good. He should be permitted to work for whomsoever he pleases, and for such price as he can obtain. These are inalienable rights guaranteed to every citizen, however humble and obscure may be his position in life. Any restriction upon these substantial rights is an invasion and un-American.

Individualism upholds the strong arm of the law. It stimulates the citizen to a higher and purer field of thought and action. It makes statesmen, patriots and heroes, while on the other hand a paternal government or collectivism dampens the ardor and spirit of our people and lowers the standard of American honor and American manhood.
It was individualism that made a George Washington, an Andrew Jackson, an Abraham Lincoln, a Clay, a Calhoun, a Webster, and last but not least, a Cleveland and a Roosevelt.

That there are existing evils of great moment to the people there is no doubt. We have endeavored to point some of them out, and to show that we have the power to control and correct them, hence the paramount question is, How shall this be done? It requires a well defined, intelligent and patriotic sentiment among the great body of the people. It requires cleaner politics and a higher order of statesmanship.

A healthy and well directed public opinion not only controls and directs legislation, but it is the basic principle of every free and civilized government, hence, in a country, like ours it is an important factor. In some countries, however, but little attention is given to the opinion of the people, either in the formation of the government or in the enactment of the laws. England perhaps bears the closest analogy in this respect, to ours. There all questions of public policy are usually discussed before the people, and their verdict is in a measure, conclusive while in many of the old countries this is not the case. They are frequently hampered and fettered with the habits, customs and traditions which are held as the best evidence of a high state of cultivation and citizenship; in other words, they want no changes because they would be destructive of some inherited views or traditional habits. In such countries their destiny is moulded and shaped by a few people, usually those high in authority, yet often these men are influenced by the habits and opinions of their own people or by the superior civilization of some other country. This has been especially true in some great powers. Peter the Great laid the foundation for a great empire, yet it can hardly be said that he was influenced in any great degree by the habits and opinions of the people of his own country. He got his plan of government in its organization and discipline, from some higher civilization, which he utilized to a great advantage in forming a government in which he was to rule with so much distinction. Frederick, the Great, did much to bring about needed changes and reforms in the law of Prussia, but these changes and reformations were not superinduced or brought about from the habits and opinions of his peo-
ple. He got his inspiration from other sources; doubtless, in a measure, from the English and French governments. He had some knowledge of their institutions; he knew something of their habits and customs; he was wise enough to accept suggestions from those in control; he stood out preeminently above his countrymen; his sources of information came from a higher civilization than was in his own country.

The correction of the abuses of which we complain has been long delayed, too long for a country like ours, where we have the highest order of civilization. It often happens, however, that the greatest abuses are continued for many years after there is a public demand for their correction. This delay, in a measure, grows out of the fact that we have too many political cowards in office; those who are afraid to assert themselves for fear they will become retired statesmen without a job. This long delay, however, in conforming to public opinion is not alone peculiar to our country. It has been especially true in England, France and many other of the great powers. In many of the older countries it has been so slow that often revolution follows. It was doubtless a feeling of dissatisfaction and discontent that forced the French Revolution which resulted in the present form of representative government, but even there her reforms have come slowly. It has been more than a century since the code Napoleon was adopted in 1804, and yet this code, in many of its important features, still exists, and its provisions seem to have a legal sanction which secures it against rapid or material changes. The same may be said of England. When James II usurped the legitimate power of the government, when he prorogued the parliament because it would not do his bidding; when he removed honest and competent judges because they would not stultify themselves and finally, when he suspended the writ of habeas corpus, the great charter of their political and religious institutions, the people of England rose up in their wrath and indignation, and forced him to abandon the throne.

The reformations in England, however, have not been so slow as in France. George III was on the throne in 1804. At that time the public opinion was against any radical changes, the people preferred to stand by their old traditions, yet there
is but little of the law in force at that time which has not been materially changed in form and substance.

A revolution, however, in a country like ours, based upon the will of the people, is impossible. Our people are too intelligent, but even with this advanced civilization it takes time to stamp those who are engaged in the trusts and the combinations as criminals and outlaws. They are men usually of great wealth and political influence. They have their friends in office and out of office. They spend their money freely for the purpose of manufacturing and controlling public sentiment. They make a determined fight to retain their ill-gotten gains. Again, the failure to act in matters of grave importance is retarded by the political demagogue who, instead of placing himself upon a high plane of public thought and duty, seeks political preferment by arraying one class of our citizens against another. The man who does this is an enemy to good government, an enemy to decent citizenship, and ought to receive the condemnation of every one. There is no reason why the people of the country should be poisoned against the people of the city. There is no reason why the poor man should be arrayed against the rich man. Why should the laboring man be led to believe that the business or professional man has his hand turned against him? Why should there be an impassable gulf or chasm between the poor and the rich, or between the laboring man and the business man? We are a common people with a common destiny and a common end; the same blood that courses through the veins of the one, courses through the veins of the other. If the question were submitted to the humblest citizen as to what was his chief ambition or greatest desire for his son, his answer would be, to educate him and prepare him for the great battle of life with a hope that he might accomplish more for himself and his fellowman, than he himself had been able to do. This is a commendable and patriotic desire. It has been this universal desire which has advanced the civilization of this country. It has been this desire which has produced many of our greatest statesmen, many of them coming from humble but honorable homes; from the mountains and the valleys, from the lake regions and even from the mountain and swamp regions of Tennessee and Arkansas. Not only many of our great statesmen have come from hum-
ble homes, but our cities are filled with successful business and professional men, merchants, doctors, lawyers, who came from the country. These are the men who not only help to fix the destiny of our country, but they are those who help to build up the great commercial, industrial and manufacturing enterprises. They are those who, by their personal efforts and example, strengthen the ties which bind us together, socially, politically and religiously. They are those who seek to lay the foundation for a pure and noble manhood, and to build up a higher and better citizenship. Then why should the man from the country be poisoned against his own son, or the son of his neighbor because he is doing the very thing his parents desire he should do? Of course there is no reason for it. The question indicates the answer and it is not a leading question either. Yet we have those who seek political preferment and frequently get it, whose chief stock in trade, so to speak, is to array the feelings, passions and prejudices of the masses against the classes. It should be the duty of every lawyer, without regard to his political feeling or faith, to put his seal of condemnation upon every man who does this, and the public mind should be educated up to the idea that such a man is unworthy of public trust; that he is unworthy of political honors, and a menace to good government and unworthy of patriotic support. Let the man himself understand that he is a demagogue and unworthy of any place of honor or trust. Every man is influenced more or less from his early training. This is true whether in religion or politics, hence we should teach our children that such a man is unworthy of emulation or example; that he is unfit for companionship or political preferment. The very framework—the mud sills of our institutions are based upon the confidence men have in each other. Destroy this and civilization is retarded, all governmental functions are impaired and our greatest hope is gone. The example and teaching of any one of our great men cannot be overestimated. They influence not only the generation of that age, but they are extended on and on to generations yet to come, increasing and expanding in each succeeding age. Like the little fountain that bursts forth far up in the mountain top, it gathers strength and width and depth until it forces itself into the great ocean of waters. So it will be with all ref-
formations in the law; they will not only serve a blessing to this age, but they will be expanded and their operation and influence will be increased from age to age, and on and on, to infinity.

Perhaps no man has done more to bring about needed reforms in law in any country than Bentham did in England. Here is what Brougham said about him:

"The age of law reform and the age of Jeremy Bentham are one and the same. He is the father of the most important of all the branches of reform, the leading and ruling department of human improvement. No one before him had ever seriously thought of exposing the defects in our English system of jurisprudence. All former students had confined themselves to learn its principles, to make themselves master of its eminently technical and artificial rules; and all the former writers had put expounded the doctrines handed down from age to age. He it was who first made the mighty step of trying the whole provisions of our jurisprudence by the test of expediency, fearlessly examining how far each part was connected with the rest; and with a yet more undaunted courage, enquiring how far even its most consistent and systematical arrangements were framed according to the principle which should pervade the code of laws—their adaptation to the circumstances of society, to the wants of men, and to the promotion of human happiness. Not only was he thus eminently original among the lawyers and the legal philosophers of his own country; he might be said to be the first legal philosopher that had appeared in the world." The reformations here mentioned have not stopped in England. They have to some extent invaded every civilized country. They form a part of the common law of this country. They were brought about through a systematic, intelligent education of the public mind, and Bentham's ideas were enacted into law.

The civilization of every country is measured by the character of the laws and the honesty with which they are enforced. In the primitive ages the laws were crude and not well understood, and were frequently enforced to gratify the revenge of some monarch or ruler, but as the ages advanced, reformations were made in the law, civilization was advanced, and the laws more conscientiously enforced, and while it must be conceded
that we have reached a high standard of perfection, our people have become more enlightened; we have school houses and churches upon every hill and in every valley and our opportunities for improvement are greater than ever before. Capital offenses have been reduced from something over 100 to three. Laws have been enacted to protect children from exposure, charitable institutions are now maintained for many of the unfortunate and the afflicted, and yet there is a feeling of discontent perhaps greater than has existed for many years. There is a feeling in the public mind which demands some radical changes in the law and a more rigid and conscientious enforcement of it, and this public opinion will sooner or later assert itself. Then, if public opinion is a mighty factor in moulding and shaping legislation, it becomes of the most vital importance that such opinion should be properly directed, that it should have for its support the great body of our intelligent citizenship; it should receive the sanction and approval of our purest and best statesmen. The law based upon such opinion will be permanent and lasting. The question then, naturally arises, how is such an opinion to be created? This can not be done by any one man or any one class of men, but every intelligent, patriotic citizen should perform his part. The members of every profession and calling should stand up and be counted for the supremacy of the law.

They should stand for a purer citizenship and a higher civilization, and in this great struggle perhaps no class of men can do more than lawyers. The lawyer has always been a mighty factor in moulding and shaping the destiny of every civilized country.

Some distinguished foreign writer, who had been to this country and made himself familiar with our institutions and form of government, on returning home, in writing of the American people, said in substance: That the permanency and stability of our institutions depended in a great measure upon the lawyers; that by reason of their education and training, they were men of enlarged views; that they took an active part in all government affairs, and in influencing legislation, both in Congress and in State legislation. This is true. A lawyer wrote the Declaration of Independence; lawyers exercised a dominant influence in drafting the Constitution. A great majority of the Presidents
of the United States have been lawyers. Webster, Calhoun and Clay were lawyers.

It will be seen from what I have said that I stand for individualism in governmental affairs. I stand for law and order; I stand for great men, for noble women, and a proud government. I would rather see my boy clothed in the rags of poverty than to see him identified with those who seek to oppress and plunder their fellowmen by means of a combination of capital to control the output or the price of the necessaries of life; the one is honorable, the other is criminal. I would rather see him selling peanuts and pop-corn on the corner than for him to feel that he could not perform an honest day's work without asking the permission of some association or union; the one is honorable, the other is un-American.

It is true that we have those who are inclined to draw a dark picture as to the future. They tell us that history is only repeating itself; that by reason of the great agitation that is going on between capital and labor, it is only a question of time when the Constitution will be frittered away and our free institutions become a thing of the past. As an evidence of this they tell us that Rome at one time reached a high standard of perfection. She had her magnificent walls, her splendid temples, her steeples, her spires and her columns; she commanded the admiration and respect, and even, in a measure, the obedience of the world. But she has fallen and today is only known in history. And so it was they tell us, with Greece; that she was at one time powerful in both war and letters, that she had great wealth, that her public buildings were numerous and splendid, more so than in any other country, and she, too, has fallen; her public buildings have decayed and crumbled, her wealth and institutions are gone; hence, they say that history is true to herself, and that it is only a question of time until we must share the same fate. But in this we think they are mistaken. We are confronted with entirely different conditions. In those countries only the chosen few were educated, while the great body of the people were purposely kept in ignorance and darkness, so much so indeed that it was said that they were relieved of personal responsibility. Not so with us. We have an intelligent citizenship. We live in an age of excitement, activity and progression; an age fraugh
with results and consequences which will ever be preserved with a marked distinction upon the pages of history, an age in which the pick-axe and the auger have been sent far down into our mother earth to unbar her deep arcana and expose her infant formation; an age of school houses and churches. With these powers and agencies at our command there can be no such thing as failure. I have great confidence in the virtue and intelligence of our people. I have an abiding confidence in our educated citizenship as well as the loyalty of our people to the great principles which underlie our free institutions, and in the course of time they will always assert themselves, and uphold and sustain the principles upon which our Government is based. In other words, we have no Greece, we can therefore have no Alexander. We have no Rome, we can therefore have no Caesar.

Eugene, the young and gallant soldier who commanded the Austrian forces at Zenta, when he made an attack upon the numerous Turkish forces contrary to the express commands of his Emperor, and after the battle was over, the victory was won, while standing upon the battle field viewing the slain and the dead, he was heard to say: "The sun seems to linger on the horizon to guild with his last rays the triumphant standard of Austria." So it will be with us if we stand for individualism, for cleaner politics, for a higher order of statesmanship, for American honor and American manhood, it will only be a question of time until we can say with the same propriety "The sun seems to linger on the horizon to guild with his last rays the triumphant standard of American freedom." American freedom, which is but another name for the Constitution, for the flag of our country and the union of the States.

PRESIDENT'S ADDRESS—TENNESSEE ASSOCIATION

BY F. H. HEISKELL, OF MEMPHIS.

The Constitution of the Bar Association of Tennessee provides that the President shall open each annual meeting with an address in which he shall communicate the most noteworthy changes in the statute law, on points of general interest, made in the State and by Congress during the preceding year.
This leaves it to the President to determine what are the most noteworthy changes made in the statute law during the past year. If I am not mistaken, it has been the custom to endeavor to call attention to all the changes so made; however, a written Constitution is of more authority than custom, therefore I think the President may select for notice such statutes as he deems most important and omit all others.

Since the last meeting of the Association, on the 8th, 9th and 10th of last August there has been a session of Congress and also of the Legislature of Tennessee. The meeting this year being earlier than usual it has been necessary to get the statutes in the form of advance sheets. These came in the shape of some 3,000 pages, of Federal and State Statutes, public and private indiscriminately comingled.

At first sight the mass was appalling, but fortunately for me, and more fortunately for you, most of the time of Congress was spent in the capacity of a common council for the City of Washington, and in passing acts providing for donating a few cannon balls and old guns to some Ladies' Aid Society or other, for the purpose of decorating some spot of which history and geography have taken no cognizance. Also there were not a few acts providing for bridging and damming navigable streams. In passing I noticed half a dozen statutes passed in quick succession providing for damming the Savannah River, in which connection of course some would-be humorist must rise to a question of personal privilege for the purpose of remarking that the Savannah was the damndest river of its size, this side the Styx.

Upon examining the State Statutes of the recent session, it was comforting to find that most of the time and efforts of the Assembly had been directed to getting county lines fixed just right and in passing such statutes as that applicable to counties of a population not less than 17,755 nor more than 17,765, and that repealing a former act declaring Beaver Creek navigable.

ACTS OF CONGRESS.

An Act approved January 26th 1907 (No. 36) makes it unlawful for any National Bank, or any corporation organized under laws of Congress to make a money contribution in con-
nection with any election, to any political office, also for any corporation whatever to make a money contribution in connection with any election in which presidential or vice-presidential electors or a representative in Congress is to be voted for, or an election by any State Legislature of a United States Senator. The corporation is subject to a fine of not exceeding $5,000.00 and each consenting officer or director to a fine not less than $250 nor more than $1,000 and to imprisonment for not more than one year, or both fine and imprisonment, in the discretion of the Court.

An Act approved January 29th, 1907, is to authorize the Secretary of Commerce and Labor to investigate and report upon the industrial, social, moral, educational and physical condition of woman and child workers in the United States, wherever employed, with special reference to their age, hours of labor, term of employment, health, illiteracy, sanitary, and other conditions surrounding their occupation, and the means employed for the protection of their health, person, and morals.

An Act to regulate the immigration of aliens into the United States was approved February 29th, 1907. A tax of $4.00 per head is levied upon all immigrants coming into the United States, with certain exceptions, the same to be a lien upon the vessel or other vehicle of transportation bringing said aliens into the country, and shall be a debt against the owner of such vessel, or vehicle of carriage. This money, or as much as $2,500,000 thereof each year is to be paid into the treasury to constitute an immigrant fund, to be used under the direction of the Secretary of Commerce and Labor, to defray the expense of regulating the immigration of aliens into the United States.

The following classes of aliens are excluded from admission into the country: All idiots, imbeciles, feeble minded persons, epileptics and insane persons, paupers, professional beggers, persons afflicted with tuberculosis, or with a loathsome or dangerous contagious disease; persons certified by the examining physician to be so mentally or physically defective as to affect the ability of such alien to earn a living; persons who have been convicted of, or admit having committed a felony or other crime or misdemeanor, involving moral turpitude, polygamists or persons who admit their belief in the practice of polygamy, anarchists, or per-
sons who believe in, or advocate the overthrow by force or vio-
lence of the Government of the United States, or of all govern-
ment, or all forms of law, or the assassination of public officials;
prostitutes or women or girls coming into the country for purposes
of prostitution, or for other immoral purposes; persons who pro-
cure or attempt to bring in such women or girls; persons called
contract laborers who have been induced to, or solicited to
migrate to this country by offers or promises of employment, or
in consequence of agreements to perform labor in this country
of any kind, skilled or unskilled. All children under sixteen
years of age, unaccompanied by one or both of their parents,
at the discretion of the Secretary of Commerce and Labor, or
under such regulation as he may from time to time prescribe.
A few exceptions are provided for, among these, that skilled
labor may be imported if labor of like kind unemployed can not
be found in this country, and provided the provisions applicable
to contract labor shall not exclude professional actors, artists,
singers, ministers of any religious denomination, professors for
colleges or seminaries, persons belonging to any recognized learn-
ed professions, or persons employed strictly as personal or domes-
tic servants.

The amplest provisions are made in this act for ascertaining
the condition of immigrants by lists or manifests to be furnished
by masters or owners of vessels, by examination by physicians,
etc., it is made a felony or misdemeanor according to the class
imported to violate this law, and provision is made for deporta-
tion of prohibited aliens, by, or at the expense of, the importing
agencies.

While Congress endeavored in the act just noticed to pro-
tect the country and its citizens at home from the danger, the
nuisance and the burden of indiscriminate immigration, it was
not unmindful of the American citizen in other regards, but
passed an act in reference to expatriation of citizens and their
protection abroad.

By the provisions of an act approved March 2, 1907, any
person who has resided in the United States for three years and
has made a declaration of intention to become a citizen as pro-
vided by law, is entitled to a passport, good for six months, en-
titling him, to the protection of this Government in any foreign
country, except the country, of which he was a citizen prior to making such declaration of intention.

Any American citizen who has been naturalized in a foreign country or taken the oath of allegiance to a foreign State is deemed to have expatriated himself. Also when he shall have resided for two years in the foreign State, from which he came, or for five years in any other foreign State, provided this presumption from residence may be overcome by satisfactory evidence and provided that no American citizen shall be allowed to expatriate himself when this country is at war.

An American woman who marries a foreigner shall take the nationality of her husband. At the termination of the marital relation she may resume her American citizenship, if abroad, by registering as an American citizen, within one year with a Consul of the United States, or by returning to and continuing to reside in the United States.

A foreign woman who acquires American citizenship by marriage to an American shall be assumed to retain the same after the termination of the marital relation, if she continues to reside in the United States, unless she makes formal renunciation thereof before a court having jurisdiction to naturalize aliens, or if she resides abroad she may retain her citizenship by registering as such citizen before a United States Consul within a year after the termination of the marital relation.

A child born within the United States of alien parents shall be deemed a citizen of the United States, by virtue of the naturalization of, or resumption of American citizenship, by the parent during the minority of the child. Provided that the citizenship of such minor child shall begin at the time he begins to reside permanently in the United States.

All children born outside the limits of the United States, who are citizens thereof, in accordance with the provisions of section 1993, of the Revised Statutes of the United States, and who continue to reside outside of the United States should in order to receive the protection of this Government, be required upon reaching the age of eighteen years, to record at an American Consulate their intention to become residents and remain citizens of the United States, and shall be further required to take the
oath of allegiance to the United States, upon attaining their
majority.

An Act to amend a former act entitled "An Act to prohibit
Shanghaing" was approved March 2, 1907. The offense for-
bidden, is by threats or representations known to be untrue, to
induce any one to go on board of any United States vessel, or
to enter into agreement to do so, or to perform service or labor
thereon.

An act to establish the foundation for the Promotion of In-
dustrial Peace, recites the award to President Roosevelt of the
Nobel prize for 1906 for his services in behalf of the Peace of
the World, and that the President desired that the sum so award-
ed him should form the nucleus of a fund, the income of which
shall be expended for bringing together in conference in the
City of Washington, especially during the sessions of Congress
representatives of labor and capital for the purpose of discussing
industrial problems with a view of arriving at a better under-
standing between employers and employees, and thus promoting
industrial peace, and provides that the Chief Justice of the United
States, the Secretary of Agriculture and the Secretary of Com-
merce and Labor, and their successors in office, together with
a representative of Labor, and a representative of Capital and
two persons to represent the General Public, to be appointed by
the President, are created trustees of an establishment by the
name of "The Foundation for the promotion of Industrial Peace"
with power to receive and administer said fund, with additions
that may be made thereto by gift, bequest or devise, in accord-
ance with the purposes defined.

An act was passed by Congress amending the law in regard
to denatured alcohol, but the interest of the bar in the denatured
article is such that the subject is not considered of general im-
portance to this Association.

An act approved March 4th, 1907, is entitled, "An Act to
promote the safety of employees and travelers upon railroads,
by limiting the hours of service of employees thereon." It ap-
plies to all carriers of passengers by railroad between the States
and between this country and foreign countries and provides
that it shall be unlawful for any such carrier, its officers or
agents, to require or permit any employee, subject to the act,
to be or remain on duty for a longer period than sixteen (16) consecutive hours, and that when such employee shall have been continuously on duty for sixteen hours he shall be relieved and not be required or permitted again to go on duty until he has had at least ten (10) consecutive hours off duty; and no such employee who has been on duty sixteen (16) hours in the aggregate in any twenty-four-hour period shall be required or permitted to continue, or again go on duty without having had at least eight consecutive hours off duty.

Provided that no operator, train dispatcher or other employee who by the use of the telegraph or telephone dispatches, reports, transmits, or receives or delivers orders pertaining to, or affecting train movements, shall be required or permitted to be, or remain, on duty for a longer period than nine hours in any twenty-four-hour period in all towers, offices, places and stations continuously operated night and day, nor for a longer period than thirteen (13) hours in all towers, offices, places and stations operated only during daytime, except in cases of emergency when such employees may be permitted to be and remain on duty for four (4) additional hours, in a twenty-four-hour period, on not exceeding three days in any week. An employee within the meaning of the act is defined to mean a person actually engaged in, or connected with the movement of any train, but the crews of wrecking or relief trains are excepted from the provisions of the act. The penalty for each violation of the act is fixed at $500.00.

STATUTES OF THE STATE, 1907.

CHAPTER 8.

Is an act to amend an act for the benefit of the indigent and disabled soldiers of the War between the States and to fix the fees of attorneys or agents for procuring such pensions and fixing the penalty for the violation of the act.

CHAPTER 17.

Is the Pendleton Bill, of which we have all heard somewhat. By merely striking out five, and inserting one hundred and fifty, in line five, section 1, Chapter 2, of acts of 1903, the four-mile law, is made applicable to all cities in the State, hereafter in-
corporated, of not more than 150,000 population, by the last Federal census.

CHAPTER 25.

Enacts that any person acting as next friend for any idiot, lunatic, or person of unsound mind, may prosecute any action, except actions for false imprisonment, malicious prosecution and slanderous words, in any court in this State in forma pauperis, without bond or security for costs, by taking and subscribing to an oath that he has no property of such idiot, lunatic, or person of unsound mind, out of which to bear the expense of such action, and that he verily believes that such idiot, lunatic, or person of unsound mind is entitled to the redress sought.

CHAPTER 118.

Is entitled an act to regulate the keeping of female dogs, by requiring them to be kept registered and to declare the running at large of unregistered female dogs a public nuisance.

The act provides that the circuit clerk shall keep a well bound book, in which all female dogs in the county, three months old and over, shall be registered in the following form: "Number, name, age, color, breed, name and address of keeper, date of registry." The first female dog registered in each county shall be number one, for said county, and the numbers shall run consecutively. The circuit court clerk is required to procure and keep on hand a supply of substantial leather collars with metal clips or tags attached, on which shall be stamped the name of the county in which the animal is registered and the registry number. For registering and furnishing the collar the clerk is entitled to a fee of $3.00. Any one failing to so register a female dog over three months old, or permitting same to run at large, without registering, is guilty of a misdemeanor, and upon conviction, shall be fined not less than $5.00 nor more than $25.00 for each female dog so allowed to run at large.

This act has no preamble and we are therefore left to determine its purpose as best we can. It has been objected that it is class legislation. Also that it illustrates man's time-worn tendency to legislate against the female sex. I suppose the purpose of having the county stamped upon the tag is that no
county shall be made chargeable with the dogs of any county but its own. Another objection urged against the act is that it enables a man to own registered stock without regard to pedigree and that the first come is declared to be an A.r K.9 without regard to color, or previous condition of servitude. If the act can be defended, at all, it is perhaps on the idea that it is intended to prevent unlawful assemblages against the peace and dignity of the State, and here it may well be doubted whether the means employed is best calculated to accomplish the purpose aimed at. It is said that a dog law has always been the political death of its advocates in Tennessee. It remains to be seen whether this better half of a dog law will have any gentler effect upon the political existence of its friends.

CHAPTER 39.

Provides for the regulation of the practice of Optometry in the State, and prohibits such practice except by those who have received a diploma from some reputable Ophthalmological Institute, College, School, or University department, duly authorized by the laws of this State, or some other State of the United States and in which there was at the time of the issuance of such diploma annually delivered a full course of lectures and instruction in the Science of Optometry. Provided that nothing in section 1, of this act shall apply to any person engaged in the practice of Optometry at the time of the passage of this act.

When I had read this much of section 1 of this act I was lost in mystery, but the last proviso of the section gave the whole scheme away and made it unnecessary to consult the lexicographers and encyclopedists. The last clause of the section reads “Provided further that nothing in this act shall be so construed as to prevent merchants, druggists and others engaged in a general mercantile business from handling and selling spectacles as they do other merchandise.” The spectacles enable us to see the meaning of the law. The other sections of the act provide for boards of examiners; for registration of practitioners, and make a violation of this act a misdemeanor punishable by fine of not less than $25, nor more than $200, for each offense.
CHAPTER 56.

Makes it a misdemeanor punishable by fine or imprisonment or both, for a husband to wilfully desert, neglect, or fail to provide for his wife, or child or children under twelve years of age, without good cause. Any husband or father who shall be guilty of such misdemeanor shall upon conviction, be punished by fine not less than $25, nor more than $100, or by imprisonment in the county workhouse, not less than one month nor more than eleven months and twenty-nine days, or both such fine and imprisonment.

CHAPTER 68.

Declares it shall be a misdemeanor punishable by a fine of not less than $100, nor more than $5,000, or confinement in the county jail for not less than one nor more than three years in the discretion of the court to knowingly import or introduce into the State any cattle, or other domestic animals affected with splenetic or Texas fever, or which may bear upon their bodies fever ticks.

Section 2, provides for the appointment of a competent person or persons to be known as "County Live Stock Inspectors," by the Board of Health of each county, and the other sections provide for quarantine regulations and rules regulating the movement of live stock into or within the State.

CHAPTER 69.

Authorizes the admission of women to the practice of law. This is a short act, it marks the end of a long fight to secure this right for the women of the State.

CHAPTER 82.

Is so well known to the bar by this time, as scarcely to need comment. It is the act changing the Court of Chancery Appeals of three judges to a Court of Civil Appeals of five judges. Sections 1 and 2 and 3, provide for two additional judges to be appointed by the Governor until September 1st, 1908, to be elected in August, 1908, for the two years expiring September 1st, 1910.
Section 7, provides that the jurisdiction of the court shall be appellate only and extend to all cases from the chancery court except cases in which the amount involved exclusive of costs exceeds $1,000. and except in cases involving the constitutionality of the Statutes of Tennessee, contested elections for office, State revenue and ejectment suits. And to all civil cases tried in the circuit court and common law courts of the State, in which appeals in the nature of writs of error, or writs of error may be applied for, for the purpose of having the action of said trial court reviewed. The court is given the same power to award and issue writs of error, certiorari, and supersedeas, which the Supreme Court has heretofore had in those cases, returnable to the Court of Civil Appeals. The practice is to be the same as in the Supreme Court.

Section 8, provides that in all cases brought up to said Court of Civil Appeals, its decrees and judgments shall be final, provided said court may certify to the Supreme Court, any case as to which it may desire the opinion and decision of the Supreme Court, in which event the Supreme Court shall assume jurisdiction of such case and decide same upon the original transcript filed in said Court of Civil Appeals. Provision is also made for removal of any case by certiorari from said court to the Supreme Court, and for writ of supersedeas in aid of the certiorari, in much the same way as now obtains between the Supreme Court and the trial courts.

CHAPTER 88.

Makes it a misdemeanor to sell pools, operate a betting book or make any bet or wager upon a horse race, and Chapter 89 makes it a misdemeanor to keep any place for the purpose of encouraging, promoting, aiding, or assisting, in any betting or wagering upon any kind of a horse race, or where any bet or wager is permitted to be made upon any horse race.

The State of Andrew Jackson cannot witness without a pang of sympathy, and regret, the passing of the race horse and the abandoned turf. The Sport of Kings, became a mere gambling device, and therefore it had to go. The face of the people is set like flint, against gambling, as well as against intemperance.
By Chapter 90, $1,500. per annum, is allowed each of the judges of the Supreme Court, to be used by them in procuring and paying for clerical hire and other necessary expenses incurred in the discharge of their official duties.

Cemetery Companies, owning land not used for cemetery purposes are authorized to dispose of same by Chapter 94.

Stockholders in any corporation organized under the laws of this State are by Chapter 104, authorized to vote in all stockholders' meetings either in person, or by proxy, but all proxies shall be in writing, and signed by the stockholder.

Chapter 134, is the act known as the Talbert Bill. It amends section 8, Chapter 142, of the acts of 1875, in regard to the charter for a telegraph company, so as to make it applicable also to a telephone company. The principal other change made by this act is in the following: "While any village or city within which said line may be constructed, shall have all reasonable police powers, etc., no village, town, or city shall have the right to prevent said company from constructing, maintaining, and operating said line within said village, town or city, so long as said line is being constructed, maintained or operated within said village, town, or city in accordance with said reasonable police regulations."

CHAPTER 154.

Declares it shall be unlawful for any person or corporation, by inducement, persuasion, misrepresentation, or other means, to induce or procure, the breach or violation of, refusal or failure to perform any lawful contract by any party thereto, and provides that the party so procuring or inducing the said breach shall be liable in treble the amount of damages resulting and that the injured party may bring suit for the same.

CHAPTER 155.

Provides that farmers and agriculturists may enter into contract with warehousemen, merchants or others, for a period of one or more years not exceeding three, to plant, cultivate, and harvest or gather on their farms any particular crop, to plant and cultivate a specified acreage and to prepare said crop for market, sale, and shipment in a particular manner. Said farmers
my appoint such person with whom they so contract as their agent to determine when and at what price said farm products shall be sold and in that case said farm products shall not be sold by said farmer or through other agent, nor delivered for storage to any other depository than said agent. The act provides that said contract and agency shall be irrevocable for the time entered into. It can hardly be meant that all parties by consent cannot revoke, and it goes without saying that one party cannot revoke a binding contract. Several persons may agree to share the expense of such agency according to the value of their crops.

CHAPTER 185.

Is an elaborate amendment of the law for the protection and preservation of game. It would require too much space to notice the features of this act.

CHAPTER 234.

Is an act to authorize the Department of Public Instruction to have prepared and distributed for the use of school authorities of the several counties and districts in the State a pamphlet containing plans and specifications for the construction of rural school buildings.

CHAPTER 235.

Is an act requiring common carriers to settle all claims for lost or damaged freight and for overcharges on freight in a reasonable time. The act provides that freight lost or damaged and overcharges between two given points, on same line or system shall be paid for within sixty days from the filing of written notice with the agent of the railroad company or other company at the point of destination of said freight, and where freight is handled by two or more roads or systems, the claims for damage or overcharge shall be paid within ninety days from the filing of written notice with the agent of the railroad company at the point of shipment, or destination.

Any railroad, railroad system, all corporations and individuals engaged as common carriers where they fail to settle the claims mentioned, within sixty or ninety days, as the case
may be, shall be required to pay the owner of said freight in addition to the loss, and interest thereon, 25% of the amount recovered for said loss, provided that said penalty shall not apply when it shall appear to the court, trying the case, that said common carrier has tendered within the time specified to the claimant, an amount of money sufficient to cover the loss, for which said common carrier is held liable.

The act applies only to claims for $50.00 or less.

CHAPTER 236.

Is entitled an act to improve the public school system of Tennessee by creating in each county a County Board of Education and District Advisory Boards, and prescribing their duties and abolishing the office of district directors.

Section 1, abolishes the office of district directors. Each county in the State at its session to be held the first Monday in July, 1907, shall divide the county into five school districts, each representing as nearly as practicable equal area of territory or the same number of inhabitants; provided that each of these school districts shall be composed of whole civil districts and provided that in counties having fewer than five civil districts each civil district shall constitute a school district.

Sections 3 and 4. The County Board of Education is to consist of five members, one from each school district except where there are fewer than five districts, then one from each district and the rest from the county at large, to be elected by the county court at its next July term to serve until Sept. 1, 1908. On the first Thursday of August, 1908, and biennially thereafter each member of the County Board of Education shall be elected by the qualified voters of the district above provided for, and in counties with fewer than five districts from the county at large. The first board shall qualify within ten days after their election by electing one of their members chairman. The county superintendent shall be the secretary of the board.

Any qualified voter who is a resident of the district and who has received a primary education is eligible to be a member of said board.

Sections 7, 8 and 9, prescribe the duties of the chairman and secretary.
JOINT SESSIONS

Section 10 provides that the board shall hold a regular meeting on the first Saturday in July, October, January and April, of each year and transact all school business, but the chairman may call a special meeting whenever in his judgment the interest of the public schools require it, and the board shall have charge of the public schools of the county and manage and control them and all school property.

Section 12, fixes the compensation of members of the board at not less than $1.50, nor more than $3.00 per day as determined by the county court, for not more than thirty days in the year.

Section 13, provides for a local board of three members from each civil district in the county to be known as the advisory board to be elected by the voters of the district biennially.

Section 14. It shall be the duty of the advisory board to visit the schools and inspect the school work in their respective districts and see that the school house is in repair and properly equipped. To make recommendations to the County Board of Education, to make a report once a year or oftener if required by the county board. To have the secretary of the Advisory Board take the school census of the civil district annually during the month of July, and report same to the secretary of the county board. To suspend and dismiss pupils subject to appeal to the county board. To issue an order upon the County Board of Education for expenditures, for repairs and incidentals to an amount not exceeding $10.00.

Some ten counties are excepted from the provisions of the act. It applies to the rest of the State.

CHAPTER 253.

Enacts that sub-sections 3, section 9, Ch. 160 acts 1895 be amended by adding the following. "If any insurance company shall without the consent of the other party to any suit or proceeding brought by or against it in any court of this State, remove said suit or proceedings to any Federal Court, it shall be the duty of the Insurance Commissioner to forthwith revoke its authority to do business in this State, and to publish such order of revocation in some newspaper of general circulation published in this State."
CHAPTER 254.

Extends the powers of railroad companies to condemn property to provide water for their use.

CHAPTER 256.

Is an act to define and prohibit vagrancy. Among the definitions of vagrant are found these: Any persons having no visible and lawful means of support who only occasionally work at odd jobs, being for the most of his or her time out of regular employment. Every common gambler or person who for the most part maintains himself by gambling. Every common prostitute. All persons who, though able to work fail to do so, but hire out their minor children, or allow them to be hired out, and subsist upon their wages.

Vagrancy is declared to be a misdemeanor punishable by fine of not less than $10.00 nor more than $25.00 for the first offense and for each succeeding offense not less than $50.00.

CHAPTER 297.

Is a pure food and drug law. The preamble recites the passage of the U. S. statute of June 30, 1906, and whereas said law applies only to the manufacture of adulterated or misbranded foods or drugs in the territories of the U. S. and the District of Columbia and to the interstate traffic in the same, and, Whereas under said law the manufacturers of all adulterated foods and drugs are at liberty to make and sell same within any State to the great detriment and danger of the people thereof, now, therefore, in order to supplement said law and to protect the people of this State, etc. Be it enacted that it shall be unlawful for any person to manufacture within this State any article of food or drugs which is adulterated or mis-branded within the meaning of this act or to sell or give away the same.

The violation of the act is a misdemeanor, punishable by fine of $500.00 or one year in the penitentiary, or both for first offense and for each subsequent offense a fine of not more than $1,000.00 or not more than two years in the penitentiary or both.

The act in its elaborate definitions and prohibitions is very similar to the Federal Statute referred to of June 30, 1906.
CHAPTER 300.

By amendment of Ch. 142 acts of 1875 a form of charter is provided for interstate clubs. The declared purpose being the bringing into closer relation the people of various states, cementing the friendship of the several sections of the Union, and making leisure, recreative, pleasant, uplifting and otherwise profitable, and in connection with and as a part of said object for the purpose of acquisition, maintenance and use of clubhouses and grounds, game hunting and fishing preserves, the laying out and building drives and boulevards for automobiles and other vehicles, the establishment and use of grounds for polo, golf, tennis and other amusements; laying out parks, and otherwise beautifying and rendering the surroundings of the club attractive, and much more to the same effect.

CHAPTER 308.

Commencing January 1, 1908, it shall be unlawful for any person, firm or corporation to employ in any manufacturing establishment in this State, any female, or any child under the age of sixteen years more than sixty-two (62) hours in any one week. From and after January 1, 1909, this is changed to 61 hours in any one week and from and after January 1, 1910, to 60 hours.

CHAPTER 314.

Authorizes the counties of the State to take and condemn lands, property, gravel beds, rock quarries, easements, etc., for general road uses and purposes and for rights-of-way and public highways.

CHAPTER 334.

All instruments of conveyance executed in official capacity by any public officer of the State or by any person occupying a position of trust or acting in a fiduciary relation shall be admitted in and construed by the courts of the State as prima facie evidence of the facts in such instruments recited in so far as such facts relate to the execution of the power of such office or trust. This shall apply to all instruments now of record, but not to affect pending litigation.
CHAPTER 324.

Amends Ch. 108, acts of 1891, an act to regulate the practice of dentistry in the State. This act contains the regular features in regard to board of examiners and examinations. Before practicing dentistry the applicant must present a diploma from some reputable school or college of dentistry and undergo a satisfactory examination. Nothing in the act, however, is to be construed to prevent any person from pulling teeth. The board of examiners may revoke the license of any practitioner for the following causes: 1. Conviction of a felony. 2. For habitual drunkenness or confirmed drug habit. Or for the advertisement of dental methods in which untruthful, improbable or impossible statements are made. This last is evidently leveled at the "Painless Dentists," in whom Judge Wilkes does not believe.

CHAPTER 343.

Makes it a felony to mistake tame for wild ginseng. That is it is made a felony to dig and carry away the cultivated article against the will of the owner, but the ancient industry of "sanging" is not interfered with. It is sometimes safer to listen to the call of the wild than to the temptations of the tame.

CHAPTER 390.

Amends the railroad commission act of 1897, increasing the salaries of commissioners to $2,000.00 and the secretary to $1,500.00 with $500.00 for expenses to each and authorizing the commission to require the location of such depots and the establishment of such freight and passenger buildings as the conditions of the roads, safety of freight, and public comfort may require.

CHAPTER 397.

Is a general forestry law. It contains provisions looking to the protection of forests from fire, making it a misdemeanor to wilfully, maliciously or negligently fire forest lands, or expose them to danger from fire.
Also containing provisions to prevent trespass upon the lands held in trust, by the State and upon private lands by cutting trees, wood, or timber, and for the protection of planted trees.

I was able to secure only about 1,400 pages of the proof sheets of the Acts of 1907. Among those I could not obtain it appears from the papers, were the following:

To prevent corruption of voters in primaries, mass conventions and election.

To amend the Code with reference to the sale of real estate for partition and distribution.

To create State and County Board of Election Commissioners.

Several acts in regard to life insurance.

To reduce fire waste in Tennessee, and provide for fire Marshals.

Several acts in regard to Mutual Insurance Companies.

To regulate the sale of concentrated Commercial feeding stuffs.

To require the satisfaction, of record, of deeds of trust and mortgages.

To enlarge the powers of railroad companies so as to authorize the relocation of its lines.

To establish a system of highways in Tennessee.

(The Tollett Road Law.)

To prevent the spread of consumption.

To amend the act of 1907 regulating the practice of medicine and surgery and the registration of physicians' certificates.

To create a reformatory for boys.

From the length of this paper, I think the thanks of this Association are due to the Assistant Secretary of State for his failure to send these acts in time to receive a more extended notice.

I wish to state in conclusion for the benefit of the gentleman of the Arkansas Association, that the object of the Tennessee Association in requiring a paper like this, at the beginning of each annual meeting is that no address thereafter during the meeting may seem dull. I feel sure I have lived up to the purpose of the rule.
THE PRACTICE OF LAW; A PROFESSION OR TRADE

BY ALBERT W. BIGGS, OF MEMPHIS, TENN.

An American statesman began one of his speeches with this sentence: "If we could first know where we are, and whither we are tending, we could better judge what to do and how to do it."

To me it seems the time is ripe for the members of the bar, to determine where we are, as a profession, and whither we are tending, that we may be able to judge what is necessary to our part to do and how to do it.

Not many years ago, and happily within the memory of many present, to have spoken of the law as a trade, in contradistinction to a profession, would have been a paradox, and I hope we may all live to see this true again. There is no question but that a great change has come into the practice of law. I refer not to those innovations which are the necessary result of changed conditions, but to such as, in my opinion, tend to impair the usefulness of the bar, cripple its influence, destroy its prestige, and work injury to the body politic.

If the practice of law had not changed with the changed conditions which the past few decades have wrought in the life, customs and habits of the people, it would be wonderful indeed. No profession can stand still in a world of growth. It must either keep abreast with the progress of the world, or it becomes useless. Yet it should progress and not retrograde, and changes should not be permitted which do not tend to its improvement, if in our power to prevent them.

A lawyer of today no more writes his briefs with a goose quill than he rides in a stage coach. With the growth of the country the number of courts have increased, and the volumes of the reports have grown. With typewriters and stenographers it is easier to write opinions, and they have increased in number, and, apparently, lengthened in recent years. The publishers have been busy, and law books have multiplied until with the making of them there is no end. The result of all this, with the increase of business, has been to make the busy lawyer depend much upon clerks, juniors and assistants, even in the preparation of the most important papers and briefs.
These things have made lawyers specialists, rather than general practitioners, as in former days. Hence, we have lawyers who devote themselves to corporation practice, or some special class of such practice, as railroad lawyers, trust lawyers and mining lawyers. We also have title lawyers, criminal lawyers, damage suit lawyers, divorce lawyers and collection lawyers. It is true since the formation of our government we have had land lawyers and criminal lawyers, and those devoted to chancery practice, but, as a rule, they took other cases as well, and were at home in any court. An eminent Tennessee lawyer, of the old school, when asked late in life by a younger member of the profession as to why he took criminal cases, replied with this story: Some years ago, in the days of the traveling circus, and before the railroad shows of today, one was traveling through East Tennessee from town to town. At a country site up in the mountains it had stopped and the tents had been stretched and the show was in progress. A lank mountaineer had brought his entire family to see it, and they were passing from the menagerie into the tent where the circus performance was ready to begin, and just at the entrance they stopped. Here a crowd had gathered around the snake charmer, with a collection of snakes from many climes. On seeing the snakes, the mountaineer ran out of the tent, and grabbing a stick, rushed back, and before he could be overpowered, had begun a war of extermination. When it was demanded why he had so acted, and after it had been explained that they were harmless to the charmer, he replied, "I was taught as a boy to kill snakes wherever I found them, and I am too old to change now." The old lawyers were accustomed to take all classes of cases and it required a new generation to make specialists.

So, today, we now have lawyers who give their entire time to one client and receive from that client a yearly salary. This was unknown a few decades ago, but owing to the large business interests of many corporations, and of some individuals, such employments are no longer rare, and while an innovation, yet many of the most able, most learned and the very greatest of the American Bar are now so employed.

These changes in the bar, while making a marked difference from former times, are such as have been the natural and neces-
sary result of our present business life, due to the development and progress of our country. The change to which I shall address myself as demanding the careful consideration of these associations is that which has been wrought by the spirit of commercialism. The desire for wealth, and wealth at once, is at the root of that which threatens the integrity and stability of the bar, and to make the practice of law—so long a profession, governed by the highest ethics—a trade whose slogan is wealth, more wealth and most wealth.

With a glorious past as a heritage, our duty to the courts of which we are officers, and which we should aid in the administration of the law; and our oaths which bind us to our nation and state and dedicate us to law, order and justice, as Samuel of old was dedicated to God—with these reminders of duty ever present, can we falter when once our duty is made plain?

The bar is and has been a selected class. Not everyone can be admitted to its membership. Requisite learning and good character have always been necessary to secure license; and, over the members, the courts have exercised jurisdiction, in a summary manner, to strike from the rolls those guilty of misconduct.

The case of Smith v. State, 1 Yerger 288, decided in January, 1829, held that it was sufficient cause to strike an attorney from the roll that he had previously accepted a challenge to fight a duel, or had fought a duel in another State and there killed his antagonist.

In delivering the opinion of the court, Judge Peck said:

"That a court has had and exercised a summary jurisdiction over attorneys admitted to its bar, cases, from the earliest period up to the present time, fully establish. In matters touching their duty, they may, by the court be fined, subjected to the payment of costs of parties litigant, made to deliver up papers confided to them, committed, suspended or stricken from the roll of attorneys."


"This power, inherent in the courts, must be conceded to them."

"It is said, and with truth, that often the dignity and purity and even the existence of the court, to any useful purpose, de-
pend upon the right to exercise this power. The court, *ex debita justicia*, will notice the acts of her officers, and will approve or condemn as merit or demerit, on examination, may justify."

"In cases unconnected with his duty as an attorney, after conviction for an offense clergyable, he may receive his clergy and then be stricken from the roll of attorneys, although clergy may, as to other privileges, operate as a statute pardon; and should an attorney so disgraced presume to appear and practice afterward, he may, for such his contempt to the order of the court, on summary motion, be transported without the intervention of a jury. This last is in virtue of a recent statute, 12 Geo. 1, Ch. 25, Sec. 4; 1 Chitty C. L. 811."

"Such in England has been, and still is, the power of courts over this class of the community; and such being a summary of British law, founded partly on acts of Parliament, and partly based upon the principles of common law, it is next to inquire whether an attorney in this State stands upon higher grounds than attorneys in England occupy. The first act which it is important to notice is that of 1809, Chapter 6, for the admission of students; next the Act of 1815, Chapter 27, for the admission of those from other States. Each must produce record evidence of full age and good moral character. On that is based the right to admission as an attorney. It would require no argument to show that if good moral character when admitted is necessary, the reason is just as strong for his retaining that good moral character after admission, good moral character being a prerequisite and quality in the attorney. It is the bounden duty of courts, when their attention is directed to it, to see that such good moral character shall be constantly preserved. The property, characters, and, to some extent, even the lives of individuals are committed to the care of the profession. It is not only a high and honorable calling to which the community naturally look up, but connected with it, it is a trust; of the profession is expected probity, integrity and example; next to a judge he should be the guardian of the Constitution and of the law, because he is presumed to know what it is, and because his oath has bound him honestly and faithfully to walk within the pale of her precepts."
In a more recent case, speaking of the honor of the profession of law, Special Judge E. H. East, one of the ablest lawyers who ever adorned the bar or bench of Tennessee, said:

"An attorney is a man set apart by the law to expound to all persons who seek him the laws of the land, relating to high interests of property, liberty and life. To this end he is licensed and permitted to charge for his services. The relation he bears to his client implies the highest trust and confidence. The client lays bare to his attorney his very nature and heart, and relies upon him for support and protection in the saddest hours of his life. Knowing not which way to go to attain his rights, he puts himself under the guidance of his attorney, and confides that he will lead him aright."

Bank v. Hornberger, 4 Cold. 531.

Required to possess these requisites for admission, to demean himself with decorum, honor, and fidelity; to assist the courts to arrive at the truth of every dispute of fact, and to apply with precision, as near as may be, the eternal principles of justice in each case; to be heard for his client before life or liberty can be taken, and to evoke due process of law before any can be dispossessed of property, or deprived of right—the position of attorney is beyond the power of legislative act to cripple or destroy, and not the subject (in Tennessee, at least) of any license tax. When once possessed of the right to practice, unless for sufficient cause first shown, the attorney can not be deprived of this right.

An illustrious citizen of Arkansas, a statesman of national reputation and lawyer of great ability, and one time an Attorney General of the United States, maintained such rights, and in Ex Parte Garland, 4 Wallace 333, Mr. Justice Fields, of the Supreme Court of the United States said:

"They are officers of the court; admitted as such by its order, upon evidence of their possession of sufficient legal learning and fair private character. It has always been the general practice in this country to obtain this evidence by an examination of the parties. In this court the fact of the admission of such officers in the highest court of the State to which they respectively belong, for three years preceding this application, is regarded as sufficient evidence of the possession of the requisite legal learn-
ing, and the statement of counsel moving their admission, sufficient evidence that their private and professional character is fair. The order of admission is the judgment of the court that the parties possess the requisite qualifications as attorneys and counsellors, and are entitled to appear as such and conduct causes therein. From its entry the parties become officers of the court, and are responsible to it for professional misconduct. They hold their office during good behavior, and can only be deprived of it for misconduct ascertained and declared by the judgment of court after opportunity to be heard has been afforded."

The Bill of Rights recognizes the lawyer as an important part of our system of government, and guarantees to every accused the right to be heard by counsel. From their number, the judges are selected, and they are truly the priests who minister at the altars of justice.

From the earliest history of our mother country down to this present time, lawyers have defended the liberties which the sword of the patriot has purchased with blood. In this connection, I might call a roll of names of undying memory whose mere mention, in this presence, would thrill our hearts with pride and cause our cheeks to glow with patriotic fervor. Shall we prove unworthy of these high duties and ignoble to the noble past?

We live in an era of money making, and the law has not escaped from the well nigh universal craze. Great fortunes have been amassed, surpassing the wildest dreams of avarice. Money seems all-powerful, and the dollar is enthroned. In the land of Washington, Jefferson and Jackson, the simple lives of former days have given place to luxurious habits. In a country without caste or rank, where all men are equal before the law, we have an aristocracy of wealth. With the second generation—sometimes the first—their conduct, in many cases, in public disregard not only good manners, but good morals, and frequently has been almost a national scandal.

Yet some lawyers have seemingly taken the "gold cure," so that it is not impossible to employ some of high standing to assist the newly rich man to put aside his wife of early days, that he may flaunt his frequently ill-gotten wealth and his newly-acquired actress wife, through the capitals of the world, where he poses as a representative American. What too severe can be
said in condemnation of these attorneys, who for large fees, or for any fee, become partners in crimes against innocent womanhood and society?

A few days ago, a lawyer, at one time of national fame, was sentenced to prison for the crime of perjury in a divorce suit. For the great increase in the number of divorces annually granted, who is to blame? The finger of guilt is pointed at the bar. I would that we could build up such a sentiment against those lawyers who rush into divorce courts with every trivial family quarrel, who thus bring scandal and ruin to the innocent, who wreck homes and break hearts, so that they could no longer claim fellowship in a bar of such membership as of Tennessee and Arkansas.

It would seem that, by reason of the contagion of money-getting and hoarding, we have adopted different standards of merit and new tests of preferment and success. The old order is threatened; even the pillars of the temple are shaken.

I believe no one will gainsay that if we shall substitute for the old order the new regime of gold, that which has been the source of our strength and power and influence, will be gone. I do not deny that a lawyer should be paid for his services a fair and reasonable return; I do not decry against proper charges for labor, but I do decry against making the practice of law a gamble, and its chief end money-getting.

As late as 1827 a suit was tried in the Supreme Court of Tennessee, wherein the question was raised as to whether or not a lawyer could recover upon a quantum meruit for professional services. The defense was that the plaintiff could not recover, because the profession of law was of an honorable character, and services rendered by its professors gratuitous. The opinion of the court was delivered by Judge Crabb, who held that the doctrine which formerly prevailed in England had never obtained in this State. He said:

"The law in England is certainly as contended for, both in relation to counsellors and physicians, but the doctrine has not prevailed in this State with regard to either. It has been common here for professional men, as well as other persons who have labored for the benefit of their employers, to sue for and
obtain what they reasonably should have for their services, in
the opinion of an impartial jury.

"We have here no separate orders in society—none of those
exclusive privileges which distinguish the lawyer in England, in
order to attach him to the existing government, and which con-
stitutes him a sort of noble in the land—rising by regular gradua-
tion, from an apprentice's humble seat, in Westminster Hall,
until he becomes a sergeant, and then is invited to a seat within
the bar as king's counsel; after a little time receives such sine-
cure appointment, or is placed on the bench for life, with a salary
of many thousand pounds sterling, or is appointed solicitor gen-
eral to the king or queen, or attorney general, or perchance at-
tains to the highest professional honors by taking his seat on the
wool sack; equal, whatever may have been his birth or his
origin, to the proudest peer he looks upon.

"None of these privileges are possessed by the advocates
and attorneys of Tennessee. True, the latter may be promoted
(if promoted it may be called) from a lucrative practice at the
bar to a troublesome and unproductive, though honorable seat,
on the bench.

"But it is contended that on the score of public policy, such
actions should be discountenanced, and the client be left to give
and the counsel to receive whatever the liberality of the former
may prompt him to offer, or the conscience of the latter induce
him to ask. On this point it is believed the weight of the
argument is clearly on the part of the adjudications of Tennes-
see.

"Leave the doctrine as desired, and the happy moment will
always be selected by the unconscientious, when the anxious
suitor is elated by hope, or distressed by fear to extort unreas-
sonable advances in the shape of gratuities. But let it be known
that industry and attention and order will be certainly compen-
sated by reasonable payment and you encourage forbearance on
the part of the attorney or advocate. He is not tempted to get
what he can, while the fever of his client is up, he waits in se-
curity until his labors are performed, his services rendered,
knowing that he will at last receive what a disinterested jury
shall award."
This case settled forever in this State that lawyers were entitled to reasonable payment for professional services rendered, and from that date to the present time no similar case, as I am advised, has arisen in this State.

The Legislature of Tennessee, some years ago, repealed existing laws against champerty, including the act of 1821, prohibiting contingent fees, and a flood of litigation has followed. Whether this has been good for the State is doubted. That it has aided to enrich the bar and increase litigation there can be no doubt, and that it will remain the law for this generation we may be well assured. The lawyer is now frequently a partner in the case, and appears not as a disinterested counsel, but as an interested party. The old idea was the lawyer could have no interest in the cause, any more than the judge. Both were in theory and in fact officers of the court, whose joint duty it was to administer justice to every litigant. If the lawyer is now a partner in the result he can be no longer disinterested.

On this subject I can not do better than quote from the Honorable President of the New York State Bar Association, the former Ambassador to Great Britain, Honorable Joseph H. Choate, who in his address on "The English Bar," delivered in January, 1907, said:

"But the chief cause of detraction from our absolute independence and disinterestedness as advocates is that fatal and pernicious change made several generations ago by statute, by which lawyers and clients are permitted to make any agreement they please as to compensation—so that contingent fees, contracts for shares, even contracts for half the result of a litigation are permissible, and I fear, not unknown. How can we wonder, if the community implicates the lawyer who conducts a cause with the morale of the cause and of the client? If he has bargained for a share of the result, what answer can we make to such a criticism? And how can we blame the community when it suspects that such practices are frequent or common, and even sanctioned by eminent members of the profession, if they confound us all in one indistinguishable crowd, and refuse to accord to any of us strictly professional relation to the cause which the English barrister enjoys? And how can the courts put full faith in the sincerity of our neighbors as aids to them in
the administration of justice, if they have reason to suspect us
of having bargained for a share of the result?

"If you ask me whether there is no way out of this conclu-
sion of condemnation or suspicion for the individual lawyer, I
say emphatically there is.

"True, we can not go back to the habits of generations, or
repeal statutes which have imbedded such practices in the social
habits of the people. But the individual advocate can persist-
tently refuse to follow such practices, or to take a contingent fee,
or a share of the controversy, and I am old-fashioned enough
to wish that every member of the profession who aspires to
leadership would take such a stand, and to believe that if he did
so it would promote his reputation and success in true profes-
sional distinction.

"For a whole generation, yes, for two generations, we had
before us a noble example of this moral distinction—alas! he is
no longer with us. I refer to the late James C. Carter, who so
long and so gloriously led us, and who, I believe, never touched
a contingent fee or a share in a controversy of which he had
the conduct, and was for all the world exactly like the best ex-
amples of the leaders of the English Bar."

The repeal of these statutes and the spirit of commercialism
with which the bar has been impregnated have together been
the cause of the active solicitation of business which is begin-
n ing to mark the practice in many of the large centers, and
which lowers the standard of the profession and brings it to the
plane of a mere business. Truly, if this becomes general, as in
one form or another it now seems that it may, it will mark the
last transition of the practice of law from the ranks of the pro-
fession and make it in deed and in truth a trade.

A lawyer owes the duty to himself, to his client, to his
country and to the administration of justice, that he will not
bring nor advise the bringing of a suit which he does not believe
is meritorious. Yet how many cases are now brought without
merit, because without cost? Surely, the suit which is solicited
will not be in turn rejected.

The Supreme Court of Tennessee, in a recent case (Inger-
soll v. Coal Creek Coal Co., 98 S. W. 178), had before it the
question as to whether a firm of attorneys who procured a num-
ber of cases by personal solicitation of their representative, was entitled to compensation for their services which the courts would enforce, and it decided in the negative. The opinion marks a step in the judicial history of the State, if not of the nation.

Other courts have disbarred lawyers for advertising to procure divorces easily and without publicity, but the following extract from the opinion of Mr. Justice Wilkes strikes at the root of one of the evils of the day. He said:

"Now, the present case is simply this: There had been a terrible disaster in the defendant's mine, caused by an explosion, and hundreds of men had been suddenly killed, and numbers of women made widows or childless, and numbers of children made fatherless. It was such a terrible catastrophe as to shock the community and arouse universal regret and horror. We may grant that a right of action accrued to the next of kin of every person killed and to every person injured.

"The complainants, through their special partner, Chandler, went at once to the scene of the disaster, and personally solicited such parties as had rights of action to put their claims into complainants' hands. Under the facts the firm, and each member, was a party to this personal solicitation.

"It seems that other attorneys reached the scene of the disaster before the complainants; and, as the Court of Chancery Appeals states, Chandler 'entered actively into the competition for business, that he boldly and openly saw widows and others whose husbands and next of kin had been killed in the explosion, and sought as other lawyers were doing to have them intrust the bringing and prosecution of suits to his firm, but that it does not appear that he practiced any fraud or deceptions, or made any false representations to get cases for his firm. He made several trips to Coal Creek on this business, at the expense of the firm. He secured some forty cases, and 150 or more cases were secured by other lawyers, all in a few days. The cases were to be prosecuted on a contingent fee of so much per cent., and of this Chandler was to have a certain proportion. Suits were brought and compromised afterwards, as has already been set out. There can be no doubt of plaintiff's right to recover,
unless they are denied relief on the ground of unprofessional conduct, which the court deems sufficient to repel them.'

"We are of opinion that, under the facts disclosed by the finding of the Court of Chancery Appeals, complainants are not entitled to recover, because these facts show acts of impropriety inconsistent with the character of the profession and incompatible with the faithful discharge of its duties.

"We can not agree to several propositions advanced by complainants. We can not agree that in these latter years a spirit of commercialism has lowered the standard of the legal profession. We can not agree that the practice of law has become a 'business,' instead of a 'profession,' and that it is now allowable to resort to the practices and devices of men to bring in business by personal solicitation, under the facts shown in this case.

"As to how far an attorney may go in soliciting business, or whether he may solicit at all, we are not called upon to decide; but when such a case is presented as is disclosed in this record, of attorneys rushing to the scene of disaster in hot haste, and competing with each other in soliciting the bereaved ones to allow them to sue for their losses, we feel that we are called upon to say, in no uncertain terms, that such conduct is an act of impropriety and inconsistent with the character of the profession. We can not, we dare not, lower the standard of the legal profession to that of a mere business, in which fleetness of foot, or the celerity of the automobile, determines who shall be employed.

"The miserable victims of the disaster are dazed by the terrible bereavement. They are in no condition to consider their rights to damages. In their extremity they fly to any one promising relief, when, if left to time more mature consideration they would be able to make, perhaps, a better choice. In addition, it is unbecoming a member of the profession, and a public scandal, and when he bases his right to recover fees upon such improper conduct, and lowering the character of the profession and the court, it is no excuse that other attorneys do the same; but this is rather a reason why this court should act promptly and decidedly, in order that an end may be put to the practice.

"It is no excuse that corporations which have caused such
disasters have been alert to send their agents and representatives to the scene, with a view of forestalling suits and making favorable compromises. This court has never failed to condemn this practice in the strongest terms; and, whenever a case has come before it which in any way smacked of fraud, or undue advantage arising out of such conduct, this court has not been slow to set aside or disregard improper or hard settlements. But such agents of corporations are not, as a rule, officers of the court, nor do they occupy that high status which the law places the attorney upon; and we think that we can safely say that if any attorney should make such settlement, under such circumstances, this court would not hesitate to disbar him.

"It is said that there is no precedent for refusing fees because of such conduct. If this be so, we are admonished by the record in this case that it is high time that such a precedent be set, and in such terms as may not be mistaken or misunderstood.

"The argument made in this case, that such practice is not looked upon with disfavor by many members of the profession, that it is freely indulged in by prominent attorneys, that it is necessary to successful practice, and that the Court of Appeals, while deprecating the practice, does not condemn it—these and other arguments call for a full and emphatic expression from this court in this case.

"It is said that, even if this rule should prevail in considering questions of good faith and professional conduct between attorney and client, after the relation is established, it does not prevail in the making of the contract of employment, and that in making such contract, before the fiduciary relation has become established, the parties stand upon the same footing and as strangers to each other.

"There is unquestionably a difference between the relations existing between attorney and client before and after employment, and, in some respects, at the time and in the matter of a retainer of the lawyer's services, so that an attorney, after he is employed, will not be allowed to charge fees which he might have charged when he was retained, if the same are excessive (Ross v. Mynatt, 7 Yerg. 30; Phillips v. Overton, 4 Hayw. 291), but this principle does not reach the present controversy."
"Here it is not the client who is concerned, but the court and the public; and the question is not narrowed down to the issue whether the client has been injured, but whether the conduct of the attorney has been contrary to the character of the profession and opposed to a sound public policy and to the proper and decorous administration of the law.

"As a matter of fact, the present suit does not concern these clients specially. They will not be benefited or burdened by it. They are interested in it in the same sense that the general public is interested, and by their individual relation to it.

"We are not now attempting to lay down the rule of good faith between lawyer and client, but the professional conduct of the attorney as he appears to the court and the public in the practice of his profession. Nor are we attempting to lay down a rule of conduct for the agents of corporations in their efforts to effect compromises of damage suits. When a case, such as counsel depicts, arises, we will deal with it as we think the law and public policy demand."

The doctrine announced by Mr. Justice Wilkes in the above case was not a new one, and is in line with what has ever been considered the proper ethics of the profession. Mr. Lincoln, the great lawyer and commoner, said:

"Discourage litigation, persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser—in fees, expenses and waste of time. As a peacemaker, the lawyer has a superior opportunity of being a good man. There will still be business enough.

"Never stir up litigation. A worse man can scarcely be found than one who does this. Who can be more nearly a fiend than he who habitually overhauls the register of deeds in search of defects in titles, whereupon to stir up strife and put money in his pocket? A moral tone ought to be infused into the profession which should drive such men out of it. There is a vague popular belief that lawyers are necessarily dishonest. I say vague, because, when we consider to what extent confidence and honors are reposed in and conferred upon lawyers by the people, it appears improbable that their impression of dishonesty is very distinct and vivid. Yet the impression is common, almost universal. Let no young man choosing the law for a calling for
a moment yield to the popular belief; resolve to be honest at all events, and, if in your own judgment you can not be an honest lawyer, resolve to be honest without being a lawyer. Choose some other occupation rather than one in the choosing of which you do, in advance, consent to be a knave.”

What is said by Mr. Justice Wilkes in the above opinion applies with much greater force to a class of lawyers who, while they may not chase damage suits against corporations, frequently seek larger business in equally dubious ways. I say it applies with greater force, and why? There may be some excuse offered for those who are familiarly called “ambulance chasers,” in that they protect the poor and ignorant.

I have some doubt whether they always act in the interest of the poor and ignorant, and when contracts are made for one-half of the recovery, it would seem, at first blush, they are not altogether moved by motives of disinterested charity.

Usually such lawyer is not a leader of the bar, and hence his conduct does not set an example for younger men. When, however, a leader of the bar, a man of respectability and standing, socially and professionally, solicits the business of large corporate interests, its effect is to hurt the entire bar.

What excuse can be given for the lawyer who seeks in many ways the business of those who are not imposed upon and who are able to take care of themselves? If we condemn one, where is the justice of permitting the larger one, the man of more reputation, to escape from censure? I say that my candid belief is that the solicitor of damage suits is the imitator, not the originator, and that his conduct has not the baneful influence on the profession which the other has.

Again, the practice of some leading lawyers to charge fees far beyond their intrinsic worth is hurtful to the profession. I can not subscribe to the now prevalent opinion that the bigger your charge, the greater you are as a lawyer. In this regard, I understand that the Nestor of the Memphis Bar has long enjoyed the distinction of being as conservative in his charges as he is sound in advice, wise in council and professional in conduct.

There are lawyers of high standing who have apparently forgotten the character of the positions which they hold, and who devote their brains and knowledge of the law to advising
clients as to how far they may go in the furtherance of schemes of predatory wealth, and keep out of prison.

Within the last day or so, my attention was called to an article in Leslie's Weekly, of May 9, 1907, by Mr. Justice Brewer of the Supreme Court of the United States, upon this feature of the practice, and as he expresses the thought which I have so much clearer than I can, and because his words will carry such additional weight, I quote from him as follows:

"That man will seek the brainiest counsel, one who can advise correctly as to the precise limits of the law, but his only thought is of the brains and knowledge, and the lawyer who best answers that thought will get employment and compensation corresponding to the pecuniary returns which follow the advice. Counsel responding to such a client may in one sense of the term be honest, but it is a negative honesty. It is an honesty which regards simply the client, the statute, and the pay. It is an honesty which ignores the fact that both client and counsel are members of society, and assumes that there is no moral obligation upon either to respect the general welfare. Is it strange that there should be so much criticism of the bar? We must remember that the wisdom of the lawmaker can never keep pace with the ingenuity of trained minds seeking to evade legal limitations. The old saying that holes may be found in every law means simply that an ingenious lawyer can often find either in the statute itself or in the mode prescribed for its enforcement some way to escape from its penalties. It is this which provokes the frequent remark that the law so seldom reaches the rich, for the rich can pay for the brainiest, and the brainiest most certainly and quickly discovers the means of evasion. As against this, I appeal for a higher standard of professional ethics."

After all, the common source is money. The spirit of the age has not left the profession untouched. With contingent fees, with solicitation of business by the high and low, in one form and another, what will be the end?

These associations and kindred ones were organized to arrest this growth. We are bound together to preserve the profession as such; to uphold its honor; to inculcate in the younger members sound professional ethics; to bid them to patiently wait
until their worth shall be recognized, rather than to seek business by unprofessional means.

From time out of mind, the young lawyer has been willing to serve periods of waiting, eking out a precarious living, until by some speech, or the conduct of some case, he could demonstrate his ability and win his right to recognition by the older members of the profession and the public. Some have been unable to hold out against the demands of pressing necessity, and have gone into other lines where money comes easier. For generations this has been the history of the bar, so that only those have remained who were able and willing to wait, and content to walk for long years in obscurity.

This severe process of elimination has not proven sufficient to keep at all times its rank free from shysters and tricksters, but, on the whole, in days gone by, it has presented a select body of men who have nobly served their day and generation, guarding the liberties of the people, and deserving their respect and confidence.

In the early days, there were no short cuts to practice, and rather than violate the ethics of the profession, thousands have left its ranks, given up long-cherished ambitions, and, as they thought, lost years which had been spent in preparation. It is no wonder that such lawyers have known the secrets of families and kept them; have been called into council and have prevented separations, divorces and scandals; have made families happy; have scattered sunshine; have handled without bond or security large estates; have executed trusts; have been called to public stations of power and authority; have been loved and reverenced in their serene old age, and died in poverty, so far as money is concerned, but rich in the gratitude and love of a people.

Let us cling to the old order, and by precept and example strive to transmit to others the practice of law as we found it—a profession, now and forever.
RESPONSE TO ADDRESS OF ALBERT W. BIGGS

BY W. A. PERCY, OF MEMPHIS, TENN.

No one could have listened to the thoughtful and eloquent address of the distinguished gentleman, Mr. Biggs, without being thrilled with pride at belonging to the legal profession, a profession to which he has concentrated his fine intellect, and of which he is a conspicuous ornament. The address is like a breath of mountain air in its freshness and purity; it rings with the same call to high purpose which good men, earnest men, unselfish men, have sounded through all the ages.

And just here let me say there is in the address a thought in which I cannot concur; that the tone which pervades the bar today is lower than that of former generations. There is no more beautiful trait in human nature, no single emotion which so distinguishes man from the brute, than the affection and reverence for the parent which increases as the man grows in strength and the parent weakens with the oncoming years, and this admirable trait makes the fault of the apotheosis almost a virtue.

Respect for our ancestors, admiration for the illustrious men in our profession and in the broader field statesmanship and action, and a laudable desire to emulate their example, are sentiments that improve as well as grace those who feel them and cannot be too much encouraged in the youth of our land.

But one who announces the proposition, whether it be in the profession of law or in any other field of human labor, or in social life, in the Western world, that the general ethical average of the men engaged in any occupation is lower today than it was at any previous time in the world’s history since the principles announced in the sermon on the mount began to bear fruit, has in my judgment studied history in only a superficial way.

We are not followers of Confucius, we do not sacrifice to the shades of our ancestors, and we bend the knee at no Shin-too shrine.

Speaking for Occidental civilization, I affirm it to be a profound historical fact that
"We are heirs of all the ages,
In the foremost files of time."

If there is anything for which we ought to be profoundly thankful, it is that we are permitted to live on this earth in this the greatest of all ages of the world—otherwise, we would be dead ones now.

The nineteenth century in its matchless accomplishments surpassed all the other ages that preceded it from the dawn of civilization combined. Its achievements in science, in commercial activity, industrial and agricultural development, have been equaled by the progress in jurisprudence, legislation, morality, social and religious conditions.

The utilization of steam was no greater advance in the world of physics than the repeal of the corn laws was in legislation, or the enunciation of the Monroe doctrine in international law; or the statute of Jeofails and Lord Tenterden's act in jurisprudence.

The development of the railroads, the telegraph and the telephone have their counterpart of progress and improvement in every avenue of human endeavor—even the law.

If anyone doubts that social conditions have improved with the general diffusion of the comforts of life and the principles of the gospel, let him begin with Suetonius' Lives of the Twelve Caesars and read on down through contemporaneous literature to the advent of the last century. The only satisfaction from a humanitarian standpoint he can find in wading through the squalor and immorality and tawdry magnificence will be in noting a slow, but increasing, improvement through the ages.

Passing out of the hopelessness of the middle ages, go through the reigns of Louis XIV., of Charles II., of the four Georges as reflected in the pages of Saint Simon and Pepys and De Grammont and Thackery, and then emerge into the wholesome air of the Victorian age.

Even in America, set apart because of peculiar conditions from the general run of human depravity, even in that sanctum sanctorum, the old Bay State and consecrated Plymouth Rock, if Mr. Secretary Long is to be taken as authority, there was more meanness, intolerance, dishonesty and immorality in any
hamlet in New England fifty years after the landing of the
Mayflower than can be found in any dozen villages put together
in any New England State today.

The whole scale of life has improved from the lowest to
the highest, but chiefest among the lowest. In an hundred years
the hewers of wood and drawers of water have emerged from
immemorial slavery, servitude and degradation to self-respect-
ing men and women living decent lives and raising and educa-
ting hopeful children.

I entirely dissent from the view that the profession of law,
or any other calling, has been commercialized.

The greed of gold is no more rampant today than it was
at any other stage in the world's history, but, thank God, the love
of man is a more vital factor in the social and political life
of the race than it ever has been since the Star of Bethlehem
was first seen in the East. The Carnegies, Rockefellers and Harr-
rimans, and their hosts of imitators, are but types of the buc-
caneers of all ages; what but greed for gold drove Drake, Ra-
leigh and Davie to sail the Spanish main, sent slave traders from
New Bedford, or nerved the forty-niners to circle Cape Horn? The human race is not pursuing the Golden Fleece with any
more ardor than did Jason and his Argonauts in the olden time
when Priam still ruled the white walled city of Troy.

Some sixty years ago the poet said:

"The jingle of the guinea helps the hurt
that honor feels."

The difference between these modern freebooters and those
of earlier times is the use they put their wealth to. They don't
spend their gains accumulated through evading or misdi-
recting the laws of the land with the aid of the astute and un-
scrupulous lawyers, in notorious living or revolution, but in
splendid and enduring charities.

Coming down to our own profession, while agreeing with
many of the lofty sentiments of the fine gentleman who has
entertained us with his address, I totally differ from him in
the lament that we of today have fallen from the high estate
of our predecessors in the profession.
The fundamental mistake which he makes is in instituting a comparison between the shining examples of past ages and the lower tendencies of the present time. To be at all accurate, he should compare the great lights of the present time with their predecessors. Does he think that such men as James C. Carter or Mr. Choate or Mr. Garland or Judge U. M. Rose, or that distinguished member of our local bar to whom he has beautifully alluded, Mr. Turley, have a lower ethical standard than Blackstone or Kent or Erskine or William Wirt? Does he think while the average human life has improved our glorious profession has retrograded? Were there no Hummels in former years? Don't overlook Lord Bacon, the greatest and meanest of mankind, or bloody Jefferies. The shysters of former days went their way to oblivion, while the great men's memories shine through the ages. But if we read Dickens or Wilkie Collins or George Eliot or Ten Thousand a Year we know they existed in what I imagine Brother Biggs considers the halcyon period of the profession as abundantly and more conspicuously than now.

I was rather touched with the suggestion that we of the legal profession occupied a sort of sacerdotal relation to the principles of sublime justice—a band of Vestal Virgins who had been set apart to guard its sacred flame. A beautiful thought—I should say fancy.

The views he expresses have not always been entertained by those outside of the profession. Yesterday I was notified by Mr. Gratz Brown, the chairman of the arrangement committee, that I would be expected to run the banquet and get up the menu. Last night after my wife and I had framed up the menu, which I hope you will find to be a gastronomic and vinous dream, I thought I would get up some apt quotations for a lawyers' banquet. I turned, as I always do in my hour of need, to Shakespeare and the Bible to see what they had to say of lawyers. I found Shakespeare has Jack Cade to say, in heading the first struggle for human liberty in England:

"First let us kill all the lawyers."

In the Bible it is said:
"And one among them, a lawyer tempted him, saying, Master, what shall I do to be saved?"

This question was the only one to which Jesus does not seem to have had a ready answer.

Neither the legal profession nor the judiciary have been the guardians of Human Liberty; they have been the guardians of private property. In the great struggles for human liberty, the profession, at least its most professional exponents, have been on the side of wealth and conservatism—not the side of progress. No lawyer instituted the jury system, and no judge labored for its preservation. No lawyer's name is signed to the Magna Charter, unless it be the witnesses for the king.

Hampden, Pym, Elliot, Sir Harry Vane and stern old Oliver Cromwell, who extorted the petition of rights, were not lawyers, but the court of star chamber was full of them. In our own country the famous Declaration of Independence was written by a young man who had a license to practice law to be sure, but who was never considered one of the great revolutionary lawyers; and old Benjamin Franklin, Jefferson's principal co-adjutor, while he might have printed law books, probably never read one of them.

In the constitutional convention the great lawyers, Wilson and Hamilton, fought all the liberal ideas—wished to make the government as monarchical as possible; and Hamilton quit the convention in disgust at the democratic tendencies of the majority.

Let us be frank with ourselves. The business of our profession has not been feeding the sacred flames of liberty, but guarding our clients' interest. Justice has not been the pursuit of the bar, but the best results of those who employ us. Our chief claims to glory are not our efforts to increase the sum of human liberty or advance justice, but the universal fidelity of the profession to the cause they are employed to represent, even though it be a bad cause, and a dangerous one.

While peculations, dishonesty and graft are common enough in commercial life, rare indeed can the case be found where a member of our profession has not been absolutely faithful to the cause of his client, be that client rich or poor, powerful or helpless.
I was greatly struck some years ago by a remark made at the opening of the bridge across the Mississippi by George Frederick Williams. He said that once in every generation all the fortunes of all the people in our nation passed through the hands of lawyers, and yet it was a remarkable case indeed where a lawyer defrauded his client.

The comparisons which Mr. Biggs seeks to make between the profession in the United States and in England of a hundred years ago is misleading; for English writers, when they speak of the profession of the bar, of course, did not include lawyers or attorneys, for whom the members of the bar or barristers entertained both contempt and fear.

I concur in the condemnation so well expressed by my distinguished friend of certain classes of divorce lawyers, ambulance chasers and corporation counsel.

So far as the divorce lawyer is concerned, I don't think he has much to do with stirring up divorces. If the law permits a divorce under a particular state of case, what the lawyer may say by way of admonition will have but little effect on a husband or wife whose differences are so serious as to make the one or the other of them seek a lawyer. I agree with him that the finger points to the bar as the cause of most divorces, but it is not the bar of justice; it is the bar of booze.

As to ambulance chasing it is a most deplorable concomitant of modern conditions. It is linked with the personal injury litigation, which practically had its birth during the last century. At common law all personal actions died with the person, and not until the great railroad systems of the country came into being with their army of employees and hosts of passengers, did the personal injury litigation assume any conspicuous place in the courts.

It has not yet been organized by the employes or the passengers; while the railroads have a legal department beginning with the great general counsel, coming on down through division attorneys, local attorneys, claim agents and detectives to prepare their side of every personal injury case, the injured party, particularly where he is an employe, has no lawyer he knows to go to. What is the ordinary case where a railroad employe is killed? The railroad company at once starts in op-
eration its tremendous machinery for the purpose of defeating a recovery by the ignorant and unfortunate widow or next of kin. What is the only reliance of the widow, ignorant of her rights or how to enforce them, or of the name of any reputable lawyer? The ambulance chaser. He is rendered necessary to the administration of justice by the existence of the claim agent. It is a shame and disgrace that he should contract for 50 per cent. of the recovery, but even then she gets, nine times out of ten, much more than the claim agent would allow. Back of all ethics, as a part of the legal system of the country, the question is, Does the ambulance chaser help to secure a measure of justice for the lowly and ignorant which would not otherwise be obtained? I have no hesitation in saying that he does. True, they bring many cases that have no merit, but they bring more that are meritorious and the chances of the able defendants being imposed on by fictitious cases are not worth speaking of.

It is to be hoped that the great labor organizations will find a way of providing systematically in advance of injury, counsel for their injured members by retaining the ablest and the most ethical members of the profession. But, in the meantime, if our purpose is to deal out justice to those who need it, the ambulance chaser must be tolerated. Don't let us, in urging ethics forget rights. It is non-ethical to seek legal business, just as it is not good form for a man to go to a ball in a sack coat or a lady to wear a low necked dress to an afternoon lawn party, yet such a man or woman's honesty and virtue may be quite as good as the average of the gathering.

Let the ambulance chaser be capable, honest, square with his clients, fair in his dealings before the court and with the members of the bar, then I say he will carry justice to those who need it, and who would never get it if they had to depend on those members of the profession more ethical and more fortunately circumstanced, and the courts should go slow in condemning them because they have solicited the business.

I heartily concur in what has been said by my Brother Biggs, as to the gross impropriety of lawyers seeking to represent either the corporation or its employees. Undoubtedly the offering oneself for employment to an injured laborer is not as heinous an offense ethically as offering oneself for employment on
the other side, it makes no difference whether the offer is made in person or through another for the first, in a way, is an offer to assist, to relieve suffering, while the second is an offer to defend private property, and both are made for a price.

Contingent fees must necessarily be charged wherever the plaintiff has a righteous cause and nothing to pay with. It makes no difference what the exact arrangement is, wherever the plaintiff has nothing to pay with except out of the recovery, the employment is contingent, champaignous in technical parlance.

To deny the right to take a fee under such circumstances, is to declare that none but those who can pay may enter the courts of the country. The quotation from Mr. Choate reminds me of the well-known story told on him, which would indicate that at times his avidity for fees may have almost equaled that of some of our ambulance chasers:

It is said that Mr. Edward Lauterbach, the distinguished Jewish lawyer, on one occasion employed Mr. Choate to assist him in the trial of a case. After the case had been ended successfully, Choate asked Lauterbach what he was going to charge the client. Lauterbach said he was thinking of charging $5,000 to cover the service of both of them. Choate said, "Leave it to me to arrange the fee." A few days afterwards he handed Lauterbach a check for $5,000. Lauterbach asked him what that was for, and he said it was to cover Lauterbach's one-half of the fee. Lauterbach looked at him for a few minutes and said:

"Choate, thou almost persuadest me to be a Christian."

The position of the bar in the United States is far higher than it ever was or is now in Great Britain. In America the bar is the ruling class. In Great Britain, as all over Europe (except in France under the third republic), the lawyers have not been, except by accident, among the ruling class. Parliament has always been dominated by the land owners and great commercial interests. No lawyer that I now recall was ever prime minister of England or Russia, or chancellor of the German empire.

Here, in addition to the burden of trying causes, we are the law making class, the deciders of the law, and the enforcers of the law. The United States is the lawyer's paradise, and it's
here that the power of the profession reaches its highest flower-
ing.

The most unfortunate phase of modern professional life is its specialization. Formerly all lawyers practiced all branches of the law. Today the great corporate interests segregate vast numbers of the profession into a special class; these men spend their lives looking after certain great interests, instead of representing first one and then another citizen. When such specialists leave the profession for the bench, Legislature or Congress, they generally go there with preconceived notions that what is good for their former client is good for the people, what is a burden on their client is unjust, and, consciously or unconsciously, they are corporation lawyers on the bench and in the Legislature.

It is bad enough, a thousand times worse than the conduct of the usually illiterate and vulgar ambulance chaser, I say it is bad enough for the counsel of great corporations to frame up and manage a system embracing claim agent to overreach the ignorant and lobbyist to suborn Legislatures by free passes and other gratuities. This is what they are expected to do by the great captains of industry who employ them, and who want no mollycoddles or college professors, but men who do things. Let such men, if they can, clear their conscience by saying we have served the system faithfully and loyally. Yet the supreme wrong which specialization has brought to the profession is in its unfitting so many of the ablest of its members from seeing anything but one side of a question, and carrying such one-sidedness on to the bench and in the Legislature.

The healthiest sign of the times is the tendency on the part of the public to identify the lawyer with his client.

The time was in the memory of most of us when the great criminal lawyer who could turn every murderer and thief loose on the community for a price, was an object of wonder and admiration and pride in the town in which he lived. The time was when to be a great corporation lawyer was the highest ambition of every youth at the bar. But in keeping with an ever-advancing public sentiment, somewhat heightened of late by Mr. Bryan, Mr. Roosevelt, and Tom Lawson the fame of lawyers whether good or ill is being linked with that of their clients.
Today there is a general feeling among the public and the bar that a man who, from choice, devotes his supreme efforts to turning felons loose on the community is prostituting his abilities, and the greater those abilities are the greater menace he is to the welfare and happiness of the people among whom he lives.

And the greatest corporation lawyers, and executive heads of the legal departments of the great insurance companies, industrial trusts and railroad combinations, whose time is spent in securing for their clients evasion of equal taxation; in the passage by every character of corruption of preferential laws; in the distribution of free passes to weak legislators; in the cruel destruction of legitimate competition; in defrauding through claim agents and detectives the widow and the orphan and the injured: Such men, I say, before the tribunal of a just public sentiment and a great profession stand as condemned as the institutions they represent. The shortcomings of the ambulance chaser are like the mistakes of children, compared with the far-reaching evils of such leaders in the profession.

In conclusion I say let us have all the ethics we can in the profession. Let us hold up for the imitation of the younger members of the bar the names of the illustrious men who have adorned it. Let us teach that lawyers who habitually represent wrongdoing will merit neither the approval of the profession nor the public, and let us always remember that common honesty is always professional—that at the bar our first duty is to serve our client by every honorable means, and on the bench and in the Legislature our duty is to the whole people and no special interest. If we do this, it will make no difference whether the practice of law is a trade or a profession.

RESPONSE TO THE ADDRESS OF ALBERT W. BIGGS

BY GEORGE N. TILLMAN, OF NASHVILLE, TENN.

Mr. President, Ladies and Gentlemen:

I heartily endorse the address of Mr. Biggs. In a free government, a government where law rules, lawyers are more responsible than any other class for its success; it is necessarily largely a lawyer's government; their opportunity is greater than
any other to form and guide public opinion, and they alone are qualified in the Legislative Assembly to put in proper and effective form the will of the people, and in the courts to expound and administer the law. Hence the necessity of maintaining a high standard of professional ethics and of honor. In no other way can we deserve and hold the confidence of the people. There is, it seems to me, one respect in which lawyers have deteriorated and that is in neglecting their obligation to serve the communities in which they live in other ways than in conducting lawsuits. It is a mistake to suppose that one, in order to be a good lawyer must eschew anything else except the law. Such abject servility to the "jealous mistress" narrows a man. The law is a liberal profession only if pursued in a liberal spirit, and with higher aim than securing clients by hook or crook and winning cases right or wrong.

RESPONSE TO THE PAPER OF MR. BIGGS.
BY W. H. ARNOLD, OF TEXARKANA, ARK.

Mr. President:

I feel that the thanks of the Joint Associations ought to be expressed for the paper of Mr. Biggs, as a fitting climax to that part of the splendid address of President J. W. House pertaining to the duties of lawyers to their clients, their profession and as citizens. The ideals suggested by the President are well supported by the splendid paper of Mr. Biggs. But while, the excellent sentiments of Mr. Biggs are to be admired, I consider that part of his address as impracticable in the condemnation, under all circumstances of contingent fees.

We often see cases where a client has all his property involved in litigation and his attorney must look alone to the results of the suits for compensation. Take the case of a woman and her children whose support is cut off by a wrongful act of the negligence of some one causing the death of the husband and father. Some lawyer should take her case; otherwise the damages would be measured by the conscience of the guilty party, which would be so niggardly as to amount to nothing. In condemning the lawyer who takes the case we would say
that the litigant is entitled to a lawyer but not a reputable one. Contingent contracts under the circumstances mentioned are so far from being disreputable that they should be considered highly creditable; for we cannot conceive of a lawyer of humane feelings who would not lend his talents towards righting the wrongs of one who has been injured or imposed upon, and take compensation when he is successful.

I hardly think Mr. Biggs intended to go so far as to denounce all contracts for contingent fees, but rather the improper conduct of a lawyer who uses questionable methods of getting cases of this kind and who takes advantage of the circumstances of his client in driving an unconscionable bargain, and disreputable practices in trying to win the case.

A PAGE FROM THE ENGLISH STATE TRIALS

BY JESSE TURNER, VAN BUREN, ARKANSAS.

Not long since, I spent a quiet afternoon reading from one of the quaint volumes of an ancient folio edition of the English State Trials.

Doubtless, in general, it is true that "books that you may carry to the fire and hold readily in your hand are the most useful after all."

There are modern editions of these same State Trials accessible which "you may carry to the fire and hold readily in your hand." But I do maintain, with Lamb, that there are books which should be read in folio only.

In this class are the State Trials. In octavo, they come in most questionable shape.

The earlier editions, with their vast expanse of page, yellow with age, across which "Tragedy in sceptered pall" comes sweeping, their ample margins, their unusual print, their archaic orthography—the very ponderosity of the tomes—all these things seem in exact keeping with the fateful character of the recorded events imprisoned between their great lids.

The compilation before me, commencing with the reign of Richard II and concluding with that of George III. embraces
within its impressive scope, four eventful centuries. It is an
epitome of the History of England during that period.

Says Dr. Johnson in a well known passage: "Whatever
withdraws us from the power of our senses, whatever makes the
past, and distant, or the future predominate over the present,
advances us in the dignity of thinking beings."

In the select class of books which work that magic spell,
stand the State Trials.

As we turn their venerable leaves, there defiles before us,
a procession of phantoms that belong to departed years;—Sir
Thomas More, the wise and virtuous Chancellor, who died in a
great cause—in the cause of religious liberty—and so, did not
die in vain; the beautiful Mary, Queen of Scots, whose check-
ered life was so full of glory and of shame; those two accom-
plished gentlemen of the days of imperious Elizabeth; Robert
Deverough, Earl of Essex, and Sir Walter Raleigh, soldier,
sailor, courtier, man of letters; Thomas Wentworth, Earl of
Strafford, the eloquent and daring Minister of Charles I:
Charles himself, who had "faced the High Court of Justice with
the placid courage which has half redeemed his fame:"
Alger-
non Sidney, who, like Sir Thomas More, died in a great cause—
in the cause of political liberty—and who, therefore, like More,
did not die in vain.

Out of the distant mists comes on the long drawn line, and
Oh! pitiful to behold, on almost every spectral throat appears
the cruel mark of the headsman's ax.

I shall ask your indulgence today while I transcribe a page
from the volume which records when, and why, Sir Walter
Raleigh, this same accomplished gentleman of the days of im-
perious Elizabeth—soldier, sailor, courtier, man of letters—came
to receive the dreadful insignia of the block.

It is hardly necessary to remind you that, on the death of
Elizabeth in 1603, the Crown passed to her kinsman, James, of
Scotland, son of Mary, Queen of Scots, and that he reigned as
James I, of England.

The transition from the last of the House of Tudor to the
first of the House of Stuart was made quietly; but beneath the
tranquil surface the currents of faction ran swiftly. The King
was hardly seated on his throne, when a conspiracy was dis-
covered to subvert the government and supplant him by the 
Lady Arabella Stuart. Among the active agents in the plot 
were Watson and Clark, two catholic priests, Lord Gray, Lord 
Cobham and Brooke, a brother of Cobham.

It seems pretty clear, at this distance, that some of these 
unquiet and aspiring personages entertained criminal projects, 
and, the better to further them, had entered into a correspon-
dence with Aremberg, the Flemish Ambassador. How closely 
Raleigh may have been in touch with this faction, can only re-
main a surmise. On the accession of James, the prosperity of 
Raleigh came to an end; it being probable that Cecil had already 
poisoned the mind of the King against him. It is obvious that 
there could have been but very imperfect sympathies between 
such a King as James and such a subject as Raleigh.

Whatever may have been the state of his feelings, it has 
not been made to appear that Raleigh ever entered the vortex 
of the movement; but it is, on the other hand, not improbable 
that he played on the outer edges of the whirlpool, and that he 
knew, or at least suspected, more than was safe for him to keep 
undivulged from the government.

In due course, he was summoned before the commission; 
and, during his examination there, made certain disclosures 
which tended to implicate Cobham. Cobham on hearing this, 
flew into a terrible passion; charged Raleigh with being the 
head and front of the conspiracy; retracted the charge, and, 
finally, retraced the retraction. Aside from the accusation of 
Cobham and certain very inconsequential circumstances, there 
was nothing to fasten the crime on Raleigh.

The two priests and Brooke were executed; Cobham and 
Gray were found guilty but afterwards pardoned.

Raleigh had been of the party in opposition to the unhappy 
Essex, the darling of the people, who had laid his head on the 
block only two years before. Owing largely to this, Sir Walter 
was highly unpopular at this critical time. Moreover, Cecil was 
now all-powerful in the State; and, unfortunately for him, Cecil, 
his former friend, had become his bitter enemy.

The skies were overcast, and soon the storm broke. Sir 
Walter was, on November 17, 1603, placed on trial for high 
treason before a special commission.
The court sat at Winton, better known as Winchester—the ancient capital of the Kingdom; founded in the days of the Romans; the seat of British, Saxon and Norman Kings; the city where it is probable Alfred the Great was born; the city where it is certain he lies buried.

Among the twelve commissioners was Henry Howard, afterwards Earl of Northampton—instigator of the murder of Sir Thomas Overbury, corrupter of his own niece, builder of colleges, founder of hospitals. Another commissioner was Robert Cecil, gifted son of Elizabeth’s great old Minister, Burleigh. It should be remembered to his credit that, notwithstanding his known animosity against Raleigh, in the actual conduct of the trial, he behaved with decency and interposed more than once in an attempt to bridle the ferocious Coke.


His history was a most remarkable one. He was of gentle blood; was, while yet a child, stolen by gypsies with whom he wandered for some time and from whom he acquired certain predatory habits; was sent to Oxford, and afterwards removed to the Middle Temple, where he neglected his law studies and fell into evil courses. He drank, he gamed, he rollicked. Nay more, the proof is pretty clear that, in exuberant Falstaffian phrase, he became one of “Diana’s foresters, gentlemen of the shade, minions of the Moon,” and, with other congenial spirits, stationed himself on Shooter’s Hill and compelled belated travellers to stand and deliver.

The charge is not so preposterous as it may seem. Our great dramatist, with apparent good reason, represents Prince Hal, less than a century before, as having aided and abetted such practices; and it is incontestible that, in Popham’s day, a law was enacted by which, on a first conviction for robbery, a peer of the Realm or Lord of Parliament was entitled to the benefit of clergy “though he can not read.”

Says Aubrey: “For several years he addicted himself but little to the studie of the laws, but profligate company, and was wont to take a purse with them.”

Finally, however, he stopped taking purses and, instead, he took a wife.
This "impediment to great enterprises either of virtue or mischief," seems to have effectually blocked his career as a Knight of the road. It did not, however, block his career along a more honourable way. He became an eminent lawyer, was advanced from the office of solicitor general to that of attorney general, from that of attorney general to that of Lord Chief Justice of England.

In this exalted station, it is conceded that, in actions between party and party, he held the scales of justice level.

In the administration of the criminal law, however, he was characterized as a "hanging judge;" and it is a curious circumstance that he bore down with peculiar antipathy on thieves and robbers. "If," says Aubrey, "He was the death of a few scores of such gentry, he preserved the lives and livelihoods of more thousands of travellers who owed their safety to this judge's severity."

Nor did he escape the imputation, possibly unjust, of a far more reprehensible act. Near the little town of Hungerford stands, and has stood for many generations, the fine old manor house of Littlecote Hall. Within its massive walls was enacted, in the days of the Tudors, a mysterious crime of unspeakable horror. This terrible episode, shorn by Sir Walter Scott, with fine poetic insight, of its most revolting features, has been transferred by him to the pages of Rokeby. The original owner of the house was, so runs the story, the perpetrator of the dark deed, was apprehended and was, so writes Aubrey, "brought to his tryall: and, to be short, this judge (Popham) had this noble house, parke and manor, and (I think) More, for a bribe to save his life."

Among the counsel for the Crown was one lawyer of transcendent genius, destined to a mournful immortality as "the wisest, brightest, meanest of mankind."

His name does not appear in the record, and he did not actively engage in the conduct of the prosecution. Thus he escaped the obloquy of it.

This fortunate effacement of Francis Bacon may, we think, be justly ascribed to the envy and malignity of his chief. This chief was none other than Sir Edward Coke, the Attorney General, whose duty it was, assisted by sundry attending satellites
in the shape of certain Sergeants at Law, to shed "the gladsome light of jurisprudence" into the hidden recesses of this infamous trial.

Coke was of good family, was educated at Cambridge, began his legal studies at Clifford's Inn and, subsequently, was entered as a student at the Inner Temple. It is recorded, that every morning he rose at three and, until eight, he feasted on such dainties as Bracton, Littleton and the Year Books. Then he heard cases argued at Westminster until noon. The afternoon was consumed in attending lectures and in private studies. The evenings were spent in noting in his common-place book the information collected during the day. Such was the regimen which produced the greatest oracle of the Common Law. Certainly the law, albeit a most jealous mistress, never had cause to suspect his devotion to her. After being called to the bar, his progress was rapid, and, before long, he was employed in every important cause. He began to amass a great fortune, adding tract after tract to his holdings, until, finally, as the tradition runs, the Crown, becoming alarmed, interfered; whereupon he obtained leave to purchase "one acre more." This "acre" was the great "CASTLE ACRE," estate equal in amount to all his other possessions. Thus did he turn "the common dust of servile opportunity to gold."

In his forty-first year, he became solicitor general and, while yet holding this office, was chosen Speaker. From the exordium of his address to Elizabeth I excise this choice tidbit as furnishing an apt commentary on the texture of his intellect: "As in the heavens a star is but opacum corpus until it hath received light from the sun, so stand I corpus opacum, a mute body until your Highness bright shining wisdom hath looked upon me, and allowed me. Amongst them (referring to his fellow-members) are many grave, many learned, many deep wise men, and those of ripe judgment; but I am untimely fruit, not yet ripe, but a bud scarcely blossomed."

In 1594 he was promoted to the office of attorney general. In this high place he displayed some of his most reprehensible qualities. In truth, he was a singularly hatable man. Even his very virtues (and they were neither few nor small) seemed to be inextricably bound up with traits of the most odious char-
acter. He was narrow, vindictive, arrogant, prone to anger and a master of the vocabulary of vituperation.

On the trial of Raleigh, Coke appeared at his worst. It is impossible for us, even at the distance of three centuries, to rise from the perusal of that shameful record without a feeling of deep indignation not unmingled with a feeling of grim satisfaction that Lady Hatton rejected Bacon and accepted his enemy. "She married that narrow-minded, bad-hearted pedant, Sir Edward Coke, and did her best to make him as miserable as he deserved to be."

It is hardly an exaggeration to say that, in that savage and vindictive era, "a State Trial was a murder preceded by the uttering of certain gibberish and the performance of certain mummeries." In respect to the brutal manner in which he uttered this gibberish and performed these mummeries, Coke, while he was far from sinning alone, succeeded in attaining a scandalous pre-eminence—a pre-eminence not seriously challenged until some two generations later, when Jeffreys entered the lists and distanced all competitors as "the most consummate bully ever known in his profession."

Undoubtedly, it required great and peculiar talents to shine so conspicuously in this execrable role; but it should not be forgotten that Coke owed his success—and his infamy—very largely to the deplorable state of English institutions and manners then existing. Not until the passage in 1696 of the Bill for Regulating Trials in cases of High Treason was the culprit entitled to see his indictment. He could not demand process to compel the attendance of witnesses. If they came voluntarily, their testimony was not delivered under the weighty sanctions of an oath, while the testimony of the witnesses for the Crown was. The juries were selected by sheriffs named by the government; and, in trials for High Treason, the government had a direct interest in obtaining a conviction. The Crown was served by able and, too often, unscrupulous advocates. The prisoner at the bar had none.

To us, these things seem appalling. In every Anglo-Saxon state, at this day, the constitutional protection to personal liberty is most ample. We are too apt, however, to forget that it has not always been so. In truth, every step in the long march of
our jurisprudence to its present high plane, has been marked by travail and by blood.

But Sir Walter Raleigh—what of him? There at the bar he stood, by virtue both of great deeds performed and great words aptly spoken, the "abstract and chronicle" of "the spacious times of great Elizabeth"—times of boundless and varied powers. He was a superb freebooter on land and water, lover "sighing like furnace," accomplished courtier, dextrous diplomat, profound scholar, singer with high, clear, sweet note—a prince in the realm of action—a prince in the realm of thought.

Gibbon considered his character "ambiguous;" and Hume has said that his mind was "great, but ill regulated." In all this, there is probably a modicum of truth. This wonderful man played many parts and he played them well. To say that he was, at times, a courtier, is to say that, at times, he practiced duplicity. To affirm that his mind was great, but ill regulated, is but to bring an indictment against the celebrated age in which he lived—an age characterized by an imperial audacity and a tremendous energy not invariably compatible with tranquil poise.

Every school boy knows, or thinks he knows, how Sir Walter spread his rich embroidered cloak that his Queen might cross the pool dry shod; how he inscribed on a glass window obvious to her eye the line: "Fain would I climb yet fear to fall," and how, espying it, she wrote beneath it: "If thy heart fail thee, climb not at all;" how, having detected him in an intrigue with a lady of the Court, she consigned him, in durance vile, to the Tower, and how, one day, learning that she drew near, he engaged in mortal combat with his keeper to the end that he might gain his casement window and from that coign of vantage, catch a glimpse of her as she passed on in maiden meditation;—how, in short, by these accumulated acts of romantic gallantry he won his way to the good graces and almost to the capricious heart of Elizabeth.

This much, at least, is certain; he stood high in royal favor and began to be much in the public eye. The white sails of his carracks shone on many a sea. He had a great sum at risk in the expedition in which his brother-in-law, Sir Humphrey Gilbert, perished—a catastrophe immortalized by the last words of Sir Humphrey: "We are as near to heaven by sea as by land."
Another expedition sent out by him explored Pamlico Sound. This early scheme of colonization came to naught, but a portion of the country then discovered still bears the name he gave it—Virginia; and another great commonwealth, itself a part of the original Virginia, commemorates his name in her capital city.

Nay more. The Virginia of his day was “no pent up Utica.” “The whole boundless continent” was hers. So that, by a pardonable stretch of language, we may affirm that Sir Walter discovered—constructively discovered—the very spot on which the associations of these two sister states so auspiciously assemble in joint session today.

He is credited with introducing to the civilized world.

“Sublime Tobacco! which from east to west
Cheers the tar’s labor or the Turkman’s rest.”

He stands sponsor, too, for the more lowly but useful potato.

Visions of an El Dorado danced seductively before his eyes “like golden exhalations of the dawn;” and, in 1595, he conducted an expedition to the Orinoco, returned with some gold, and published an account of his voyage. He led the van of the English fleet that destroyed the Spanish ships in the harbor of Cadiz, and, soon after, captured Fayal.

On that great day when the Armada was shattered, he displayed remarkable skill and valor. There is, indeed, some reason to ascribe to his counsel the strategy that turned the tide of battle.

Shortly after, he became Governor of Jersey.

Nor was his position during these stirring years hardly less conspicuous as a man of letters. He was the mentor of Prince Henry. He was the friend and judicious patron of Spenser and Jonson. The former called him “the summer’s nightingale,” and the latter called him, affectionately, “father.”

He conceived the design of having a sort of international clearing-house for authors where the medium of exchange should be ideas—not baser coin.

To this period must also be referred some of his most highly imaginative verse. Nor did he confine himself to verse.
Witness the following from his "advice to his son:" "Above all things be not made an ass to carry the burdens of other men: If any friend desire thee to be his surety, give him a part of what thou hast to spare: If he press thee further, he is not thy friend at all, for friendship rather chooses harm to itself than offereth it. If thou be bound for a stranger, thou art a fool: If for a merchant, thou puttest thy estate to learn to swim: if for a churchman, he hath no inheritance: if for a lawyer, he will make an invasion by a syllable or words to abuse thee. If for a poor man, thou must pay it thyself: if for a rich man, he needs not. Therefore, from suretyship, as from manslayer or enchanter, bless thyself. For the best profit and return will be this, that if thou force him for whom thou art bound, to pay it himself, he will become thy enemy: if thou use to pay it thyself thou wilt be a beggar."

Surely Bacon, at his best, does not surpass this in sententious wisdom.

This was the man who faced his accusers at Winton more than three hundred years ago.

Numerous sharp exchanges between "Mr. Attorney" and Raleigh marked the struggle.

It was a duel between stink ball and rapier.

With the world for his stage and posterity for his audience, the prisoner at the bar battled single handed; yet such was his serene courage, his ready wit, his eloquence, his command of all the most potent weapons of intellectual fence, that, on that memorable day, he struck down prosecutors and judges alike, and so he stands for all time the protagonist of that portentous drama.

The indictment charged that Raleigh "did conspire to deprive the King of his Government, to raise up Sedition, to alter Religion, to bring in the Roman Superstition, and to procure foreign Enemies to invade the Kingdom."

The prisoner plead not guilty and took no exceptions to any of the jury, which consisted of four knights, four esquires and four gentlemen—saying: "They are all Christians and honest Gentlemen."

Heale, the King's Sergeant at Law, opened for the Crown. This is the same Heale, if I do not mistake my man, who had been
characterized by Lord Ellesmere a short time before as "a grypinge and excessive usurer," "a notorious and common ambodexter, taking fee on both sydes," and "a great drunkarde."

This learned and "notorious ambodexter" now proceeded to detail the alleged facts as set out in the indictment insisting that Raleigh was the soul of the conspiracy: saying: "Cobham, a man bred in England hath no experience abroad, but Raleigh is a man of great Wit, Military and a Sword Man." He concluded with the sapient observation: "Now, whether these things were bred in a hollow Tree, I leave them to speak of who can speak far better than myself." "And so"—thus runs the narrative—"sat him down again."

Then Sir Edward Coke, the King's Attorney, rose. He commenced by observing that he perceived that the Lords and rest of this great Assembly were come to hear "what has been scattered upon the Wrack of Report." Then he was disingenuous enough to protest; "We carry a just Mind to condemn no man but upon plain Evidence." Continuing, he declared; "Here is exorbitant Mischief." Next, invoking the friendly aid of anatomy and botany, he proceeded to define Treason; "There is Treason in the Heart, in the Hand, in the Mouth, in Consummation; comparing that In corde to the Root of a Tree: in ore, to the Bud; in manu, to the Blossom; and that which is in Consummatione, to the Fruit. The greatness of Treason is to be considered in these two things: Determinatione finis, and Electione Mediorium. This Treason excelleth in Both, for that it was to destroy the King and his Progeny." (Then addressing Raleigh) "But to whom do you bear Malice? To the Children?"

Raleigh: "To whom speak you this? You tell me News I never heard of."

Coke: "Oh, Sir, do I? I will prove you the Notoriest Traitor that ever came to the Bar."

Raleigh: "Your Words can not condemn me; my Innocency is my defense. Prove one of these Things whereof you have charged me, and I will confess the whole Indictment and that I am the horriblest Traitor that ever lived, and worthy to be crucified with a thousand, thousand Torments."
Coke: "Nay, I will prove it all: Thou art a Monster; thou hast an English Face, but a Spanish Heart."
Raleigh: "Let me answer for myself."
Coke: "Thou shalt not."
Raleigh: "It concerneth my Life."
Coke: "Oh! Do I touch you? I think you meant to make Arabella a Titular Queen, of whose Title I will speak nothing; but sure you meant to make her a Stale. Ah! good Lady, you could mean her no good."
Raleigh: "You tell me News, Mr. Attorney."
Coke: "Oh, Sir! I am the more large, because I know with whom I deal; For we have to deal today with a Man of Wit."
Raleigh: "Did I ever speak with this Lady?"
Coke: "I will track you out, before I have done. Englishmen will not be led by Persuasion of Words, but they must have Books to persuade."
Raleigh: "The Book was written by a Man of your Profession, Mr. Attorney."
Coke: "I would not have you impatient."
Raleigh: "Methinks you fall out with yourself: I say nothing."

Then Coke proceeded: "My Lords, you know my Lord Cobham for whom we all lament and rejoice: lament in that his House which hath stood so long unspotted, is now ruinated: rejoice in that his Treasons are revealed. He is neither Politician nor Swordman: Raleigh was both, united in the Cause with him, and, therefore, Cause of his Destruction."

After Coke had continued in this strain at some length, Raleigh exclaimed: "I will wash my Hands of the Indictment, and die a true Man to the King."
Coke: "You are the absolutest Traitor that ever was."
Raleigh: "Your Phrases will not prove it, Mr. Attorney."

Then Coke, assuming an air of moderation and lofty impartiality, continued: "You, my Masters of the Jury, respect not the Wickedness and Hatred of the Man; respect his Cause: If he be guilty, I know you will have care of it, for the Preservation of the King, the continuance of the Gospel authorized, and the Good of us all."
Raleigh: "I do not hear yet that you have spoken one Word of Proof against me. Here is no Treason of mine done. If Lord Cobham be a Traitor, what is that to me?"

Coke: "All that he did was by thy Instigation, you Viper; for I thou thee, thou Traitor."

Raleigh: "It cometh not a Man of Quality and Virtue to call me so. But I take Comfort in it, it is all you can do."

Coke: "Have I angered you?"

Raleigh: "I am in no case to be angry."

Chief Justice Popham: "Sir Walter Raleigh, Mr. Attorney speaketh out of the Zeal of his Duty for the Service of the King and you for your life: be valiant on both Sides."

The evidence was now introduced. Only one witness (Dyer) confronted Raleigh. All the rest of the evidence came in the form of ex parte written statements of sundry conspirators, none of which, with the exception of that of Cobham, connected the prisoner, even in the most remote degree, with the treason.

Lord Cobham confessed that it was his purpose to go into Spain to further the alleged treason; to obtain there 600,000 crowns; to return by Jersey, and that nothing should be done until he had spoken to Sir Walter Raleigh, for distribution of the money "to them that were discontented in England." It appears, that, at this examination, he breathed out oaths and exclamations against Raleigh, calling him villain and traitor, saying he had never entered into these courses, but by his, Raleigh's, instigation, and that he would never let him alone. He further said he was afraid of Raleigh that when he should return by Jersey, that he, Raleigh, would have delivered him, and the money to the King. Being examined by Sir Arthur George, he exculpated Sir Walter saying: "they never durst trust him, but Sir Arthur Savage they intended to use, because they thought him a fit man."

One Dyer was called, sworn and stated: "I came to a Merchant's House in Lisbon, to see a Boy that I had there. There came a gentleman into the House and inquired what Countryman I was. I said an Englishman. Whereupon, he asked me if the King was crowned? And I answered no, but that I hoped he should be, shortly. No, saith he, he shall never
be crowned; for Don Raleigh and Don Cobham will cut his throat ere that day come." On this evidence being delivered, Raleigh inquired: "What infer you upon this?" Coke replied: "That Treason hath Wings."

Raleigh’s examination before the council was read, from which it appears that he admitted to that body that Cobham offered him 8,000 crowns for the furtherance of peace between England and Spain and that he gave this answer thereto: "When I see the Money, I will tell you more; for I had thought it had been one of his ordinary idle Conceits, and, therefore, made no Account thereof."

Raleigh insisted strenuously and repeatedly that the statement of Cobham had not been subscribed; that he was entitled to be confronted by Cobham and that he could only be found guilty on the testimony of two witnesses. He protested: "You try me by the Spanish Inquisition, if you proceed only by the Circumstances without two Witnesses."

Coke: "That is a reasonable Speech."

Raleigh: "Good, my Lords, let it be proved either by the Laws of the Land, or the Laws of God that there ought not to be two witnesses appointed. If Christ requires it, as it appeareth, Mat. 18, if by the Canon, Civil Law and God’s Word, it be required that there must be two Witnesses at the least, bear with me, if I desire one."

Ld. Ch. Just. Popham: "You have offered Questions on divers Statutes, all which mention two Accusers in case of Indictments. You have deceived yourself, for the Laws of 25 Edward III, and 5 Edward VI, are repealed. It sufficeth now, if there be proofs made either under hand, or by testimony of witnesses or by oaths. It needs not the Subscription of the Party, so there be Hands of credible Men to testify the Examination."

Raleigh: "It may be an Error in me; and if those Laws be repealed, yet I hope the Equity of them remains still: But if you affirm it, it must be a Law to Posterity. The Proof of the Common Law is by Witnesses and Jury. Let Cobham be here; let him speak it; call my Accuser before my Face and I have done."
Ld. Ch. Just. Popham: “This Thing can not be granted. for then a Number of Treasons should flourish. The Accuser may be drawn by Practice whilst he is in Person.”

Judge Gawdy: “The Statute you speak of concerning two Witnesses, in case of Treason, is found to be inconvenient; therefore, by another Law, it was taken away.”

Raleigh: “The Common Trial of England is by Jury and Witnesses.”

Ld. Ch. Just. Popham: “No, by examination: If three conspire a Treason, and they all confess it, here is never a Witness, yet they are condemned.”

Judge Warburton: “I marvel, Sir Walter, that you, being of such Experience and Wit, should stand on this Point; for so many Horse Stealers may escape if they may not be condemned without Witnesses.”

Raleigh: “I know not how you conceive the Law.”

Ld. Ch. Just, Popham: “Nay, we do not conceive the Law, but we know the Law.”

Evidently, they were of that select company of worthies, who sang:

“From Adam's birth, one early day.
In that Primeval Spring.
To some last week's discovery,
We know each single thing.
There's nought beyond our mental sight,
Or that we can't explain.
Our knowledge taps the Infinite;
We've sought for more in vain.”

To my Lord Chief Justice Popham’s complacent declaration of infallability for self and associates, Raleigh replied: “The Wisdom of the Law of God is absolute and perfect; but now, by the Wisdom of the State, the Wisdom of the Law is uncertain. Indeed, where the Accuser is not to be had conveniently, I agree with you; but here my Accuser may. He is alive and in the house. Susanna had been condemned, if Daniel had not cried out, will you condemn an innocent Israëlite, without Examination or Knowledge of the Truth?”

Ld. Ch. Just. Popham: “There must not such a Gap be opened for the Destruction of the King as would be if we should grant thy Request. You plead hard for yourself, but the Laws plead as hard for the King.”
Then the following was read from Raleigh's examination before the council: "The Way to invade England were to begin with Stirs in Scotland." To which Raleigh responded: "I think so still. I have spoken it to Divers of the Lords of the Council by way of Discourse and Opinion."

Coke: "Now, let us come to these Words: 'Of destroying the King and his Cubs.'"

Raleigh: "O, barbarous! If they, like unnatural Villains should use these Words, shall I be charged with them? Do you bring the Words of these hellish Spiders, Clark, Watson and others, against me?"

Coke: "Thou hast a Spanish Heart, and thyself art a Spider of Hell."

Then the following from Cobham's examination was read: "He (Cobham) saith he had a Book written against the Title of the King which he had of Raleigh, and that he gave it to his Brother, Brooke, and Raleigh said it was foolishly written."

Raleigh: "I never gave it to him: He took it off my Table. I think it is a very severe Interpretation of the Law to bring me within Compass of Treason for this Book writ so long ago of which Nobody had read any more than the Heads of the Chapters, and which was burnt by G. Brooke, without my Privity. Here is a Book supposed to be treasonable. I never read it, commended it, or delivered it, or urged it."

Coke: "Why, this is cunning."

Raleigh: "Everything that doth make for me is cunning, and Everything that maketh against me is probable. If Truth be constant, and Constancy be in Truth, why hath he (Cobham) foresworn that that he hath said?"

Coke: "Have you done? The King must have the last."

Raleigh: "Nay, Mr. Attorney, he which speaketh for his Life must speak last. False Repetitions and Mistakings must not mar my Cause. You should speak secundum allegata et probata."

Coke: "The King's Safety and your Clearing can not agree." Then he had the effrontery to add: "I protest before God, I never knew a clearer Treason. Go to, I will lay thee upon thy Back for the confidestest Traitor that ever came at a Bar. Why should you take 8,000 Crowns for a Peace?"
Lord Cecil: "Be not so impatient, good Mr. Attorney. Give him leave to speak."

Coke: "If I may not be patiently heard you will encourage Traitors and discourage us. I am the King's sworn Servant, and must speak. If he be guilty, he is a Traitor: if not, deliver him."

Whereupon, "Mr. Attorney sat down in a Chafe and would speak no more until the Commissioners urged and entreated him. After much Ado, he went on and made a long Repetition of all the Evidence for the Direction of the Jury, and at the Repeating of some Things, Sir Walter Raleigh interrupted him and said, he did him wrong."

Coke: "Thou art the most vile and execrable Traitor that ever lived."

Raleigh: "You speak indiscreeetly, barbarously, and uncivilly."

Coke: "I want Words sufficient to express thy viperous Treasons."

Raleigh: "I think you want Words indeed, for you have spoken one Thing half a dozen Times."

Coke: "Thou are an odious Fellow. Thy Name is hateful to all the Realm of England for thy Pride."

Raleigh: "It will go near to proving a measuring Cast between you and me, Mr. Attorney."

Coke: "Well, I will now make it appear to the World that there never lived a viler Viper upon the Face of the Earth than thou." Here Coke drew a letter, subscribed by Cobham, out of his pocket; and "as he read it, inserted some speeches."

In this letter, Cobham proceeded to state that while in the Tower, Raleigh caused an apple ("Eve's apple") to be thrown in at his chamber window, the tenor of which was to entreat him (Cobham) to right the wrong he had done him (Raleigh) in saying that he (Cobham) on his return from Spain was to have met him by appointment in Jersey. That Raleigh sent him word that the judges met at Mr. Attorney's house and that there was good hope the proceedings against the accused would be stayed. He charged that Raleigh was to have a pension of 1,500 pounds for his part in the conspiracy and reiterated that Raleigh had been the original cause of his ruin, and of his discontentment,
having advised him "not to be overtaken by preachers as Essex was." Commenting on this last expression Coke exclaimed: "Oh! damnable Atheist! He hath learned some Text of Scripture to suit his Purpose but falsely alleged. He counsels him not to be counselled by Preachers as Essex was. He died the Child of God. God honored him at his Death."

Raleigh: "You have heard a strange Tale of a strange Man. Now, he thinks he hath Matter enough to destroy me. I bid a poor Fellow throw in the Letter at his Window written to this Purpose; 'you know you have undone me; now write three Lines to justify me.'"

Ld. Ch. Just. Popham: "But what say you now of the Letter and the Pension of 1,500 pounds per Annum?"

Raleigh: "I say that Cobham is a base, dishonorable, poor Soul."

Coke: "Is he base? I return it into thy Throat on his behalf."

Ld. Ch. Just. Popham: "I perceive you are not so clear a Man as you have protested all this While; for you should have discovered these Matters to the King."

Justice Anderson, also, had already indicated in the presence of the jury in the most unmistakable terms that he considered Raleigh guilty.

At this point, Raleigh produced the following letter addressed to him by Cobham and asked that it be read: "seeing myself so near my end, for the discharge of my own conscience, and freeing myself from your Blood, which else will cry Vengeance against me, I protest upon my Salvation I never practiced with Spain by your Procurement. God so comfort me in this, my Affliction, as you are a true Subject, for anything that I know. I will say as Daniel: 'Purus Tum a sanguine hujus.' So God have Mercy upon my Soul, as I know no Treason by you."

The letter being read, Raleigh exclaimed: "Now, I wonder how many Souls this Man hath? He damns One in this Letter and Another in that." This episode evidently created something akin to consternation in the ranks of the Crown lawyers, for the record just here reads: "Here was much ado. Mr. Attorney alleged that his last Letter was publicly and cun-
ningly urged from the Lord Cobham, and that the first was simply the truth, and that lest it should seem doubtful that the first was drawn from my Lord Cobham by Promise of Mercy or Hope of Freedom, the Lord Chief Justice willed that the Jury might be satisfied. Whereupon, the Earl of Devonshire delivered that the same was meer voluntary, and not extracted from the Lord Cobham, upon any hopes or Promise of Pardon.”

“This,” so runs the record, “was the last evidence.”

The Jury then departed to consider of their verdict “and stayed not a quarter of an hour,” but returned and gave their verdict, “guilty.” Whereupon, the Clerk of the Crown said: “Sir Walter Raleigh, thou hast been indicted, arraigned and pleaded ‘not guilty,’ for all these several Treasons and for Trial thereof hast put thyself upon thy Country, which Country are these who have found thee guilty. What canst thou say for thyself why Judgment and Execution of Death should not pass against thee?”

Raleigh: “My Lords, the Jury hath found me guilty. They must do as they are directed. I can say nothing why judgment should not proceed. You see whereof Cobham hath accused me. You remember his Protestations that I was never guilty. I desire the King should know of the Wrong done unto me since I came hither.”

Ld. Ch. Just. Popham: “You have had no Wrong Sir Walter.”

Raleigh: “Yes, of Mr. Attorney.”

This damning arraignment of “Mr. Attorney,” terrible in its very brevity and directness, stands vindicated by the verdict of succeeding ages.

Then Lord Chief Justice Popham prepared to pronounce judgment, preluding with sundry “wise saws and modern instances,” such as, “it is best for Man not to seek to climb so high, lest he fall; nor yet to creep too low lest he be trodden on; “if you had been down, you know Fortune’s Wheel, when it is turned about, riseth again;” “Covetousness is like a Canker that eats the iron Place where it lives.” Next he proceeded to falsely tax Raleigh with his alleged atheistical views, admonishing him “not to let any Devil persuade you to think there is no Eternity in Heaven; for if you think thus, you shall find Eternity
in Hell Fire.” Then he concluded: “I never saw the like Trial and hope I shall never see the like again.” A statement against which it is safe to presume there has been no dissentient voice raised from that day to this.

The judgment, with its diabolical heaping up of horrors, followed: “That you shall be had from hence to the Place whence you came, there to remain until the Day of Execution; and from thence you shall be drawn upon a Hurdle through the open Street to the Place of Execution, then to be hanged and cut down alive and your Body shall be opened, your Heart and Bowels plucked out and thrown into the Fire before your Eyes; then your Head to be stricken off from your Body, and your Body shall be divided into four Quarters to be disposed of at the King’s Pleasure.”

We read in the record “that Sir Walter besought the Earl of Devonshire and the Lords to be Suitsors on his behalf to the King; that in regard of Places of Estimation he did bear in his Majesty’s time, the Rigor of his Judgment might be qualified and his Death be honorable and not ignominious.”

Then the Court rose, Sir Walter was carried up again to the Castle and thus the curtain fell on the unfinished tragedy—a tragedy, the last scene of which, was not enacted until after the lapse of fifteen years.

It is little indeed that the world owes James. It is, however, but simple justice to record that one of the few services he has unwittingly rendered it, was to incarcerate Raleigh. For, when, after his trial, the prisoner passed through the Traitor’s Gate, the most glorious period of his life began. Prince Henry, not unnaturally, lamented and declared that “no King but his father would keep such a bird in such a cage;” but

“Stone walls do not a prison make.  
Nor iron bars a cage.”

Through the casement of the condemned man’s cell, in the White Tower streamed

“The light that never was on sea or land  
The consecration, and the Poet’s dream.”

In that ethereal light, was written that famous fragment—the History of the World—magnificent in the organ like music
of its stately periods—"the best model of that ancient style," so thought so eminent a judge as Hume.

In that same celestial light, too, were probably composed the lofty and animated lines, "The Soul's Arrant," and "His Pilgrimage."

In 1616, Raleigh was released, at the intercession of Villiers, on the understanding that he should go in person in search of "A Golden Mine in Guiana." After his return from the unsuccessful voyage in quest of it, it was resolved to proceed against him upon his old condemnation, "for, having had experience upon a former Trial, they cared not to run the Hazard of a Second." Accordingly, on October 28, 1618, the Lieutenant of the Tower, in pursuance of a Writ of Habeas Corpus to him directed, brought Sir Walter Raleigh from the Tower to the King's Bench Bar, at Westminster.

It seemed almost as though judgment having been pronounced by one generation, execution was now about to be awarded by the next.

The King, indeed, still lived; but he lived only to make a name which, to the latest times, should be a by-word and shaking of the head to the nations.

Nor had Coke yet run his long and eventful course. Like the sun, he grew bigger as he drew near his setting. He was destined to yet half efface the stain of that disgraceful day at Winton; for, as Chief Justice of All England, the question had already been put to him: "In a case where the King believes his prerogative or interest concerned, and requires the judges to attend him for their advice, ought they not to stay proceedings till his Majesty has consulted them?" And he had replied in words which ought to be inscribed in letters of gold wherever on this earth Justice rears her glorious fanes: "When the case happens, I shall do that which shall be fit for a Judge to do." And the time was fast approaching, too, when he should approve himself an intrepid and skillful parliamentary leader, and should carry our second great Charter of Liberty—the Petition of Right—in face of the opposition of a hostile King.

Still, there was much to admonish Sir Walter that there is "An end of names, and dignities and whatsoever is terrene."
Well might he exclaim: "What Shadows we are, and what Shadows we pursue!"

Robert Cecil, Earl of Salisbury, the great Minister of James, after having made for himself "a political solitude," had been gathered to his Fathers.

The Earl of Northampton—he of the great House of Howard—eleemosynary donor and poisoner that he was, had gone hence.

The wide and mysterious halls of Littlecote House, where "Horror sat plumèd," resounded no more to the magisterial footfalls of my Lord Chief Justice Popham. He was now the tenant in perpetuum of a narrower and still more mysterious house, and his vast estate was, even then, being rapidly dissipated by his son and heir "by excessæ and by luxury."

The Lady Arabella, the hapless cause and the hapless victim of "unmercifull Disaster," which "followed fast and followed faster,"—her life had gone out in darkness in the Tower. Silently, and at midnight, her body had been carried through its frowning portals; and hard by her famous kinswoman, Mary Stuart, she now reposed, in peace at last, beneath the pavement of the great Abbey.

At this tremendous moment it may be that the culprit recalled that noble passage, penned by his own hand, which marks the close of his History:

"O eloquent, just and mightie Death! Who none could advise, thou hast perswaded: what none hath dared, thou hast done: and whom all the World hath flattered, thou only hast cast out of the World and despised: thou hast drawne together all the farre stretched Greatnesse, all the Pride, Crueltie and Ambition of Man, and covered it all over with these two narrow Words, Hic Jacet!"

The silence was broken by the Attorney General (Henry Yelverton) who "spake in effect thus: 'My Lords, Sir Walter Raleigh, the Prisoner at the Bar, was, fifteen years since, convicted of High Treason, by him committed against the Person of his Majesty and the State of this Kingdom and then received the Judgment of Death to be hanged, drawn and quartered. His Majesty of his abundant Grace, hath been pleased to show Mercy upon him till now that Justice calls unto
him for Execution. Sir Walter Raleigh hath been a Statesman and a Man who, in regard of his Parts and Quality, is to be pitied. He hath been as a Star at which the World hath gazed; but Stars may fall, nay they must fall, when they trouble the Sphere wherein they abide. It is, therefore, his Majesty's Pleasure now to call for Execution of the former judgment, and I now require Order for the same."

When asked by the Clerk of the Crown what he could say for himself why execution should not be awarded against him, Sir Walter, addressing the Lord Chief Justice (Sir Henry Montague), replied: "The judgment which I received to die, so long since, I hope it can not now be strained to take away my Life; for that since it was his Majesty's Pleasure to grant Power as Marshal on the Life and Death of others, so, under Favor, I presume I am Discharged of that Judgment. For, by that Commission, I departed the Land and undertook a Journey to honor my Sovereign and to enrich his Kingdom with Gold, of the Ore whereof this Hand hath found and taken in Guiana, but the Voyage, notwithstanding my Endeavor had no other Success, but what was fatal to me, the Loss of my Son and wasting of my whole Estate."

To this, the Chief Justice replied that what Sir Walter said touching his Voyage was not to the purpose; that his Commission could not, in any way, help him; that there was no Word tending to pardon in the Commission, and that, in case of Treason, only by Words of a special nature could a Pardon be effected.

Raleigh acquiesced in the ruling, which, harsh as it was, was unquestionably the law, and said that he put himself on the Mercy of the King.

The court then proceeded to award execution, prefacing the order by a disposition mild and humane in tone. The Chief Justice observed that he was called upon to grant execution upon a judgment given fifteen years since; that the culprit might have thought it heavy if done in cold blood, but that new offenses had stirred up his Majesty's Justice to remember to revive what the Law had formerly cast upon him. Continuing, said he: "I know you to have been valiant and wise, and I doubt not that you retain both these Virtues, for now you shall have occasion to
use them. Your Faith hath heretofore been questioned, but I am resolved you are a good Christian, for your Book, which is an admirable Work, doth testify as much. I give unto thee the Oil of comfort though in respect that I am a Minister of the Law, mixed with Vinegar.” Then with a prayer to God for the prisoner, the Chief Justice concluded with this exhortation, well meant, but entirely unnecessary: “You must do as that valiant Captain did, who, perceiving himself in Danger, said in defiance of Death: ‘Death, thou expectest me, but maugre thy Spite, I expect thee.’ Fear not Death too much, nor fear not Death too little. Not too much, lest you fail in your Hopes; nor too little, lest you die presumptuously.”

Sir Walter, after expressing a wish that he should not be cut off suddenly, inasmuch as “I have Something to do in Discharge of my Conscience, and Something to satisfy his Majesty in, Something to satisfy the World in, and I desire I may be heard at the Day of my Death,” was conducted to the Gate House.

The night before his execution, Sir Walter wrote two letters, one to the King, the other to his wife. The letter to the King denied all wrong doing and concluded: “I humbly submit myself to the Will of God, my Supreme Lord, and shall willingly and patiently suffer whatsoever it shall please your Majesty to afflict me withal.”

To his wife, he wrote: “My Love I send you that you may keep it when I am dead; and my Counsel, that you may remember it when I am no more, and seeing that it is not God's Will that I should see you any more in this life, bear it patiently and with a Heart like thyself.” He then gave certain directions touching his estate, adding: “And howsoever you do, for my Soul's Sake, pay all poor Men.” Then he continued: “Love God and begin betimes to repose yourself upon Him, and therein shall you find true and lasting Riches and endless Comforts: for the Rest, when you have travelled and wearied your Thoughts over all Sorts of worldly Cogitations, you shall but sit down by Sorrow in the End. Teach your Son also to live and fear God whilst he is yet young that the Fear of God may grow with him. Remember your poor Child for his father's Sake, who chose you and loved you in his happiest Times. Get
those Letters (if it be possible) which I writ to the Lords, wherein I sued for life. God is my Witness, it was for you and yours that I desired Life. But it is true that I disdained myself for begging of it; for know it, my dear Wife, that your Son is the Son of a true Man, and who in his own Respect despiseth Death and all his misshapen and ugly Forms. I can not write much. God, he knows how hardly I steal this Time while others sleep.” Then, with an exquisite touch of Nature, the rover requested that his body be laid in Exeter Church, by his father and mother, and concluded: “I can say no More. Time and Death call me away. The Everlasting, Powerful, Infinite and Omnipotent God who is Goodness itself, the true Life and true Light, keep thee and thine; have Mercy on me, and teach me to forgive my Persecutors and Accusers, and send us to meet in His glorious Kingdom. My dear Wife, farewell. Bless my poor Boy. Pray for me, and let my good God hold you both in his Arms. Written with the dying Hand of Sometime, thy Husband, now, alas! overthrown, Walter Raleigh.”

The final preparations went forward rapidly. The day after execution was awarded, Sir Walter was conveyed to the appointed place, in the Old Palace Yard about nine of the clock in the morning. “Whereupon (proceeds the Chronicler) when he came with a cheerful countenance, he saluted the Lords, Knights and Gentlemen there present. After which a proclamation was made for silence, and he addressed himself to speak in this manner:” He bespoke the indulgence of his auditors, saying that it was now the third day of his fever; that this was the hour at which it was wont to come; and that, if he should show any weakness, to attribute it to his malady. He thanked God that he had been brought into the light to die, rather than in the dark prison of the Tower. He then observed that there were, as he had been told, two main points of suspicion that the King had conceived against him. One was, that the King had been informed that he had often had plots with France. The other was, that it had been alleged that he had spoken dishonorably and disloyalty of his Sovereign. He repelled these charges and explained in detail certain inculpatory circumstances on which they were based. He confessed that he had feigned himself to be ill-disposed and sick at Salisbury, saying, that he hoped it
was no sin, "for the Prophet David did make himself a fool and suffered spittal to fall down upon his beard to escape from the hands of his enemy and it was not imputed unto him." A certain "base Frenchman" whom he characterized as "a Runagate Fellow, One that hath no Dwelling, a kind of Chymical Fellow," and his own Kinsman, Sir Lewis Steukey, who had betrayed him, he forgave; "for I have forgiven All Men; but that they were perfidious I am bound in Charity to speak, that All Men may take heed of them." Touching the charge that he did not mean to go to Guiana, that he knew of no mine but that his sole purpose was to regain his liberty, he protested that he had acted in good faith; that "he who knew the Head of the Mine would not discover it when he saw my Son slain but made away himself." He insisted that it had always been his purpose to return to England after the disastrous Guiana expedition. He denied other injurious reports; and then drawing towards the close, he said: "Only I will borrow a little more Time of Mr. Sheriff, to speak of one Thing that doth make my Heart bleed to hear that such an Imputation should be laid upon me: For it is said that I should be a Persecutor of the Death of the Earl of Essex, and that I stood in a Window over against him when he suffered and puffed out Tobacco in Disdain of Him. God I take to Witness, I shed Tears for him when he died; and as I hope to look God in the Face hereafter, my Lord of Essex did not see my Face when he suffered, for I was afar off in the Armory where I saw him, but he saw not me. I confess, indeed, I was of a contrary Faction, but I knew my Lord of Essex was a noble Gentleman and that it would be worse with me when he was gone; for I got the Hate of those who wished me well before, and those that set me against him, afterwards, set themselves against me and were my greatest enemies, and my Soul hath many Times been grieved that I was not nearer him when he died; because, as I understood, afterwards, that he asked for me at his Death to have been reconciled unto me." Then he concluded with these words: "These be the material Points I thought good to speak of and I am now at this Instance to render up an Account to God, and I protest, as I shall appear before him, this that I have spoken, is true and I hope I shall be believed."
A proclamation being made that all men should depart the scaffold, Sir Walter prepared himself for death, giving away his hat and cap with some money to such as he knew that stood near him. He then took his leave of the company—Lords, Knights, and Gentlemen—requesting Lord Arundel to desire the King that no scandalous writing to defame him might be published after his death, saying further, "I have a long Journey to go, and, therefore, I will take my leave." Then putting off his doublet and gown, he desired the Headsman to show him the ax, "which not being suddenly granted unto him, he said: 'Prithee, let me see it; dost thou think that I am afraid of it?'" So, "it being given unto him, he felt along the edge of it and smiling, spake unto the Sheriff, saying: 'This is a sharp Medicine, but it is a Physician that will cure all Diseases.'" Then the Executioner knelt down and prayed Raleigh's forgiveness, "the which, laying his Hand upon his Shoulder, he forgave him." "Then, being asked which way he would lay himself on the Block, he made Answer and said: 'So the Heart be straight, it mattereth not which Way the Head lieth.'" "So, laying his Head on the Block, his Face being towards the East, the Headsman throwing down his own Cloak, because he would not spoil the Prisoner's Gown, he giving the Headsman a sign when he should strike, by lifting up his Hands, the Executioner struck off his Head at two Blows, his Body never shrinking nor moving. His Head was then showed on each Side of the Scaffold, and then put into a red Leather Bag, and his wrought Velvet Gown thrown over it, which was afterwards conveyed away in the mourning Coach of his Lady's."

After his death, these lines were found written on the fly leaf of his Bible:

"Even such is Time that takes in trust
Our youth, our joys, our all we have,
And pays us but with earth and dust;
Who, in the dark and silent grave,
When we have wandered all our ways,
Shuts up the story of our days:
But from this earth, this grave, this dust,
My God shall raise me up, I trust."

When the headman's ax fell, a great era came to a close; for Sir Walter was the last conspicuous survivor of that
dauntless array that humbled the pride of Spain in the memorable sea fight of 1588.

To the present age, the names of most of those who participated in his trial are mere abstractions. They are "as water spilled on the ground, which can not be gathered up again." Slobbering Jamie is remembered only to be despised. Even the just fame of Sir Edward Coke, by efflux of time, grows pale. But the splendor of thy fame, O! Gallant Knight, is destined to abide undimmed through the centuries, for

"Thou hast left behind
Powers that will work for thee: air, earth and skies.
There's not a breathing of the common wind
That will forget thee: thou hast great allies:
Thy friends are exultations, agonies,
And love, and man's unconquerable mind."

INSTITUTIONAL CHANGES
BY HON. YANCY LEWIS, DALLAS, TEXAS.

Human government not only exercises powers, but is itself subject to the constant play of various forces. For this reason, it is doubtless true that no government except the simplest despotism has ever been correctly described in all its parts, relations and operation. Mr. Blackstone was as well qualified for this work as any of those who have attempted it, but we know that in his description of the apportionment and the balances of sovereign authority in England, he fell into great errors, and this, not because of carelessness or intent, but because while government in England has had an unusual stability and continuity of principle and form, it has been subject, during all the years, to constant flux and efflux, to contests as to the seat of the sovereign authority, to the shifting thereof, sometimes slow and imperceptible, sometimes violent and rapid, but always, measuring by the slow movements of the centuries, constant. It is, furthermore, probably true that no government has been or can be framed that shall operate in exact accord with the design of its founders; first, because of the imperfections of human speech in expressing the intentions of men, but principally because government is an agency to be adapted to the wonderfully
complex, varied and changing social organism wherein necessarily arise conditions that human sagacity can not foresee, and in which perpetually operate educational, religious and economic forces, acting and re-acting upon institutions of government as such institutions modify and direct them.

Accordingly, we should expect what historically we know, that in the history of states their institutional forms tend to change their character and operations; some become atrophied and obsolete; others have undue development; still others are evolved from new and changing conditions. The pure democracy becomes the oligarchy; the oligarchy despotism, or may be by God's kindness or happy accident the sequence is reversed. A more complex phenomenon, and therefore more curious and interesting, is presented when an antagonistic principle of government becomes paramount, but retains and operates through, old institutional forms. Illustrations of this phenomena are to be seen in the cases of supposed pure despotisms in which the power of the monarch has come to be subject to the customary law of the palace or the bureaus. Such illustration occurred in the history of Rome when Augustus Caesar acquired absolute authority but scrupulously preserved the old forms and offices, and thus, so to speak, ruled despotically but constitutionally. All recall how under his successors the senate, that in an earlier time had exercised supreme power and debated and decided the fate of nations, was retained apparently to register the will of imperial masters and to vote them divine honors. Such illustrations are at the present time presented in England, where the King and the House of Lords still remain integral and essential parts of its constitutional system, but neither exercise their full theoretical functions, and in Mexico, where, if information be true, an enlightened and benevolent autocrat administers affairs under cover of Republican forms and written constitutions, not unlike our own. It is interesting to note in this connection that as society progresses the tendency becomes more marked for governmental forms to adhere less distinctly to pure types, as monarchical, oligarchical or democratic, but under constitutions to become composite and to combine apparently inconsistent principles. Thus the English Government having both
the monarchical and aristocratic elements is, it may well be believed, more republican than the Republic of France, and, because of its more immediate response to the expression of the popular will, more democratic than the United States which has neither king nor nobles.

In this country, we have established government by means of written constitutions. We have erected its departments, outlined their duties and powers, and imposed restrictions and limitations upon their exercise. In these instruments, we have made the utmost endeavor to secure precision of language and exactness of purpose. We have adopted as a fundamental rule that the construction of these constitutions is to be uniform; that they are not to mean one thing at one time and another at some subsequent time when circumstances seem to make a different meaning desirable. We accept in its fullness the statement, "There is no doctrine which the wit of man has invented, more pernicious than the proposition that a constitution may change and alter in its meaning according as there has been a change in the enveloping conditions."

Having regard to these fundamental propositions, it is proposed to inquire, whether the specific provisions of written constitutions have been in this country sufficient to control the play of forces first alluded to, and to prevent either the atrophy of some of the institutional forms and powers, or the growth of others which, if not unconstitutional, are at least extra-constitutional. That there have been such developments must be clearly affirmed.

ELECTION OF PRESIDENT AND VICE PRESIDENT.

The first and most distinctive is the difference in the mode in which the President and Vice President of the United States are actually chosen from the mode contemplated by the constitution. Thus, the constitution contemplates that the President shall not be elected by the people directly but by a body of representatives selected with reference to their ability to make a proper choice; in fact, however, a party convention of delegates unknown to the constitution makes the selection and the electors merely confirm their nomination. It was intended by the con-
stitution that the electoral colleges of the several states should meet and deliberate separately and reach independent conclusions, in the belief that by this method cabals and combinations would be prevented and only men of great and established reputations for ability and virtue would be considered, while mediocre men lacking extended reputations would be excluded from the Presidency; and in this belief a proposal for a general meeting of the electors from all the states was voted down.

It is known to all that the nominations are, in fact, made in unified conventions composed of delegates from every state and territory, and instead of men illustrious for their services being chosen, ordinarily it is deemed prudent to nominate men not conspicuous for their talents nor eminent because of their public records. The constitution provides that, "No senator or representative or person holding an office of trust or profit, under the United States, shall be appointed an elector." The object of this provision, of course, is to maintain the separation of the departments of government by freeing the President from any sense of obligation to the members of the house or senate and to prevent the selfish interest of the office-holding class from being a factor in the selection of the Chief Magistrate. But the party convention in which the candidates for the Presidency are nominated are usually crowded by the very classes of individuals whom it was the constitutional purpose to exclude from the choice of the President; the spirit of combination is rife and the cabal of a few leaders, or "bosses," frequently determines the result. In view of these consequences, we can understand, even if we do not agree with him, why Mr. Calhoun declared of the present system of selection: "Never was there a scheme better contrived to transfer power from the body of the community to those whose occupation is to get or hold offices, and to merge the contests of party into a mere struggle for the spoils." By it, provisions of the constitution which were regarded by the convention as of the utmost importance and which were only adopted after the maturest consideration have been rendered as obsolete as if they had never been written.
PARTY PLATFORMS.

Closely related to the action of the party convention in making nominations for the presidential office, and illustrating still another phase of extra-constitutional growth, is the development of the party platform as a higher law controlling in conscience and in honor members of Congress and of the State Legislature in the discharge of their official functions. The trickery, the evasion and the disregard of party declarations have been much considered, sometimes humorously, and sometimes seriously; but it has not always been distinctly perceived that the power of party conventions by their declarations, to forecast and control legislative action, involves a serious change of the constitutional functions and is in truth the development of a new governmental institution regulating and controlling, to the extent that its promulgations have effect, the action of the constitutional agencies. Yet it is clearly true that to the extent that the party convention is able to indicate the details of legislative action and to control the legislative mind, it becomes, in itself, the seat of legislative power, while the official bodies merely register the will of a controlling authority superior to themselves, though unknown to the law.

It is further to be observed that the declarations made by the National Convention dictate the sentiment of the combined party convention, to all senators and representatives of the states of the same party faith, thus breaking down state lines and centralizing, as has been correctly stated, the action of the government of the Union and subordinating all state and district action to its dominating influence, so that while, supposedly, the senators are instructed by the several states and representatives by their respective constituencies, in point of fact, they are, as to the great majority of controverted matters, controlled neither by their own judgments, nor by their respective states or constituencies, but by the action of the general body, in effect superior to them. As an agency of centralization it must be admitted that the general National Convention holds first place.

This fact is made more clear when it is remembered that in the enactment of laws by the Congress, the states in one branch
are equal in voting strength; that this equality is the one thing not subject to amendment; and that a bill to become a law must have a majority of votes representing numbers and a majority of votes representing states, without regard to numbers; while in the convention, the equality of the states is practically ignored and the power of numbers is controlling. Under the constitution, a majority of states having a third of the total population can prevent legislation, while in the convention a third of the states having a majority of population can declare the party will, which shall control the action of the representatives in the enactment of laws.

When the state convention declares its platform of state policies, it also substitutes its judgment for the judgment of the Legislature, and likewise obliterates district lines as the source of instruction to the representative. The right of the party, through its platform expressions, to control the legislator of the same faith in the discharge of his constitutional functions, has been pressed far; in some of the Legislatures, standing rules give preference over all other bills to the consideratiion of the particular measures embodying the platform demands. The argument is customarily made, and usually with controlling force, that the individual legislator should vote in accord with the party declaration. These views have been so long recognized and so customarily acted upon, that it is difficult to recall that the party convention is an institutional growth, and its powers extra-constitutional.

THE PARTY BOSS.

As presenting still another phase of institutional, if not constitutional development, the party boss must be considered. We all know him. We are all familiar with his genesis. It is not unrelated to the developments heretofore considered. Usually his seat of power is one of the large cities, though his type is not lacking in smaller communities. With utter absence of political conviction, or regard for political principle, he takes the name and professes allegiance to one or the other of the great parties. Establishing relations with those sections of the community which feel themselves especially the
objects of the law's control or antagonism, the liquor interests, the gamblers, the sports, the criminal and simi-criminal classes, he organizes and combines these into a solid nucleus, directed and controlled by himself. With this nucleus it is easy to offer inducements to the ambitious, and to effect combinations with business interests desiring protection or wishing to escape just obligations, or seeking to acquire public rights and franchises. Power grows by what it feeds upon. The solidarity of the organization enables its head to lay hold of the regular machinery of municipal government; to control official places; to reward followers; to award contracts to faithful and interested friends; to punish obstinate or troublesome enemies; to derive large revenues from criminal and semi-criminal classes for unlawful exemptions from punishment, and thus to make it measurably true, that the constituted agencies which the state had established for protection against wrong-doers, are, themselves, controlled and directed by the very classes against whom, theoretically, they are supposed to operate. When the head of the organization thus built up is a man of large capacity for intrigue and combinations, he moves to the acquisition of the party machinery of the state and through it to the control of the powers of the state government, and to a consequent enlargement of his own power to reward friends, to punish enemies and to promote or defeat ambitions; and thus to extend his own authority. When he reaches this point, if simply avaricious, he contents himself with the acquisition of wealth; if ambitious, he seeks high official station, and thus clothes actual power with a semblance of lawfulness.

To regard him, however, as not holding official place, but as naming and directing the councilmen of the cities, dictating appointments, procuring or defeating municipal legislation, controlling the state legislature and guiding its proceedings, is to enable a clearer perception of the existence of a governmental force, actual, real, potential, not recognized by law, and lying outside of organic provisions, but ruling in its most literal sense, through the acts and forms of constituted authority dominated by it. So distinctly is this force recognized by experienced lobbyists at Washington and some of the state capitals, that often
they deem it waste of time to seek to enlist members from some boss' "sphere of influence," but proceed at once to find the means of interesting and enlisting him, knowing when this is done the members may be relied upon. When the party boss reaches this point, he is frequently able to name and control the delegates of his party from his state to the National Convention; and it has more than once occurred that a combination of a few of these great oligarchs has been able to make the nomination for the presidential office and to shape the platform, with the consequences that have been noticed, of directing the representatives in the discharge of their constitutional functions, and of subjecting states and districts to the action of the unified convention. The evolution of the boss is the most significant and evil portent in our national life. His development is an institutional growth, but the growth is cancerous and deadly.

EXPANSION OF THE POWER OF THE SPEAKER.

Another institutional change is presented in the enlargement of the power of the Speaker in the Lower House of Congress. This officer is mentioned but once in the Constitution, and, then, in the clause providing, "The House of Representatives shall choose their Speaker and other officers." It is a fundamental rule of construction of the words used in the Constitution, that where they had come to have a defined and accepted meaning in the Common Law of England at the time of the formation of the Constitution, they should have the same meaning here so far as the difference in the principles of our government will permit. To the extent that this rule might operate to define the powers and prescribe the duties of the presiding officer of the House of Representatives by analogy to the powers and duties of the Speaker of the House of Commons, it would tend to make him a judicial officer ruling with judicial impartiality, the organ of the House's will, but not its master; but through the existence and power of committees (nowhere mentioned in the Constitution) to deal with the subject matter of legislation and the authority of the Speaker under the rules of the House to name the members of such committees, it has come to pass that the Speaker is able to, and does, usually,
constitute the committees with reference to the enactment into
laws of his own views, by putting on them members who are
in accord with his opinions, and who thus reflect in legislation
not the views of the House, but of its presiding officer. This
fact, together with the arbitrary recognition, or refusal of rec-
ognition, by the Speaker, of members desiring to address the
House, has led to a vast increase in the power and responsi-
bility of the Speaker, and a corresponding decline in the impor-
tance of the House as a legislative body. The inquiry has
come to be, not what will the House do, but what will the
Speaker do. As a consequence, the House has ceased to be
a deliberative body. Its discussions have degenerated in char-
acter, and in rarely debates in any true sense the particular
question that is under consideration. The members, recogniz-
ing the futility of such discussion, ordinarily avail themselves of
the time set apart for debate for the expression of views with
reference to any irrelevant matter as to which they may de-
sire to bring their opinions to the attention of their constituents.
The real work of legislation is done by the majority sections of
the different committees; or, as Justice Brewer observes, "It
is profoundly true, that Congressional legislation, today, is not
legislation by the representatives of the people, but by com-
mittees of such representatives," and it would seem accurate
to add, "formed by the Speaker, with a view to the attainment
of particular ends and policies."

Mr. Bryce, an acute but not
an unsympathetic observer, refers to the power of the Speaker
as, "Power, which in the hands of a capable and ambitious man
becomes so far reaching that it is no exaggeration to call him
the second, if not the first, political figure in the United States,
with an influence upon the fortunes of men and the course of
domestic events superior in ordinary times to the President's;
although shorter in its duration and less patent to the world."

DIRECT LEGISLATION.

It has doubtless been noted that in each of the institutional
developments to which I have referred, the representative prin-
ciple has suffered most. This principle was impaired in tak-
ing the choice of the Président and Vice President from se-
lected representatives, or electors; it was further weakened by
the authority of the party platform to control the acts and judg-
ment of the Congressmen, or of the representatives in the state
legislature; it was more gravely wounded by the power of
the party boss to control the election of representatives, who,
recognizing that their promotion was due to him rather than
to the people, were subjected to his direction. It has been great-
ly affected in the National Congress by the increase in the power
of the Speaker. It has undoubtedly suffered further impair-
ment by the action of the judiciary in exercising the power to
hold for naught an act of legislation, adjudged by it to be in
conflict with the Constitution. It is not proposed to revive the
controversy, whether this power was given originally by the
Constitutions, State and Federal. It must be admitted that it is
difficult to reconcile the absolute equality and co-ordination of
the several departments with a theory under which in practical
result, though not in terms, the action of the one is subjected
to the supervision of the other because of its ability successfully
to oppose its judgment of what the Constitution means against
the judgment of the other two branches. It is instructive to
recall that at one time the controversy over this question raged
with great intensity; that in some of the states judges were im-
peached for assuming to declare an act of legislation unconsti-
tutional; that in another they were defeated for re-election;
that in others, they were subject to impeachment, but acquitted;
that in still another, the Court asserting the power to declare an
act unconstitutional was sought to be relieved of its functions
by legislative enactment and a new tribunal established, with
the result that for a while two courts assumed to exercise the
supreme judicial authority; that when finally, Mr. Marshall gave
the weight of his great office and of his extraordinary ability to
the doctrine as it is now received, his views did not have im-
mediate acceptance, but were sharply antagonized. Mr. Jef-
ferson, his opponent upon many points, criticized his announce-
ment with great warmth and feeling, and declared that his argu-
ments had been unansweredly refuted if the human reason was
capable of refuting any given proposition. The doctrine, how-
ever, has been so long accepted and acted upon; it is so tho-
roughly wrought into the jurisprudence of the country; the public mind has come to rely with such confidence upon the courts for protection against ill-considered and destructive legislative action, that it may be accepted that if the courts should now conclude that they did not possess this power, the public judgment would at once insist that by appropriate amendments they should be given it. Its exercise, however, it may be asserted with confidence, has unfavorably affected the action of our representative bodies in two ways; it has lessened the sense of legislative responsibility and induced haste and lack of consideration and caution; second, it has sometimes, it may be well believed, caused these bodies to yield to popular feeling or clamor, or to the desire to make individual or party capital, and to pass acts recognized as unconstitutional, in the expectation that the courts would prevent their operation.

Whether the developments thus hastily outlined be the cause of a change in the public mind, with reference to some of the most fundamental theories in our institutions now plainly evidenced in the drift from the government of representative majorities to one of the popular majorities, from legislation by the delegated agents of the people to enactments by the direct will of the people, can not be positively asserted, but it may well be believed that they have contributed to a tendency whose existence may be easily demonstrated. As this suggestion presents the grave and far-reaching inquiry, is the principle of representative government breaking down, and as this may involve the still graver and more fundamental question, is this government to be a constitutional or an absolute democracy, I pray you to consider for a space some significant facts. It will be admitted by all that a Constitution should be a plain declaration of fundamental principles, a delineation of the different departments of government and the expression of such restraint as may be deemed wise upon their exercise of authority and that all matter of policy should be left to the legislative determination; yet, it is notably and universally true that the State Constitutions have exhibited two characteristics in a stronger degree, with each passing year, namely, an increasing distrust of the legislative authority and a growing disposition to
restrain it by increasing the limitations upon its exercise; and second, the incorporation in the Constitution of matter which is not fundamental but properly the subject of legislation. Early in the century, the State Constitutions averaged six or eight pages in length; now they contain thirty or forty pages. On the other hand, as if responsive to this distrust of themselves, the legislatures show an increasing inclination to submit to direct vote the determination of legislative questions; and this in the face of the settled maxim of constitutional law that the power conferred upon the Legislature to make laws can not be delegated by that department to any other body or authority. "Thus in New York, the Legislature," says Mr. Bryce, "which had been long, distracted and perplexed by the question whether articles made by the convicts in the state prisons should be allowed to be sold, recently resolved to invite the opinion of the multitude and accordingly passed an act under which the question was voted on over the whole state, proposing after having obtained the people's judgment in this manner, to pass a statute in conformity with their wishes." The same author notes that as far back as 1843, Wisconsin referred it to the voters to decide whether or not banks should be chartered; and Minnesota declared that a railroad law of a certain class should take effect only when submitted to and ratified by a majority of the electors. By an amendment to its Constitution, at a later time, the same state required the appropriation of money belonging to certain funds to be approved by a majority of the electors of the state. So, in a number of states, debt beyond a certain specified amount can not be contracted except in pursuance of a vote of the people, and in others the rate of taxation is limited to a certain ratio subject to be increased by the popular vote, thus transferring from the Legislature to the popular majority the most ancient and important legislative function,—the power to raise and appropriate money. The suppression or prohibition of the liquor traffic for the state at large has been submitted to the determination of the popular vote in many states. These examples illustrate the increasing disposition to accomplish less and less of legislation through agencies exercising delegated powers, but to do this more and more by the direct action of
the people, by means of the popular majority. It is not surprising, therefore, that the proposition is now made to do in all cases what has, heretofore, been done in a few; to submit by means of the initiative and referendum any or all legislative questions to the direct determination of the popular will. This proposition has been adopted in a few states and finds favor in many quarters; but, though naturally and logically it is the outgrowth of tendencies heretofore noted, as applicable to the Federal Government, it is almost unthinkable. That government in every part and relation is founded upon the representative principle. By the Constitution all legislative powers therein granted are vested in Congress, a representative body. The Constitution itself was, of course, framed by a representative body; it was ratified and adopted not by the direct vote of the people of the several states but by their representatives in conventions assembled. Its amendment must be proposed by representative bodies; by two-thirds of both houses of Congress, or by a convention called upon application of the Legislatures of two-thirds of the states; the amendments, when proposed, must be ratified, not by direct vote but by representative bodies, namely, by the Legislatures of three-fourths of the several states, or by conventions in three-fourths thereof. Thus profoundly did our fathers commit themselves to the representative principles. Still another consideration presents itself: To adopt Federal legislation by a direct vote of the people throughout the United States would mean the destruction of the states, the obliteration of state lines, and the compounding of the American people into one common mass, which, says Chief Justice Marshall, no political dreamer was ever wild enough to think of. But it is enough to say that the referendum of this character can not be accomplished without revolution, because in the adoption of laws, each state now has an equal representation in the Senate and this is the one provision of the Constitution not subject to amendment. Without this provision, the government of the Union could not have been formed and by virtue of it, in power of negative Rhode Island is equal to New York, and Nevada, with a population less than that of a single county in Texas, is equal to that mighty commonwealth. No one can believe that
the smaller states will voluntarily surrender this equality by agreeing to be bound by a majority of the votes throughout the country. On the other hand, if it should be proposed that there should be a majority of votes in a majority of the states, it is equally clear that the populous states would never consent to it, as they would thus lose the weight of their numerical strength and be bound by the action of a majority of the smaller states.

But the theory of direct legislation, even as applied to the states, contemplates a fundamental departure from our earlier conceptions of government. The theory of legislation by representation proceeds upon the idea that the representatives will be selected for their superior ability and qualities; that they will give a continuous and careful attention to the questions under consideration; that they will bring to their solution something of expert and specialized knowledge, at least an undivided and undistracted attention; that they will proceed as a deliberative body, and be governed by a procedure compelling careful consideration and the testing of the merits or weakness of measures by committee scrutiny and full debate; that they will be less subject to the immediate impulses of passion and prejudice than the popular electorate. And in support of these views, the facts are cited that the questions submitted to popular vote in constitutional amendments are rarely carefully considered; that the body of the people are usually not aroused to a sufficient interest to cause anything like a full vote to be cast, and that in the indifference or the ignorance of the majority of the voters is presented the opportunity for combined interests or small but active sections of opinion to secure the adoption of unwise and vicious measures. But back of these objections is the more fundamental one urged by the profoundest and most disinterested students of government, that legislation by the direct popular majority means the change from constitutional democracy to absolute democracy; that constitutional restrictions will not long restrain a majority desiring and having the power to change them; that unrestrained power is despotic power, whether exercised by a majority or a monarch; that the despotism of the absolute democracy tends quickly and inevitably to the despotism of one man. As Lieber expresses it: "All endeavor to throw
more and more unarticulated power into the hands of the pri-
mary masses, to deprive the country more and more of a grad-
ually evolving character; in one word, to introduce an ever-in-
creasing, direct, unmodified power, amount to an abandonment of self-government, and an approach to imperatorial sovereignty, whether there be actually a Cæsar or not—to popular absolutism, whether the absolutism remain for any length of time in the hands of a sweeping majority, subject of course to a skillful leader, as in Athens after the Peloponnesian War, or whether it rapidly pass over into the hands of a broadly named Cæsar. Imperatorial sovereignty may be at a certain period more plausible than the sovereignty founded upon divine right, but they are both equally hostile to self-government."

These are also the views of Cooley, of Calhoun, and of many other wise ones who have considered human institutions with a view to preserving human liberties. They may not be sound; but, in view of institutional changes made and proposed, they must command your carefulest consideration as lawyers, as citizens and as freemen.

A recent address by the Honorable Secretary of State suggested in substance that great changes under our Federal Constitution must yet occur and that the Supreme Court of the United States, through its function of interpretation, must and will be the means by which those changes shall be accomplished. These views have been received with much favor in certain quarters, and there seems to be something of concerted effort to induce their acceptance in the public mind. If the present address has succeeded in anything, it has established that in the face of the provisions of our written Constitutions great changes have already been wrought in our institutions; and, yet, I can not characterize the suggestion referred to otherwise than as most insidious and dangerous. On the other hand, the proposed change in the method of legislation seems to me nearly akin to it, and I can not forbear the inquiry: Have we not gone far enough in the departure from the ways of the fathers and from the spirit and principles of our constitutional systems? Instead of trying other and more radical experiments, is it not safer and wiser, more prudent and practical, to direct
our attention to the vital part where weakness has shown itself, to endeavor by patient study, by unrelaxing effort, by whatever means may be necessary, to strengthen our representative branch, to secure its independence, and to raise its levels of ability and character and efficiency? If further changes are to be, instead of effecting them, on the one hand, by weakening, if not destroying, one of the main foundations of our structure of government, or, on the other hand, by imposing on another a weight and burden still more crushing and destructive to the integrity of the entire system, let the changes rest upon the original foundations, let them be in harmony with the original design and plan; let there be enlargement and expansion, if necessary, but let these be in continuation of the first strong and clear conception.

For myself, I do not hesitate to avow the belief that in the frame of government adopted in this country in the beginning, we have our best assurance of orderly progress and happiness; that we walk in safest paths, when guided by the principles of the Constitution as made by the fathers; that that instrument, as a scheme of government, is the most wonderful and admirable which the wisdom of man has yet devised. Nay, when I recall how little of the ordering of events which have contributed to the enlargement of human rights has been due to man's sagacity and how much to blind chance or else to a higher direction, I am loath to ascribe that great instrument to man's wisdom alone, but to see in it rather the expression of a divine providence in its kindest manifestation.

In conclusion, I offer to this body of lawyers two reflections, old, old, as human history and yet rendered forever new by human experience. One the need on the part of a free people of a never ceasing vigilance in the consideration of measures, of a constant harking back to settled principles, of a constant testing of what is new and strange by the fundamental truths and axioms of constitutional government. The disposition to do this has been the distinctive characteristic of our English ancestors from whom we derive our most priceless liberties; and it goes far to explain not only why these have been so enduring but why their progress has been marked by or-
derly and imperceptible evolution rather than by hurly-burly change or destructive revolution.

The other is, that the constitutional systems are expressed in but not created by the written constitutions; back of our written instruments are a thousand years of history, of struggle, of achievement, of ideals of right and liberty crystalized into enduring maxims and great principles of government. Without these our written constitutions would be practically without meaning. These are the soul of our free institutions, of which the written constitution is but the brief and formal abstract. However precise such written instruments may be, they are as "sounding brass and tinkling cymbal" unless the spirit of a people is one with the spirit of their institutions. And in this statement, I fancy I am able to suggest to you the lawyer's noblest work, the work of unifying the spirit of institutions and of people, of apprehending clearly the deep and abiding principles of government and of keeping them vital in the popular heart and understanding.

ANCIENT LAWYERS

BY EUGENE F. WARE, OF TOPEKA, KANSAS.

The first definite records of legal custom and procedure come from the ancient city of Athens, and more particularly appeared in the plays of Aristophanes over 2,300 years ago. But traces of lawyers and legal procedure are very much older.

In March of the year 422 B. C. Aristophanes read one of his plays to a Greek audience in which he introduced some interesting characters. It seems that a wealthy Grecian farmer, so the plot ran, had become inoculated with what he called the "horse-fever." And this horse-fever impelled him to horse-racing and gambling; and in the course of campaigning his horses through the country, at the various races, and betting upon them he became seriously in debt, and as Socrates was represented as running a law school at the time, or, in the language of the author, a "thinking-shop," the farmer determined to study law, and then try and defeat his creditors. He went, so the story runs, and studied with Socrates
but could not do very well and so quit; but as he had a son
who also had the horse-fever, and was betting on the races, he
brought this son to Socrates, to have Socrates graduate him at
law, so that the son could fight his father's creditors.

To make a long story short the young man was a failure
and the whole scheme came to naught. But in the play there
are many interesting passages as showing the methods of the
day. It seems that the people of Athens were extremely litigi-
gious. In fact a subsequent play entitled "The Wasps" was
written by Aristophanes to set forth that particular charac-
teristic among the people, but in the first play to which I al-
lude, "The Clouds," there are more interesting paragraphs
than in the second. It appears from these plays that one
method of issuing summons was verbal. The quarrels that
were had in the street generally ended by one of the parties,
then and there before witnesses, summoning the other party to
appear before a certain judge on a certain day; so, it appears
in that ancient time each person might serve his own sum-
mons verbally, in the presence of witnesses, and, hence, when
any accident or tort happened, one party immediately notified
the other party to be and appear before a certain magistrate
at a certain time to respond to such demand as might then be
made although there were professional summoners.

The Author Aristophanes seems to be very much opposed
to lawyers and represents them as full of tricks. For in-
stance, let me read a passage: The old farmer is represented
as talking to Socrates thus:

Farmer: "I have found a very clever method of getting
rid of my lawsuit, so that you yourself, Socrates, would acknowl-
edge it."

Socrates: "Of what description?"

Farmer: "Have you ever seen this stone in the drug
stores, the beautiful and transparent one, from which they
kindle fire?"

Socrates: "Do you mean the burning glass?"

Farmer: "Yes, I do. Come, what would you say, pray,
if I were to take his burning glass, when the clerk was enter-
ing the suit, and were to stand at a distance in the direction of
the sun, thus, and melt out the letters of my suit?"
Socrates: "It would be cleverly done."

Farmer: "Oh, how I am delighted that a suit of five talents ($5,000) has been thus canceled." ("Clouds," 760.)

This picture of ancient Athens is a valuable one. There is the drug store with a lot of druggist's sundries in. It is probably on a corner. There is a glass lens, for glass had long been known at least three thousand years. This lens as a burning glass applied to the parchment blistered out the text, while the clerk of the court was entering the suit. Thus, we have courts, and clerks, and drug stores and the materials with which to make telescopes all in this one quotation.

Athens seems to have been a modern city, because the author speaks of parasols and umbrellas and of the youths kicking footballs; and the characters from time to time have with them folding campstools and there are informers constantly bringing qui tam actions. One person is returning home to a distant Greek town; a colloquy occurs in which he is asked what he is going to take back, whether crockery or anchovies, and he says, "No, we have them at home; I will take back an informer," to which the querist replies: "Better pack him up like crockery." Some of these informers made a business of informing upon non-resident aliens and attaching their property much after the methods of the present day. Others looked after resident aliens. One of them in the play is addressed as follows:

"Have you not from the first displayed impudence which alone is the protection of orators, on which you relying drain the wealthy foreigners. . . . But, indeed, another fellow much more rascally than you has appeared, so I rejoice. He will immediately put an end to you, and surpass you, as he plainly shows, in villainy, impudence and knavish tricks." ("Knights," 325.)

Another informer is thus addressed:

"Oh, you rascally and abominable brawler. Every land is full of your audacity and extortions and indictments and law courts, oh, thou mud slinger." ("Knights," 300.)

Another one is addressed as follows:

"You talk twaddle. Have you the audacity to abuse wine as senseless? Can you find anything more business like
than wine? Don't you see when men drink they are rich, win lawsuits and are happy and assist their friends? Come, bring out a measure of wine quickly that I may moisten my mind and say something witty." ("Knights," 90.)

Another person is addressed as follows:

"If you have anywhere pleaded some little suit well against a resident alien babbling the livelong night and talking to yourself in the streets and drinking water and showing yourself off and boring your friends, you have fancied that you were a great orator." ("Knights," 340.)

Another speaks:

"By Jove, if two orators were talking and one was recommending the building of ships of war, and the other, on the contrary, the spending of this money on his hearers, the one who spoke of paying his hearers having outstripped the one who spoke of war ships would go his way rejoicing. . . .

Now, tell me, if any fawning lawyer should say: 'You jurymen, you get no pay unless you decide against this suit,' what would you do?" ("Knights," 1350.)

It appears further from the plays that in the courts of law where there were any parties litigant over sixty years of age, their cases were set in the order of precedence of their ages so that cases of old people might be the first heard and decided. But the priority of the other cases was not as regards filing of the suit but according to lot. So that no one could tell exactly when his case was coming off; and when the case was set it was set for two days so that the first day could be used in efforts for compromise.

The jury were also the subject of much ridicule. The jury seemed to be at that time the citizens at large who cared to come and listen to the case. There was no regular panel, and no regular number of jurors, but when certain citizens as jurors became triers in the case, they must stay until the case was closed. The pay of the jurors per day was three obolii; various slang terms were applied to jurors as "Brethren of the three obol pieces," there being a coin of three obolii in silver of the value of one of our dimes.
The farmer to whom I first referred, in the play, being overcrowded with his debts, had trouble with his son who was unable to defend him, and the son says:

"Ah me, what shall I do, my father being crazed? Shall I bring him into court and convict him of lunacy?" ("Clouds," 845.)

It will be plainly seen that the writ de lunatico was in vogue. The father had thought his son was a very clever young man and recommended him to Socrates, as follows:

"Never mind, teach him, he is clever by nature; indeed from his earliest years when he was a little fellow, only so big, he was wont to form houses and carve ships within doors and make little wagons of leather and make frogs out of pomegranate rinds, you can't think how cleverly; but see that he learns these two cases, first the better whatever it may be; and second, the worse, which by maintaining what is unjust overturns the better. If not both at any rate teach him the unjust one by all means." ("Clouds," 877.)

Afterwards the practice of law is referred to in the comedy as "the practice of loquacity" (Ib., 925), and speaking of the youth the same person says:

"Yet certainly shall you spend your time in the gymnastic school, sleek and blooming, not chattering in the market place rude jests, like the youths of the present day, nor dragged into court for a petty suit, greedy, insincere and knavish." (Ib., 1005.)

The following colloquy is had:

1st: "Come now, tell me, from what class do the advocates come?"

2nd: "From the blackguards."

1st: "I believe you. Then from what class do the tragedians come?"

2nd: "From the blackguards."

1st: "You say well, but from what class do the public orators come?"

2nd: "From the blackguards."
1st: "Then have you perceived that you say nothing to the purpose; and look, what class among the audience is the more numerous?"

2nd: "Well, now I am looking."

1st: "What then do you say?"

2nd: "By the gods, the blackguards are far more numerous." (Ib., 1100.)

The farmer tells Socrates regarding the former's son:

"Teach him and chastise him and remember that you train him properly on the one side able for petty suits, but train his other jaw able for the more important causes." (Ib., 1108.)

The farmer comes back to Socrates after the son has been educated and Socrates greets him with, "Good morning." The farmer says:

"The same to you, but first accept this present. For one ought to compliment the teacher with a fee. Tell me about my son, whether he has learned that cause which you just now brought forward?"

Socrates: "He has learned it."

Farmer: "Well done, O Fraud, thou all-powerful queen."

Socrates: "So that you can get clear off from whatever suit you please."

Farmer: "Even if witnesses were present when I borrowed the money?"

Socrates: "Yea, much more. Even if a dozen be present."

Farmer: "Then I will shout with a very loud shout. Ho, weep you petty usurers, both you and your principal, and your compound interest." (Ib., 1145.)

Afterwards the farmer gets into a quarrel with his son and calls him a "burglar." (Ib., 1327.)

One of the jurymen tells how the eloquence of the lawyers is showered upon him, and also how he is flattered by them, and how some lawyers lament their poverty, and others tell laughable jokes from Aesop, and others bring in their children to influence the jury, and others affect a derision of wealth; and how when an actor is defendant he does not get off until he recites some beautiful passage, and how the flute-
players must play the flute to the jurors—and then follows this quotation:

“And if a father, leaving an heiress at his death, give her to any one with respect to the principal clause; we have- ing put a long farewell to the last will and testament, and to the case, which is very solemnly put upon the seals, give this heiress to him who by his entreaties shall have won us over, and this we do without being responsible.” (“Wasps,” 585.) This indeed sounds modern.

Then the jury man goes on to say that when he comes home with his jury money, three obols, his daughter washes him up and kisses him and wheedles him out of the money. There is inserted in this colloquy a maxim of a wise man who said, “You can’t judge till you have heard the speech of both.”

It seems that when the vote was taken by the jury the crier of the court said: “Who is there who has not voted. Let him rise up” (Ib., 750), so that they might know the number of votes rightfully cast, and closes, saying: “The jury- men, when the witnesses lie, with difficulty decide the matter by ruminating upon it.”

One actor says, turning as a lawyer to the audience:

“Veteran jurymen, clansmen of the three obol coin, whom I feed by bawling right or wrong, come to the rescue, I am being beaten by a conspiracy?” (“Knights,” 255.)

It does not seem to have been necessary to have known the name of the person who committed a tort when the sum- mons was served. In one case the following form is found:

“I summon you, whoever you are, before the market clerks for injury done to my wares, having this man Chaer- phon as my witness.” It seems that in an action of tort for an injury the plaintiff was entitled to any judgment which he recovered, but if he recovered no judgment whatever, the defendant got a judgment against the plaintiff for the sum which the plaintiff sued for. Therefore, the plaintiff must needs win if he brought his suit and if there was any doubt about his winning he put the amount of his recovery low so as not to suffer much of a penalty. Persons are frequently spoken of in the plays, as doing nothing else but trying lawsuits.
The stage on which these plays appeared is often referred to. The orchestra is in a pit in front of the stage and there is the bald-headed row the same as in the present days. One of the characters, in the play called "The Birds," says that the locust indeed sings a month or two upon the branches while the Athenians are always singing during their whole life upon lawsuits. ("Birds," 40.)

In those old days the barber shops of Athens were the resort of the wits and idlers of the time, and one barber shop, kept by a man named Sorgilus, is especially named. If there was a person who desired to know the current news and gossip he could find it out by inquiring in the barber shops where public matters in Athens were generally discussed.

One actor says that he is trying to think of and utter "a big and corpulent word" that would make an impression on the minds of those who heard it. Attempts are still made to utter big and corpulent words, by lawyers.

There seems to have been traveling summoners and informers because in one of the plays a man is represented to be hunting around to find somebody who could furnish him with wings, and in reply to a question an informer says:

"I am an island summoner and informer."

Actor: "Oh, Blessed thou, in thy vocation?"

Informer: "And a pettifogger. Therefore I want to get wings and hurry around the cities, and issue summons."

Actor: "In what way will you summon more cleverly by the aid of wings?"

Informer: "Not so, by Jove, but in order that the pirates may not trouble me. I will return back again with the cranes."

Actor: "Why do you follow this occupation? Do you inform against the foreigners, young as you are?"

Informer: "What must I do, for I know not how to dig."

Actor: "But, by Jove, there are other honest occupations by which it more generally behooves a man to get his living than to get up lawsuits."

Informer: "I will not shame my race. The profession of an informer is that of my grandfather." ("Birds," 1435.)

In a play in which Aeschylus and Euripides are mentioned, Aristophanes used the term, "poetic saw-dust." It is a
somewhat neat term, "poetic saw-dust," but certainly did not apply to Euripides against whom it was directed.

In one of his plays Aristophanes starts a socialistic movement, and the following dialogue takes place:

P. "I will first of all make the land common to all, and the silver and the other things, as many as each has. Then we will maintain you out of these, being common, husbanding and sparing and giving our attention to it."

B. "How then, if any of us do not possess land, but silver and gold and personal property?"

P. "He shall pay it in for the public use, and if he don't pay he shall be foreclosed."

B. "Why, he acquired it."

P. "Yes, but in truth it will be of no use to him at all."

B. "On what account, pray?"

P. "No one will do any wickedness through poverty, for all will be possessed of all things—loaves, slices of salt fish, barley cakes, cloaks, wine, chaplets, chick-peas, so that what advantage will it be not to pay it in?"

B. "Then do not those even now steal more who have these world's goods?"

P. "Yes, formerly my good sir, when we used the former laws, but now, for substance shall be in common, what is the advantage of not paying it?" (Ecc., 600.) . . .

B. "One thing further I ask. If one be beaten in a lawsuit before the magistrate, from what source will he pay off the judgment for it is not right to pay it out of the common fund?"

P. "But in the first place, there shall not be any lawsuit."

B. "But how many this will ruin."

P. "I also make a decree for this. For on what account you rogue, should there be any?"

B. "By Apollo, for many reasons. In the first place for one reason, I ween, if anyone being in debt denies it."

P. "Whence then did the lender lend the money when all things are in common? He is by lending convicted of theft."

B. "By Creres, you instruct us well. Now let some one tell me this: Whence shall those who beat people pay off a
judgment rendered for the assault, I fancy you will be at a loss about this."

P. "Out of the barley cakes which he eats. For when one diminishes this he will not insult again so readily after he has been punished in his stomach."

B. "And on the other hand, will there be no theft?"

P. "Why, how shall he steal when he has a share of all things?" (Ib., 660.)

And so on the reasoning goes for several pages. One citizen puts in only a part of his goods, and another joins the community and puts in nothing, until finally from greed and avarice the socialistic community breaks up. It is an interesting play as showing that the subject is not only ancient, but was worked out in all of its details. And at the end one of the speakers says (694), "If anyone gets thirteen talents, so much the more does he desire to get sixteen talents; and if he may accomplish this he wishes for forty or he says life is not worth living."

I will close by saying that in those days, 400 years before Christ, Athens was a boom town, was full of lawyers and lawsuits, and overrunning with wealth and population.

Let us now go back twice as far as the distance from now to the days of Aristophanes. This brings us to the palmy days of Babylon, Nineveh, Nippur, and Susa.

It has been my good fortune to have had a personal acquaintance with some who have been engaged in discovering and translating the antiquities of those ancient countries, and I have spent many hours in reading the translations of tablets which have been found and translated. I have been surprised at the evidences thus found of judicial systems, and of the fact that no legal document exists in common use today but that has its counterpart among the ancient forms. I made a list of some of these, and will briefly give them to you now:

A letter from a prisoner to the King of Assyria declaring the innocence of the former of the crime charged.

A judicial interpretation of a part of the Assyrian code.

A deed of a field by Titi to Addunaid, giving price (half a mana and four shekels in silver, twenty dollars). On the edge is the seizin, "giving up of the field."
The will of Sennacherib, the King.
A contract for seventy-five oxen.
Sale of three slaves for one mana each.
Sale of house in the town of Hama for one mana.
Sale of house in Nineveh for one mana in silver (two pounds).
A six years’ lease of a plantation.
A contract for loan of eight manas and three shekels of silver at half a shekel interest for six months.
A loan of nine mana and fifteen shekels at twenty-five per cent. per annum.
Many other loans running from one and two-thirds per cent. to twenty-five per cent. per annum.
A joint deed for a house by two brothers.
A conveyance of seven slaves for three manas; one of the slaves and two wives, who were also slaves.
A mortgage of four slaves for 210 mana of copper (420 pounds).
An arbitration and award that Salmu-aki shall pay Assursallim one and one-half manas of silver.
A judicial decision as to the ownership of a female slave, named Salmanu-naid.
An explanation of legal terms.
A record of the judgment of a court in favor of Nabushar-usur.
A loan of money “at the customary rate of interest.”
A lot of various boundary stones, engraved with the deed and title of the owner.
A royal grant by Nebuchadnezzar, the King.
A written statement regarding the abstraction of various articles from the royal treasury.
A list of things supplied to the crew of a boat.
The record of the payment of a fee.
Record of payment of tithes, first year of Cambyses.
A chattel mortgage on a door to secure the loan of one mana of silver.
Concerning the dowry of (Miss) Kibitum Kisat.
A sale of land by one brother to another, 2120 B. C.
A money judgment for a debt by a Babylon court.
Satisfaction of a mortgage by a swap of land.
An account of the litigation in which (Mrs.) Bunanitu won her husband’s estate from his brother after long contention.
A tablet showing the purchase and conveyance to a man and his wife, jointly, of seven canes, five cubits and eighteen fingers of land situated in Borsippa, for eleven and one-half manas of silver, including the house.
A declaration of a right-of-way in favor of another.
An acknowledgment of the payment of the first installment of interest on a mortgage.
A summons in an action of debt for the non-payment of price of slave.
An award of one mana of silver for killing the servant of another.
Deed of partnership between Sininana and Irisbamsin, 2,400 B.C.
A bequest by a son to his father.
A renunciation by a father of his minor son, accompanied by the adoption of the son by another man.
A declaration of trust by Sini concerning certain property bought and held by him, 2,120 B.C.
Record of a loan made for the purpose of paying the interest on another outstanding loan.
An apprenticing by Nubta of Attan to Beledir for five years.
A deed, in sixth year of Cyrus, of real estate in the ward of Suanna in the city of Babylon, giving dimension and abutting owners, signed by seller and witnesses.
An order for straw for workmen on canal.
A tablet concerning the rations of workingmen.
An order on another for five manas of wrought iron (10 pounds), for work done.
A power of attorney from one brother to another to sell a quantity of grain.
A lease of a house by the agent of a woman, she being the owner.
Slave having been sold when title was in dispute, the tablet shows the matter now all settled, the title perfect, and the money paid.
A loan of field produce in the third year of Xerxes.
A list of tenants who had paid their rent.
A written cancellation and withdrawal of a right-of-way theretofore granted.
An income mortgage of revenues of a temple.
Instruction from Bullut to an agent to loan some produce to another.
A quitclaim deed by a woman and her husband of certain portions of their revenue.
A receipt by a joint owner for his part of the produce.
The defeat of a lady in litigation in which she sought to acquire her brother's property.
A renting of slaves for work.
An agreement to deliver a certain quantity of coined silver ("stamped for giving and receiving").
Perhaps it would not be amiss to add a few others of the very many:
An inscription showing that Entenna was King of Babylon 4,200 B.C.
A letter to a King of Babylon asking for a doctor to see a lady.
A table of synonyms of Assyrian words.
Concerning treatment of diseases of the eye.
Assyrian-Elam dictionary.
A list of clothing some person had on hand.
Observation of the planet Venus.
A record of the recovery of an image of the goddess Nana that had been captured and carried off from Babylonia 1,635 years before.
A label to be worn by Phipa, a female slave of Sinishish.
The history of the recovery by Sennacherib of a signet seal that had been captured and carried away six hundred years before.
A record of the conquests of Tilgath Pilesar.
A list of furniture in the royal household.
A report on the progress of the building of a palace.
A tablet containing a list of the standard works of the royal library of Nineveh.
Record of the eclipses of the moon.
The exact date of the vernal equinox.
Records of the Creation and of the Deluge.

An address "to primitive man."

A letter from Sennacherib to his father, reporting the condition of the empire.

A report of progress being made in copying documents for the royal library.

I will further continue this narrative by telling something of the firm of Murashu's Sons. It seems that old Mr. Murashu of Nippur, was a banker, and broker and real estate agent, collector of taxes, a sort of county treasurer, so to speak in Nippur, and in all probability considerable of a lawyer. He carried on business for a number of years, and on his death the firm name was changed to Murashu's Sons, and continued under this name for about seventy years. One of the sons died, and an uncle came into the firm, but the name of the firm was not changed. We do not know how long ago.

They did a very large business, and a quantity of their records were found. It would seem that when a document like a baked clay tablet became obsolete they filed it away in a cistern, and one of these filing places was found, and the contents are now in the Pennsylvania University. There were all kinds of notes and mortgages, and leases, and documents, which a person under such circumstances would expect to lay away, and which are the same as would be found among the old files of any merchant of today. Among these old documents I quote the following:

1. A mortgage is given on land to pay off an old debt and cancel expense of a visit to the King.

2. A debt is assigned, together with the security which was pledged for its payment, and a guaranty is given against future litigation.

3. An inventory is made out for 200 jars full of old wine, by order of the superintendent of the house of the prince to Rimut "the inspector of food."

4. A mortgage is given of an orchard which is rented on shares. Rent to be paid into the storehouse of Murashu's Sons. The mortgage recites that no other creditor shall have any power over the orchard until this debt is paid.
5. Land and buildings are rented for 60 years. Rent to be paid annually in advance. Part of the land to be put into an orchard.

6. Seventy-two oxen are leased with irrigation implements to run eighteen irrigation stations, four oxen each.

7. Murashu’s Sons pay taxes, a mana of silver, a soldier for the King, flour for the King, and gifts for the royal palace; being taxes for one month.

8. A lease of fish-ponds in which the lessee, besides the stipulated rent of about $600 in silver, agrees to furnish one of the firm a mess of fresh fish every day.

9. One of the firm rents a house on the ramparts of the temple and pays rent in advance with a stipulation that if possession is demanded before the end of the lease he is to get all of his money back.

10. Three hundred and seventy-three sheep and goats are rented out by the firm and are to be delivered by the head animal-keeper. Rent to be paid in sheep, wool and butter. Ten per cent. allowed for death of animals at time of return but for every dead one shall be returned a hide and two and one-half shekels (1 oz.) of sinews (for bow strings).

11. Fields cultivated and uncultivated are leased out belonging to the overseer of the carpenters, in five different municipalities, term three years, rent payable in silver, wine, sheep, and flour.

12. Murashu’s Sons buy 25,240 adobe bricks to be made and delivered in installments at their brick shed.

13. Bel-nadin, one of Murashu’s sons, buys a gold ring and takes a guaranty in writing that the emerald set will not fall out in twenty years.

14. Murashu’s Sons procure the release of a man from prison and take a bond from the prisoner’s uncle for about two hundred dollars that the prisoner would not leave town without legal permission.

But among other things there was a very peculiar document which was evidently drawn up by a lawyer of very large experience, and is something of considerable interest. It is the compromise of a damage suit, and is as follows:
"Bagadata spoke to Bel-nadin, one of Murashu's sons, as follows:

"The town Rabiia from which silver was taken, Hazatu and its suburbs thou hast destroyed. Silver, gold, my cattle and my sheep and everything belonging to me, all, thou, thy bond-servants, thy messengers, thy servants and people from Nippur, have carried away.

"Whereupon Bel-nadin, one of Murashu's sons, spoke to Bagadata as follows:

"We did not destroy Rabiia, thy town, from which thy money was carried, and the suburbs. Thy silver, thy gold, thy cattle, thy sheep, everything that is thy property, all, I, my bond-servants, my messengers, my servants, and people from Nippur did not carry away.

"Bel-nadin, son of Murashu, gave Bagadata on condition that no legal proceedings be had on account of these claims 350 "gur" of barley, one gur of spelt, 50 gur of wheat, 50 good large jars full of old wine including the jars, 50 good large jars full of new wine including the jars, 200 gur of dates, 200 female sheep, 20 oxen and 5 talents of wool.

"Bagadata has received all of the foregoing. There shall be no legal proceedings forever on the part of Bagadata, his bond-servants, his messengers, his servants, and the men of those cities and their suburbs, which were entered, to-wit: Rabiia, Hazatu and the suburbs, or any of them against Bel-nadin, his bond-servants, messengers, servants and people of Nippur.

"Bagadata, his bond-servants, messengers, servants and the men of said cities on account of which they said concerning Rabiia, Hazatu, the suburbs of Rabiia, and everything pertaining to that property none of them shall bring suit again forever against Bel-nadin, his bond-servants, his messengers, his servants and the people of Nippur.

"By the gods and the King they have sworn that they will renounce all claims as regards those charges.

"Bagadata bears the responsibility that no claim shall arise on the part of the men of those cities against Bed-nadin, his
bond-servants, his messengers, his servants and the people from Nippur.

(Signed by) "Bagadata."

Ten witnesses and the scribe.

To the corporation lawyer; to the lawyer who has defended railroads; street car lines; manufactories and casualty companies against damage suits, the foregoing contract is one of great interest. He has seen compromises and agreements set aside and has defended suits brought to annul them. He had heard perjury so often that he can recognize it instinctively when he hears it. He has heard the damagee swear to being unable to read; to not having read the compromise contract although able to read; to having signed the contract under false representations; to having been deceived into signing the contract; that the contract was read to him wrongly; that he did not understand the contract when he did sign it; and so forth, and so forth, and so forth. The old lawyer of Nippur had had all of this experience; he had been fooled often; he had had compromises set aside often and so in this instance, he determined to tie up the plaintiff with a double-and-twisted knot, and so he first had a disclaimer of liability inserted; then an adequate consideration, the receipt of which was duly acknowledged; then a statement that there should be no subsequent litigation; then a sworn renunciation of all claims; then a guaranty to pay any judgment which might be rendered.

No modern lawyer can excel the scientific construction of this old time compromise agreement, and it is so old that it dates back to the time when silver was more valuable than gold, and was mentioned and classified in advance of gold.

THE REPORTER

BY T. D. CRAWFORD, LITTLE ROCK, ARK.

In the Preface to the 6th Volume of his Reports, Lord Coke said: "The reporting of particular cases as examples is the most perspicuous course of teaching the right rule and reason of the law, for so did Almighty God Himself, when he delivered by Moses his judicial laws, Exemplis docuit pro
'Legibus,' as it appeareth in Exodus, Leviticus, Numbers and Deuteronomy."

Upon the basis of the authority of the adjudged case has been built up the mighty fabric of English and American jurisprudence. To what extent the character of the English-speaking peoples has been affected by their system of law is largely a matter of speculation. Mr. Burke said: "English jurisprudence has not any other sure foundation, nor consequently have the lives and properties of the subject any sure hold, but in the maxims, rules and principles, and juridically traditionary lines of decisions contained in the notes taken, and from time to time published, mostly under the sanction of the judges, called Reports."

ANTiquity OF REPORTING.

When the practice of reporting law cases as precedents began in England cannot be determined with certainty. Some writers assume that the Liber Judicialis, of Alfred, contained judgments by the Saxon judges. Chronicles and recitals in early charters give accounts of decisions anterior to the Norman Conquest. Nor, says Mr. Wallace, can it be ascertained to whom is due the honor of having been first "of the mighty line of Reporters, which seems stretching to the crack of doom." The earliest extant reports of English law are the Year Books, which were written in law French, and extend from the beginning of the reign of Edward I to the latter end of the reign of Edward III, a period of more than 200 years. Plowden relates that the Year Books during and since the reign of Edward III were written by four Reporters, "who were chosen and appointed for that purpose, and had a yearly stipend from the King for their trouble;" that they "used to confer together, at the making and collecting of a Report, and their Report, being made and settled by so many, and by men of such approved learning, carried great credit with it, as indeed it ought." It is interesting to note that these "grave and learned" Reporters of the Year Books, as they were styled by Lord Coke, were the only official Reporters England ever had, except when an attempt was made, under Bacon's advice, to revive official

1 Preface to 1 Plowden.
reporting in the reign of James I. Of this attempt Mr. Douglas speaks as follows: "In the reign of James I, Lord Chancellor Bacon procured the revival of the ancient office of Reporter, but it was soon dropped again, and does not seem, while it continued, to have been productive of the advantages expected from it. I know of no Reports attributed to the persons then nominated to the office except those printed in the name of Serjeant Hetley, who, we are told in the title page, was appointed by the King and Judges for one of the Reporters of the Law. Whether it was he or the Lord Keeper Littleton who was really the author of these Reports (many of them being exact duplicates of those ascribed to Littleton), they are far from bearing any marks of peculiar skill, information or authenticity". 2 Perhaps it was due to the inferiority of this Reporter's work that the conservative Briton has adhered to a system of unofficial reports until the present time.

At the end of the Year Books, private lawyers undertook the business of reporting, either for their own use or for publication. Preeminent among the earlier Reporters were Plowden, Dyer and Coke. Edmund Plowden's reports are said to be distinguished for authenticity and accuracy. He reported a very notable and interesting case, which may be noticed: Hales v. Petit, 1 Plowden, 253.

Sir James Hales, one of the Justices of Common Pleas, was drowned in a river near Canterbury, it was alleged, by his own voluntary act. A lease to him and his wife as joint tenants was seized by the Crown as forfeited by reason of the felony of his suicide, and was regranted to Petit, who made entry, and thereupon was sued by Lady Hales in trespass. Six sergeants-at-law argued the case. Lady Hales's counsel took the position that the deceased Justice could not have been a felon, because, so long as he was alive, there was no felony, and because the death would not relate back to the cause of it. Walsh, of counsel for Petit, argued contra that the act consisted of three parts: "The first is the imagination, which is a reflection or meditation of the mind, whether or not it is convenient for him to destroy himself, and what way it can be done. The second is the resolution, which is a determination of the mind to destroy

2. Preface 1 Doug.
himself and to do it in this or that particular way. The third is the perfection, which is the execution of what the mind has resolved to do." He contended therefore that the forfeiture was to have relation to the act done in the party's lifetime, which was the cause of his death.

The metaphysical argument of plaintiff's counsel was answered by Sir Anthony Browne, one of the Justices, in this manner: "If one strikes another, so that afterwards he dies of it, the indictment ought to say that he struck him feloniously. So that the felony is attributed to the act, which act is always done by a living man, and in his lifetime. Sir James Hales was dead, and who drowned him? Sir James Hales. And when did he drown him? In his lifetime. So that Sir James Hales, being alive, caused Sir James Hales to die; and the act of the living man was the death of the dead man. And then for this offence it is reasonable to punish the living man who committed the offence, and not the dead man." Thus the learned Justice disposed of the sophistry of plaintiff's counsel.

Shakespeare it is thought, probably attended the sittings of court at Westminster Hall, which was near the Globe Theatre. If so, the hair-splitting subtleties urged in this case probably suggested to him the argument between the grave diggers in Hamlet. These two clowns were digging Ophelia's grave. An erudite discussion between them arose as to Ophelia's right to a Christian burial. The first clown elucidated the case thus:

"Here lies the point: if I drown myself wittingly, it argues an act; and an act hath three branches: it is, to act, to do, to perform: argal, she drowned herself wittingly."

Second Clown: "Nay, but hear you, goodman delver,"—

First Clown: "Give me leave. Here lies the water; good; here stands the man; good; if the man go to this water, and drown himself, it is, will he, nill he, he goes.—mark you that: but if the water come to him and drown him, he drowns not himself; argal, he that is not guilty of his own death shortens not his own life."

Evidence still preserved, it is said, tends to show that Sir James Hales's death was occasioned by his crossing a river over a narrow bridge, from which he accidentally fell and was drowned,
at the untimely age of 85. If true, this would seem to vindicate the superior wisdom of the clown.

Dyer's Reports extend from 4 Henry VIII to the period of his death in 1582. He was allowed to have been the best lawyer of his time. He served as Chief Justice of the Common Pleas Court for 20 years. His reports were printed after his death. Lord Campbell says: "Dyer may be considered the Shakespeare of Law Reporters, as he had no predecessor for a model, and no successor has equaled him." His reports are not so full as Coke's or Plowden's, but are said to "resemble more the concise notes of a man of business, containing an accurate state of the case with the objections and answers, as short as might be."

Preeminent as were his merits as Chief Justice of the King's Bench, it is doubtful whether Coke's work as Reporter does not constitute his greatest title to fame. Lord Bacon, who was his lifelong enemy, said of them: "Had it not been for Sir Edward Coke's Reports, the law by this time had been almost like a ship without ballast". Chancellor Kent says: "Lord Coke said that he endeavored, in his Reports, to avoid obscurity, ambiguity and prolixity. The want of methodical arrangement and lucid order is so manifest in his Reports, and he abounds so greatly in extrajudicial dicta and collateral discussions, that he is distinguished above other Reporters for the very defects he intended to avoid." Yet he adds: "With all their defects, Lord Coke's Reports are a standard work of that age, and they alone are sufficient to have discharged him from that great obligation of duty with which he said he was bound to his profession."

Judge Putnam of the Supreme Court of Massachusetts (17 Pick., 9) says: "The extrajudicial opinions of Lord Coke contain more of the common law than is to be found in the writings of any other Reporter before or since his time."

Coke availed himself of the opinions of the court reported by him as an opportunity to explore the entire field of law learning. His, therefore, were the first leading or annotated cases. King James took exception to the liberality of Coke's views, as injurious to the prerogative of the crown, and commanded him to strike out the offensive parts, but Coke's rev-
erence for the law, which the historian Green says "overrode every other instinct", prevented him from yielding, and he was for this and other causes removed from the office of Lord Chief Justice of England.

Other eminent Reporters in the period following the time of Coke were Hobart, Croke, Yelverton, Salkeld, Robert Raymond, Vaughan, Strange and Saunders. Speaking of this time, an eminent contemporary judge, Sir Harbottle Grimston, said: "A multitude of flying reports, whose authors are as uncertain as the times when taken, have of late surreptitiously crept forth." Probably as a result of the enterprise of the booksellers, the Reports accredited to Noy, Owen, Popham, Winch, Littleton, March, Hutton, Ley, Lane and Hetley were issued about the middle of the 17th century posthumously and without known editor. Other contemporary Reporters, whose books have been referred to as possessing little or no authority, may be mentioned: Moseley, Barnardiston, Dalison. Latch. Goldsborough, Finch, J. Bridgman, Keble, Siderfin, Carter. Winch, Fitzgibbons and Comberbach—to most of us, it must be confessed, voces et praetera nihil. Many of these Reports were in such bad repute that the judges would not permit them to be cited. Lord Kenyon once said of Comberbach that a sentence or two in a certain case reported by him must have been really delivered by the judge, "for they contained something like sense, and therefore could not be Comberbach's own".

It is said that modern reporting began with Sir James Burrow's Reports (1765), which, together with those of Cowper and Douglas, contain the substance of Lord Mansfield's judicial decisions, and are among the most interesting Reports in the English law. Since their time, the courts of law at Westminster have been filled by eminent judges and reported by reasonably faithful and accurate Reporters, as may be seen by reference to the Term Reports, to the Reports of East and his successors, as Reporters of the King's Bench, and to Wilson, Henry Blackstone, Bosanquet and Puller, and their successors in the Common Pleas Court.

Anciently, the opinions in chancery causes were not reported. Lord Bacon tells us that he made two thousand decrees in a year; yet not a single decision by him is reported.
Vernon's Reports are said to be the best of the old reports in chancery. Peere Williams's Reports extend from 1700 to 1735, and embrace the period of the decisions of several eminent chancellors, including Lord Hardwicke, who was a consummate master of his profession. Other English Chancery Reporters of more or less deserved celebrity are Eden, Brown, Cox and the two Veseys.

For a century preceding 1865, reporting in England was carried on by a private enterprise in each court separately. The "authorized" Reports were generally accurate, but dilatory. A partial remedy was provided by the legal newspapers issuing earlier reports. But carrying the dual system of Reports was burdensome to the profession. Dissatisfaction with this system finally led the Bar in England to appoint a Council of Law Reporting, which has been incorporated, and under whose direction the Law Reports, having quasi official authority and weight, have been published since 1865.

In the United States, towards the end of the eighteenth century, the Reporters were few, and principally unofficial. Since that time, says Prof. Wambaugh, "there has been a steady tendency towards official reporting; and today the Reporters of the Supreme Court of the United States and of most, perhaps of all, of the State courts of last resort, are public officials, duly elected or appointed."

It may be interesting to mention that the earliest volume of Reports printed in America was the Reports of Ephraim Kirby, Esq., of cases adjudged in the Superior and Supreme courts of Connecticut printed in 1789 and covering cases from the year 1785 to 1788. It was an unofficial but excellent work and was recognized by the Legislature, which directed the purchase of 350 copies for distribution.

The earliest opinions reported in America will be found in Jefferson's Reports, which were not printed, however, until 1829, the cases having been decided from 1730 to 1740, and from 1768 to 1772.

THE METHOD OF REPORTING.

My Lord Coke, in the report of Calvin's case, asserted it to be the right of every Reporter "to reduce the sum and effect
of all to such a method as, upon consideration had of all the arguments, the Reporter himself thinketh to be fittest and clearest for the right understanding of the true reasons and causes of the judgment and resolution of the case in question." Likewise thought Judge Story. In a letter to Mr. Richard Peters, formerly Reporter of the Supreme Court, he said: "In respect to the duty of a Reporter, I have always supposed that he was not a mere writer of a journal of what occurred, or of a record of all that occurred. This duty appears to me to involve the exercise of a sound discretion as to reporting a case, to abridge arguments, to state facts, to give the opinions of the court substantially as they are delivered. As to the order in which this is to be done, I have supposed it was a matter strictly of his own taste and discretion, taking care only that all he states is true and correct, and that the arrangement is such as will most readily put the profession in possession of the whole merits of the case, in the clearest and most intelligible form."

Lord Bacon, in the Advancement of Learning, directed his luminous mind to the method of reporting cases. He said: "Let the judgments of the supreme and principal courts be diligently and faithfully recorded, especially in weighty causes, and particularly such as are doubtful or are attended with difficulty or novelty. For judgments are the anchors of the laws, as laws are the anchors of states. And let this be the method of taking them down: (1) Write the case precisely and the judgments exactly, at length. (2) Add the reasons alleged by the judges for their judgments. (3) Mix not the authority of cases brought by way of example with the principle case. (4) And for the pleadings, unless they contain something very extraordinary, omit them.

"Let those who take down these judgments be of the most learned counsel in the law, and have a liberal stipend allowed them by the public. But let not the judges meddle in these Reports, lest, favoring their own opinions too much or relying upon their own authority, they exceed the bounds of a recorder."

Elsewhere he says: "Great judges are unfit persons to be Reporters, for they either have too little leisure or too much authority, as may appear well by those two books (Dyer and Coke), whereof that of my Lord Dyer is but a kind of notebook, and those of my Lord Coke hold too much de proprio."

Whatever may be thought of Bacon's observation that great judges have too much authority to report their own cases, there can be no question that few judges upon the appellate bench in America have the necessary leisure. With cases crowding upon each other's heels, the time of the judge is taken up in deciding the questions involved in the particular case before him.

THE TITLE OF THE CASE.

Some Reporters seem to think it necessary at the head of each case to string out the names of all the parties. As the title of the case is designed merely to facilitate reference, the shorter the title the more convenient. Mr Wallace, who was an accomplished Reporter, probably went to an extreme in abbreviating names, as Railroad Co. v. Bank. One who knows, for instance, that such a case as the Arkansas Southern Railway Company v. German National Bank was appealed to the Supreme Court of Arkansas is entitled to have it indexed in the table of Cases Reported under the letters "A" and "G". Litigation by banks and railroads is not so uncommon that the reader may not easily be misled if he is forced to turn to the abbreviated titles in order to find his case.

THE REPORTER'S HEADNOTE.

It was the custom of Judges Miller, Bradley and Field to prepare their own headnotes. Judge Thompson says: "These headnotes very often contain, in a condensed and running form, an outline of the whole course of argument employed by the judge in the opinion, and do not confine themselves to a statement of the point decided by the court, as they should."

Judge Sanborn, of the Court of Appeals for the Eighth Circuit, is in the habit of preparing his headnotes. Either by law or custom, the judges of the Supreme Courts of Ohio, Georgia, Kansas, Minnesota and Nebraska prepare their syllabi.

4. 2 Greenbag, 215.
In the latter State it is said that, by a convention among the judges, the headnote is the only part of the opinion upon which the court agrees, the judge writing the opinion proper being solely responsible for its language. In Indiana the Legislature undertook to require the judges to prepare the headnotes. The Supreme Court held that this was the duty of the Reporter, and decided to undertake the task. (Ex parte Griffiths, 118 Ind. 83.)

The Committee on Law Reporting in the American Bar Association in 1895 made the following recommendation: "The preparation or careful revision of the syllabus by the Court so as to cover only the points actually decided by the case would be highly desirable. Very much of the difficulty arising from the imperfect and misleading headnotes would be avoided if the practice which is enforced by law in some jurisdictions by which the judges prepare the headnotes were adopted, or even if, as in others, the judges uniformly carefully examined and revised the proof of the syllabus as drafted by the Reporter".8

It may well be doubted whether a headnote prepared by the Court is preferable to one prepared by the Reporter. The Judges, as a rule, have little time to prepare headnotes, nor, in writing opinions, are they apt to consider the value of a case as a precedent, their attention being wholly directed to the decision of the question in hand. The Reporter, if he is capable of doing his work properly, is in position more critically to determine the effect of a case as a precedent, because that is the point to which his attention is constantly directed. The alternative suggestion of the Committee, that the judge who writes the opinion should carefully revise the proof of the syllabus, as drafted by the Reporter, is worthy of adoption. The Reporter should welcome the Judge's criticism of his headnote.

Mr. Douglas, one of the best of the King's Bench Reporters, laid down the rule for preparing the headnote: "The plan upon which I have formed these abstracts has been to state the point as a general rule or position. This method upon the whole seems to be the most useful".9 "The true office of a Reporter's headnote", says Judge Thompson, "is to state in brief form the propositions of law actually decided in the case, and beyond that

6. 1 Doug. Pref.
he ought not to go". Lord Justice Lindley said that it should contain "the pith and marrow" of the case.

The method sometimes employed of stating at length a summary of the evidence and then telling the reader what the court held is rarely permissible. A writer in the Law Quarterly Review, says: "If a headnote cannot be intelligibly constructed without a lengthy analysis of the facts of the particular case, that is in itself prima facie ground for suspecting that the case ought not to be reported at all".

A headnote which states as briefly as may be the proposition of law decided, stripping off unnecessary facts and giving only so much of detail as is necessary to show how the question arose, is probably the most helpful and satisfactory type. However, no general rule for the preparation of the headnote can be laid down which will fit all cases.

Mr. John Mews, in an article in "The Present System of Law Reporting", 9 Law Quarterly Review, 182, said: "A semble is clearly a proper subject of a headnote, but a query is in almost every instance useless, for in such case the court offers no opinion."

The headnotes prepared by Mr. Turner in the case of Curtis v. State, 36 Ark., 284, have been criticised by Judge Thompson in this manner: "In this case ten assignments of error are ruled upon in the opinion, only two of which are contained in the syllabus of the Reporter.....There is no excuse for such work. Wherever a point is of sufficient importance for the court to rule upon it in a written opinion, it is of sufficient importance to be noted in the syllabus—at least, it is presumption in the Reporter to decide otherwise". That Mr. Turner reported this particular case rather scantily must be conceded, as there are several propositions of law decided which he has failed to note. Some of the points decided by the court, however, were properly omitted from the headnotes. For example, Judge English, in this case, which was a murder trial, in the fourth assignment of error, considered at length the sufficiency of the evidence to sustain a verdict of murder in the first degree. A headnote on this assignment would probably set out

7. 2 Greenbag, 215.
9. 2 Greenbag, 216.
half a page of facts with the conclusion "held", etc. Such a headnote would be worthless for any purpose whatever. If Mr. Turner is open to criticism at all in respect to this assignment, perhaps it is for not omitting it from the report of the case. Judge Lindley said: "Even when a judgment is written, much of it may relate to matters requiring decision, but not worth reporting; and it should be shortened accordingly."10 Opinions may contain discussions of questions of fact of no probable value in any other case. There appears no good reason why the reports should embalm such dead matter.

**THE STATEMENT OF FACTS.**

In the letter to Mr. Peters, from which quotation has already been made, Judge Story said:

"In regard to the statement of facts, I have always thought the best method to be, where it could be conveniently done, to give the facts at the beginning of the case, so that the reader might at once understand its true posture. If the Court state the facts, the true course is to copy that very statement, because it is the ground of the opinion, and to remove it from the place in the opinion which it occupied (taking notice that it is so removed and used), and then proceed to give the rest of the opinion in its proper order, after the argument. Upon any other plan, either the Reporter must make a statement of facts of his own, which it seems to me would be improper, or repeat the statement of facts by the Court, which would be useless, and burthen the volume with mere repetitions. This course has been constantly adopted by the Reporter of my Circuit opinions, and I have always approved it....Whenever it is not done, there is (to be sure) a much easier labor for the Reporter, but his Reports always wear a slovenly air." Mr. Wallace heartily agrees with Judge Story, and seems to think, as an additional reason why the Reporter should always state the facts, that he is more impartial than the Judge!*

As a general rule, it may be conceded that the method of stating the facts recommended by Judge Story is the best. If the opinion leaves the facts to the Reporter to state, or if the


*Pref. to *1 Wall. Rep.*
Court's statement is easily separable from the opinion, that plan should be followed. If the Judge has fully stated all the facts necessary to the understanding of the opinion, but has interwoven his law and facts so that they are inseparable, it is neither necessary nor proper, under ordinary circumstances, for the Reporter to repeat the facts in a statement of his own. Judge Story's suggestion, properly addresses itself as much to the Judge as to the Reporter.

This leads to another question: Should the Court or the Reporter state the facts? Judge Seymour D. Thompson, in a recent article in the Green Bag, considered this question. He said: "This statement of facts, whether embodied in the opinion or presented separately from it, should always be prepared by the Court, or by the Judge who writes the opinion as the mouthpiece of the court, and never by the Reporter. The reason why the Reporter should never be entrusted with this duty is threefold: 1. He is but one man, and he may have the office of reporting the decisions of a court composed of from three to nine judges. He cannot attend the arguments and find time to perform the rest of his official work. He cannot do the work, which has been distributed among the judges of a numerous bench, of making the statements of the facts of all cases which they have been able to decide. 2. If he attempts to do this, he will in many cases make statements of facts essentially different from those upon which the court predicates its judgment; in other words, he will understand the facts one way and the Court will understand them another way, and this will introduce confusion and incongruity into the decisions of the Court, and may often, in supposed cases, render its decisions absurd. 3. The judicially expounded law is always an exposition of the law as applicable to a given state of facts. . . . . This being so, a judicial opinion cannot be well written unless the judge opens it with a statement of the facts upon which the judgment of the Court proceeds".12 This view seems to be sound, with the limitation that where there is an agreed state of facts, or for other reasons there can be no difference of opinion as to what facts the court had in mind, so that it is a mere matter of copying, there is no objection to leaving the

facts to the Reporter to state. It should not be lost sight of that the function of the Reporter is merely to edit the opinion of the Court, not to make the Court's opinion reflect the views of the Reporter.

It is, of course, the duty of the Reporter to see that the Judge's statement is full enough, and to supplement it if necessary to the correct understanding of the opinion.

THE REPORTER AS EDITOR.

One of the functions of the Reporter is to edit the Judges' grammar. No Reporter who takes pride in his work will neglect the matter of correcting the opinions which he reports. Bad grammar in the printed reports is probably as much a reflection on the Reporter as on the Judge. Nor should he confine himself to matters of grammar. If the Reporter believes that the opinion states the law incorrectly or incompletely, or that it overrules previous decisions, it is his duty to so advise the Judge.

Probably in the course of his experience the Reporter will happen across opinions of the Court which he will feel ought to be suppressed. Mr. Vernon was one of the English Reporters, and an eminent lawyer. Lord Talbot, referring to a case decided by the Earl of Macclesfield, mentioned it as a circumstance of weight that "Mr. Vernon had always grumbled at the decision in that case, and never forgave it to Lord Macclesfield." Lord Campbell says: "When I was a Nisi Prius Reporter, I had a drawer marked 'Bad Law', into which I threw all the cases which seemed to me improperly ruled. I was flattered to hear Sir James Mansfield, C. J., say, 'Whoever reads Campbell's Reports must be astonished to find how uniformly Lord Ellenborough's decisions were right.'" Every Reporter ought to have a drawer in which to bury the "Bad Law" opinions. The difficulty at the present time, however, is to keep the lawyers from citing them from the unofficial reports. A lawyer with a bad case wants bad law. In a moment of inadvertence the Court may be misled into following an ill-advised opinion, to its subsequent regret.
THE INDEX.

Much has been written in recent years upon the subject of indexing the Reports. Uniformity of classification, if it were attainable, would be a vast improvement over present conditions. As it is, every Reporter arranges the classification of his Index to suit his own ideas. A common method of preparing the Index is to clip the headnotes of the cases and paste them in loco. This is the easiest method; probably not the best. An Index need not be as full as the headnotes. A line is usually enough to call attention to each point decided; if a fuller statement be desired, the reader can easily turn to the headnote and opinion.

WHAT CASES SHOULD BE REPORTED.

In an article in the Law Quarterly Review, already referred to, Mr. John Mews says: "It sometimes happens that counsel, from one cause or another, have failed to discover a case that really decides the question at issue. We frequently hear it said that the authority of Smith v. Jones is shaken because another case in the books was not cited to the Court. The report of such a case is not only useless but misleading. The duty of a Reporter is not only to report, but to see that what he reports is, as far as he can see, sound law".13 It must be confessed that this places a very serious responsibility upon the Reporter. There are occasions when, struggling to make the particular opinion fit in with opinions already reported, he will be apt to think that the task imposed upon the Hebrews of making bricks without straw were easy in comparison.

Lord Coke, in the preface to 7th Report, points out that the object of reporting cases is to give "direction in like cases". Turning again to the article by Mr. Mews, he amplifies this idea. "A reportable case", he says, "is one that will be useful to the practitioner, one that construes a somewhat ambiguous act of Parliament of general interest, that lays down some fresh legal principle or applies a well-known principle of law to entirely different circumstances, that doubts, or, as it is more frequently termed by the more polite Reporters, distinguishes a previously reported case; cases, in short, that adds something to our legal

knowledge. Unreportable cases will therefore include the following examples: those turning on the special wording of a particular document that is generally subject to considerable variation, for in such cases, as many past and present members of the Bench have remarked, decisions on similar words in other documents are of little or no value. Many decisions on the construction of wills and settlements should therefore be excluded, as well as those on contracts or other documents the construction of which depends upon their special terms. An exception to this class must, however, be made, namely with regard to cases on the construction of bills of lading and charter parties [to which may be added, insurance policies], for these documents have reached a fairly general form."

Mr. Justice Lindley has succinctly stated the rule for determining what cases should be reported as follows: "The subjects reported should include all cases which introduce or appear to introduce a new principle or new rule; or which materially modify an existing principle or rule; or which settle or tend to settle a question on which the law is doubtful; or which for any other reason are peculiarly instructive. If these principles are not attended to, the Reports will be unnecessarily bulky, and time and labour will be wasted." He adds, however, that "it is better to err on the side of reporting too many cases than of reporting too few."

Judge Thompson very properly observes that "you cannot suppress the decisions of a court by not reporting them officially, for they will be eagerly taken up by the unofficial reporters." And he might have added: They will be cited by the lawyers and the courts. It is a singular thing that the lawyer, as a rule, does not content himself with citing to a proposition of law a case that clearly establishes it, and that has never been overruled, qualified or distinguished, but will seek out and cite every other case that directly or remotely touches upon the question; as do many Judges likewise. As an instance, the Supreme Court of Arkansas more than a score of years ago adopted rules that required the appellant to file an abstract setting forth the material parts of the pleadings and evidence, and providing that

14. 1 Law Quar. Rev. 143.
15. 11 Greenbag, 106.
upon his failure to do so the case should be dismissed. These rules are plain and simple, and seem to need no glossary. However, in 1892 the Court took occasion to say in a written opinion that the rules meant what they said. Since that time there have been a dozen opinions handed down reiterating this first holding; none to the contrary. Why should it be necessary to continue to repeat the same proposition? Judge Lindley, in the article from which I have already drawn, said: "Practice cases are useful, but only on points that are obscure and unsettled". The point here is neither obscure nor unsettled.

Speaking of the matter of Reporting unnecessary opinions, Judge Thompson in the article first quoted from said: "The moral of all this is that there is but one way to keep down the accumulation of Reports of unimportant cases, and that is for the appellate courts to decide such cases without writing any opinions at all". But he adds that the objection to this is insurmountable, that "the work of a court of last resort which decides without giving reasons cannot retain the confidence of the bar and the public". It must be confessed that this reasoning is weighty. However, this is not a problem which the Reporter is called upon to solve: "Non nostrum tantas componere lites".

THE MULTIPLICATION OF REPORTS.

When Edward Coke came to the bar in 1578, there were in existence eleven volumes of Year Books, two volumes of Plowden's Reports and three volumes of Dyer's. "Up to the year 1776", Mr. Wallace says, "the whole number of reports in England, both law and equity, did not much exceed a hundred and fifty volumes." In Ram on Judgments, it is stated that the total number of State and Federal Reports in the United States in 1870 was 2012. At the present time there are, in the Arkansas Supreme Court Library, of Reports of the various States and Territories and of the Federal Courts, not including any unofficial Reports, except the Federal Reporter, a total of 6216 volumes—an increase in 37 years of more than 200 per cent. Eighty years ago when reports and text books by comparison were few, Judge Kent wrote: "To attain a competent knowledge of the common law in all its branches has now become a very serious undertaking, and it requires steady and lasting
preseverance of the student. The grievance is constantly growing, for the number of periodical law reports and treatises which issue from the English and American press is constantly increasing". The Reporter of today cannot say, like the French King, "After us the deluge!"

A favorite remedy of some writers for staying the flood of law books is a recourse to codification. An experiment in this line was made by New York in 1848 when the Legislature adopted what is known as the Reformed Procedure Act. Subsequently the same procedure was adopted in more than 20 other States and Territories. The result is that there has been a multitude of cases in these States construing the meaning of the Code. If by some means the various States could simultaneously start off with a uniform and complete Code of Law as well as procedure, one might, under our system of following precedents, confidently expect that within ten years there would be more than ten thousand cases construing the meaning of this Code. Whatever views one may entertain upon the subject of codification, it may well be doubted whether, so long as we retain the principle of stare decisis, it would afford any substantial relief from the excessive production of books relating to the law.

What is the remedy for this multiplication of law books? The Emperor Justinian in one of the edicts which he published in confirmation of the authority of the Pandects, and prefixed to that work, expressly prohibited the civilians of his time, and those of all future ages, from writing any commentaries on his laws. The King of Bavaria, in imitation of Justinian, in 1813. prohibited the publishing of any commentaries on his penal code. It may be doubted whether this remedy would meet the exigencies of the situation.

There are some writers who contend that the evil of excessive multiplication of law books carries its own remedy—that "the wilderness of single instances" will finally become so entangled that no particular thing can be found in it, and that the rule of stare decisis will become so weakened that lawyers and judges will be driven to work out and decide cases along lines of natural reason and justice. Whatever may be the develop-
ment of the law in the future, we may be sure that somehow the system will adjust itself to the changing needs of humankind.

THE REPORTS OF A STUDY OF LIFE.

The Reports are a faithful transcript of contemporary manners, a panorama of real and moving life, with its tragedies as well as its comedies; "faithful records of those little competitions, factions and debates of mankind that fill up the principal drama of human life". In the oft-quoted language of Juvenal: "Quidquid agunt homines nostri est farrago libelli." The historian and the student of manners will find much of value within the pages of the Reports. In them are preserved the skilled dialecties of the great lawyers and the able opinions of profound judges. What, but for the Law Reports, would have preserved to us the fame of the Erskines, the Websters and the Choates? Of the Mansfields, the Hardwickes, the Kents and the Marshalls?

But, since the supreme function of the courts is to administer justice, we should expect to find in the adjudged cases exemplifications of applied justice. A splendid tribute was paid by Chancellor Kent to the integrity of the English Bench—a tribute which the Reporter believes to be equally applicable to the Courts of America:

"Every person well acquainted with the contents of the English Reports must have been struck with the unbending integrity and lofty morals with which the courts were inspired. I do not know where we could resort, among the volumes of human composition, to find more constant, more tranquil and more sublime manifestations of the intrepidity of conscious rectitude. If we were to go back to the iron times of the Tudors, and follow judicial history from the first page in Dyer to the last page of the last Reporter, we should find the higher courts of civil judicature generally, and with rare exceptions, presenting the image of the sanctity of a temple where truth and justice seem to be enthroned and to be personified in their decrees."
THE GROWING IMPORTANCE OF THE
FOURTEENTH AMENDMENT

BY HANNIS TAYLOR, WASHINGTON, D. C.

Down to the making of the second Constitution of the United States under which we now live, the Confederation of Swiss Cantons, the United Provinces of the Netherlands, and the German Confederation represented the total advance which the modern world had made in the structure of Federal governments. Such advance was embodied in the idea of a Federal system made up of a union of States, cities or districts, representatives from which composed a single Federal assembly whose supreme power could be brought to bear not upon individual citizens but upon cities or States as such. The fundamental principle upon which all such fabrics rested was the requisition system, under which the Federal head was simply endowed with the power to make requisitions for men and money upon the States or cities composing the league for Federal purposes; while the States alone in their corporate capacity possessed the power to execute and enforce them.

The first advance made by the English colonies in America in the path of Federal union ended with the making of the first Federal Constitution of the United States, embodied in what is known as the Articles of Confederation. Upon that point, with a single exception, nothing new had been achieved; the fruit of the first effort was simply a Confederation upon the old plan with the Federal power vested in a single assembly which could only deal through the requisition system with the States as States. The one particular in which our first Federal Constitution rose above the old Teutonic leagues after which it had been patterned was embodied in the new principle of interstate citizenship which it originated. As Bancroft has expressed it: "Inter-citizenship and mutual equality of rights between all its members give to it a new character and enduring unity. * * * The principle of inter-citizenship infused itself into neither the Constitution of the old German Empire, nor of Switzerland, nor of Holland." Section one of Article four of the Articles of Confederation provided that, "The better to secure the perpetual mutual friendship and intercourse among the people of the different States in this Union, the free inhabitants of each of these
States, paupers, vagabonds, and fugitives from justice excepted, shall be entitled to all the privileges and immunities of free citizens in the several States."

Such was the origin of the first new political conception to which our career as a nation has given birth. The second is embodied in what is known as constitutional limitations on legislative power, an American invention which rests upon the doctrine of the sovereignty of the people as distinguished from the sovereignty of parliament. While the colonies remained in subjection to the mother country the powers of the colonial assemblies were limited by the terms of the charters by which each colony was created or recognized. When a statute was passed by a colonial assembly in excess of its powers it was liable to be annulled by the Judicial Committee of the English Privy Council. When the colony was transformed into a sovereign State, the annulling power of the Privy Council passed to the highest court of the State.

The third great political invention to which our career as a nation has given birth can be attributed to a personal author, Petatiah Webster, who gave to the world a path-breaking idea when, in February, 1783, he published at Philadelphia a tract entitled "A Dissertation on the Political Union and Constitution of the Thirteen United States of North America," in which he not only advocated permanent courts of law and equity and a stricter organization of the executive power but also a national assembly of two chambers instead of one, with power not only to enact laws, but to enforce them on individuals as well as on States. A year later that tract, which had been reprinted at Hartford, was followed by another of the same tenor by Noah Webster, of that place, in which he proposed "a new system of government which should act, not on the States, but directly on individuals, and vest in Congress full power to carry its laws into effect."

This brand new idea which the Websters were the first to express, and of which no preceding statesman or jurist ever dreamed, would perhaps have borne no fruit, if it had not been supplemented by a suggestion from one whose practical insight seems to have been equal to every emergency. On December 16th, 1786, Jefferson, who was then at Paris, wrote to Madison,
who was then actively engaged in fabricating the present Constitution, as follows: "To make us one nation, as to foreign concerns, and keep us distinct in domestic ones, gives the outline of the proper division of powers between the general and particular governments. But to enable the Federal head to exercise the powers given to best advatage, it should be organized as the particular ones are, into legislative, executive, and judiciary." Fresh from Jefferson's brain came this fourth political invention involving the splitting up of Federal powers, immorally vested in single Federal assemblies and the organization of them in three separate and distinct departments in the qualified sense in which such a division is understood in the English Constitutional system.

Such were the four cornerstones upon which the fathers founded the unique Federal system in 1787 which was differentiated from all preceding Federal systems by the fact that Federal power, for the first time in the world's history, was to be brought to bear, not upon States or cities as such, but directly upon citizens as such. Only in the light of a statement is it possible to comprehend the vastness of the solecism involved in the omission of the State builders of 1787 to endow their own creation with citizens of its own. They contented themselves with simply reproducing the substance of section one of article four of the Articles of Confederation in section two of article four of the present Constitution which provides that "The citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States." Beyond that point the framers of the more perfect union were not prepared to go.

The then feeble sense of nationality did not prompt them to do more than establish an interstate citizenship to which they imparted the qualities of uniformity and equality, by denying to every State the right to discriminate in favor of its own citizens as against those of any other State. There was no attempt whatever, either in the Constitution itself or in any act of Congress passed after its adoption, to establish or define citizenship of the United States as such, as a distinct and independent thing from State citizenship. As Mr. Justice Curtis said in the Dred Scott case, "that the Constitution itself has defined citizenship of the United States by declaring what persons, born within the
several States, shall or shall not be citizens of the United States will not be pretended. It contains no such declaration."

In that famous case, which may be considered as the prelude to the Civil War, a grand inquest was made by the Supreme Court of the United States into the whole question of citizenship, and the judgment of the Court was "that no State can, by any act or law of its own, passed since the adoption of the Constitution, introduce a new member into the political community created by the Constitution of the United States. It can not make him a member of this community by making him a member of its own." Prior to the adoption of the Fourteenth Amendment a man was a citizen of the United States only by virtue of his citizenship in one of the States composing the Union. If any such thing as a Federal or National citizenship then existed at all, it was nothing more than a secondary and dependent relation.

The maxim that "Constitutions are not made, they grow," is as true of our own Constitution as of any other in the world. A Constitution is like a language; when it ceases to grow it is dead. The normal growth of our Federal Constitution has been made possible by the unfailing stream of judge-made law which flows from the Supreme Court of the United States, adapting and expanding its rigid and dogmatic forms to the ever changing conditions of an unparalleled national development. As all the world knows, it is now practically impossible to amend the Constitution in order to meet ordinary emergencies. History proves that the ponderous and unwieldy machinery of amendment has only been moved in recent times by the giant hand of Civil War.

During a period of one hundred and three years only three amendments have been added to our Federal Constitution and all through that agency. Every lover of his country should rejoice when he remembers that the results of the Civil War made possible the removal of the solecism by which a Federal government, supposed to act directly upon its own citizens, was denied the possession of them in its right. Emancipation, which came only and avowedly as a necessary war measure, was followed by conditions under which it was claimed that the Legislatures of the Southern States were ready to enact statutes of the most oppressive and cruel kind, designed to reduce the negro again to virtual slavery.
Fortunately for us all, at that critical moment, other interests were crying out for protection against hostile State legislation. Roscoe Conkling, who was a leading member of the Reconstruction Committee which framed the amendment, produced for the first time the journal of the committee on the argument of the San Mateo County case in the Supreme Court, December 19, 1882. In the course of his argument Mr. Conkling said: "At the time the Fourteenth Amendment was ratified, as the records of the two Houses will show, individuals and joint stock companies were appealing for Congressional and administrative protection against invidious and discriminating State and local taxes.

One instance was that of an express company, whose stock was owned largely by citizens of the State of New York, who came with petitions and bills seeking acts of Congress to aid them in resisting what they deemed oppressive taxation in two States, and oppressive and ruinous rules of damages applied under State laws." Thus it appears that, at the critical moment, citizens of the State of New York, claiming Federal protection for their property interests against hostile State legislation, joined with those who were seeking to protect the freshly emancipated from the same danger.

It can not be deemed that, prior to the Fourteenth Amendment, the Constitution guaranteed no adequate protection to life, liberty, or property as against hostile State legislation. Except in the case of bills of attainder or laws impairing the obligation of contracts, the arbitrary exercise by local Legislatures, courts, or executive officers of power affecting life, liberty or property could not be checked or redressed by the national judiciary. The prohibition against *ex post facto* laws referred to criminal cases only. As Mr. Justice Field said in *Bartemeyer v. Iowa*, 18 Wall. 129, 140, "Before this Amendment and the Thirteenth Amendment were adopted, the States had supreme authority over all those matters, and the National Government, except in a few particulars, could afford no protection to the individual against arbitrary and oppressive legislation."

Under such conditions it was therefore possible that private property might have been confiscated and vested rights denied by States, without the right of appeal upon the part of the sufferer to the Supreme Court of the United States. The only provisions
of the original Constitution which protected fundamental rights in the States were those entitling the citizens of each State to all the privileges and immunities of citizens in the several States, and guaranteeing a republican form of government in every State. As all the world knows, the provisions of the Bill of Rights embodied in the first ten amendments restrain the National Government only, and were not intended to apply to the States.

To remedy that condition of things, to set the Federal judiciary up as the ultimate guardian and protector of the life, liberty and property of every American citizen, it became necessary to nationalize the entire system by creating a national citizenship as the primary citizenship. That end was accomplished by the first clause of the first section of the amendment in question which provies that "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside." Thus the old order of citizenship was reversed; thus it was settled that the primary citizenship in this country is to the United States; and the secondary to the State of the citizen's residence. As Mr. Justice Bradley has expressed it:

"Every citizen, then, being primarily a citizen of the United States, and secondarily, a citizen of the State where he resides, what, in general, are the privileges and immunities of a citizen of the United States? That question is answered, in part, by the remaining portion of Section 1 which provides that "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." By the "due process of law" limitation the new national citizenship was placed under the direct protection of that chapter of Magna Charta which provides that "no freeman shall be taken or impressed, or desseized, or outlawed, or exiled, or anywise destroyed; nor will we go upon him, nor send upon him, but by the lawful judgment of his peers or by the law of the land."

This provision appears in the reissues of the Great Charter, with the insertion in the second (2 Hen. III, A. D. 1217) and third (9 Hen. III, A. D. 1225) charters of Henry III of the
words, "of his freehold or liberties, or free customs," so that chapter 39 in its final form is: "No freeman shall be taken or imprisoned or disseized of his freehold, or liberties, or free customs, or outlawed, or exiled," etc.

In the course of time the sacred text of that fundamental statute came to be understood in England as a living guarantee of all the rights which good government should recognize and enforce, a conception which naturally varied from age to age. That conception, in the liberal form given to it by Coke and his followers, during the constitutional struggles with the Stuarts, was transplanted by the founders of the English colonies on our Atlantic seaboard where it became the original basis of American constitutional law.

Mr. Justice Miller, speaking for the Court in Davidson v. New Orleans, 96 U. S. 97, said: "The prohibition against depriving the citizen or subject of his life, liberty or property, without due process of law, is not new in the constitutional history of the English race. It is not new in the constitutional history of this country, and it is not new in the Constitution of the United States when it became a part of the XIV Amendment in the year 1866. The equivalent of the phrase 'due process of law' according to Lord Coke, is found in the words 'law of the land,' in the Great Charter, in connection with the writ of habeas corpus, the trial by jury and other guarantees of the rights of the subject against the oppression of the crown."

And here let me call your attention to the historical inaccuracy of the once prevalent view that this chapter 39 was intended to be a guarantee not only of "due process of law" but of trial by jury as well. It is perfectly certain now that the phrase "per legale judicium parnum suorum" (by the lawful judgment of peers) did not refer to trial by jury for the conclusive reason that that method of trial in criminal cases was not developed even in an imperfect form, until at least ninety years after the Great Charter was won.

The phrase in question referred only to a feudal right with which trial by jury has no connection. Such was the historical origin and such the real meaning of the ancient formula which the framers of the Fourteenth Amendment transferred from the Great Charter to our new Bill of Rights. And yet board and
comprehensive as that ancient formula was the framers of the amendment found it to be too narrow for their purposes. They felt obliged to supplement it by a new American invention which provides: "Nor shall any State * * * deny to any person within its jurisdiction the equal protection of the laws." Thus it was that new as well as ancient elements entered into this epoch making section which has shifted the center of gravity of the Constitution from the individual States to the nation as a whole. In the corporate person of the nation it has vested the self-executing power to preserve itself in every part.

When in the Slaughter-House Cases, 16 Wall. 36, the vital part of the amendment came for the first time before the Supreme Court for construction, one of the greatest jurists and advocates of modern times—my honored friend ex-Justice John A. Campbell, then of the New Orleans Bar—pressed upon the Court, possibly in a sarcastic spirit, an extreme view of the effect of the amendment which, if it had been accepted, would have subjected to the power of Congress "the entire domain of civil rights heretofore belonging exclusively to the State," and "degrade State governments by subjecting them to the control of Congress in the exercise of powers heretofore conceded to them of the most ordinary and fundamental character."

In the presence of such a startling suggestion the Court emphatically declared that neither the Civil War nor the amendments in which its political results were embodied, had materially altered the constitutional relations of the State and Federal governments to each other. The fact was, however, fully recognized that under the amendment the primary citizenship in this country is to the United States, and the secondary to the State of the citizen's residence.

It was further held that the two citizenships are separate and distinct from each other. In the words of the Court, "It is quite clear, then, that there is a citizenship of the United States and a citizenship of the State, which are distinct from each other and which depend upon different characteristics or circumstances in the individual." In the light of subsequent events it is now easy to perceive that when the judgment in the Slaughter-House Cases was rendered, the entire possibilities of the amendment were not fully understood. Clearly comprehending that it was making only
a beginning, the Court, in *Davidson v. New Orleans*, 1877, wisely said that, "apart from the imminent risk of a failure to give any definition which would be at once perspicuous, comprehensive and satisfactory, there is wisdom, we think, in the ascertaining of the intent and application of such an important phrase in the Federal Constitution, by the gradual process of judicial inclusion and exclusion, as the cases presented for decision shall require, with the reasoning on which such decisions may be founded."

During the thirty years which have passed by since the rule was laid down, a process of evolution made possible by it has been gradually maturing a system of Federal judiciary control directed against any and every form of arbitrary and illegal State action, whether executive, legislative or judicial. One notable effect of that process of growth has been to give a wider meaning to the American element in Section 1, which declares: "Nor shall any State * * * deny to any person within its jurisdiction the equal protection of the laws."

In the Slaughter-House Cases Mr. Justice Miller, for once, missed the mark when he said: "We doubt very much whether any action of a State not directed by way of discrimination against the negroes as a class, or on account of their race will ever be held to come within the purview of this provision." The Supreme Court has since wisely discarded that narrow view by the universal application of that clause of the amendment to every form of State action and legislation, civil or political, irrespective of race. In *Holden v. Hardy*, 196 U. S. 366, the Court said: "A majority of the cases which have since arisen have turned not upon a denial to the colored race of rights therein secured to them, but upon alleged discriminations in matters entirely outside of the political relations of the parties aggrieved."

The journal of the committee which framed the amendment, the debates in Congress upon it, and the argument of Senator Conkling heretofore referred to in the San Mateo County Case, put it beyond all question that the benefits of the clause in question were never intended to be limited to the negro race. While the Supreme Court has thus been widening the scope of the equal protection of the laws clause of Section 1, it has been giving a more restricted meaning to the preceding clause which
guarantees "due process of law." When in *Munn v. Illinois*, 49 U. S. 113, the question of the power of a State to regulate rates was presented, the right of the State Legislature to regulate rates was declared to be complete, the question of reasonableness was pronounced to be a legislative one, and it was said that "for protection against abuses by Legislatures the people must resort to the polls, not to the courts."

Since then that doctrine has undergone a progressive modification whose advance was accentuated by the decision in *Chicago, etc., R. Co. v. Minnesota*, 134 U. S. 418, wherein the court said, as to rates established not by the Legislature directly but by an administrative board created by the Legislature: "The question of the reasonableness of a rate of charge for transportation by a railroad company involving as it does the element of reasonableness both as regards the company and as regards the public, is eminently a question for judicial investigation, requiring due process of law for its determination." Even when the Legislature acts directly the courts have power to set aside unreasonable rates.

In *Chicago, etc., R. Co. v. Wellman*, 134 U. S. 339, it was said: "The Legislature has power to fix rates and the extent of judicial interference is protection against unreasonable rates." In a subsequent case involving the validity of water rates fixed by local authorities, the Court added: "Judicial interference should never occur unless the case presents, clearly and beyond all doubt, such a flagrant attack on the rights of property under the guise of regulation as to compel the Court to say that the rates prescribed will necessarily have the effect to deny just compensation for private property taken for public use."

Thus by advancing and retreating, by defining and qualifying, the Supreme Court has, during the nearly forty years that have elapsed since the adoption of the amendment, built up about it a profound literature which, if printed separately, would fill volumes. In order to make that literature more accessible the profession has been favored with three text books specially devoted to it. The first from Judge Henry Brannon, entitled, "The Fourteenth Amendment," appeared in 1901; the second, far wider in historical and philosophical scope, from William D.
Guthrie, a conspicuous leader of the New York bar, appeared under the same title in 1898; the third, the most comprehensive and complete of them all, from Lucius Polk McGee, professor of law in the University of North Carolina, appeared in 1906, under the title of "Due Process of Law." Still we are only on the threshold of a vast scheme of judicial development which is every day increasing the defining and arbitrary power of the Federal judiciary.

The most superficial observer can not fail to perceive that the equilibrium of American society founded at the outset on the quality of opportunity and comparative equity of condition, has been seriously disturbed by vast accumulations of wealth in the hands of a few individuals and corporations whose growing power is being organized and concentrated in trusts and monopolies. Out of such abnormal creations have grown gigantic fortunes which compel their possessors at one moment to commit acts of unparalleled philanthropy, at another to indulge in the un-American desire to make alliances with the nobility of foreign lands, at another to defy that fundamental maxium, at once political and religious, which declares that the sacredness of the family is the foundation of the State.

By such manifestations, all unhealthy, the infant spirits of socialism and anarchy is being nurtured, while the laboring classes are being organized into compact corporate bodies, directed by experienced commanders, and sustained by accumulated contributions which often amount to millions. Between these two extremes stands the main body of the American people, unemotional, conservative, liberty-loving, law-abiding, whose one desire is to accomplish, through constitutional means, a return to normal conditions in which the individual man can enjoy comparative equality of opportunity.

From the political power of that dominant middle body is now emanating schemes of wise and judicious legislation, State and Federal, which let us hope may gradually break up all abnormal accumulations of wealth, crush monopolies, and reduce the powers of corporations within reasonable limit. Over and above the parties to this irrepressible conflict stands the potent and incorruptible arbitrator, the Supreme Court of the United
States, armed by the Fourteenth Amendment with the power to guarantee "due process of law" and "the equal protection of the laws." Let every lover of his country rejoice when he remembers that the framers of our new Bill of Rights were wise enough to provide that its arbitrating and protecting power should extend to the entire body of American citizens, natural and artificial, regardless of race, section, sect or party.

LOCAL GOVERNMENT IN TENNESSEE

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The purely historical aspects of my subject are attractive and afford excellent opportunities for the display of easy learning, but as my purposes are entirely practical, I must forego the pleasure of historical inquiry, except in so far it may be indispensable in support of the suggestions which I shall make.

It is well known to students of the law and of history that there are two apparently distinct systems of local government in the United States; both borrowed by us from England; kindred systems, in reality parts of one original, yet strongly distinguished in different sections of the country, though in a measure combined in many States. One of these, known as the Township System, was first definitely established, has reached its highest development, and has displayed the greatest persistency in the New England States. The other is the County System, which we may say, originated, in this country, in Virginia, and which prevails throughout those States over which the Virginia influence has extended. It is necessary to remember that the settlement of New England was begun by church congregations. These congregations, coming to this country, settled together and lived together, establishing their villages, about their churches and their school houses. In many instances the lands were held in common and apportioned according to the old Germanic custom. The government was essentially democratic, the entire male population of the community, of a certain age, meeting together at stated times, taking such action and adopting such laws as were necessary for the well being of the people. This system persists in New England until this time, having attained its
highest efficiency perhaps in Massachusetts, and retaining most nearly its original features in Rhode Island.

It has been said happily that the social forces of New England were centripetal, while those of Virginia were centrifugal. The Virginians instead of huddling together about a church and a school house quickly became scattered. They found a fruitful soil and a genial and hospitable climate. They were not, as a rule, seeking religious freedom but the betterment of their personal fortunes, not more strenuously however than their New England kinsman, and there was no sectarian or other influence to hold them together as was the case in New England. The introduction of tobacco into Virginia resulted in the establishment of large plantations, and the planters dispersed themselves through the broad and fertile low-lands employing their slaves in the cultivation of this profitable plant. The New Englanders lived close together under the eaves of their churches; the Virginians far apart, each isolated in the midst of his spreading plantation. Conditions in Virginia were wholly unsuited to the existence of the Township System, and the county became of necessity the governmental unit; and that which was true of old, Virginia became true likewise of all the Southern States which may be described as the Virginia group. Thus the American township may be called a New England institution, the county, a Southern institution. We shall see later that in many States a very happy reunion of the two has been effected.

It is the purpose of this paper to consider only the broader aspects of the subject of local government, and to offer general suggestions without insisting upon any detailed or specific plan. It is well enough to say at the outset, however, that it is my purpose to advocate material modifications of the system which now prevails in Tennessee. My remarks will, of necessity, have more direct reference to conditions in Tennessee, as I do not claim sufficient familiarity with the institutions of other States to justify an attempt to criticize them.

The County System prevails in Tennessee because it existed in North Carolina, of which Tennessee was originally a part, and from which it derives nearly all its institutions, and because here, as in Virginia, conditions heretofore have been unfavorable to the township.
It remains only to be added that both the township and the county are of English origin, at least it is not necessary to trace them further back. The township may be described as the original English unit of government. By the combination of townships was created the English hundred and by a combination of hundreds, the shire, from which comes our modern county. At the time of the settlement of North America the township or town, and the shire or county, existed together in England. Conditions in New England, as we have seen, led to the adoption of the Township System, while conditions in Virginia, and in the South generally, necessitated the use of the county. The fact that the two were separated, originally in this county, on account of the conditions indicated, suggests the disappearance of those conditions, in course of time, as a reason why the two systems should be reunited; and it will appear later that this reunion which has occurred in several States, has produced the most satisfactory results. The proper development of my subject requires that I consider next the history of local government in Tennessee.

We have never had the township in this State, but always distinctively the county. Now and then there have been attempts to adopt, probably unconsciously, certain features of township government, but even at this time the trend of legislation seems to be in the other direction, as the last Legislature has deprived our civil districts, which are our nearest approach to townships, of the power to select their own school directors.

The first Constitution of the State contains no trace of anything resembling the Township System, unless it be in the fact that the Captains Companies, the predecessors of our civil districts, elected their own civil and militia officers. The powers of the Legislature to act upon particular and local matters were directly affected by the first Constitution only in section 8 of the Declaration of Rights which was in the following language: "That no man shall be taken or imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any other manner destroyed or deprived of his life, liberty, or property, but by the judgment of his peers and the law of the land." This is the 39th article of Magna Charta, which serves in this country as a check upon arbitrary legislation, and which
logically considered has, perhaps, no direct relation to the subject of local government. There was much complaint under the first Constitution on account of the fact that the Legislature habitually devoted the larger part of its time to what was called special legislation. Except in so far as this, legislation was arbitrary and discriminative it does not seem to have been regarded as unconstitutional. There are many of our early cases which declare unconstitutional certain acts of the Legislature because they were not general but partial and therefore not the law of the land. The final attitude of the Supreme Court upon this question under the Constitution of 1796, is perhaps best declared in the case of Budd v. The State, decided in 1842, but construing an act passed under the first Constitution in 1832; in the following language: "It matters not how few the persons are, if all who are or may come into the like circumstances and situations, be embraced, the law is general and not a partial law."

Budd v. State, 3 Humph. p. 492.

It must be remembered that at the time of the adoption of the second Constitution in 1835, Tennessee was not thickly settled and that very little had occurred to call for any modifications of the County System, which undoubtedly was the best adapted to the conditions prevailing in the early history of the State, when population was sparse and town government practically impossible. Nevertheless, it appears that the dissatisfaction created by continual special legislation under the first Constitution suggested to the convention of 1834 the propriety of considering the adoption of the Township System, but that conservative body was not ready for so radical a departure from the old method. Therefore, it resorted to the following plan,—section 8 of the Declaration of Rights, already quoted, was continued and still remains in the Constitution; and the convention of 1834 inserted as an additional preventive section 8 of article 11, which is still in effect, and which provides that "the Legislature shall have no power to suspend any general law for the benefit of individuals, inconsistent with the general laws of the land; or to pass any law granting to any individual or individuals rights, privileges, immunities or exemptions other than such as may be, by the same law, extended to any member of any community who may be able to bring himself within the
provisions of such law." This provision is the complement of section 8 of the Bill of Rights, in that while section 8 of the Bill of Rights forbids the Legislature to deprive a citizen arbitrarily of his rights, section 8 of article II prohibits the arbitrary granting of privileges and exemptions. This, however, was not quite satisfactory to the friends of local government in the convention of 1834. It will be found that certain of Mr. Jefferson's remarks upon the subject of townships were quoted in the convention, and it is apparent that his opinions were not without influence although the attempt to adopt the township plan was unsuccessful. The convention however, was induced to accept as a compromise provision section 9 of article II, which provides that the Legislature may vest such powers in the courts of justice with regard to the direction of local affairs as may be deemed expedient. This section however, has had no perceptible effect, unless it be in the enlargement of the administrative powers of the county courts in certain respects, and the occasional grant of powers to the other courts to appoint minor local officers. In so far as it was intended to avoid special legislation it may be declared to be entirely ineffective. Section 8 of the Bill of Rights and section 8 of article II may be taken as our constitutional declarations upon the subject of "the law of the land" and "due process of law," phrases which are held by all of our American courts to be equivalent. Section 9 of article II has not, so far as I know, been before the courts in any case of importance. The whole question of the power of the Tennessee Legislature to enact special and local laws has been made to depend upon the construction of article 8 of the Bill of Rights, and of section 8 of article II, and the results have been extremely interesting.

We have seen what the position of the Supreme Court upon this subject was in the last important case decided under the Constitution of 1796. It will be remembered that the Budd case was decided in 1842. Since that time there has been a steady progression in class legislation, and I wish to say at this point, that, while I can not approve the extent to which this doctrine has been applied, I do not attempt to criticise or to place responsibility upon the Legislature or upon the Supreme Court. The fault primarily is with the system and not with the law makers
or-the judges. In 1879, after the adoption of the present Constitution, the Supreme Court said of section 8 of article 11: "It does not prohibit legislation for the benefit of classes composed of any members of the community who may bring themselves within the class."

*Davis v. State*, 3 Lea, 380.

This was merely a following of and rule in *Budd v. State* further toward its ultimate development.

In the case of *Luehrman* against the *Taxing District* an act of the Legislature was construed by the Supreme Court, which in form was general, but which in fact was intended to apply only to the City of Memphis. Judge Freeman of the Supreme Court said of it, in a dissenting opinion: "It was born of an emergency to meet the pressure of a particular case;" and such beyond question was the fact. The effect of this decision is that by an act general in form, and so construed as to be applicable to all who may bring themselves within its conditions, the general assembly may legislate, constitutionally, to meet the pressure of a particular case, or the needs of a particular locality.

The present status of adjudication upon the subject of special and class legislation in Tennessee, appears in the cases of *Cook v. State* and *Cole Mfg. Co. v. Falls*, and is to the effect that, a statute is constitutional, no matter how limited the territory or the number of persons to whom it may actually apply, provided it may be extended to any member of the community who may be able to bring himself within its provisions.

*Cook v. State*, 90 Tenn. 413.

*Cole Mfg. Co. v. Falls*, 90 Tenn. 482.

This carries the logic of the earlier cases, and, it may be, of the Constitution, to its ultimate conclusion, and may be taken as vesting in the General Assembly, almost an unlimited, but indirect, power of local legislation, the only limitation being that the classifications must not be palpably arbitrary or capricious. I repeat that I do not undertake to criticise the Supreme Court. Upon the contrary, it seems to me that, as we must have local legislation, the State could hardly have existed under the present Constitution but for the liberal constructions which the Court of last resort has made of the provisions under consideration. The pressure upon the Legislature has been constant, and of increas-
ing intensity, and the utmost lenity of judgment is proper in considering its action. In many cases it has enacted local laws, in response to well founded appeals for relief, which could not be had otherwise, and the Supreme Court, properly, has supported such legislation, when possible, by liberal constructions of the Constitution, although many acts have been set aside. Inevitably the policy has been progressive, and the Legislature, gradually extending its claims, has gone, as it believed, farther in many instances, than the decisions warrant, or than the Supreme Court would now permit if the acts should be attacked.

The acts of 1905 furnish some striking illustrations. I shall mention only three statutes. Chapter 33 of the acts of 1905, defines a lawful fence in counties of not less than 22,738 and not more than 22,750 population. That is to say, the number 12 is made the distinguishing consideration which justifies this particular act. Chapter 461 creates a Board of Jury Commissioners in counties having a population of not less than 26,424 and not more than 26,430. The limits of this act are fixed by the number 6. It is unnecessary to add that these acts are directed to particular counties and that they carry the doctrine of class legislation to an extent which is believed to be without precedent. They illustrate forcibly the danger of excesses in the application of this doctrine. Another, now, to be mentioned, shows the even greater danger of applying it to subjects to which it has no legitimate application. Chapter 274 of the act of 1905 authorizes the Governor to appoint notaries public in counties of not less than 12,936 and not more than 12,975. It would be a daring logician indeed who would undertake to support the proposition that there is any more reason why the Governor should appoint notaries in counties of this particular population than in any others, and not less temerity would be displayed in the assertion that the subject is a suitable one for the application of the class doctrine. As I may not go more into detail I content myself with remarking in conclusion upon this part of my subject that the Legislature of Tennessee is asserting constantly, the power to legislate upon a special case, for a particular locality, and practically, upon any particular subject, by use of the method of classification. My proposition is that, this point having been reached, the logic of the situation absolutely requires
one of two courses, either, that the Legislature be given the power to do these things directly instead of indirectly and by evasion, or that a plan of local legislation and administration be adopted which will relieve it, in some proper measure at least, of the necessity and of the power of dealing with matters of this kind.

This brings me to the consideration of the general plan which I think should be substituted.

No method has ever been devised or ought to be devised, which will relieve a State Legislature entirely of the duty of giving attention to local matters, but the substitution of the Township System of government or of a Township County System, for our purely County System would certainly produce most beneficial results. I shall refer briefly, later, to the matter of municipal corporations. At present, I ask your attention to the Township System as applied to rural communities. These communities, practically have governed the United States up to this time, and the evils of class legislation in Tennessee grow largely out of demands for enactments, often just and necessary, for their particular benefit. In Tennessee there are almost no local powers of administration or legislation, except such as are vested in county courts and in municipal corporations. Government is not, otherwise, at all localized. I do not pretend to say that the plan which I have in mind will remedy all the evils that exist, but I am sure that it will go very far in that direction. Now, bearing in mind the extent to which our Legislature has gone in class legislation, let me ask your attention to the other system of local government. So far as I know the township in its primitive English form does not exist in this country. In New England the township was the original unit of government; and there it is still entrusted with larger functions, and plays a more important part than elsewhere. The following summary of certain of the Massachusetts townships' statutes will indicate the method of local government in that State.

Towns may sue and be sued—may hold real and personal property for public uses, and in trust for educational purposes, may make contracts and sell corporate property,—may levy taxes, for schools, to support the poor, for highways, to publish town
histories, for burial grounds, to destroy noxious animals, "and for other necessary charges therein."

They may make by-laws, not repugnant to the laws of the State, for the direction of their prudential affairs, preserving peace and maintaining internal police; but such laws are not effective until approved by the Superior Court, or, in vacation, by a Judge of that Court.

Voters in the town meetings are all male citizens 21 years of age, (except paupers, etc.), who have resided in the State one year, and in the town six months and have paid a State or county tax.

The annual meeting is held in March or April, and special meetings when ordered by the selectmen. Meetings are called on warrants issued by the selectmen and served by constables. These warrants must state the objects of the meetings, unless otherwise ordered by statutes.

Town officers are elected annually, they are selectmen, assessors, treasurer, constables, and all other usual town officers.

1 Dillon Municipal Corporations, p. 47.

The towns are usually converted into ordinary municipal corporations when they reach a population of 10,000 or 12,000. Boston retained townshlp government until 1822 when it had 7,000 qualified voters, and no city was incorporated in Massachusetts until after 1820.

The general powers of the towns are strictly defined by statutes of the State.

If you ask what is left for the counties of Massachusetts, I state that each county in that commonwealth has three commissioners, elected by the people, for three years, one going out each year. These commissioners represent the county in lawsuits, apportion county taxes, lay out and discontinue highways with the county, have charge of houses of correction and erect and keep in repair the county buildings. There is a county treasurer elected by the people for a term of three years. The Superior Court of the State holds at least two sessions each year in the county and tries all the civil and criminal cases. Each county has a probate court and a registrar of deeds elected by the people for a term of three years. The justices of the peace are appointed by the Governor for seven years. The sheriff is elected
by the people for three years. It will be seen that even Massachusetts is thus combining the Township and the County Systems. The combination has been effected likewise in many of the Western States, with somewhat greater regard, however, for the powers of the county than in Massachusetts.

I support my argument in favor of township government, or rather of the combination of the Township and County Systems by certain quotations which I am sure will carry weight with this audience.

The eminent French writer De Tocqueville, who deserves to be more studied than he is by the present generation of Americans, has this to say of township governments:

"Town-meetings are to liberty what primary schools are to science; they bring it within the people's reach, they teach men how to use and how to enjoy it. A nation may establish a free government, but without municipal institutions it can not have the spirit of liberty."

"The township of New England possesses two advantages, which strongly excite the interest of mankind, namely, independence and authority. Its sphere is limited, indeed; but within that sphere its action is unrestrained. This independence alone gives it a real importance, which its extent and population would not insure."

"The New Englander is attached to his township, not so much because he was born in it, but because it is a free and strong community, of which he is a member, and which deserves the care spent in managing it. In Europe the absence of local public spirit is a frequent subject of regret to those who are in power; everyone agrees that there is no surer guaranty of order and tranquility, and yet nothing is more difficult to create."

"The township, at the center of the ordinary relations of life, serves as a field for the desire of public esteem, the want of exciting interest, and the taste for authority and popularity; and the passions which commonly embroil society change their character, when they find a vent so near the domestic hearth and the family circle."

"The native of New England is attached to his township because it is independent and free; his cooperation in its affairs insures his attachment to its interests; the wellbeing it affords
him secures his affection; and its welfare is the aim of his ambition and his future exertions. He takes a part in every occurrence in the place; he practices the art of government in the small sphere within his reach; he accustoms himself to those forms without which liberty can only advance by revolutions; he imbibes their spirit; he acquires a taste for order, comprehends the balance of powers, and collects clear practical notions on the nature of his duties and the extent of his rights."

Emerson, the New England philosopher, said of the town meetings:

"I see in them the safety and strength of New England."

Judge John F. Dillon says:

"The New England town is especially interesting as affording perhaps an example of as pure democracy as anywhere exists. All of the qualified inhabitants meet and directly act upon and manage or direct the management of their local concerns. Each citizen has a vote and an equal voice. This form of government was adopted at a very early period, and is practically adhered to and deeply cherished by the people of the New England States. The result has demonstrated how well adapted it is to promote the well being of the communities that for so long a space of time have thus governed themselves. The remarkable growth and prosperity of the New England States not the most favored by nature, and the intelligence and character of the people are known to all, and it is not strange that these results should be attributed, in a large measure, to this system of local popular government."


Mr. Jefferson said:

"Those wards called township in New England are the vital principle of their government, and have proved themselves the wisest invention ever devised by the wit of man for the perfect exercise of self government and its preservation."


In this assemblage the words of Mr. Jefferson should carry great weight, and it must be remembered that it was largely due to his influence and his wise judgment that the Northwest territory was laid off on a plan which carried with it the suggestion, almost the necessity, of adopting the Township System. It may
not be amiss to add that the establishment of the University of Virginia was a part of Jefferson's plan for education and for local government.

John Fiske, the most competent and philosophic of our recent writers upon historical subjects says of the township:

"It is a kind of government that people are sure to prefer when they have once tried it under favorable conditions."

Fiske's Civil Government, p. 91.

Let us briefly consider what are the reasons underlying these strong opinions. In the first place, the township, in its primitive form, is a pure democracy, and a pure democracy which under conditions existing in this country down to the present time, has demonstrated both its efficiency and its beneficence. It is, says Fiske, the form of government "most effectively under watch and control." In its very nature it is a preventive of what we know as rings and of political trickery, frauds, and malpractices of all kinds. It allows the people to control their own affairs. Within reasonable limits they make their own laws, levy their own taxes, care for their own poor, manage their own highways, and make all other laws that they may consider necessary and proper for the public welfare. They do nearly all those things connected with local government which the Legislature of Tennessee does under the present system. They are directly interested. They proceed after thought, with care and with caution. The Legislature, ordinarily, is not informed as to the subjects upon which it acts in local matters. Usually it does not give them adequate consideration. A system of legislative courtesy has grown up in Tennessee by virtue of which each member is regarded as entitled to the passage of any local act which he may propose. This has come to be a fixed system of reciprocal courtesy. Not infrequently courtesy is the only conceivable reason for the adoption of legislation of this kind. It must be obvious to every one that the well informed people, who are directly affected in their most important interests are better qualified than the uninformed and indifferent Legislature to deal with these matters. It ought not to be necessary to argue to American lawyers, or to American people, that the localization of government is the true principle. Reason, as well as experience and observation, is on the side of the Town
System or of one based upon that principle. But you ask what do you propose in Tennessee. Generally speaking, without claiming the wisdom to suggest a specific remedial measure, I reply, localized government. It may be said that there are communities in Tennessee that are not fit for the exercise of this form of self government; that there are counties where the negro population is predominant. I can only say that in such localities it would be unwise to set up town government now, and that it is not necessary. If pressed for a more specific answer I would say, begin by making the adoption of the Town System optional among the counties. This may seem to be a very radical suggestion, but the plan is one which has the abundant approval of actual experience. I quote again from Mr. Fiske, who in speaking of Illinois, says that in 1848 with the adoption of a new Constitution by that State: “it was provided that the Legislature should enact a general law for the organization of townships under which any county might act whenever a majority of its voters should so determine. This was the principle of local option, and in accordance therewith township governments with town meetings were at once introduced into the Northern counties of the State, while the Southern counties kept on in the old way. Now comes the most interesting part of the story. The two systems being thus brought into immediate contact in the same State, with free choice between them left to the people, the Northern System is slowly but steadily supplanting the Southern System, until at the present day only one-fifth part of the counties in Illinois remain without township government.”

Fiske's Civil Government, pp. 91, 92.

The author continues: “it is very significant that in Missouri, which began so lately as 1879 to erect township governments under a local option law, similar to that of Illinois, the process has already extended over about one-sixth part of the State; and in Nebraska where the same process began in 1883 it has covered nearly one-third of the counties of the State. The principle of local option as to government has been carried still further in Minnesota and Dakota. The method just described may be called county option; the question is decided by a majority vote of the people of the county. But in Minnesota in
1878, it was enacted that as soon as any one of the little square townships in that State, should contain as many as twenty-five local voters, it might petition the board of county commissioners and obtain a township organization even although the adjacent townships of the same county should remain under county government only. Five years later the same provision was adopted by Dakota and under it township government is still spreading.”

_Fiske's Civil Government_, pp. 91, 92.

This brings me to the renewal of my proposition that the General Assembly of Tennessee should either be allowed to legislate in all local matters directly, and without evasion, or that the Township System should in some measure, and in some form, be introduced into the State. I might mention other States in which the same conflict described by Mr. Fiske as having occurred in Illinois has been going on with a like result. I know of no reason why we may not safely adopt the plan of local option among the counties of the State in this matter of township government. As, usually, where there are opposing or conflicting systems, there are good elements in both, it seems to me that the proper plan of local government has been reached in the Western States where there has been a happy marriage of the township with the county; of the democratic principle with the representative principle, each effective in its own proper sphere. That we are in need of more localization of government in Tennessee must be apparent to every thoughtful man. I do not attempt to dogmatize upon the subject. I do not say that the adoption of the Township System would be a cure for all the evils of which we complain, but I do say that the subject is worthy of the most careful consideration of the lawyers and of the people of the State.

It should be added that the town meeting is not an invariable feature of township government. It is adhered to only in New England and in certain of the States more directly under the New England influence. In other States the township is governed by officers who are elected according to the ordinary method and without the town meeting. In some States county government is composed of the selectmen or supervisors of the towns, in others of county officers, of a limited number, are in-
dependently elected. If I could follow my own judgment I would institute the town meeting in the rural districts. I agree thoroughly with James Bryce, the present English Ambassador to this country, who says that "the town meeting has been the most perfect school of self government in any modern country."


We have already seen what Emerson thought upon the subject, and Mr. Jefferson says: "When there shall not be a man in the State who will not be a member of some one of its councils, great or small, he will let the heart be torn out of his body sooner than its power be wrested from him by a Caesar or a Bonaparte."

_Jefferson's Works, Vol. 6, p. 543._

These quotations go to the very heart of the subject. The town meeting educates and dignifies the people. In it men are heard who never could be heard upon public questions in any other forum. They become interested, public spirit is enlivened, watchfulness is promoted, and in every way the public good is advanced. Where there is no town meeting the farmer or other dweller in a rural community, hardly touches public life at any point. He lacks interest in it, and his value as a citizen is reduced to the lowest limit. Where the town meeting exists, the individual citizen is at his maximum value and efficiency.

In conclusion upon this branch of the subject permit me to call attention, only in passing, to the famous speech by Secretary Root upon the decadance or at least inefficiency of State governments. I do not think that that speech was so much argumentative as predictive in intent. It is a fixed law of nature that when two instruments are provided for the accomplishment of any purpose the most effective one will be retained and the other discarded. The enlargement of our domestic and foreign commerce has made it apparent that certain things, heretofore regarded as being exclusively within the domain of State control, must be conceded to the Federal Government. I do not believe, however, that this means any more than rearrangement and adaptation. But, however that may be, it is certain that if State governments are threatened, then the power of the people will be best maintained by localizing government in every possible way.
I can not do more than suggest that the tremendous growth of our country, the increase of population, and the diversification of interests and occupations, constantly demonstrate the necessity for the localization of government. I do not believe that so long as individual communities throughout the country control their own particular affairs, interesting themselves directly in matters of government, there can be any substantial danger to popular rights, and as we see the trend towards the increase of Federal authority in certain directions, it becomes more imperatively our duty to attend to the maintenance and enlargement of popular activities and rights in other directions. Our opinions as to the powers of State and Federal governments may be modified, many important ones may be surrendered, but so long as a genuine system of local self government prevails in this country the rights of the people will be secure.

To me it seems that the Township System with its town meeting, in which the voice of every citizen can be heard, upon proper occasion, is the surest guaranty of the preservation of government “of the people, by the people and for the people.”

I add one thing only in regard to municipal corporations, and that is that the Legislature should be allowed to control them only by general laws; that under the Constitution, or under the statutes, a proper distinction should be made between those functions of the municipal corporations in the performance of which they are the agents of the State, and those other functions which they perform in the administration of their own purely local affairs. In so far as the municipality is a public agent it must remain largely under the control of the State, and occasions may arise when it may be necessary to assert the State’s authority by special laws, but in so far as it acts upon its own local affairs, it should have the largest liberty of self government. The constant intermeddling of the Legislature of Tennessee with the affairs of municipal corporations has been a source of great detriment to those corporations, and the Constitution should be so recast as to prevent a recurrence of such conditions in the future. In the cities, as well as in the rural communities local affairs are controlled best by the people themselves, and, it is the right of the people to control them. The changes which I
have advocated can not be made so long as the present Constitution of Tennessee stands, and therefore this paper is, necessarily, a plea for a new or an amended Constitution.

**Note**—The foregoing paper is not the address verbatim delivered at Memphis, but a hasty enlargement of the notes used in delivering it. I regret very much that I have not had time to give the matter better form.

J. W. C.

**PROGRESS IN THE LAW AS COMPARED WITH OTHER PROFESSIONS**

**BY N. W. NORTON, FORREST CITY, ARKANSAS.**

There is an eminent fitness in holding in this city of Memphis, a joint meeting of the Bar Associations of the two States of Tennessee and Arkansas. Tennessee has, more than any other State, contributed to the citizenry of Arkansas. Since white men first subdued the wilds of the Atlantic Shore, the drift has been westward, and west from Tennessee to Arkansas passed many of her best people.

The strain suffered no impairment from the transplanting. It was a change of sovereigns only, not a change of countries or conditions. In Arkansas they probably never felt like strangers. It was not only like home, but it was close to home—and was in reality, so far as sentiments, traditions, and institutions were concerned, only the extension of a neighborhood. In Arkansas they have prospered and increased in number; and while none are more loyal to Arkansas, they are still Tennesseans. It follows that while Memphis is not near the center of Tennessee, it is close to the center of Tennesseans.

You are wondering what this has to do with my subject? As counsel say to an unanswerable question from the Court, "I'm coming to that."

A goodly portion of Arkansas is proud of Memphis. We feel like we have proprietary rights. It's our city. We come here to spend our money when we are ahead, and to borrow when we are behind. It has been said that Memphis and Arkansas are separated by the Mississippi River. It is a mistake, they are joined together by it. Feeling as we do towards
Memphis, it is not to be wondered at that we contemplate her growth and progress with great satisfaction-like-wise her promise. To be next door neighbor to the future city of the South is good enough for us. At this point we remember that the future of Memphis has not always been bright. It has had times of mourning and depression. Its numbers were decimated; its business prostrated. Epidemics? Yes, none could say when they would or when they would not come. There would be recuperation, but so long as uncertainty existed there could be no sustained material progress. Memphis, I judge is ever conscious of what she owes to the medical profession. First, conditions were immensely bettered and the risk minimized, through a system of local improvements made at the behest of her board of health, or leading physicians. The visitations were less frequent and without violence as compared with former times; still the point of safety was not reached; and still the medical profession was indefatigable. We all know now the completeness of the victory. At the last appearance of the disease, the ability of the profession to handle it was demonstrated; and no doubt it is at this time still better equipped.

Think of the grandeur of the achievement; and of the service to mankind, and to Memphis particularly. And this is only one of the many wonders wrought in that profession in the last two decades. Wonderful progress. Compared with it what has been done in other professions—the law included?

I have reached my subject.

The case of the law is a defensive one. It can claim little progress. It may be we can justify and excuse the absence of progress. Justification is a good defense.

Within the professional lives of living lawyers there has not been much added to the common stock of jurisprudence. The work of the Nestors of the profession was too well done—in so far as the law is a creation, and not a growth. The common law being a growth had a time of maturity, after which the demands upon it compelled an adaptivity by which it was rounded out and filled. But the framework, made up not only of principles, but of all the principles that can bear upon the manifold relations of man, underwent no change.
The common law is good to think about—the imperceptible growth that in the end furnished custom after custom, to be enforced by courts which again had their own customs to use at the enforcement. The admirable thing about a custom is the absolute certainty that it is right—otherwise it would not have become a custom. Customs are first time tried. They are never wrong, though wrong can come by following a custom, from habit, after conditions have changed.

The law is the product of the earnest endeavors of enlightened men for centuries, to administer justice. What wonder then if a point has been reached beyond which progress is impracticable. Man has his limitations, and everything that is man made has its boundaries. A certain degree only of perfection is reasonably attainable; beyond that point the further degree possible to be attained, does not compensate for the effort. In most matters of life a great deal can be acquired through habit; but man cannot acquire the habit of being each day more perfect than he was the day before. The limitations of his nature forbid. Likewise the very nature of the law as a science, forbids perpetual progress. It is probably now as near an embodiment of the Golden Rule as it can be made. Don’t ask us to improve upon the Golden Rule.

Not all of the landmarks of the law have been made by lawyers; but they have all been either made or defended and maintained by lawyers. Many things invaluable and most to be cherished, have been brought forth by the sudden action of the people in resistance to tyranny; but stands thus taken, have had to be defended at all times, and this has been done by the Bar with absolute fearlessness.

Since our present government has existed, two changes have transpired that are worth recording, and justify a claim of some progress. There may be many others but to my mind, these two stand out, and tower above all others. I have reference to the adoption of the code for one, and the other, prior in point of time, was the giving of the power to the courts to declare a statute unconstitutional. When we remember that nothing is required in the way of qualifications in a law maker (a fact which upon occasion has permitted many of us to participate) it should be taken to be no more than good common
sense, that there should be a tribunal somewhere, to pass upon the fitness of his product.

Blackstone somewhere comments upon the fact that in nearly all the vocations of life, some preparation is necessary, but that in the making of the laws, a matter at once both delicate and vital, no special fitness is required—nor neither learning nor experience.

Even if laws were at all times made by lawyers—not through the growth of judicial precedent, but struck off from conceptions—they would often be unwise and misconceived, and occasionally violative of elementary right. It would seem proper then that there should be a power of review, for the repeal of an indefensible statute, might not be promptly forthcoming.

Next, we were given written constitutions as the supreme law. These constitutions in the main were simple statements of primary rights previously existing; but there could be no possible objection to an enumeration of them nor, to the intent to perpetuate them.

Even in the absence of a supreme law the power to declare a statute invalid could well be granted. Besides being frequently made by men without skill, they are always made in an atmosphere unfavorable to careful and patient analysis, and are frequently the result of combinations, or the offspring of mere considerations of expediency.

But when a people in their organic act, declare that certain things are so vital to the welfare of the community that they must never be infringed, who can question either their right to do so, or their wisdom.

It was a long stride forward, and the Bar of America is entitled to the credit. It was progress. We could live without the rule; but it is in favor of justice and the preservation of our institutions. Our approval is due to the plan which best safe-guards the elementary rights, so universally enjoyed—and for that very reason but little appreciated.

Next we contributed the Code of practice—a body of rules of such pre-eminent good sense, that England, though always conservative to the point of stubbornness, soon for all practical purposes adopted them.
The central idea of the code of course was that, the suiter might get to the court with his *case*. The *case* there was the principal thing, not the form in which it was presented. The old form of pleading was the result of centuries of contentions over technical niceties. No doubt during most of its life that form of pleading served a useful purpose. But its principles were carried too far. It was over-done. It became burdensome. Suitors were put out of court too frequently—and finally for that case—and always with attendant expense and delay. It required a lawyer with exceedingly good skill in the application of the law to the facts of his case, to select his form of action with anything like certainty. Probably there were not enough lawyers of this kind to do the business. Any way it is quite plain that the Bar was ready for a change. The result was the code. It was enlightened because it was a recognition of the fact that mistakes of judgment were not necessarily calamities. There was no sound reason why a mistake should cause such a disaster, especially when no injury had resulted to the opposing party. Common law pleading made a cause too much of a game, when it should have been an investigation. It was a game in which the plaintiff would frequently be cast without having gotten fairly into it.

The next most valuable code provision—appeals having practically become a matter of right—is that error shall not be regarded; "unless it is material, and prejudicial to the substantial rights of the party excepting."

This is in perfect keeping with the general scheme of the code, which looked to the settlement of controversies in a substantial and business-like way in court, as men would settle out of court.

Men make mistakes in every other walk of life. Why should they be expected to be free from error in trying a law suit.

It is common knowledge that the nice distinctions drawn by lawyers in the wording of instructions, are without significance to a jury. Not that the jury is incapable of appreciating them (though this might sometimes be true) but because their point of view is comprehensive of the whole case rather than its details; and with a purpose of doing substantial justice. They may never deal with the difference between "safe," and
“reasonably safe,” or the difference between “value,” and “market value,” and still the verdict will be right, from the honest general view taken of the whole case. They may not realize that it is only rarely the case that exact justice can be done; and still they work along that line and reach conclusions approximately right, which is as much as could be expected of another jury, should the cause be reversed.

It is sound public policy for the law to recognize the fact that trials cannot be kept free from minor mistakes.

An error, substantially and practically controlling, growing out of the court’s erroneous view of the substantive law, affects the verdict; but minor errors to which a jury would attach no importance, and which were probably counterbalanced by errors of like degree committed against the successful party, should never work a reversal;

This provision of the code is well calculated to add to the dignity and consequence of the trial court. Respect for its judgments is thereby increased, and it is saved from the charge of being only a ministerial part of the government, recording points made and saved for the real court, which is somewhere else.

We hear complaint of the increasing list of “harmless errors,” I am willing for it to grow. It is in the direction of good government. The right of a litigant to a reversal should depend, not on the presence of error in the record, but the presence of error substantial and prejudicial.

(I realize that if I continue to practice law, there will be times when I will see this differently.)

It is when we contemplate the task of administering the law, as distinguished from the law itself, that we are impressed with a sense of short-coming.

So great is the undertaking that probably no lawyer is even even fairly satisfied with his equipment. He soon learns (this is theory, bear in mind) that his attainments, no matter what they are, furnish no margin over and above his actual needs; and in proportion to his experience, he learns to be modest and charitable, and he stays that way—unless he gets into politics.

In other professions a vain gloriousness may be possible; but the law is inexorable, and will have nothing but humility.
I am not standing ready, however to admit that even in the administration of the law we could reasonably count on improvement. I am not admitting that it is indifferently done. I realize that it is criticized voluminously, but that proves nothing unless it is that it establishes the plentitude of critics. They are another class that serves no apprenticeship—no qualifications are required—many of them are good people, but thoughtless. When a case stands concluded and the result goes out; it is an easy thing to find some fault with it.

There will be unsatisfactory verdicts and occasional failures of justice, but on the whole, who can say that better results could have been had some other way. Our system of laws is the result of long experience; our judges are never corrupt; juries rarely willful; and a case is not submitted until there is a consciousness on both sides that it has been thoroughly tried. What more could be done? The administration of the law is but the aggregate of individual cases, each one of which was thoroughly tried on its own account.

Lawyers themselves having met with defeat, are frequently violent critics of decisions. Generally they are wrong, and always they overlook the fact that no man is a competent judge in his own case—and neither is counsel.

If the administration of the law can be improved upon, it must come from a more careful selection of agencies; and while juries are in mind, something might be said of the character of jurymen. That most men offered for jurymen, are even tempered and of ordinary views, is to be expected, but it is equally to be expected that an occasional one will in some way or other be unusual. In the first place I would always prefer jurors to be middle-aged or under. Much experience adds nothing to ones ideals, neither does it heighten ones sense of honor, nor increase ones respect for the law. The average man, much past the meridian of life, has generally seen the law disregarded many times, and this diminishes his respect and reverence. I would also prefer jurors from the middle class—who have lived quiet lives—who have neither done nor attempted anything great or remarkable. This class of men have the greatest respect for the law. Men of very large affairs I would always leave off. They are too frequently absorbed in their own con-
cerns to such an extent that nothing else is of any importance. They are impatient and opinionated. Their impatience with the law is generally in proportion to the property they have protected by it. They think of the law only when it is an obstacle in the way of some forbidden scheme—which at once proves the unwisdom of the law. I once noted the views of a merchant who had taken crop mortgages for a generation, and had been protected by them. At last he bought a couple of bales of cotton upon which a merchant in a neighboring town had a mortgage. The other man’s mortgage meant nothing to him. He had paid his money for the cotton and wouldn’t give it up. He suffered himself to be sued and settled with the sheriff. With his own safe full of mortgages he felt outraged that a mortgage should be held good by a court. For the time he felt sure they were against a sound public policy, and that there ought to be some way to beat them. On another occasion I heard a large planter say that he could not afford to have matters from his plantations—civil or criminal—get into the courts—that it took too much time. That it was better to take a club to an offender, than to bother with courts. I suppose his plan included some scheme for hushing things up. The unfitness of such men to serve upon a jury is manifest. Their natural sense of justice had been too long subdued—overcome by the desire for gain; as was also their respect for the law. They were rare and extreme cases, fortunately; but milder types of the same character are often met with and they are not the best jurymen. I am a believer in juries. A jury, like a court in a code state, has an equity side and will mitigate the hardships of the positive law without hesitation, when it can do so. It will also sometimes anticipate the Governor and exercise the pardoning power. We cannot complain of our judiciary. We frequently say they should be appointed rather than elected. This is not because unfit men are now put upon the Bench,—though that may some day come—but rather because we dislike to see a judge concern himself about votes, and conventions; and dislike the recurring necessity. We want him ever with the greater dignity. Life or good behavior is the proper tenure; and selection by the Bar would be an ideal means. Almost any practicing lawyer will make a fair judge; still some are so pre-eminently fitted for the
judicial office, that not to have their services is a loss to the entire community. In elections by the Bar their selection would be a certainty.

But there is what might be called the private practice of the law by members of the Bar. To say the least of it, it is wholesome. While the last twenty-five years in Arkansas have seen a great increase in population and in volume and variety of its business, and in the number of its lawyers, litigation has probably no more than held its own. The relation between client and lawyer, in a matter not in the courts, is much like the relation between physician and patient. It is between them. Public opinion has no bearing. The client can there have the law, "cold and chilly," as I have heard it characterized. By this practice many a budding lawsuit meets with an early but not untimely extinction. There will be in this way an occasional sacrifice of a cause that might have been won upon a technicality or through the prejudices of a jury; but by it, the public welfare will have been promoted and the client at the same time well advised. There is slight chance that a lawyer will decide a case of real merit against his client. The result may be doubtful, and visible obstacles great, but with a meritorious cause these only serve to rouse his fighting blood.

So, while we can make no great claim to advancement in the science of the law; nor in the administration of the law by the courts, we can proudly claim that through the unselfish devotion of the lawyer to his clients and to his profession, litigation is minimized, the peace and quiet of communities maintained and good feeling preserved, where lasting strife and bitterness could have been engendered. The man who wants his neighbor sued, "just to show him up if I don't make a cent out of it," is disappearing. Dying out for want of encouragement from the Bar.

I know there is nothing spectacular in this part of the practice. It furnishes no news item, justifies no glaring headlines. Neither is it appreciated by communities—each individual thinks his instance the only one—and still, it is to the everlasting credit of the Bar; that is if one can be said to be entitled to credit for following a course that his profession has made second nature.
The body of the business men to-day—of themselves a profession—only want to know the law to obey it, and they manage to find out about it without the service of a summons.

The real business man—the man of affairs not blinded by greed—rouses the admiration, by his desire for good government, and the willingness with which he submits to his part of the restraints.

We have many things to be proud of without including progress in the list. Except in a very limited sense it is denied us. Science as applied to things physical, (including the human machine) is available to the profession, which to my mind is now making more progress than any other set of men on earth—the medical profession.

They have victory after victory in medicine and surgery. No praise is too great, or out of proportion to their service to humanity. Equally enlightened and devoted as the Bar, they have the advantage of dealing with things physical—not metaphysical. Discoveries they can make, and each one adds to the accumulated knowledge. All other sciences aid them, and mechanism is their co-adjutor.

But of all the wonderful and manifold inventions of man, not one is available to the lawyer for the extraction of truth from an unwilling witness, or to quicken the understanding of a court befogged. It is only in the conquest with the material world that progress is, apparently, limitless.

Professions that deal with the intellectual, moral or spiritual attributes of man, must ever work without artificial aids. The accumulated knowledge of the material world, awe inspiring, and constantly augmented, is without value to the law as a science, and without value to the lawyer. It contributes nothing to good government or to wisdom in administration. In short the lawyer must go to battle to-day, with the same old weapons carried by his ancestors: legal reason, and the testimony of witnesses. What wonder then that we can say but little of progress? The limitations are in the very nature of the service. Reason is not more logical than of old; neither is a disputed fact easier of solution. Practically the law must stand, durable, servicable, beneficial and unprogressive.
In the administration of the law there will ever be an average excellence, and only slightly variable. The judge, the jury, the nature of the case, the characters of the parties and the condition of the public mind are all factors, at all times, neutralizing each other in a way, and preventing any great departure from the common course.

For the law and lawyers I have had to confess and avoid—with a plea of justification.

With a case stated differently I think I could take lawyers and win, affirmatively.

Other professions are unselfish, loyal, noble, and filled with a great manhood; but in their trust and confidence in each other, and their profound respect for and appreciation of each other, and the resultant good-fellowship, the sun in its rounds finds nothing like the legal profession.
PROCEEDINGS OF THE
TWENTY-SIXTH
ANNUAL MEETING

OF THE

BAR ASSOCIATION

of

TENNESSEE

Held at Memphis, Tenn.,
June 4th, 5th, and 6th.

1907
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BAR ASSOCIATION OF TENNESSEE

PRESIDENTS SINCE ORGANIZATION.

1881–2.
W. F. COOPER ........................................ Nashville

1882–3.
B. M. ESTES ........................................ Memphis

1883–4.
ANDREW ALLISON ...................................... Nashville

1884–5.
XENOPHON WHEELER ................................ Chattanooga

1885–6.
W. C. FOLKES ........................................ Memphis

1886–7.
J. W. JUDD ........................................ Springfield

1887–8.
H. H. INGERSOLL ........................................ Knoxville

1888–9.
L. B. McFARLAND ....................................... Memphis

1889–90.
J. M. DICKINSON ...................................... Nashville

1890–1.
G. W. PICKLE ........................................ Dandridge

1891–2.
M. M. NEIL ........................................ Trenton

1892–3.
ED. BAXTER ........................................ Nashville

1893–4.
W. A. HENDERSON ....................................... Knoxville
1894–5.
JAMES H. MALONE ........................................... Memphis
1895–6.
ALBERT D. MARKS ........................................... Nashville
1896–7.
W. B. SWANEY ................................................ Chattanooga
1897–8.
C. W. METCALF ................................................ Memphis
1898–9.
J. W. BONNER ................................................ Nashville
1899–1900.
W. L. WELCKER ............................................. Knoxville
1900–1901.
GEORGE GILLHAM ........................................... Memphis
1901–1902.
J. H. ACKLEN ................................................. Nashville
1902–1903.
R. E. L. MOUNTCASTLE ....................................... Morristown
1903–1904.
JNO. E. WELLS ............................................. Union City
EDWARD T. SANFORD ........................................ Knoxville
1904–1905.
JOHN H. HENDERSON ........................................ Franklin
1905–1906.
EDWARD T. SANFORD ........................................ Knoxville
1906–1907.
F. H. HEISKELL ............................................. Memphis
1907–1908.
M. T. BRYAN ................................................. Nashville
OFFICERS FOR 1907-1908

PRESIDENT.

M. T. BRYAN..................................................Nashville

VICE-PRESIDENTS.

D. K. YOUNG..................................................Clinton
JAMES S. PILCHER..............................................Nashville
W. P. METCALF..................................................Memphis

SECRETARY AND TREASURER.

R. H. SANSOM..................................................Knoxville

CENTRAL COUNCIL.

G. N. TILLMAN, Chairman......................................Nashville
R. F. JACKSON..................................................Nashville
C. C. SLAUGHTER...............................................Nashville
F. ZIMMERMANN................................................Memphis
S. B. SMITH..................................................Chattanooga
# STANDING COMMITTEES, 1907-1908

## JURISPRUDENCE AND LAW REFORM

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<td>JORDAN STOKES, Chairman</td>
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<td>JOHN A. PITTS</td>
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<td>JOHN BELL KEEBLE</td>
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## JUDICIAL ADMINISTRATION AND REMEDIAL PROCEDURE

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<td>JOHN H. DeWITT</td>
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## LEGAL EDUCATION AND ADMISSION TO THE BAR

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<td>THOMAS J. TYNE, Chairman</td>
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<td>LUKE LEA</td>
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<td>STITH M. CAIN</td>
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<td>S. L. COCKROFT</td>
<td>Memphis</td>
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<td>ROBERT BURROW</td>
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## PUBLICATION

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<td>ROBERT LUSK, Chairman</td>
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<td>A. W. STOCKELL</td>
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<td>NORMAN FARRELL, Jr.</td>
<td>Nashville</td>
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<tr>
<td>J. PIKE POWERS, Jr.</td>
<td>Knoxville</td>
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<td>W B. TURNER</td>
<td>Columbia</td>
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GRIEVANCES.

W. D. SPEARS, Chairman .................................................. Chattanooga
GEORGE D. LANCASTER .................................................. Chattanooga
ED. WATKINS ................................................................. Chattanooga
ED. T. SEAY ................................................................. Gallatin
WILLIAM P. COOPER ...................................................... Shelbyville

OBITUARIES AND MEMORIALS.

W. A. PERCY, Chairman .................................................. Memphis
G. T. FITZHUGH ............................................................. Memphis
W. P. METCALF ............................................................. Memphis
HUGH M. TATE .............................................................. Morristown
E. E. ESLICK ............................................................... Pulaski
SPECIAL COMMITTEES, 1907-1908

COMMITTEE TO RECOMMEND TO THE LEGISLATURE THE MOVEMENT TOWARD UNIFORM LAWS.

W. M. BRANDON, Chairman ........................................ Dover
THOMAS B. COLLIER .................................................. Memphis
JOHN H. HENDERSON ............................................... Franklin
J. J. ROACH .......................................................... Nashville
HILL McALISTER ..................................................... Nashville

ADVISORY COMMITTEE ON JUDICIAL REFORM
AND INHIBITING FREE TRANSPORTATION.

W. G. M. THOMAS, Chairman .................................... Chattanooga
R. E. L. MOUNTCASTLE ............................................ Knoxville
J. H. MALONE ....................................................... Memphis
FRANK FENTRESS, Jr ................................................ Memphis
W. H. WILLIAMSON ................................................ Nashville
HENRY E. SMITH ...................................................... Nashville
PROCEEDINGS
OF THE
SEPERATE MEETINGS OF THE
BAR ASSOCIATION OF TENNESSEE
AT THE
TWENTY-SIXTH ANNUAL MEETING
HELD IN THE UNITED STATES COURT ROOM, MEMPHIS, TENN.
JUNE 5, AND 6, 1907.

FIRST SESSION.

SECOND DAY—WEDNESDAY JUNE 5th.
AFTERNOON SESSION.

The meeting was called to order at 2:30 o'clock P. M. by Hon. F. H. Heiskell, President.

The minutes and proceedings of the last annual meeting of the Association having been printed in the 1906-7 Annual and distributed by the Secretary among the members, the reading thereof was, on motion, dispensed with, and as thus printed and distributed the minutes were approved.

The next in order, the report of the Secretary and Treasurer, R. H. Sansom, was presented and read to the Association. It appearing that this report, before the reading thereof, had been presented to and audited by the Central Council, the report was, on motion unanimously adopted and ordered spread of record, which is accordingly done as follows:
REPORT NO. 1.
To the President and Members of the Bar Association of Tennessee:

As Secretary and Treasurer of the Association I submit the following report for the period ending June 3, 1907.

MEMBERSHIP

Active members .................................................... 372
Honorary members .................................................. 49
Total membership ................................................... 421

RECEIPTS AND DISBURSEMENTS.

Debits.
Cash balance from former Sect'y. Treasurer ...................... $ 59.52
Collections from admission fees and annual dues to date ...... 849.00
Total ................................................................ $908.52

Credits.
Disbursements as per vouchers exhibited ....................... $687.97
Balance in hand ....................................................... $220.55

Respectfully submitted June 3, 1907.
R. H. Sansom,
Secretary and Treasurer

Checked and approved.

William P. Metcalf,
Chairman Central Council

The Secretary made announcement of the certificate plan and rates, to the effect that unless one hundred certificates were filed with the Secretary during the meeting of the Association to be by him certified to the passenger agent of the railway companies, no reduced rate for the members returning to their homes would be granted by the railroad companies.

The report of the Central Council was next presented and read by the chairman, W. P. Metcalf, as follows:

REPORT OF CENTRAL COUNCIL:

To the President and members of the Tennessee Bar Association:

It appears from former proceedings of the Association that it has been customary for the Central Council to report applications only and recommend for membership, but in view of the joint meeting of the Tennessee and Arkansas Associations your Committee begs to make some further report of its work since the annual meeting of the Association at Lookout Mountain last year.

At that meeting of the Tennessee Bar Association there was by invitation present a delegation of lawyers, members of the Arkansas Bar Association—the purpose of their attendance being to cooperate with our Association looking to a joint meeting at Memphis for the year 1907. Preliminary
arrangements were made which the officers and respective Executive and Central Council of the two Associations have carried out—the result being the present joint meeting at Memphis.

The Central Council takes this occasion to remark that it has not received from the members of the Tennessee Association the cooperation that was anticipated and accordingly makes the suggestion, with the hope that the wish will be fulfilled, that each member of the Association take it upon himself, as his duty, to so arrange his business affairs that he can and will attend these annual bar meetings. Whether the joint meetings are to continue or not, it will be necessary, in order for the successful continuation of the Tennessee Bar Association, that its members give it the support of their attendance. The members as a rule do not realize the great amount of labor that devolves upon the President and Secretary and members of the Central Council in arranging the program and other matters connected with the meeting, and certainly their lack of attendance shows poor appreciation of an organization of which they have every reason to feel proud and whose work should receive the support of their enthusiasm.

Long in advance of the meeting the Chancellors and Judges throughout the State were respectively asked to adjourn their courts, or at least to set no cases during the several days of the meeting, in order that the attorneys of the respective bars might have an opportunity of attending. This request, with few exceptions was granted. Publication, throughout the State was made of the attractive program that had been arranged and individually every member of the Association was sent the printed program in ample time to have arranged for his attendance.

Your Committee presents and recommends for membership the following gentlemen:

Charles H. Smith ............................................... Knoxville
Frank Park, Jr. .................................................. Jefferson City
Edwin G. Bell .................................................... Memphis
W. L. Terry ...................................................... Memphis
James E. Dillard ................................................. Memphis
Harry Anderson ................................................... Memphis
J. L. McRee ..................................................... Memphis
R. G. Brown ...................................................... Memphis
W. D. Kyser ...................................................... Memphis
Hubert Fisher ..................................................... Memphis
Quenten Ranken .................................................. Trenton
J. W. Kirkpatrick ................................................ Ripley
C. F. Hatcher .................................................. Columbia
S. R. Clarke .................................................... Trenton
S. L. Cockroft .................................................. Memphis
Julian C. Wilson ................................................ Memphis
C. L. Coyner ..................................................... Memphis
W. D. Spears .................................................... Chattanooga
W. G. Covett .................................................... Memphis
Wm. D. Spears ................................................... Chattanooga
W. H. Taylor .................................................... Trenton

William P. Metcalf,
Chairman.
Albert W. Biggs,
R. Lee Borteloo.
This report was on motion adopted, and the entire list of names thereon recommended for membership were unanimously elected.

Upon motion of Mr. J. H. Malone of Memphis, seconded by Judge D. K. Young of Clinton, Tennessee, Judge Thomas E. Eldridge was unanimously elected to honorary membership in the Association.

Hon. Edward T. Sanford, chairman of the Committee on Jurisprudence and Law Reform read the report of his committee, which on motion was adopted and ordered spread of record, which is accordingly done.

Mr. President and Gentlemen of the Association:

Your Committee on Jurisprudence and Law Reform submit, that the Legislature of the State having recently adjourned, and another annual meeting of the Association taking place as it does before another session of the Legislature we do not find it advisable to make any report at the present meeting.

Respectfully submitted,

E. T. Sanford,
L. M. G. Baker,
R. E. L. Mountcastle.

At this point some question being made wholly in jest as to whether Hon. E. T. Sanford was an active member of the Association since the removal of himself and family to Washington, D. C., Mr. Sanford rose to a point of personal privilege and to the gratification of the members of the Association announced that he was still a Tennessean, and that he still claimed Knoxville as his home and domicile.

The report of the Committee on Judicial Administration and Remedial Procedure was presented and read by its chairman, Judge A. B. Pittman of Memphis. On motion this report was accepted and ordered spread of record which is accordingly done.

To the President and Members of the Bar Association of Tennessee:

Your Committee on Judicial Administration and Remedial Procedure begs leave to submit the following as its report.

The General Assembly of Tennessee, lately adjourned, has passed various laws affecting judicial administration and remedial procedure, notably the act by which the overwhelming burden resting upon the Supreme Court is eased by diverting part of its business to an intermediate
court with final jurisdiction in certain cases. There has been a further change in the laws affecting jury service. Your committee assumes that it is the province of another committee, that on Jurisprudence and Law Reform, to report on what has been accomplished and to discuss the effect of the new laws. But it takes this opportunity to point out what it regards as an unmitigated evil, which this Association should strive to correct.

SEASONABLE PUBLICATION OF ACTS.

Notwithstanding the fact that the late General Assembly has adjourned weeks ago, there is not, at the time of drafting this report, an authentic publication of the Acts of 1907. The profession and the public know, in a general way, that certain acts have been passed which may seriously affect rights and impose duties and liabilities, which acts are in full force and effect, and yet, there is no way to gain definite information regarding them, except by application for certified copies at considerable expense, which application may or may not be successful. In the meantime, the public, the profession and the courts must grope in the dark.

Is there any good reason, considering the facilities of modern printing houses, why these acts should not be ready for delivery within ten days, at most, after the adjournment of the Legislature? Your committee recommends that this Association appoint a committee to investigate and report at its next session, what action should be taken looking to a remedy for this disagreeable and dangerous situation in the future.

ABOLISH APPEARANCE TERM.

After looking over the extensive field entrusted to its consideration, your committee finds no more important nor urgent subject of remedial procedure than the abolishment of the appearance term. This relic of a barbarian age, however appropriate it may have been in the days of our forbears, has outlived its usefulness and should be discarded, as the ox-team was at the advent of the railroad. Is there any earthly reason why a defendant should be kept in ignorance regarding what he is called upon to answer for months after the summons has been issued? Or why either party should be forced to await the passing of the return term before the issue can be tried? It is being understood more and more that a delay of justice amounts practically to a denial of justice. If that be true, there is a plain road to promote justice by reducing the necessary delay for from three to nine months by merely abolishing the appearance term, and both sides to the suit would reap equal benefits from the change. Your committee recommends action by the Association looking to the establishment of a mode of procedure in which the filing of the declaration is the beginning of the suit upon which, alone, summons may be issued; in which the defendant is required to plead within thirty days after service of process; in which all dilatory pleas must be disposed of within ten additional days, and in which the case stands ready for trial the moment the issues are joined.
Not only would this promote justice, but it would save the busy lawyer the necessity of studying his case repeatedly. Under present conditions, in circuits where the courts are in session the year round, the lawyer procures the issuance of summons and then proceeds to forget the case until the appearance term rolls around, when he revises the facts for the purpose of drafting his declaration, he rests upon his laurels, expecting to hear from the case again some time in the dim, distant future; and all at once it stares at him from the list of cases published for trial. Then he hustles to get ready and finds that his witnesses are scattered and that it is impossible for one reason or another, for him to get ready on short notice, with the result that the case goes over until it is hoary with age.

This subject was brought to the attention of this Association three years ago by the forcible, logical and unanswerable effort of Mr. Rowan Greer, of the Memphis Bar, and it is a matter of regret that since that time two sessions of our Legislature have gone down the corridors of time without causing a ripple on the surface of this particular pond of stagnation.

WRITTEN OPINIONS.

Your committee recommends that the Supreme Court be memorialized on the subject of preparing a written opinion in every case adjudicated, whether the same is for publication or not. It would be of great help to the lawyer to know exactly upon what grounds his case has been decided, even though it be of a character not warranting publication, and a more generous publication of opinions is also recommended.

This is not intended as a criticism of the present members of the Supreme Court. Your committee is aware that, with the mass of cases brought before it with each term, it would have been a physical impossibility to do more than they have done. But the burden having been eased by recent legislation, and each justice having been supplied with a stenographer, it may not be improper at this time to call attention to the subject and urge compliance with the request.

PEREMPTORY INSTRUCTION.

Your committee takes genuine pleasure in calling the attention of the Association to recent adjudications by our Supreme Court, establishing the peremptory instruction on a firm basis on the Tennessee system of jurisprudence. The settlement of this vexing question is a tremendous stride in the line of progress and places Tennessee abreast of the times in judicial administration.

There may be some well meaning members of the Association, who, from innate conservatism, oppose peremptory instructions as an impairment of the constitutional right of trial by jury. To such members we say that so long as it is the sworn duty of the trial judge to annul the verdict of the jury where they have failed to apply the law to the facts of the case, and so long as it is the sworn duty of the Supreme Court to overrule the trial judge and jury for the same reason, there can be
no impairment of the right of trial by jury, where the court, in proper and well defined cases, exercises the duty of interference in advance of a verdict and without overrating the parties with further expense and effort which, in the end, would be wasted. It must be presumed that both plaintiff and defendant will make out, in the first place, the best case which the facts may warrant. If the uncontroverted facts do not, and the inference from which no reasonable minds can differ in law, support a judgment for plaintiff, or fail to establish a valid defense, the parties should be informed of it then and there, and the litigation be ended without delay for the ultimate benefit of all parties concerned and the relief of trial dockets.

While this seems clear to your committee, it realizes that the public mind may not be settled on the proposition, for which reason the firm stand taken by the Supreme Court in settling the question is all the more commendable.

Respectfully submitted,

A. B. Pittman,
F. Zimmerman,
Jas. S. Pilcher,
J. W. Canada.

Mr. M. T. Bryan of Nashville, moved that the recommendations in the above report be concurred in. After the motion was duly seconded, a very spirited discussion, both for and against the motion, took place. Mr. J. H. Holman of Fayetteville spoke in favor of the motion. Judge S. T. Wilson argued against the recommendations in regard to peremptory instructions and written opinions. Judge J. B. Heiskell of Memphis spoke in favor of written opinions, but argued that they should be brief, more concise, and limited to a terse consideration of the controlling facts and questions of law in the case. Mr. John E. Bell of Memphis discussed "uncontroverted facts." He moved to strike out the sentence pertaining to "uncontroverted facts" in the report and to adopt in lieu thereof, the following:

Be it resolved that the report be amended by striking out the paragraph as to peremptory instruction and inserting in lieu thereof the following:

That the Committee on Legislation be instructed to draw and present to the next Legislature for passage, a bill providing that the right of trial by a jury shall be restored and that no fact tried by a jury shall be re-examined in any appellate court in the State of Tennessee, and that the finding of any jury as to questions of facts shall not be set aside
by any appellate court except upon the question that there is no evidence tending to support the finding.

JOHN E. BELL.

Judge S. F. Wilson discussed the inferences drawn from "uncontroverted facts." Mr. Milton J. Anderson of Memphis here seconded Mr. John E. Bell's motion. On motion of R. H. Sansom, the report of the Committee on Judicial Administration and Remedial Procedure was reread by its chairman, Judge Pittman, who then spoke in favor of the report being adopted as presented and read, except that the following words be inserted on page five in the next to the last sentence thereon after the words "if the uncontroverted facts, that is, such facts as reasonable men could draw but one inference from." On motion of Judge Pittman the said words were ordered inserted in the report.

Mr. W. B. Turner of Columbia moved that the report of the Committee on Judicial Administration and Remedial Procedure, together with the amendments proposed, be referred back to the same committee to report to the next annual meeting of the Association. Mr. John E. Bell seconded the motion. Mr. M. T. Bryan accepted the motion and second as an amendment to his original motion to concur in the recommendations of this committee. Mr. W. A. Percey rose to a point of order to inquire as to which motion was before the house, and which motion would take precedence. Mr. John E. Bell took the position that the motion to refer took precedence. The chair so ruled and declared that the motion to refer had precedence and was before the House for discussion. The following members discussed the motion to refer and favored the same: W. A. Percey of Memphis, James S. Pilcher of Nashville and Albert W. Biggs of Memphis. The question being called for, the motion was placed before the House by the chair and carried unanimously. Thereupon the chair ordered that the report of the committee with the proposed amendments be referred to the same committee for report next year.

The President announced that Hon. Joshua W. Caldwell would, instead of reading a paper, deliver an address on the following day to the joint meeting of the Associations on the subject of "Local Government."
Mr. R. G. Brown, chairman of the Entertainment Committee announced for the pleasure of the members of the Association a trolley ride over the City of Memphis, cars leaving the Gayoso Hotel at 9 o'clock P. M.

President Heiskell announced a change in the hour of the meeting of the Joint Associations on Thursday June 6th from 10 to 9 o'clock A. M.

The report of the Committee on Legal Education and Admission to the Bar, was presented and read by its Chairman, Mr. S. L. Cockroft, of Memphis. On motion the report was unanimously accepted and ordered spread of record, which is here done.

Mr. President and Members of the Bar Association of the State of Tennessee:

As chairman of the committee on the subject of Legal Education and Admission to the Bar, I submit the following report:

Since the last meeting of the Bar Association it has not been a year, and at that meeting which was held in August, 1906, the Board of Law Examiners reported about one hundred and twenty, the number of persons examined applying for law license the previous year, and since that time not more than forty or fifty persons applying for law license have been examined, several examinations are to be held within the next few days at Lebanon, Nashville and Knoxville, and so there will be about one hundred applicants for this year yet to examine.

The reason of the fact that so few have been examined since the last session of the Bar Association is, that the present session is being held about two months earlier than heretofore, and before the session of the law schools are out when most of the applicants are examined.

This law creating the State Board of Law Examiners passed in 1903, and since then it has been the constant effort of each member appointed by the Supreme Court to elevate the standard of the bar of the State, and an earnest endeavor to shut out and keep out of the practice that fraternity of parasites, known and read of all men as "shysters at law." These parasites on the body politic are to be found in every locality, and like the poor are ever present with us and prove a standing vexatious and troublesome menace to the peace and good order of society and a disgrace to the profession they claim to follow.

It has been and is now the fixed and determined purpose of the Board by faithful, discreet, honest and conscientious performance of the duties imposed and by the use of fair, impartial and painstaking examinations and a proper investigation as to the reputation, standing and character of the applicants for license to practice law, to permit no one to obtain a license who is not worthy and who fails to make the requisite grade to entitle him or her to admission to the bar on examination. In this
way the people generally may be much benefitted by having a better class of legal advisers to whom they can commit their business affairs and who can properly care for the interests of clients employing them to conduct their litigation.

Experience and observation have forced the conclusion that under our modern civilization and progress in applied science and inventive genius, producing new conditions and relations and constantly calling for new applications of legal principles, there is an indispensable need of systematic and thorough legal education in order to rightly equip and qualify the lawyer of today for the intricate questions arising in the line of his profession. This preparation can not be acquired in these busy times of hustle and bustle in the law office but must be obtained at a law school where the energies of the young student can and will be directed along lines of systematic study and thought, by those who have time and learning sufficient to do so and whose business it is to give proper direction of the course to be pursued by the student and map out for him the pathway for a systematic practical investigation for the mastery of the law in its scientific aspect and the application of some of the principles in actual practice. There is much more need of a thorough training in the law today than formerly because of the many complicated and intricate questions arising consequent upon the many mechanical, industrial, electric and steam operating improvements in machinery, in the industrial enterprises and the increased volume and extent of business operations along all lines in this strenuous age of rapid advancement and restless energy.

It is quite apparent to the Board of Examiners that among those seeking admission to the bar, the ones who have taken a course of study and training in a law school make better grades and acquit themselves in examinations with much greater credit and evince more fitness for entering the profession and go into the real practice with greater promise of success than do the ones who study simply in some law office.

The records of the Board show that many, and in fact, most of those who attempt to stand the examination without any systematic study in a law school fail, while very few who take a thorough course in the schools make a failure. There can be no question but that there is much waste of time and energy for any young man to attempt to fit and qualify himself for the practice by reading law in a law office alone.

If the Board by faithful honest service to the public, keeps incompetent and poorly equipped persons from entering the practice of law, much benefit and saving to the people in preventing the institution of worthless and preplexing litigation will have been accomplished, as well as thereby proving an advtantage to the profession, in keeping up its high and honorable standard. Bad, unwise and incorrect counsel given from ignorance of the law on the part of would-be attorneys may cause some financial loss to litigants, but worst of all, where these shysters flourish, the resources of evil, corruption and ingenious rascality will be substituted
for the legitimate and honorable practice of the law before the courts of the country.

The conduct of unworthy, disreputable and unqualified men who pretend to practice law brings the profession into bad repute and unsavory odor with the general public. The remedy for this evil and undesirable condition rests largely in the hands of the Law Examiners who can do much to prevent or lessen this state of affairs in the future, and add greatly to the purification of the bar in the State by a judicious determined and proper course of action under the wholesome law passed in 1903, creating the Board of Examiners and the wise rules adopted by the State Supreme Court in pursuance thereof, acting under the powers conferred by said law.

The following rules of the Supreme Court of Tennessee, governing admission to the bar were adopted April 28th, 1903, to wit:

I.

License to practice law in the courts of this State shall be granted by this court only upon certificate of the State Board of Law Examiners, created by an act approved March 30, 1903.

II.

Each applicant for admission to the bar shall present to said Board a certified transcript of the records of the county court of the county of his residence as required in Code (Shannon) section 5776 and such other evidence as the Board in its discretion may require and shall pay to the treasurer of the Board in advance a fee of five dollars. Each person applying for a license shall file his application with the secretary of the Board of Law Examiners at least ten days before the date fixed for examination.

III.

SUBJECTS UPON WHICH EXAMINATIONS SHALL BE BASED.

Each applicant for admission must sustain a satisfactory examination upon the law of real and personal property, personal rights, torts, contracts, partnerships, bailments, negotiable instruments, principal and surety, domestic relations, wills, corporations, equity jurisprudence, evidence, common law and equity pleading and practice, criminal law and evidence and upon the principles of the Constitution of the State and of the United States and legal ethics.

IV.

RE-EXAMINATION OF REJECTED APPLICANTS.

If an applicant on examination should fail to pass the examination and so be rejected, he may be re-examined at any time after three months from the date of such rejection without paying any additional fee therefor; provided, he shall apply for such re-examination at some regular meeting of the Board.
V.

The questions and answers of all examinations will usually be in writing, but applicants may be subjected to oral examination if the Board should deem it necessary or proper.

VI.

ATTORNEYS FROM OTHER STATES, HOW ADMITTED.

Every applicant for admission to the bar upon a license or other voucher showing his admission as an attorney at law in another State or foreign country, must present to the Board such license duly certified or a copy of the record of the court showing his admission to the bar duly proved as required by law for the authentication of the records of courts of sister States when offered in evidence in the court of this State. Such license or voucher must confer the right to practice in the highest courts in such State or foreign country. Such applicant shall be admitted upon such license or voucher without examination by the Board, if it appears to the court by certificate of said Board that in the State or country in which the license was issued the requirements for admission to the bar were equal to those prescribed in this State. Or if it should appear that the applicant has been engaged in active practice of law for a period of five years in courts of record under such license and provided further that the Board is otherwise fully satisfied that the applicant is worthy. The Board shall certify to this court persons entitled to admission by virtue of having been admitted to the bar in such other State or foreign country.

VII.

It is directed by the Supreme Court that the Board of Law Examiners shall hold examinations at the places designated in the act creating said Board approved March 30, 1903, and in addition, Memphis, Shelby County, and Chattanooga, Hamilton County, Tennessee, at such times as the Board may fix.

VIII.

The applicants for law license shall, in addition to the fee of $5.00 to be paid for examination, pay a license fee of $3.00, after they have been examined and have passed the required grade and entitled to receive a license to practice law in the State. This law license properly made out and signed to be issued to the ones entitled to same on receipt of the $3.00 fee.

The above rules have been our guide in conducting the examinations and the Board is ever trying to improve on the manner of preparing practical test questions and also in the method of conducting the examinations and applying the principles of proper grading to the papers of the applicants. Under the rules so wisely adopted by our Supreme Court as conditions precedent to admission to the bar, graduates from our own or any other university or law school are not exempt from examination, and
lawyers coming from other States must be subject to a written examination in person, unless they shall have been admitted to practice law in the highest courts of another jurisdiction and actually practiced for five years preceding their applications; or unless those seeking admission in this State from another jurisdiction have been examined in the State, whence they come, by a system of examinations and character of questions and answers equal in requirements in all respects to that of our own.

In conducting the examinations no catch questions are propounded, but such answers are sought by the interrogatories as will test the applicant's mental calibre and also his real knowledge of the law and some credit is allowed for a thoughtful, sensible, plausible answer, even though it may be wrong in fact.

Each applicant is furnished with a blank application to be filled out by himself and blank certificates for proof of good moral character and also blanks to be filled out by a law professor or lawyer in whose office the student may have studied showing the studies pursued and extent of the applicant's reading of law.

After these blanks are filled out, the applicants are required to file them with the secretary of the Board. In the application for examination the student himself gives his age, his history and especially his educational advantages and studies in law which he has pursued.

In this way the basis to form some adequate idea of the capacity and qualification of the applicant is obtained and the proof of good moral character is never overlooked in the estimate of the requisites to make a lawyer and this safeguard prevents many unworthy persons from creeping into the profession.

The Board has been holding six examinations every year at different points in the divisions of the State, as required by the law, and has given two days' written examinations at each session, making a number of large records of written matter to be read, examined and graded by the Board after they shall have been finished by the applicants.

About 75 or 80 printed questions for the written examinations are used, covering 15 or 16 subjects of the law. The questions are printed on small slips of paper and numbered from one to five under each subject and the applicants paste the first question down on the page of their paper and then answer that; and another question is given, pasted down and answered and so on to the last. After the papers are finished by the applicants the requirements are that the sheets containing the questions and answers be fastened together in regular order and handed in to the Board for the purpose of examination and grading and no one is allowed to pass who does not make as high a grade as 75 per cent. on a scale of 100.

Fewer applicants are rejected now than at the beginning sessions of the Board for the simple reason that scarcely any apply for license without previous systematic study in some reputable law school.

The work of reading 125 to 130 records written with pen and ink averaging 40 to 50 pages each, is quite a task and this has to be done in order to grade the papers properly and this duty imposes a very great respon-
sibility, as the grades should be determined correctly, honestly and impartially. This requires time and patience, as well as labor, and the standard of the profession in the future depends on the faithful execution of this obligation by a Board of incorruptible character.

The Board since its appointment by the Supreme Court has endeavored to perform its duty honestly and conscientiously and has persistently refused license to persons who did not meet the required standard and the purpose is to hold up the standard of the profession, and in every way the members of the Board are trying to show themselves worthy of the trust which is reposed in them by the court and members of this Association and of the bar generally.

There is a constant aim and effort to instill within the minds of all applicants for law license that they should have high ideals and strive to live up to them in a manly honorable manner and make every effort to become good and useful citizens in seeking to become first-class lawyers; and that by the union of their talents in the line of their profession with high class citizenship they can expect to achieve at least, some of the rewards of properly applied industry and do much in the direction of holding up the dignity and prestige of one of the grandest of all professions.

Respectfully submitted,
S. Cockroft,
Chairman of Committee.

On motion of R. H. Sansom, duly seconded by Col. G. N. Tillman, Judge J. B. Heiskell was unanimously elected as an honorary member of the Association, and his name ordered placed on the roll as such.

On motion an adjournment was taken to 9 o'clock A. M. Thursday.

SECOND SESSION—THURSDAY JUNE 6th, 1907.

AFTERNOON SESSION.

The meeting was called to order by the President at 2 o'clock P. M.

The report of the Committee on Publication was called for. The chairman of this Committee was absent and no report was made.

The report of the Committee on Grievances was called for and passed.
Mr. F. Zimmerman of Memphis, upon request of and as a member of the Committee on Judicial Administration and Remedial Procedure presented the following motion:

Be it resolved that a special committee be appointed and instructed to draft a bill looking to an increase of judicial salaries, and to report such bill to the next session of this Association for discussion and amendment with a view of presenting such bill to the Legislature and pressing the same for passage.

F. ZIMMERMAN.

Mr. T. B. Collier of Memphis, suggested that the committee, if one be appointed, be directed to prepare the bill and publish the same through the press of the State so as to enlighten the members of the bar and the people of the State, and thereby make the question of the increase of the salaries of judges and chancellors an issue in the next election of senators and representatives to the next General Assembly of the State.

Mr. Thomas E. Harwood urged that the bill ought to be first submitted to and acted upon by the Bar Association before it is published.

President Heiskell suggested that resolutions on this subject were adopted by the Association at its last annual meeting. Secretary R. H. Sansom, read said resolutions so adopted from page 71 of the Minutes of the Association for the years 1906-7. Mr. F. Zimmerman spoke against the suggestion of Mr. T. B. Collier. Mr. John E. Bell of Memphis, moved the adoption of the following resolution, which motion was duly seconded:

Be it resolved that a committee be appointed to draft a bill which shall provide that peremptory instructions shall not be given by the trial courts of this State in cases of negligence and contributory negligence.

JOHN E. BELL.

Col. C. W. Metcalf rose to a point of order and insisted that the entire proceeding was out of order, Mr. John E. Bell rose to the point of order and insisted that the proceedings were regular and in order, and objected to the position taken by Col. Metcalf. Col. Metcalf then moved to table the motion of Mr. Bell. Mr. Rowan Green seconded Col. Metcalf’s motion. Mr. John E. Bell attempted to debate the motion to table, and the chair ruled that the question was not a debatable one. Col. Metcalf’s motion was then put to the House.
and the noes were declared to have carried. A division was called for, and the vote taken on said division. The vote resulted as follows: Ayes 18, Noes 8. Thereupon the chair declared that the motion of Col. Metcalf to table the motion and resolution of Mr. John E. Bell carried.

Mr. H. N. Cate of Newport, moved that a committee be appointed to draft a bill in conformity with the resolutions read from page 71 of the published minutes of 1906-7 adopted by the Association at its last annual meeting, and that this bill be presented to the next meeting of the Association. Motion seconded by F. Zimmerman, and upon vote unanimously carried.

Mr. R. G. Brown, chairman of the Entertainment Committee announced that at 5 o'clock p. m. a boat ride on the Mississippi River would be given for the pleasure of the members of the Association.

At this point Mr. W. B. Swaney of Chattanooga, as chairman of the Committee on Grievances made a verbal report of his committee to the effect that the committee had no charges to make against any of the members of the Association.

At the request of the President, Mr. James H. Malone of Memphis, took the chair.

The report of the Committee on Obituaries and Memorials was called for. Much to the gratification of the Association not one of its members had died during the past year and so no report was made by this Committee.

The report of the Special Committee on the Torrens System of Registering Deeds, being called for, it was stated by the chair that this was the carrying over of a last year committee. No report was made.

The report of the committee to recommend to the Legislature the movement towards Uniform Laws was made by its chairman, Mr. J. H. Malone. Mr. J. H. Anderson moved that this report be adopted and spread of record. Mr. W. B. Swaney of Chattanooga moved to amend the report so that the incoming President should appoint the committee recommended ip said report. Mr. R. G. Brown moved to amend the report in regard to pleading so that the defendant should be required in law actions to set forth in particularity his defense. Mr. Albert
W. Biggs seconded Mr. Swaney's motion. Mr. Swaney spoke in behalf of the motion to carry out the recommendations made in the report of the committee.

On motion the report of the committee to recommend to the Legislature the movement towards uniform laws was adopted as presented and ordered spread of record which is accordingly here done.

To the Honorable F. H. Heiskell, President, etc.:

Your committee appointed to recommend to the Legislature the movement towards uniform laws, beg leave to report that as there will not be a session of the Legislature before the next meeting of this Association, no practical steps can be taken to carry out the recommendations heretofore made by this Association.

There is upon the statute books at the present time what is commonly known as the "Negotiable Instrument Law," that being the only "Uniform law" that is a law recommended by the American Bar Association, which has been enacted in Tennessee. The enactment of this law was taken up actively by lawyers and commercial bodies in various portions of the State, and your chairman succeeded in having this law recommended by some of the commercial bodies of Memphis, and in addition he appeared with other lawyers upon a committee from this Association, and by these means they succeeded in having the law enacted.

It would be a long step not only for the uniformity of laws, but to the advantage of the whole people of the State if we could have enacted uniform laws for the acknowledgment of deeds, the probate of wills, the enactment of a uniform system of divorce laws, and enactments upon similar subjects.

All of these matters were set forth with so much learning in a paper by the Honorable Edward T. Sanford, at a former meeting of this Association that it would be a work of supererogation on our part to say anything further in advocacy of a "Uniform system of laws."

We wish to emphasize one fact, and that is it is a perfectly idle form to make recommendations with respect to legislation and allow the matter to drop there. If anything practical is accomplished it must be by the appointment of members of this Association who will take the matter seriously before the Legislature as representatives of this Association. Witness the law upon the statute books with regard to legal education and admission to the bar. Committees appeared before the Legislature from time to time during a course of about ten years before we were successful, and I know whereof I speak because I was a member of the committees appeared before the Legislature as such during those years.

We therefore recommend that the incoming President appoint a committee who will agree to appear before the next Legislature and urge the
passage of a uniform system of laws, or such thereof as the Association may determine at its next meeting.

The chairman having served his time upon these committees begs to be excused from further duty in the premises.

Respectfully submitted,

JAMES H. MALONE,
Chairman

June 6, 1907.

Under the head of miscellaneous business Col. C. W. Metcalf offered the following resolution which was on motion unanimously adopted:

Resolved that the State Bar Association of Tennessee, not only confirms the opening address of welcome to the State Bar Association of Arkansas in all that was said in that address, as to the ability of the bench and bar of that State, but adds at the close of the Union Meetings, an expression of gratification, pleasure and profit in having the Arkansas Bar Association to unite with the Tennessee Bar Association in this their respective annual meetings.

C. W. METCALF.

On motion it was unanimously ordered that the Publication Committee confer with the proper officers of the Bar Association of Arkansas in regard to publishing jointly the minutes of the two Associations.

Mr. H. N. Cate of Newport offered the following resolution which was unanimously adopted.

Be it resolved that the Tennessee Bar Association, in session at Memphis, Tennessee, hereby bear testimony to the splendid hospitality of the members of the Memphis Bar and citizens of Memphis, and we hereby tender to them our sincere thanks for the kind and cordial reception given us, and especially do we express our appreciation of the efforts of the Committee on Entertainment to administer to our pleasure while in the city. Also we extend our thanks to the United States Government for providing for our pleasure, a boat excursion, on the “Great Father of Waters.”

H. N. CATE.

Mr. F. Zimmerman offered the following resolution which was adopted:

Resolved that the Committee on Jurisprudence and Law Reform be, and is hereby, instructed to investigate, and report at the next meeting of this Association on the advisability of modifying present laws in respect to the requirement of a unanimous verdict of the jury in civil cases.

F. ZIMMERMAN.
The next order of business was the election of officers for the ensuing year. Hon. M. T. Bryan of Nashville was nominated for President, and there being no other nominations, on motion the rules were suspended and the Secretary directed to cast the unanimous vote of the members present for Mr M. T. Bryan which was done, and he was declared unanimously elected. Whereupon Chancellor Heiskell, the retiring President, surrendered the gavel to the President-elect, who on taking the chair made a brief speech of thanks and acceptance.

The election of Vice Presidents being next in order the following nominations were made: For East Tennessee, Judge D. K. Young of Clinton; for Middle Tennessee, James S. Pilcher of Nashville; for West Tennessee, W. P. Metcalf of Memphis. And there being no other nominations, the Secretary on motion, under a suspension of the rules, cast the unanimous vote of the members present for the three gentlemen named and they were declared duly elected Vice President of the Association.

The election of the Secretary and Treasurer, being next in order, Mr. R. H. Sansom, was nominated for re-election. There being no other nominations, the President on motion and under a suspension of the rules cast the unanimous vote of the members present for Mr. Sansom, and he was declared unanimously elected Secretary and Treasurer of the Association.

The following gentlemen were by unanimous vote chosen to constitute the Central Council: C. C. Slaughter, Nashville; R. F. Jackson, Nashville; G. N. Tillman, Nashville; F. Zimmerman, Memphis, and and S. B. Smith, Chattanooga.

As delegates and alternates to the American Bar Association, the following were selected by the unanimous action of the Association: Mr. R. G. Brown, Memphis; Chancellor F. H. Heiskell, Memphis, delegates; Mr. T. B. Collier, Memphis, and Mr. Charles H. Smith, Knoxville, alternates.

On motion the Association adjourned.
CONSTITUTION

ARTICLE I.

Objects.

The objects of the Association are to foster legal science, maintain the honor and dignity of the profession of law, to cultivate professional ethics and social intercourse among its members, and to promote improvements in the law and the modes of its administration.

ARTICLE II.

Election of Members.

All nominations for membership shall be made by the Local Council of a county or Bar Association when such Local Council or Bar Association exists; when there is no Local Council or Bar Association in any county, nominations for such county shall be made by the Central Council. All nominations thus made or approved shall be reported by the council to the Association, and all whose names are reported thereupon become members of the Association; provided, that if any member demands a vote upon any name thus reported, the Association shall thereupon vote thereon by ballot. Five negative votes shall be sufficient to defeat any election for membership. But interim, the Central Council, upon recommendation of any Local Council, shall have the power to elect applicants to membership.

ARTICLE III.

Membership.

Any person shall be eligible to membership in this Association who shall be a member of the bar of this State, in good standing, and who shall also be nominated as herein provided.

ARTICLE IV.

Officers.

The officers of this Association shall consist of one President, three Vice-Presidents, a Secretary and Treasurer, a Central Council, who shall be the Board of Directors, under the charter, to be chosen by the Association. One of the members of the Central Council shall be its chairman. Each of these officers shall be elected at each annual meeting for the next ensuing year, but the same person shall not be elected President for two years in succession. All such elections shall be by ballot. The officers
elected shall hold office until their successors are elected and qualified according to the Constitution and By-Laws.

**Article V.**

*Central Council.*

The Central Council shall consist of five members, and shall be, at all times, an advisory board of consultation and conference, when called on for that purpose by the president, or any Vice-President who may, for the time being, be acting as President.

**Article VI.**

*Local Council.*

The President, by and with the advice and consent of the Central Council, may establish a Local Council in any county in the State by issuing a warrant to that effect, naming therein the persons composing such Local Council. Each Local Council shall consist of not less than three nor more than seven members. No person shall be eligible to appointment as a member of any Local Council who is not at the time a member of this Association.

**Article VII.**

*Election of Members.*

All members of this convention signing the charter, and all members elected as herein provided shall become members of the Association upon the payment of the admission fee as herein provided for. But after the adjournment of this convention all nominations for membership shall be made as herein provided.

**Article VIII.**

*Annual Dues.*

Each member shall pay three dollars to the Treasurer as annual dues, and no person shall be qualified to exercise any privileges of membership who is in default. Such dues shall be payable, and the payment thereof enforced, as may be provided by the By-Laws. Members shall be entitled to receive all publications of the Association free of charge. The admission fee shall be three dollars, to be paid as the member is elected. The admission fee shall be in lieu of all dues for the first year.

**Article IX.**

*Adoption of Amendments of By-Laws.*

By-Laws may be adopted or amended at any annual meeting of the Association by a majority of the members present.
BAR ASSOCIATION OF TENNESSEE

ARTICLE X.

Committees.

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

2. On Judicial Administration and Remedial Procedure.
3. On Legal Education and Admission to the Bar.
5. On Grievances.
6. On Obituaries and Memorials.

A majority of those members of any committee, or of the Central Council, who may be present at any meeting of such committee or council, shall constitute a quorum for the purpose of such meeting. Vacancies in any office provided for by the constitution shall be filled by appointment by the President, and the appointees shall hold office until the next meeting of the Association.

ARTICLE XI.

Central Council.

The Central Council shall perform such duties as may be assigned to them by the President, or as may be defined by the By-Laws, except as herein otherwise directed.

ARTICLE XII.

Meeting of the Association.

This Association shall meet annually, at such time and place as the Central Council may select, and those present at such meeting shall constitute a quorum. The Secretary shall give sixty days' notice of time and place of such meeting, either by publication in a public newspaper or by personal communication.

ARTICLE XIII.

Duties of the President.

The President shall open each annual meeting of the Association with an address, in which he shall communicate the most noteworthy changes in the statute law, on points of general interest, made in the State and by the Congress during the preceding year.

ARTICLE XIV.

Alterations or Amendments of the Constitution.

This Constitution may be altered or amended by a vote of three-fourths of the members present at any annual meeting, but no such change shall be made at any meeting at which less than twenty members are present.
ARTICLE XV.

Duties of the Local Council.

Each Local Council shall perform such duties as it may be called upon to perform by the President, or as may be defined by the By-Laws.

ARTICLE XVI.

Suspension of Members.

Any member of the Association may be suspended or expelled for misconduct in his relations to this Association, or in his profession, on conviction thereof, in such manner as may be prescribed by the By-Laws.
BY-LAWS

I.—PRESIDENT.

The President shall preside at all meetings of the Association, and in case of absence, one of the Vice-Presidents shall preside.

II.—SECRETARY.

The Secretary shall keep a record of all meetings of the Association, and of all other matters of which record shall be deemed advisable by the Association, and shall conduct the correspondence of the Association, with the concurrence of the President. He shall notify the officers and members of their election, and shall keep a roll of the members, and shall issue notices of all meetings.

III.—SECRETARY AND TREASURER.

The Secretary and Treasurer shall collect, and, under the direction of the Central Council, disburse all funds of the Association; he shall report annually, and oftener, if required; he shall keep regular accounts, which shall be at all times open to inspection of the members of the Association. His accounts shall be audited by the Central Council. Before discharging any of the duties of this office the incumbent shall execute a bond, with good and sufficient surety, to be approved by the President, payable to the President and his successors in office, in the sum of one thousand dollars, for the use of the Association, and conditioned that he will well and faithfully perform the duties of his office so long as he discharges any of the duties thereof.

IV.—CENTRAL COUNCIL.

The Central Council shall meet at least once every three months, and oftener if called together by the President. They shall have power to make such regulations, not inconsistent with the Constitution and By-Laws, as shall be necessary for the protection of the property of the Association, and for the preservation of good order in the conduct of its affairs. They shall keep a record of the proceedings, which shall be read at the ensuing meeting of the Association; and it shall be their duty to present business for the Association. They shall have no power to make the Association liable for any debts amounting to more than half the amount in the Treasurer’s hands in cash, and not subject to prior liabilities. They shall perform such other duties as are required of them by the Constitution, or as may be assigned to them by the President.

V.—ORDER OF BUSINESS.

At each annual, stated, or adjourned meeting of the Association the order of business shall be as follows:

1. Reading minutes of preceding meeting.
2. Address of the President.
5. Election, if any, to membership.
8. Miscellaneous Committees.

The order of business may be changed by a vote of the majority of the members present.

No person in discussion shall occupy more than ten minutes at a time, nor be heard more than twice on the same subject.

The parliamentary rules and orders contained in Cushing's Manual, except as otherwise herein provided, shall govern all meetings of the Association.

VI.—MEMBERS ELECT.

If any person elected does not, within one month after notice of his election, signify his acceptance of membership by a letter to the Secretary to that effect, and by payment of his admission fee, he shall be deemed to have declined to become a member.

VII.—COMMITTEES.

In pursuance of Article X of the Constitution, there shall be the following standing committees:

1. A Committee on Jurisprudence and Law Reform, who shall be charged with the duty of attention to all proposed changes in the law, and of recommending such as, in their opinion, may be entitled to favorable consideration of the Association.

2. A Committee on Judicial Administration and Remedial Procedure, who shall be charged with the duty of the observation of the working of our judicial system, the collection of information, the entertaining and examination of projects for a change or reform in the system, and of recommending from time to time to the Association such action as they may deem expedient.

3. A Committee on Legal Education and Admission to the Bar, who shall be charged with the duty of examining and reporting what change it is expedient to propose in the system and mode of legal education, and of admission to the practice of the profession in the State of Tennessee.

4. A Committee of Publication, who shall be charged with the duty of examining and reporting upon all matters proposed to be published by authority of the Association, and pertaining to any of the subjects for the advancement of which the Association is created.

5. A Committee on Grievances, who shall be charged with the hearing of all complaints which may be made in matters affecting the interest of the legal profession and the practice of law, and the administration of justice, and to report the same to this Association, with such recommendations as they may deem advisable; and said committee shall, in behalf of
the Association, institute and carry on such proceedings against offenders, and to such extent as the Association may order, the cost of such proceedings to be paid by the Treasurer, on the warrant of the Central Council, out of moneys subject to be appropriated by them.

VIII.—APPOINTMENT.

Each of the standing committees shall consist of five members, and shall be appointed annually by the President of the Association, and shall continue in office until the annual meeting of the Association next after their appointment, and until their successors are appointed, with power to adopt rules for their own government, not inconsistent with the Constitution or these By-Laws. Any standing committee of the Association may, by rule, provide that three successive absences from the meetings of the committee, unexcused, shall be deemed a resignation by the member so absent from his place upon the committee. Any standing committee of the Association may, by rule, impose upon its members a fine for non-attendance, and may provide for the disposition of the fines collected under such rule.

IX.—CHARGES AGAINST MEMBERS.

Whenever any complaint shall be preferred against a member of the Association for misconduct in his relations to this Association, or in his profession, the member or members preferring such complaint shall present it to the Committee on Grievances, in writing, and subscribed by him or them, plainly stating the matter complained of, with particulars of time, place and circumstances.

The committee shall thereupon examine the complaint, and if they are of the opinion that the matter therein alleged is of sufficient importance, shall cause a copy of the complaint, together with a notice of not less than five days, of the time and place when the committee will meet for the consideration thereof, to be served on the member complained of, either personally or by leaving the same at his place of business during the office hours, properly addressed to him. If, after hearing his explanations, the committee shall deem it proper that there shall be a trial of the charge, they shall cause a similar notice of five days of the time and place of trial to be served on the party complained of.

The committee shall be furnished with a list of the witnesses, their names and place of residence, who it is proposed shall be examined to sustain the charge, which shall accompany the complaint when made to the committee; and when the day is set for trial the member complained of, upon his demand therefor, shall be entitled to a copy of said list of witnesses. At the time and place appointed for the trial, or at such other time as may be granted by the committee, the member complained of shall file a written answer or defense. Should he fail to do so, the committee may proceed thereupon to the consideration of the complainant.

The committee shall thereupon, and at such other times and places as they may adjourn to, proceed to hear the evidence adduced and try the complaint, and shall determine all questions of evidence.
The complainant, and the member complained of, shall each be allowed to appear personally and by counsel, who must be members of the Association; and the complainant, and the member complained of, shall each be competent witnesses. The witnesses shall vouch for the truth of their statements on their word of honor. The committee shall have power to summon witnesses; and if any such witnesses are members of the Association, a neglect or refusal to appear may be reported to the Association by the committee, and treated as a misconduct.

The committee, of whom at least four must be present at the trial, except that a less number must adjourn from time to time, shall hear and decide the allegations submitted to them; and if they find the complaint or any material part of it, to be true, they shall so report to the Association, with their recommendation as to the action to be taken thereon.

The decision of the committee shall be served on the member complained of, and if the decision be that the complaint, or any material part thereof, is true, and in that case only, the committee shall also serve a copy of the complaint, answer, if there be an answer, and decision on the President of the Association; and if requested, either by the member or members complaining, or the member complained of, shall annex thereto a copy of the evidence taken, which said document shall be regarded as a report of the committee to the Association.

Every such report shall be acted on only by the Association at an annual, stated or adjourned meeting of the Association, and of which the member complained of shall have due notice, to be served upon him by direction of the committee. The committee shall thereupon proceed to take such action on said report as they may see fit, provided only that no member shall be expelled unless by the vote of two-thirds of the members present and voting.

Whenever any trial shall be determined on; the member complained of may object, for cause, to any of the members of said committee, which said causes he shall state in writing and present to the committee. Thereupon the committee shall report the facts to the President, and inclose to him a copy of the objection for cause; and the President shall forthwith summon the Central Council to meet with him and determine what weight, if any, the objections for cause are justly entitled to have; and if the President and a majority of the Central Council present and voting shall determine that the objections for cause are not well taken, and the same are overruled, the President shall so inform the Committee on Grievances; but if the President and a majority of the Central Council, as aforesaid shall determine that any of said objections for cause, to any member of the Committee on Grievances is well taken, then the President shall so inform said committee, and forthwith appoint another member or members to supply the temporary vacancy caused thereby; and the method herein provided shall be resorted to until a committee is obtained against whom the member complained of urges no just objection for cause.
BAR ASSOCIATION OF TENNESSEE

If any member of the bar in the State of Tennessee shall collect money in his professional capacity for a client, and wrongfully fail or refuse to account for the same, it shall be the duty of the President, or any Vice-President of the Bar Association of Tennessee, on complaint being made to him by any person, to appoint a suitable committee from among the members of this Association to investigate the case, and report the facts to the officer appointing this committee; and if, in the judgment of that officer, a case can be made out against the offender, said appointing officer shall order same or another committee to prosecute the offender in the courts for disbarment.

If any member of the bar of Tennessee shall be guilty of any unprofessional conduct; for which he could, under the then existing laws of the land, be disbarred, it shall be the duty of the President and Vice-Presidents of the Bar Association of Tennessee to proceed to have him disbarred, as indicated in the by-law just preceding this.

All the foregoing proceedings shall be kept secret, except as their publication is hereinbefore provided for, unless otherwise provided for by this Association.

X.—NOMINATIONS AND ELECTIONS.

Nominations of candidates to fill the respective offices may be made at the time of election by any member, and as many candidates may be nominated for each office as members may wish to name, but all elections, whether to office or membership, must be by ballot. A majority of the votes cast be sufficient to elect to office, but five negative votes shall be sufficient to defeat an election to membership.

XI.—SUPPLYING VACANCIES.

All vacancies in any office or committee of this Association shall be filled by appointment of the President, and the person thus appointed shall hold for the unexpired term of his predecessor; but if a vacancy occur in the office of President, it shall be filled by the Association at its first stated meeting occurring more than ten days after the happening of such vacancy, and the person elected shall hold for the unexpired term of his predecessor.

XII.—ANNUAL DUES.

All annual dues of this Association shall be paid on or before the first day of March in each year, and any member failing to pay his annual dues by that time shall be in default, and, upon the order of the President, the Secretary shall strike the name of such member from the rolls of membership, unless for good cause shown the President shall excuse such default, in which last event the name of such member shall, upon the order of the President, be restored by the Secretary to the roll of membership.

XIII.—AMENDMENT OF BY-LAWS.

These by-laws may be amended at any stated, adjourned or annual meeting of the Association by a majority of those present.
XIV.—RESIGNATION OF OFFICERS AND MEMBERS.

Any officer may resign at any time upon settling his accounts with
the Association. A member may resign at any time upon the payment of
all dues to the Association; and from the date of the receipt by the
Secretary of a notice of resignation, with an indorsement thereon by the
Treasurer that all dues have been paid as provided, the person giving such
notice shall cease to be a member of the Association.

XV.—SALARY OF SECRETARY AND TREASURER.

The annual salary of the Secretary and Treasurer shall be two hundred
dollars, one-half of which shall be due on the first day of May, and the
other half on the first day of November in each year, but may be paid
earlier, or at other times, if the Central Council shall, in writing, so direct;
but this shall be in full of all compensation to him. No other officer of
the Association shall receive any salary or compensation.

XVI.—SPECIAL MEETING.

If the President and Central Council shall determine that it is neces-
sary for the Association to hold any other meetings during the year than
the regular annual meeting, the same shall be held at such time and place
as the President and Central Council may fix, upon twenty days' notice
of such time and place, to be given by the Secretary by publication in a
newspaper; and the Secretary shall give this notice upon the order of the
President.

XVII.—NUMBER OF PAPERS.

Not more than six papers, in addition to the regular order of business,
shall be read at each annual meeting, and not more than one at each of
the sessions of the Association.

XVIII.—LENGTH OF PAPERS.

No paper read before the Association shall occupy more than thirty
(30) minutes.

XIX.—CENTRAL COUNCIL TO FURNISH SUMMARY OF
REPORT.

It shall be the duty of the chairman of each standing committee of the
Association to send to the Secretary of the Association at least thirty (30)
days before each annual meeting the report and recommendations which
his committee intends to present to the meeting. The Secretary shall, as
soon as practicable after the receipt of same, print and distribute to the
members of the Association a brief summary of the recommendations con-
tained in said reports.

XX.—HONORARY MEMBERS.

All Chancellors and Judges of the Superior Courts of this State, and
resident Judges of the Federal Courts, are honorary members of this
Association, and they are relieved from the payment of admission fees
and dues.
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Canada, J. W. .............................. Memphis
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Carlock, L. H. ............................. LaFollette
Carr, H. M. ................................ Harriman
Carroll, W. H. ............................. Memphis
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Cassell, R. B. .............................. Harriman
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Chamlee, G. W. ............................. Chattanooga
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Childress, Ben ............................ Pulaski
Clarke, S. R. ............................... Trenton
Cockroft, S. L. ........................... Memphis
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Cohn, Nathan .............................. Nashville
Coleman, Louis M. ....................... Chattanooga
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BAR ASSOCIATION OF TENNESSEE

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91  Cooper, Wm. P.         Shelbyville
92  Cooper, Wm. T.        Chattanooga
93  Cornick, Howard        Knoxville
94  Covett, W. G.           Memphis
95  Cox, N. N.            Franklin
96  Cox, Thad A.         Johnson City
97  Coyner, C. L.         Memphis
98  Craft, Henry            Memphis
99  Crockett, R. H.        Franklin
100 Cummins, W. H.        Chattanooga
101  Davis, Jno. M.       Wartburg
102  DeHaven, D. W.       Memphis
103  DeWitt, John H.   Nashville
104  Donnelly, R. E.         Mountain City
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108  Early, John H.        Chattanooga
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110  Eastman, J. W.      Chattanooga
111  Edington, H. N.      Memphis
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119  Farley, J. W.        Memphis
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McNutt, J. F. ............................................... Crossville
McQueen, E. P. ............................................. Loudon
McRee, J. L. .............................................. Memphis
McSween, W. D. ........................................... Newport
Metcalf, C. W. ............................................. Memphis
Metcalf, W. P. ............................................. Memphis
Miller, Lee F. ............................................. Elizabethton
Miller, W. B. ............................................. Chattanooga
Miller, S. E. ............................................ Johnson City
Monroe, Jas. A. ............................................ Wartburg
Moore, Jno. N. ............................................ Knoxville
Moore, J. Washington .................................... Nashville
Moore, J. W. E. ........................................... Brownsville
Morrell, Norman B. ....................................... Knoxville
Morton, Jno. W. Jr. ....................................... Knoxville
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Mountcastle, R. E. L. .................................... Knoxville
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Myers, D. E. .............................................. Memphis
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Owens, W. A. ............................................ LaFollette
Park, Frank Jr. .......................................... Jefferson City
Parker, Chas. G. ......................................... Shelbyville
Patterson, M. R. ......................................... Memphis
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Pickle, George W. ....................................... Knoxville
Pigford, C. E. ............................................ Jackson
Pilcher, Jas. Stuart ...................................... Nashville
Pilcher, Stuart C. ....................................... Nashville
Powers, E. H. ............................................ LaFollette
Powers, J. Pike, Jr. ..................................... Knoxville
Randolph, George ....................................... Memphis
Randolph, Wm. M. ...................................... Memphis
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330 Strang, S. Bartow. .................................. Chattanooga
331 Susong, J. A. ............................................ Greeneville
332 Swaney W. B. ............................................ Chattanooga
333 Swafford, J. B. .......................................... Dayton
334 Sweeney, John C. ...................................... Paris
335 Tate, Hugh M. ............................................. Morristown
336 Taylor, E. R. ............................................. Morristown
337 Taylor, M. H. ............................................ Trenton
338 Templeton, Jerome ..................................... Knoxville
339 Templeton, Paul E. .................................... Jellico
340 Terry, W. L. ............................................. Memphis
341 Thomas, W. G. M. ....................................... Chattanooga
342 Tilman, A. M. ............................................ Nashville
343 Tilman, G. N. ............................................ Nashville
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345 Thornburgh, Jno. M. .................................... Knoxville
346 Trabue, C. C. ............................................ Nashville
347 Trezevant, M. B. ....................................... Memphis
348 Trewitt, A. H. ........................................... Chattanooga
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364 Walsh, Edward F. ....................................... Knoxville
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366 Warriner, H. C. ......................................... Memphis
367 Washington, Jos. E. ................................... Wessyngton
368 Watkins, Ed ............................................ Chattanooga
369 Watson, Will J. ........................................ Chattanooga
370 Webb, T. S. ............................................. Knoxville
371 Webb, Thos. I., Jr. ..................................... Nashville
372 Welcker, Jas. H. ......................................... Knoxville
373 Welcker, W. L. .......................................... Knoxville
374 White, George T. ....................................... Chattanooga
375 Whitman, A. T. .......................................... Nashville
376 Williams, Joe V. ....................................... Chattanooga
377 Williams, S. C. ......................................... Johnson City
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LIST OF HONORARY MEMBERS.

1. Allison, John, Chancellor
2. Allison, Judge M. M.
3. Anderson, D. D.
5. Beard, Judge W. D.
6. Bearden, W. S., Chancellor
7. Bell, Judge B. D.
8. Bond, Judge John R.
9. Bright, John M.
10. Burke, Judge George L.
11. Cartwright, Judge J. A.
12. Childress, Judge John W.
13. Clark, Judge C. D.
14. Colyar, Judge A. S.
15. Cooper, John S., Chancellor
16. Eldridge, Judge Thos. E.
17. Everett, Judge S. J.
18. Frazier, Hon. Jas. B.
19. Galloway, Judge J. S.
20. Hawkins, A. G., Chancellor
21. Haynes, Hal H., Chancellor
22. Heiskell, F. H., Chancellor
23. Heiskell, Gen. J. B.
24. Higgins, Judge Joe C.
25. Hudding, Judge Samuel
26. Houston, Judge W. C.
27. Hull, Judge Cordell.
29. Lamb, A. B.
30. Lansden, D. L., Chancellor
31. Laughlin, Judge H. W.
32. Lurton, Judge H. H.
33. Maiden, Judge R. F.
34. Malone, Judge Walter
35. Malone, Thos. H.
36. McAlister, Judge W. K.
37. McCall, Judge John E.
38. McConnell, T. M., Chancellor
39. McHenderson, Judge G.
40. Moss, Judge John T.
41. Neil, Judge M. M.
42. Palmer, Horace E.
43. Pittman, Judge A. B.
44. Richardson, Judge John E.
45. Shields, Judge John K.
46 Sneed, Judge Jos. W. ......................... Knoxville
47 Spencer, Judge Selden P. .................... St. Louis, Mo.
48 Stout, J. W., Chancellor ...................... Cumberland City
49 Taylor, Judge John M. ....................... Lexington
50 Tyler, Judge A. J. ............................. Bristol
51 Wilkes, Judge John S. ....................... Pulaski
52 Wilson, Judge S. F. ........................... Galatin
53 Woods, Judge Levi S. ......................... Lexington
54 Young, Judge J. P. ............................ Memphis
M. T. BRYAN,

PRESIDENT 1907-1908.
PROCEEDINGS OF THE
TWENTY-SEVENTH
ANNUAL MEETING
OF THE
BAR ASSOCIATION
of
TENNESSEE

Held at Nashville, Tennessee
May 21st, 22nd, and 23rd
1908
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BAR ASSOCIATION OF TENNESSEE

PRESIDENTS SINCE ORGANIZATION.

1881-2.
W. F. COOPER..........................Nashville
1882-3.
B. M. ESTES..........................Memphis
1883-4.
ANDREW ALLISON........................Nashville
1884-5.
XENOPHON WHEELER........................Chattanooga
1885-6.
W. C. FOLKES..........................Memphis
1886-7.
J. W. JUDD..........................Springfield
1887-8.
H. H. INGERSOLL........................Knoxville
1888-9.
L. B. McFARLAND........................Memphis
1889-90.
J. M. DICKINSON........................Nashville
1890-1.
G W. PICKLE..........................Dandridge
1891-2.
M. M. NEIL..........................Trenton
1892-3.
ED. BAXTER..........................Nashville
1893-4.
W. A. HENDERSON........................Knoxville
JAMES H. MALONE ................................................. Memphis
1894-5.

ALBERT D. MARKS ............................................ Nashville
1895-6.

W. B. SWANEY .................................................. Chattanooga
1896-7.

C. W. METCALF ................................................ Memphis
1897-8.

J. W. BONNER ................................................ Nashville
1898-9.

W. L. WELCKER ............................................... Knoxville
1899-1900.

GEORGE GILLHAM ............................................. Memphis
1900-1901.

J. H. ACKLEN ................................................ Nashville
1901-1902.

R. E. L. MOUNTCASTLE ................................... Morristown
1902-1903.

JNO. E. WELLS ............................................... Union City

EDWARD T. SANFORD ....................................... Knoxville

JOHN H. HENDERSON ....................................... Franklin

EDWARD T. SANFORD ....................................... Knoxville

F. H. HEISKELL ............................................... Memphis

M. T. BRYAN ................................................ Nashville

FOSTER V. BROWN ......................................... Chattanooga
OFFICERS FOR 1908-1909

PRESIDENT.

FOSTER V. BROWN........................................Chattanooga

VICE-PRESIDENTS.

C. J. ST. JOHN........................................Bristol
J. M. ANDERSON........................................Nashville
LUKE E. WRIGHT........................................Memphis

SECRETARY AND TREASURER.

CHAS. H. SMITH..........................................Knoxville

CENTRAL COUNCIL.

W. L. FRIERSON, Chairman................................Chattanooga
J. B. SIZER...........................................Chattanooga
J. J. LYNCH...........................................Chattanooga
T. A. WRIGHT..........................................Rockwood
JAS. H. MALONE........................................Memphis
STANDING COMMITTEES 1908-1909

JURISPRUDENCE AND LAW REFORM.
W. B. GARVIN, Chairman ........................................ Chatanooga
A. W. CHAMBLISS ............................................... Chatanooga
J. M. TRIMBLE .................................................... Chatanooga
THOMAS H. MALONE ............................................. Nashville
J. H. FRANTZ .................................................... Knoxville

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J. B. SIZER, Chairman ........................................ Chatanooga
JNO. H. CANTRELL ................................................ Chatanooga
LOUIS M. COLEMAN ............................................... Chatanooga
W. A. PERCY .................................................... Memphis
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LEGAL EDUCATION AND ADMISSION TO THE BAR.
ROBERT BURROW, Chairman .................................. Bristol
JNO. H. HENDERSON ............................................ Franklin
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S. L. COCKROFT ................................................ Memphis
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PUBLICATION.
ROBERT LUSK, Chairman ........................................ Nashville
A. W. STOCKELL ................................................ Nashville
NORMAN FARRELL, Jr ......................................... Nashville
J. PIKE POWERS, Jr ........................................... Knoxville
W. D. WRIGHT ................................................ Knoxville
BAR ASSOCIATION OF TENNESSEE

GRIEVANCES.

D. L. GRAYSON, Chairman ............................................ Chattanooga
S. BARTOW STRANG .................................................. Chattanooga
G. W. CHAMBLEE .................................................. Chattanooga
R. A. HAGGARD .................................................. Waynesboro
D. C. YOUNG .................................................. Sweetwater

OBITUARIES AND MEMORIALS.

HOWARD CORNICK, Chairman ............................................ Knoxville
JNO. M. THORNBURGH .................................................. Knoxville
HUGH M. TATE .................................................. Morristown
ROWAN GREER .................................................. Memphis
W. B. TURNER .................................................. Columbia

COMMITTEE ON OBITUARIES AND MEMORIALS IN RESPECT TO MEMBERS DECEASED IN 1907-1908.

PARK MARSHALL, Chairman ............................................ Nashville
W. G. M. THOMAS .................................................. Chattanooga
L. M. G. BAKER .................................................. Knoxville
W. P. METCALF .................................................. Memphis
JOS. H. ACKLEN .................................................. Nashville

COMMITTEE TO URGE LEGISLATURE OF 1909 TO ENACT INTO STATUTES SUCH MEASURES AS WERE RECOMMENDED BY COMMITTEES OF 1907-08.

ROBBIN J. COOPER, Chairman ............................................ Nashville
JOHN BELL KEEBLE .................................................. Nashville
PERCY D. MADDOX .................................................. Nashville
GEORGE D. LANCASTER ............................................ Chattanooga
JOE V. WILLIAMS ............................................ Chattanooga
The twenty-seventh annual meeting of the Bar Association of Tennessee was convened in the Hall of Representatives in the Capitol at Nashville, Tennessee, on May 21, 1908. The meeting was called to order at 10:30 o’clock a.m., by the President, Hon. M. T. Bryan of Nashville, in the following appropriate words:

"As President of the Bar Association of Tennessee, it is my pleasure and my duty to call this, the twenty-seventh annual meeting of the Association, to order. In so doing it is pleasing to see so many members of the Association present, and particularly pleasing to note the presence of the distinguished Secretary of War, the Honorable William H. Taft; also the presence of other notable and distinguished gentlemen.

"This Association has been in the habit of holding its annual meetings in different parts of the State, and on such occasions it has been the custom for some gentleman, representing the Bar and community in which the Association met, to deliver an address of welcome. Meeting here today in the capital of the State, it is most appropriate and fitting that the welcome which is in all our hearts for the Association and our distin-
guished guests should be voiced by the Governor of the State, who is himself an honored member of the Association. He, however, is unavoidably absent, but has designated the Hon. James C. Bradford, a distinguished member of the Bar, to represent him on this occasion. I have, therefore, the very great pleasure of presenting Mr. Bradford, who will speak for the Governor and the State.'

Mr. Bradford spoke as follows:

Mr. President and Gentlemen of the Association:

I am sure it would have been very much more pleasing to you, and certainly to me, to have had the Bar Association and its visitors welcomed to the capital city of the State by the Governor of the State; but inasmuch as the officers of the Association, in the absence of the Governor, have chosen me to perform that duty, I shall do it to the best of my ability. The warmth of the welcome which I shall extend to you on behalf of the Bar of the city of Nashville, and of the citizens of the city of Nashville, will not be less than that which would have characterized the address of the Governor if he had been here.

Gentlemen of the Association, the President of the Association has stated that this is the 27th anniversary, or the 27th annual meeting, of the Bar Association of Tennessee. I think it is appropriate on this occasion that I should state some facts in relation to the Bar Association which are a matter of history, and which might be lost if they were not related. The papers relating to the origin of the Bar Association of Tennessee have been lost—at least, I have been unable to find them or to obtain them from any member who participated in the organization of the Association. The Association was organized by Judge William F. Cooper, whom the older members of the profession remember with respect and fondness. He was the first President, and it was at his suggestion that representatives of the different Bars of the State were called together in the city of Nashville twenty-seven years ago to organize a State Bar Association. It fell to my lot to be the secretary of that organization, and I continued to be the secretary for a number of years. Occupying that position in connection with the distinguished gentlewomen who served as presidents of the Association. I soon became aware of the good work that the Association was doing, both for the profession and for the State. During the twenty-seven years of its existence it has suggested, it has initiated, and it has secured from the Representatives of the State in the legislative halls, many wholesome acts of legislation. Not only has it been a public benefit, but it has secured that for the members of the profession which otherwise would not have been secured. It has brought them together in annual convention, and has promoted acquaintance, good fellowship and a high spirit among the members of the Bar. Surely no body of men ought to be extended a warmer welcome by the capital city
than the members of the legal profession in convention assembled. The relation of the lawyers—of the members of the profession—to the public, their relations to legislation, are such that they are an important factor in the development of the welfare and well being of the people of the State. They constitute the most important and the strongest factor in the Legislatures that assemble in this capitol. It has been characteristic of the profession of the law, it is one of its traditions, that its members have always been on the side of liberty, on the side of right, and on the side of justice. It is from their ranks that the judges who administer the laws are recruited, and unless there is a high spirit, unless there is a high state of morals among the members of the profession, of course the effect is found both in the creation of the laws and in their administration.

Gentlemen of the Bar Association, we have here on this occasion with us a very distinguished gentleman, the Secretary of War of the United States. In welcoming you I also welcome him. He has conferred upon our profession and upon this Bar Association upon this occasion a distinguished honor. Judge Taft is known to many of us; he was judge of this circuit, and many of us have practiced before him. He not only comes from a neighboring State, but his relations in the past have made him almost one of us, and we are particularly proud on this occasion to welcome him and to hear his voice this evening when he shall address the Bar Association and the public at large. Other gentlemen of distinction are to be with us from other States. We also extend to them a most cordial welcome.

Gentlemen, in concluding I can only say that one and all of you are welcome to the capital city of the State, and that the people of the city and the members of the Bar are more than glad to have you here, and they feel proud of the distinction that you have conferred upon them by assembling here upon this occasion.

At the conclusion of the foregoing address announcement was made that Judge Wm. H. Taft, Secretary of War, would deliver an address at the Vendome Theatre at 8:15 o’clock, admission to which would be by tickets, which could be obtained from the Secretary.

President Bryan next introduced Hon. G. N. Tillman of Nashville, who delivered the following address of welcome on behalf of the Nashville Bar.

Brethren of the Bar:

The pleasant duty of greeting you in behalf of the lawyers of Nashville has been assigned to me. Welcoming you to the capital city, to the State Capitol, and to this hall is somewhat like inviting one to walk into his own house and make himself at home.

It is very appropriate that the opening session of the Association
should be held here, upon this old battle ground, where peace now reigns and there is none to make us afraid. Instead of living judges sitting like the Fates upon the deeds and destinies of parties litigant, we are encompassed about with the phantoms of the past, the shadows of great names. On this occasion and in this place we may fitly quote a passage from St. Paul: "Wherefore seeing we also are encompassed about with so great a cloud of witnesses, let us lay aside every weight, and the sin which doth so easily beset us, and let us run with patience the race that is set before us."

Now what is the sin that doth so easily beset us? It is not idleness. There is no class of society that does more hard work. It is not dissipation and riotous living. A lawyer's life is a student's life, and temperance is a necessity. It is not hard-heartedness, uncharitableness. They are proverbially liberal to a fault in all their private relations, and in their judgments of their fellowmen I verily believe they are more lenient and charitable than any other class of society. It seems to me that what threatens the loss if prestige to the profession in public esteem is the growing tendency on the part of the ablest, most gifted, and experienced members of the Bar to give themselves wholly to practice in the Courts, neglecting the study of jurisprudence in its larger sense, and not rendering that service in the improvement and progress of government, for which they are so eminently qualified. A lawyer should be something more than an intellectual machine—a sort of slot machine, that will not work on any occasion or for any purpose, until the coin is dropped in his pocket. As Ben Johnson says in one of his plays: "So wise, so grave, of so perplexed a tongue, that would not wag, nor scarce lie still, without a fee." A lawyer owes a debt not only to his profession, but to society at large, to the State. We are fortunate in having in attendance at this meeting, one who has been discharging for several years in the national sphere and in the world sphere this debt which the profession owes to the State. His character and illustrious career are the blossom and fruit of the legal profession pursued with noble aims; in the prime of life, rich in learning, ripe in experience and judgment, he quit the quiet cloisters of the law to enter the public service, in which he has earned and won the confidence, admiration, and I may say the love of his countrymen without regard to party. I mean, of course, Judge Taft—for he will continue to be Judge Taft even though he becomes President Taft.

The chief object of our Bar Association is to bring as many members of the profession as possible to a recognition of this obligation to their country and into co-operation in promoting the public good, by maintaining a high standard of ethics in the practice of law, and by promoting the improvement of the laws. I have been a member of the Bar Association of Tennessee for, I think, about twenty-five years, and I speak from a knowledge of its history when I say that it has done a great work, not only in its influence upon the Bar, but in the legislation which it has been instrumental in having enacted. There are many statutes admitted to be wise and beneficent, which have been passed through the efforts of the Bar
Association: reformations and improvements, many of which would not
have been enacted but for the Association.

But beside our work we have had a good time. Lawyers have always
been a social set. Their quips and quirks, their witticisms and humor,
their convivial bounts and feasts, are handed down from most ancient
times. Some of our best jokes may be traced back to Greece and Rome—
but they still do good service. And those that originated in America fifty
or a hundred years ago are just as good as new to those who hear them
for the first time. Each generation of lawyers, as it arises, comes into
this rich inheritance of chestnuts, fresh and sweet to them. Life and its
experiences, including all its fun, is new and interesting to each child of
earth.

We welcome you, therefore, not only to the work of the Association,
but to the social circle. As Shakespeare says: "Do as adversaries do in
law—strive mightily, but eat and drink as friends." Formerly, in England,
when lawyers were educated at the Inns of Court, it was required as an
essential part of their education that they should eat in the common hall,
at least a certain number of times during each term; and I am not sure
it would not be a wise extension of the principle to require every lawyer
of good standing to attend the meetings of the Bar Association as a condi-
tion of retaining his license.

Again, I say welcome; welcome from the contentious arena of the
court room to the peaceful deliberations of the Bar Association.

"Forget awhile the business and the strife,
Forget the cares, the thorns of life,
The visage wan, the purblind sight,
The toil by day, the lamp by night,
The tedious forms, the solemn prate,
The sharp dispute, the dull debate,
The drowsy judge, the babbling hall—
"Forget them now—forget them all."

President Bryan introduced Hon. James H. Malone of
Memphis, who responded to the address of welcome as follows:

Mr. President, Ladies and Gentlemen:

I think the distinguished President should have said that I was the
second choice upon this occasion, and that the distinguished gentleman
who was to have replied did not put in an appearance this morning. I am
sure, however, that I express the sentiment of every gentleman outside of
the limits of the city of Nashville when I say that we are most happy to
be with you upon this auspicious occasion. I am glad to be here myself
and I feel in a very good humor. I came up last night. A gentleman
asked me this morning why I came up last night, why I didn't wait and
come up this morning, and I told him that Nashville was so peaceful and
quiet that I wanted to rest up here. I know no more fitting place for lawyers
in the State of Tennessee to gather, than in the city of Nashville, the
capital of the State, the great city of Nashville, and to meet in this great hall, this historic hall, where Presidents of the United States in former years have sat and have not only shed glory upon the State of Tennessee, but upon the name of the United States of America, as well. I am glad that reference has been made to the fact that a lawyer is fit to fill any place; no place is too good for a lawyer. I reckon Judge Taft will admit that himself.

I am glad we are going to have a good day. I asked about the barbecue—Mrs. Malone came with me, my superior officer—and I asked about it and the President apologized a little bit and said the ladies were not expected to go to this barbecue this afternoon, so we are going to have a good day, we will have a barbecue and take some trimmings besides, I reckon. Now, gentlemen of the Association, I am glad to see so many lawyers here, and so many distinguished citizens. For one, I do not believe that the profession in Tennessee, although it is of such an exalted character, has exerted that influence upon the jurisprudence of the State which it should have exerted. There are many of the old guard here that I see here every year, and I want to see this Association grow in importance and in influence until the day and time will come when it will exert that influence upon the lawyers and jurisprudence of the State which it should exert, and, among other things, I wish to see some action taken, and I do not see why we have not taken it years before, to see that the salaries of the judges of this State are raised to at least a sum that we will not be ashamed to mention. Now while we are here engaged in these pleasureable matters, let us keep an eye to the interests of the great State of Tennessee. I know of no hands into which the interests of the people—and when I say the people I mean all the people from the greatest to the least and humblest, into whose hands their interests can be entrusted with more safety and more security than into the hands of the lawyers of the State of Tennessee, and I say it is a duty upon the profession to meet in annual session and to look over the organization, to look back, not simply for the interests of the profession, not simply as a selfish mission, as the distinguished gentleman has referred to, but with a broader view, with a view to the interests of all the State in the fullest, truest and highest sense of the word; and when we have reached the point where we can exert that just influence upon the jurisprudence of the State of Tennessee, then, and not till then, will we have performed the mission which is entrusted to the Bar of the State of Tennessee.

I thank you, gentlemen.

Judge J. M. Dickinson of Chicago announced that his invitation to the barbecue at Belle Meade included the ladies as well as members and friends of the Bar Association of Tennessee. To this Mr. Malone laughingly remarked that he feared Judge Dickinson was going to break up the barbecue.

President Bryan introduced Judge Taft to the members
of the Association, saying: "Gentlemen of the Association, I think it particularly appropriate, and I deem it a great privilege to me personally to improve the present opportunity of presenting to you His Excellency, the Hon. Secretary of War, who is here upon our invitation, and who has honored this occasion with his presence. I take great pleasure in presenting to you Mr. Secretary Taft. Amid prolonged applause, Judge Taft rose and after quiet was restored addressed the Association as follows:

Mr. President, Gentlemen of the Tennessee Bar: I am going to perpetrate an address upon you to-night such as will perhaps remind you of the drowsy judge to whom eloquent reference has already been made, and, therefore, I intend to spare you any remarks this morning. I should be wanting, however, first in courtesy and second in an expression of my real feeling, if I did not say to you how much I enjoy meeting you all in Tennessee. It is a great pride to me to look back to the fact that for eight years I had the honor to exercise Federal jurisdiction with my dear friend Judge Lurton, who still remains on that Bench to uphold the cause of Federalism. (Applause.) And the sweet reminiscences that come back to me of the association that we upon that Bench had with the members of the Bar of Tennessee. Gentlemen, there is no relation that I know of, except the domestic relation, that is sweeter, that is more full of elevating qualities than that which exists between judges upon the Bench and members of the Bar, when there is what always ought to exist between them, a mutual respect and belief on the part of each member of the Bar that he is going to get a square deal with the judges upon the Bench, and the belief on their part that he is doing his honest duty towards his client, with the consciousness of that other duty that he owes to the country and to the Court of conducting himself as a high-toned counsellor and barrister of the Court ought to conduct himself (Applause): that feeling that when the Court decides against him it has decided against him because the Court did not believe that he had a good case; that feeling of confidence that the decision was an honest one, not affected in the slightest degree by prejudice or feeling, sometimes accompanied, I will agree, with a sorrow that the Court
did not have a clearer perception of the fundamental principles of jurisprudence (Laughter and applause); but a hope that in future cases that aberration of mind that seemed to have affected the Court temporarily might pass and a just judgment be rendered (Laughter). Really, that intimate association, that close feeling of friendship between the judges and the members of the Bar which is not affected in the slightest by decisions in their favor or against them, is a relation that I fancy no other profession is able to enjoy (Applause); and the fact that we of this profession are fighting constantly, of course we are fighting in a representative capacity, but some times some of us develop in a representative capacity even greater energy than when we are fighting for ourselves, but the fact that we can carry on a controversy with all the earnestness, all belief in the righteousness of our cause from day to day and then come and meet as we do here with, I think, less prejudice, less jealousy, and less friction than in any other profession, and I do not even except the clerical profession, and that makes to me the profession of law so dear a one that I never get into the atmosphere of a court room now that I don’t regret politics and wish I were there still (Applause).

At the conclusion of the foregoing remarks, upon motion of G. N. Tillman, unanimously passed, the meeting took fifteen minutes’ recess during which those in attendance were personally introduced to Judge Taft. At the conclusion of the recess announcement was made that a special train furnished the Association by the N. C. & St. L. Ry. would leave the Union Station for Belle Meade at 12:30 o’clock and returning would leave Belle Meade at 3 p. m.

Mr. G. N. Tillman, Chairman of the Central Council, presented the report of the Central Council, and upon motion duly seconded and passed said report was accepted and ordered spread on record; and those recommended in said report for membership were unanimously elected members of the Association:

The Central Council recommends the following attorneys for membership in the Association:

Park Marshall ...........................................Nashville
W. H. Washington ......................................Nashville
M. H. Meeks.............................................. Nashville
D. H. Wilkin.............................................. Nashville
C. D. Berry.............................................. Nashville
W. L. Talley.............................................. Nashville
Austin McNeil............................................ Nashville
J. W. Culton.............................................. Knoxville
Geo. E. Banks, Sr........................................ Winchester
S. A. Breazeale.............................................. Harriman
Sam C. Brown............................................. Harriman
J. R. Mitchell............................................ Crossville
C. T. Hughes............................................. Columbia
Andrew L. Todd........................................ Murfreesboro
Thos. B. Lytle........................................ Murfreesboro
R. A. Smith.............................................. Elizabethton
D. C. Young.............................................. Sweetwater
W. H. Buttram........................................... Huntsville
A. R. Gholson........................................ Clarksville
L. T. Smith............................................. Jamestown
A. H. Roberts........................................... Livingston
S. A. Morgan........................................... Oakville
Douglass Wickle........................................ Callendar

Hon. M. T. Bryan next delivered the President’s annual address, which appears in the appendix.

Adjournment was taken to 8 o’clock p. m. and the members, their wives and friends of the Association, repaired to Belle Meade, the historic home of Judge J. M. Dickinson, who as host to Judge Taft and the members of the Association and friends, tendered a delightful barbecue, which was greatly enjoyed by all present.

NIGHT SESSION.

The night session was held in the Vendome Theatre, and when the meeting was called to order at 8:20 p. m. fully three hundred members of the Association were seated on the stage, and every seat in the theatre was occupied by citizens of Nashville, and a large number were compelled to stand throughout the evening. This session was graced by the presence of several hundred ladies. President Bryan called the meeting to order and in eloquent terms introduced and presented the distinguished Secretary of War, Judge Wm. H. Taft, who delivered the principal address of the Association. Judge Taft’s address appears in the appendix.
SECOND DAY, FRIDAY, MAY 22.

MORNING SESSION.

The meeting was called together at the Watauga Club at 9:45 a.m. by President Bryan, who in his opening remarks noted the presence of Judge Taft, our distinguished guest, who had delivered such a splendid address the evening before.

G. N. Tillman, Chairman of the Central Council, reported that the Council recommended the following additional names of attorneys for membership in the Association, and they were unanimously accepted and elected to membership.

The Central Council recommends the following attorneys for membership in the Association:

M. G. Butler .............................................Gainesboro
O. K. Holladay ...........................................Cookeville
B. G. Adcock ............................................Cookeville
A. Adgood ..............................................Cookeville
J. R. Jetton ...........................................Murfreesboro
Jno. J. Core ............................................Nashville
E. Shapard ............................................Shelbyville
F. E. Cox ..............................................Franklin
R. M. Harrell .......................................Jacksboro
Jas. D. Richardson, Jr ................................Murfreesboro

Respectfully submitted,

G. N. TILLMAN, Chairman.
R. F. JACKSON,
C. C. SLAUGHTER,
F. ZIMMERMAN,
S. B. SMITH.

President Bryan announced that a banquet would be tendered the members of the Association at 8:30 o'clock p.m., in the banquet hall of the Watauga Club, tickets to which could be secured from the Secretary.

President Bryan next introduced Gen. Luke E. Wright, first Ambassador to Japan, who delivered an address on his experiences in the Land of the Rising Sun. The address appears in the appendix.

Judge L. B. McFarland moved that Judge Taft be elected an honorary member of the Association. Seconded. Motion was carried unanimously by rising vote. Judge Taft expressed
his thanks to the Association for this honor in the following happily chosen remarks:

I am very much obliged to you, gentlemen, I thank you from the bottom of my heart for the honor of becoming a member of your Bar. In my heart I feel that this is a mere formal- ity, for I have always felt that I was a member of the Bar of Tennessee (Applause). I love to be among you and know the high character of your members, its high standard and its great ability. Nevertheless, I cherish this evidence of your respect and I hope affection. I hope I may be pardoned for a moment to say with what great delight I have listened, as I know you have, to this unprepared and unpremeditated and altogether surprising address of your (Applause) distinguished brother from Memphis and my distinguished colleague from the Philippines and the Orient. It may be that we just frightened him into it, I don’t know. If we did, I think fright will help him a good deal in the future. I hope it may (Applause). Certainly considerable familiarity with respect to the affairs of Japan, I can say what he was not disposed to say about my picture of the Philippines, that he was quite as accurate as any man of such a poetical and fanciful trend of mind could be under the circumstances (Applause). He certainly commended himself to the people of Japan by his delightful personality and by those very democratic ways which he has described which have enabled him to find out what the real nature of the Japanese is, because that is not so easily fathomed, and the statement he has made here demonstrates his understanding of human nature and his love of human nature whether it be found in the plain, in the midlands or mountains of Tennessee, or in that beautiful land in miniature that he seems to find in Japan and the Orient. I thank you, Mr. President, ladies and gentlemen.

Judge R. M. Barton moved that a fifteen-minute recess be taken in order that those who had not yet had the honor and pleasure might meet Judge Taft personally. Seconded by Judge St. John. The motion was carried and a fifteen-minute recess was taken.

After the recess the meeting was called to order by the President.

Announcement was made that a reception would be ten-
ordered in honor of Judge Taft and the members of the Bar Association at the Country Club from 5 p. m. to 7 p. m. at which the ladies of Nashville would receive. Also that street cars furnished free by the Nashville Street Railway Co. would leave the Watauga Club at 4:30 p. m. to convey the members to and from the Country Club.

The following action was taken in reference to the preliminary report of the American Bar Association in re Canons of Professional Ethics:

By W. B. Swaney.

Mr. Chairman:

The American Bar Association has for the past two years had a committee working on a Code of Ethics for the legal profession. This committee of the American Bar Association has been at work for practically two years on a code of ethics for the American Bar. I hold in my hand the advance sheets of a preliminary report that has been sent out by this committee. I make the motion that this report be referred to the Committee on Legal Education and Admission to the Bar, with a demand from the Association that they report on that during this meeting to this extent: While this is a preliminary report and will be acted on at the meeting of the American Bar Association at Seattle, Washington, this report will practically be adopted, and that report will be adopted and that report will be accepted; so that it will be made a part of the proceedings of our Association and in that way be educative and beneficial to the whole profession.

By Mr. G. N. Tillman, of Nashville:

I hold in my hands a copy of the preliminary report of the American Bar Association "in re Canons of Professional Ethics." It is quite a lengthy document, and well worth the critical study of the members of the Bar, but I see no necessity of any haste. I think it would be better to amend Brother Swaney's motion by referring it with directions to this committee to report on it at our next meeting. It has not been acted upon by the American Bar Association, and I have upon the whole no criticism to offer upon it, but yet I have my doubts whether there are a dozen members of the Bar that have a copy of it.

By Mr. Swaney: On that question my motion does not go as far as the gentleman seems to think. Let it be incorporated in the proceedings of this meeting and sent out to members of the Bar.

By Mr. G. N. Tillman: You mean put in the printed report of this Association?

By Mr. Swaney: Yes, sir, so that at the next meeting we can take it up and act upon it.

By Mr. Tillman: A copy of the report can be obtained by writing to the committee in Philadelphia, and now as the report of this meeting
is likely to be very elaborate, I see no necessity for embodying this in
the proceedings of this Association. The Association is now in debt three
or four hundred dollars, at least so claimed by our friends at Memphis,
and we will have to get up funds to run this.

By Mr. Thos. J. Tyne, of Nashville: The Committee on Legal
Education and Admission to the Bar will probably recommend some
additional legislation, and inasmuch as the Legislature meets between
now and the next meeting of the Bar Association, if this matter is to
be recommended at all, or if there is any legislation to be proposed. I
believe it should be acted on at this meeting, so that all matters of
legislation can be reported or presented, at the next meeting of the
Association.

By the President: The pending motion is that the report be referred
to the Committee on Legal Education and Admission to the Bar. The
question was put and unanimously carried; and thereupon the report was
referred to the Committee on Legal Education and Admission to the Bar,
with directions that it be acted upon at this meeting.

President Bryan introduced Judge R. M. Barton of the
Court of Civil Appeals, who read a paper on "Taxation," which
appears in the appendix.

After Judge Barton concluded his paper President Bryan
announced a recess until 2 o'clock p.m.

Afternoon Session.

The meeting was called to order at 2:15 o'clock by Hon.
J. S. Pilcher, Vice-President for Middle Tennessee, who pre-
sided in the absence of President Bryan, who was in attendance
at a reception given in honor of Judge Taft.

Vice-President Pilcher introduced Gen. Charles T. Cates,
Jr., of Knoxville, who read a paper entitled "The Conflict Be-
tween the State and Federal Courts." This paper appears in
the appendix.

Vice-President Pilcher introduced Judge Jno. W. Judd of
Nashville, who read a paper entitled "The Extent and Limit of the
Treaty-Making Power of the United States." The paper ap-
ppears in the appendix.

Vice-President Pilcher called for the report of the Com-
mittee on Jurisprudence and Law Reform, and said report was
presented by Hon. Jordon Stokes, Chairman of the said com-
mittee. Said report was on motion duly seconded and regularly
passed and ordered spread of record, which is accordingly done,
as follows:
REPORT OF COMMITTEE ON JURISPRUDENCE AND LAW REFORM.

To the President and Members of the Bar Association of Tennessee:

Out of many subjects that have suggested themselves to your committee, we deem it advisable only to select one. We select this one for the reason that it is a vital question today in our country, and one upon which our best students of municipal government are devoting their time and talents. Your committee, while recognizing the evils that have grown up in the government of our cities, and that such government has not kept pace with the administration of State and National affairs, yet we are not able to agree upon any method that we think would solve the difficulty. We therefore do nothing more than suggest the subject, and recommend that it be referred to either one of our regular committees to make a careful study of the question and report more fully on it at our next annual meeting.

We are agreed that there should be a change in the manner of governing our large cities, and we invite the discussion of this question by the members of this Association, and its reference to a committee as above stated.

Very respectfully,

JORDAN STOKES,
Chairman.

Upon motion duly seconded and unanimously passed, the recommendations in the foregoing report are referred to the Committee on Jurisprudence and Law Reform for a report thereon at the next annual meeting.

Vice-President Pilcher called for the report of the Committee on Judicial Administration and Remedial Procedure, and said report was presented and read by Hon. Percy D. Maddin, Chairman of said committee. Upon motion of Judge George L. Burke, duly seconded and unanimously passed, further action on the report of said committee was deferred until Saturday morning.

Thereupon the meeting adjourned until 9 o'clock Saturday morning.

From 5 o'clock p.m. to 7 o'clock p.m. the members of the Association, their wives and friends, enjoyed the delightful reception tendered by the ladies of Nashville at the Country Club.

At 8:30 o'clock p.m. the banquet of the Association was held in the banquet hall of the Watauga Club, and among the
more than one hundred members present was our distinguished guest, Hon. Martin W. Littleton of New York, who responded to the most eloquent toast of the evening.

THIRD DAY, SATURDAY, MAY 23.

Morning Session.

The meeting was called to order in the Watauga Club by President Bryan at 10 o’clock a.m. The Central Council presented the names of the following attorneys, recommending them for membership, all of whom were unanimously elected as members of the Association:

Daniel McGugin .................................................. Nashville
Jno. C. Brown .................................................. Nashville
J. W. Cooper .................................................. Crossville
I. W. Crabtree .................................................. Winchester
Jas. W. Dorton .................................................. Crossville
D. E. McCorkle .................................................. Franklin
Jno. A. Pitts .................................................. Nashville
J. D. G. Morton .................................................. Gallatin
C. H. Garner .................................................. Tracy City
Felix D. Lynch .................................................. Winchester
Frank L. Lynch .................................................. Winchester
W. W. Fairbanks ............................................... McMinnville
Garnett S. Andrews ............................................ Nashville
A. B. Watkins .................................................. Nashville
W. W. Draper .................................................. Gainesboro
C. H. Cobb .................................................. Union City
R. B. Cooke .................................................. Chattanooga
W. W. Pardue .................................................. Gallatin

Respectfully Submitted,

G. N. TILLMAN, Chairman.
F. ZIMMERMAN,
S. B. SMITH,
R. F. JACKSON,
C. C. SLAUGHTER.

L. M. G. Baker of Knoxville moved that Mr. Percy D. Maddin, Chairman of the Committee on Judicial Administration and Remedial Procedure, be requested to read to the Associa-
tion his report presented and read the afternoon before. The motion was seconded and unanimously carried, and thereupon Mr. Maddin read his report.

Upon motion of G. N. Tillman, duly seconded by F. Zimmerman, which motion was unanimously carried, said report was accepted and ordered spread of record in the minutes, which is accordingly done, as follows:

REPORT OF THE COMMITTEE ON JUDICIAL ADMINISTRATION AND REMEDIAL PROCEDURE.

To the President and Members of the Bar Association of Tennessee:

Your Committee on Judicial Administration and Remedial Procedure begs leave to submit the following report:

Your committee has thought it well, before entering upon any recommendations, to make a brief reference to what has been recommended in former reports by this committee, and also to briefly note what the results of these recommendations have been.

It frequently occurs that members of the Association are unable to attend consecutive meetings, and unless they make a careful examination of the published reports of its proceedings, they are not aware of what has been suggested or recommended by this Association. Later, when the Legislature meets, and measures are passed which redound to the benefit of the community, and aid in the prompt and beneficial administration of justice, even the members of the Tennessee Bar Association may not know that the Association was instrumental in bringing about these needed changes.

It is, therefore, not inappropriate that we refer briefly to what has been accomplished through the suggestions and efforts of this committee of the Tennessee Bar Association.

Up to the year 1901, the following recommendations made to the Bar Association by this committee had been adopted and embodied in the laws passed by the Legislature, and had become part of the judicial procedure of the State:

The Jury Commissioners' Law, relating to the selection of juries, had been adopted in many of the larger counties.

The number of civil districts in various counties had been reduced, thereby diminishing the number of the members of the Quarterly Courts of the counties.

Provision had been made for the taking of depositions by stenographers, in place of the old style long hand depositions.

A bill had been passed, granting time after the expiration of a term of Court, in which to make up the Bill of Exceptions and perfect appeals.
Matters pertaining to the re-opening of biddings in Chancery sales had been regulated.

Witness fees and criminal costs had been regulated, thereby saving enormous sums to the State in criminal cases.

The Court of Chancery Appeals was created, greatly relieving the arduous labor of our Supreme Court.

Assignment of errors in the Supreme Court was provided for, thereby greatly diminishing the labors of the Court, in the investigation of both Chancery and law cases.

Defendants were allowed to plead in abatement, along with plea in bar, and the effect of overruling a plea in abatement was ameliorated.

In cases of appeals from magistrates, a prompt demand for a jury was required to be made.

Husbands seeking divorce were required to give prosecution bonds. Many of these provisions are of very great importance to litigants, and have resulted in very great benefit, both in the saving of time, labor and expense.

Since 1901 many other recommendations of this committee have been adopted, either by laws passed, or by judicial rulings.

The committee, in 1901, recommended that continuances should only be granted on special affidavit, the truth of which might be investigated by the Court. This suggestion was shortly thereafter made the basis of a ruling of the Supreme Court, and from that time, even on the first application for continuance, the party not ready finds that he must give the best possible reasons for his unprepared condition, before he can obtain a continuance. This has resulted in much more prompt trials of cases.

The recommendation that in certiorari cases, issue may be taken upon facts alleged as ground for not appealing, and that the first term shall be the trial term, was enacted into a law in Chapter 115 of the Acts of 1903.

In 1905 the committee recommended an increase in the number of judges of the Supreme Court, or the creation of an additional intermediate Appellate Court, in order to expedite and render less burdensome the labors of the Supreme Court.

The Legislature of 1907, by establishing the Court of Civil Appeals, has done more to lighten the labors of our Supreme Court, and enable that Court at each term to clear, or practically clear, its docket, than by any other means that could reasonably have been adopted.

Doubtless many other measures recommended by this committee have been adopted either by the Legislature or by the Courts, not to mention the many measures recommended by the various Committees on Jurisprudence and Law Reform, and other committees of the Association.

Some recommendations which this committee has made have not, however, been adopted. A few of these will now be mentioned.

**INCREASE OF JUDICIAL SALARIES.**

One of the matters about which recommendations have been made in
various years, both by this committee and by special committees, is the increase of judicial salaries.

At the meeting of the Association in 1905 a resolution was passed that "It is the sense of the Bar Association of Tennessee that our judiciary is inadequately paid, and that their salaries should be increased, and that the Chair appoint a committee of three, with Chas. W. Rankin as Chairman, to take up the question of an increase in the salaries of our judiciary, and report to the next meeting of the Association."

In 1906 a most exhaustive report was made under this resolution, showing the salaries of the main judicial officers of all the State and Federal Courts, and of most of the foreign countries. This report showed that the judiciary of this State were paid far less than similar officers of nearly all the other States and countries.

In addition to that report, the Committee on Judicial Administration and Remedial Procedure gave special attention to the question of judicial salaries, showing that Supreme Justices, for example, in 1868-9 received $4,000, and Judges and Chancellors $2,500 per year, while in 1879 Supreme Judges were reduced to $3,000, and Chancellors and other Judges to $2,000. In 1885 the Supreme Judges were put back to $3,500, Chancellors, Circuit and Criminal Judges to $2,500, and that for twenty-five years thereafter there had been no change in these figures.

The committee's report of that year strongly recommended the increase of salaries to Justices of the Supreme Court to $5,000, and Judges of the Court of Chancery Appeals to $4,200; Chancellors, Circuit and Criminal Judges to $3,600.

Nothing, however, has been done by the Legislature towards increasing these salaries, except it may be said that the Act of 1907, Chapter 90, gives an allowance of $500 for a stenographer and other necessary expenses, and thereby, to some extent, renders it within the range of possibility for the Judge to do the work which he was compelled to do.

It is needless for this committee to call attention to the fact, first, that the labors of the Courts have greatly increased since the present basis of salary was established, and for that reason, if for no other, an additional compensation should be granted the judiciary of the State.

No less important is the fact, well known to every one, that the cost of living has increased in a still greater proportion. The purchasing power of a dollar today is scarcely more than two-thirds its purchasing power twenty-five years ago. A salary which at that time would have seemed fair, and even liberal, is far from sufficient under existing conditions, and this committee again earnestly recommends that some steps be taken by this Association, looking to the appointment of a committee to go before the next Legislature, to make a plea for additional compensation to our judiciary.

In this connection, we also desire to call attention to the fact that whenever a man is elected Judge of the Supreme Court or Court of Civil Appeals, his home life practically comes to an end. These Courts, meeting
in the three grand divisions of the State for their several terms, require a Judge to establish a new home at each place.

This is likewise true of nearly all the Judges and Chancellors of the State. While in a few of the large counties the Judges and Chancellors hold Court only in their home counties, the great majority of them hold Court in many counties, and spend most of their time away from home.

The time to take up this question with the Legislature is at hand. The next general election of Judges takes place in 1910, and the Legislature of 1909 is the one that will have a right to fix the salaries of the newly-elected Judges and will be the one before whom whatever effort this Association intends to make should be made.

We especially recommend that the Association take action upon this question now, and make it the paramount issue of the coming year. Otherwise, nothing can be done for eight years, for, under the Constitution, the salary cannot be changed during the term for which the Judge is elected.

The report of the committee of 1907 made several suggestions upon which there was much discussion, and finally that report was referred to this committee for report at the present year. We will, therefore, refer to the matter suggested in that report. First, seasonable publication of the Acts. All will agree that it is highly desirable that there be prompt publication of new laws passed by the Legislature; about this, there can be no difference of opinion. And we, therefore, recommend, as did the committee in 1907, that the Association appoint a committee to confer with the proper State authorities to secure, if possible, the publication of the various laws passed by the Legislature as early as possible after they are passed or after the Legislature adjourns.

Second, as to abolishing the Appearance Term. A number of reports of this committee have recommended abolishing the Appearance Term in the Circuit Court. Suggestion along this line was made in 1906 and again in 1907.

Your committee respectfully submits that they would not favor the straight-out abolishment of the Appearance Term without other limitation as to the time within which issues must be made up prior to the Trial Term.

The abolishment of the Appearance Term, without any further limitation, would mean that a suit could be brought on Wednesday preceding the Monday when Court met, issues would have to be made up during the first week of Court, and if the Court held into the next week, the case might stand for trial one week after the process had been returned. It is manifest that this would put defendants to the greatest possible disadvantage.

Under Chancery Court practice, after a case is at issue, the parties are allowed four months and two months for taking their proof in chief and in rebuttal, and thus an immediate trial can not be forced.

The complainant may also take his proof in chief, close and give notice to the other side, and force that side to take its proof within two months, and then the case will stand ready for trial; but at least two
months will have expired after the issues are made up before the case can be forced to trial. It should also be borne in mind that under the Chancery Court practice, proof is by deposition, and the defendant has the opportunity of seeing complainant's proof, and therefore can better prepare to meet it in a short space of time. In Circuit Court trials, however, the particular proof which the plaintiff will adduce is not known until it is offered on the witness stand; and if the trial were forced so soon after the case was at issue, the plaintiff could, if he saw proper, prepare his case before bringing suit, demand a trial immediately after the issues were made up, and have the defendant powerless to make out his defense. This would be manifestly unjust.

The Appearance Term has come down to us as one of the fixed institutions in judicial procedure from the earliest days in this State. It has been found a reasonably satisfactory method of practice.

It must be further borne in mind that the Circuit Courts meet every four months, while the Chancery Courts meet only every six months, so that an appearance term does not mean as long delay in the Circuit Court as it would mean if the same practice prevailed in the Chancery Court. Taking all these matters into consideration, this committee does not recommend abolishing the Appearance Term.

If some change were desired from the present practice, this committee would suggest that some time might be gained by making rule days in the Circuit Courts and having processes returnable to such rule days, and provide that if the case is at issue by a rule day at least sixty days before the next term, it should stand for trial at the following term. This your committee recommends.

PEREMPTORY INSTRUCTIONS.

Your committee, in 1907, took occasion to approve the practice of granting peremptory instructions, as established by recent adjudication of our Supreme Court. This recommendation caused considerable argument and discussion, manifesting wide difference of opinion as to the advisability of this practice. It was this discussion that probably caused the report of that year to be re-referred.

Your committee is of opinion, and so reports, that the practice of granting peremptory instructions, as limited and qualified by our Supreme Court, meets its approval.

It will be noted that the peremptory instruction allowed and approved by our Supreme Court is a very different practice from the peremptory instruction allowed and practiced in Federal Courts.

In our Supreme Court, the right, under proper conditions, to give a peremptory instruction, was first firmly established in the case of Greenlaw vs. Railroad, 114 Tenn., 187, decided at the December Term, 1904, though the right to demur to the evidence—which is, in result, very much the same practice—was recognized as having long existed in Tennessee, in the case of Hopkins vs. Railroad, 96 Tenn., 409, decided in March, 1896.

In the case of Tyrus vs. Railroad, 114 Tenn., 587, it was shown that
as early as 1844 in Tennessee Courts had granted peremptory instructions to juries, and the Supreme Court had refused to reverse the same on the ground that the proper result had been reached and that such instruction, if an invasion of the province of the jury, was a harmless error under the particular facts of those respective cases.

Ever since the decision of the Greenlaw case in December, 1904, the practice of granting peremptory instructions in proper cases has grown in favor and in frequency of use.

The right to grant the peremptory instruction, however, is very limited. The rule established in Tennessee is well stated in the case of Tyrus vs. Kansas City R. R., 114 Tenn., 579, as follows:

"When there is no controversy as to any material facts the trial judge may instruct the jury to return a verdict in accordance with his view of the law applicable to such ascertained and uncontroverted facts. But there can be no constitutional exercise of the power to direct a verdict in any case in which there is a dispute as to any material evidence or any legal doubt as to the conclusion to be drawn from the whole evidence upon the issues to be tried."

Our Supreme Court, making comments upon this rule, said:

"The rule is in accord with the substance and spirit of all our previous practice, and is but a harmonious part of a system. That is, if there is any dispute as to any material fact, the case must go to the jury; if there is no dispute as to such facts, the question is one of law for the Court."

In Kinney vs. Railroad, 116 Tenn., 450 (1606), the Court said:

"Where there is a conflict in the testimony as to any material determinative question, the Court, having no power to pass on the credibility of the witness, must submit the case to the jury. If there is no dispute as to such fact, the question is one of law for the Court."

In Knoxville Traction Co. vs. Brown, 115 Tenn., 323, the Court said:

"Where there may be a difference of opinion under the evidence as to whether the plaintiff's negligence directly contributed to the cause of the accident, the Court should not peremptorily instruct the jury, but should under proper instructions submit the question of contributory negligence to the jury, and where there are controverted and determinative questions of fact, the issues must be submitted to the jury."

The practice of giving peremptory instructions, or directing a verdict, prevails in Alabama, Arkansas, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New York, New Jersey, North Carolina, Pennsylvania, South Carolina, Vermont, West Virginia, and Wisconsin. And the practice of directing an involuntary non-suit—which is in result the same as granting peremptory instructions, prevails in California, Connecticut, Delaware, Georgia, Iowa, Kentucky, Maine, Massachusetts, Michigan, Minnesota, New Hampshire, Nebraska, Nevada, New York, New Jersey, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Texas and Wis-
consin—making in all 33 States of the Union where one or the other of these forms of practice is in vogue.

It is recognized as an established practice in the Federal Courts, and has been so recognized for many years.

With this great weight of authority in favor of the practice, is Tennessee willing to refuse to recognize it? What can be gained by submitting a case to the jury when there is no dispute about the evidence, and when, conceding all the evidence to be true, together with the most favorable inferences that can be drawn from it in favor of the opposing side, no verdict could be properly given for that side? It is only under these conditions that the opposing side can obtain a peremptory instruction.

If an improper verdict is rendered under those circumstances, the lower court or the Supreme Court must set it aside, resulting in a new trial, with a double cost both to the litigants and to the county.

Your committee, therefore, is moved to approve the practice of granting peremptory instructions under the limitations prescribed in Tennessee.

AS TO CRIMINAL LAW.

Former reports of your committee have not devoted much attention to procedure in criminal matters, and your committee ventures to make the following suggestions:

_Court Stenographer_. The State should provide a Court Stenographer to take down the testimony in all felony cases.

This is as important to the defendant as to the State, in order that, upon an appeal, the Supreme Court may see the exact testimony that was before the jury. Many defendants in criminal cases are not able to bear the expense of a stenographer, and therefore their cases go before the Appellate Court with only a partial and imperfect report of the evidence. For their sakes, a court stenographer should be provided. And, on the other hand, many criminal cases in the Supreme Court are reversed because the conviction was not sustained by the evidence as reported in the bill of exceptions.

It will be borne in mind that the Attorney General tries all the cases on behalf of the State, while the particular lawyer representing the defendant may have only one or a few such cases at any particular term. Therefore, in making up the bill of exceptions, the defendant's testimony is likely to be more complete, while the State's testimony is partial. From this fact, many criminal cases are reversed which would have been affirmed if the entire evidence for the State had been before the Supreme Court.

STATUTE OF LIMITATIONS ON PROBATE AND CONTEST OF WILLS.

The line of demarkation between the province of this committee and that of the Committee on Jurisprudence and Law Reform is not entirely distinct, and while the suggestion we now make may be on the border line, we take the liberty of making it:

Under the present state of the law, a person may die intestate and his
will not be offered for probate for an indefinite time; and, on the other hand, after being probated, the parties may wait for twenty or thirty years, and then file a contest, there being no statutory limit upon either right. This results in uncertainty as to land titles which should be obviated.

We, therefore, suggest and recommend that a statute of limitations of, say, two, three or five years, should be imposed upon the probating of wills; a statute of limitations of two years as to persons sui juris; six years as to all persons for the contesting of wills.

Several previous reports of your committee have suggested the advisability of having a joint conference of all the Judges and Chancellors in the State for the purpose of considering changes in judicial administration and remedial procedure, but these suggestions have not been acted upon. It is believed that such a meeting would be fruitful of much good. We believe that by proper efforts such a meeting could he had at the next meeting of this Bar Association, and we, therefore, submit to the Association the advisability either of appointing a special committee for the purpose, or directing this committee to take the matter up with the Judges and Chancellors of the State and endeavor to have them all present for a joint conference at the next meeting of the Bar Association.

Respectfully submitted,

Percy D. Maddin, Chairman,
Joshua W. Caldwell,
Jno. H. Dewitt,
Thos. H. Malone,
F. Zimmerman,

The President called for the report of the Advisory Committee for Judicial Reform and Inhibiting Free Transportation. Said report was presented and read by W. G. M. Thomas, Chairman of the Committee.

G. N. Tillman moved that said report be adopted and spread of record in the minutes. Motion was seconded by F. Zimmerman, and upon vote was unanimously carried. Said report was in the words following, to-wit:

To the President and Members of the Bar Association of Tennessee.

In virtue of the action taken by the Association at its last year's meeting at Memphis, the President appointed the undersigned "Advisory Committee on Judicial Reform and Inhibiting Free Transportation."


In support of the real merits of each of these measures, we beg to refer to the report of the Committee on Judicial Administration and Remedial Procedure, made to the August, 1906, meeting of the Association.
That report appears upon pages 67 and 69 of the published minutes of that year.

We recommend that these bills be enacted into laws by the next Legislature of Tennessee, and, to that end, that a special committee be appointed with full power to take charge of the entire subject and urge through the Legislature each one of these proposed enactments.

Respectfully submitted,

W. G. M. THOMAS, Chairman.
J. H. MALONE,
R. E. L. MOUNTCASTLE,
HENRY E. SMITH,
FRANCIS FENTRESS, JR.

Committee.

A BILL TO BE ENTITLED AN ACT TO CHANGE AND FIX THE SALARY OF THE JUDGES OF THE SUPREME COURT.

Section 1. Be it enacted by the General Assembly of the State of Tennessee, That the salary of the Judges of the Supreme Court, hereafter elected or appointed, shall be five thousand ($5,000) dollars per annum, payable as now provided by law.

Sec 2. Be it further enacted, That all laws in conflict with this Act be and the same are hereby repealed.

A BILL TO BE ENTITLED AN ACT TO CHANGE AND FIX THE SALARY OF THE JUDGES OF THE COURT OF CIVIL APPEALS.

Sec. 1. Be it enacted by the General Assembly of the State of Tennessee, That the salary of the Judges of the Court of Civil Appeals, hereafter appointed or elected, shall be four thousand two hundred ($4,200) dollars per annum, payable as now provided by law.

Sec. 2. Be it further enacted, That all laws in conflict with this Act be, and the same are hereby repealed.

A BILL TO BE ENTITLED AN ACT TO CHANGE AND FIX THE SALARY OF THE CHANCELLORS AND CIRCUIT AND CRIMINAL COURT JUDGES.

Section 1. Be it enacted by the General Assembly of the State of Tennessee, That the salary of each Chancellor, Circuit Judge and Criminal Court Judge, hereafter appointed or elected, shall be three thousand six hundred ($3,600) dollars per annum, payable as now provided by law.

Sec. 2. Be it further enacted, That all laws in conflict with this Act be, and the same are hereby repealed.

A BILL TO BE ENTITLED AN ACT TO EQUALIZE THE REMUNERATION RECEIVED SEVERALLY (1) BY THE JUDGES OF THE SUPREME COURT, (2) THE JUDGES OF THE
COURT OF CIVIL APPEALS, (3) THE CHANCELLORS AND THE JUDGES OF THE CIRCUIT COURT AND CRIMINAL COURT, BY REIMBURSING EACH OF SAID JUDGES AND CHANCELLORS HIS ACTUAL RAILROAD AND LIVERY FARE AND HOTEL BILLS WHILE GOING TO AND FROM HIS COURTS AND IN HOLDING HIS COURTS IN COUNTIES OTHER THAN THE COUNTY OF HIS RESIDENCE.

Section 1. Be it enacted by the General Assembly of the State of Tennessee, that the actual railroad and livery fare and hotel bills, paid by the Judges of the Supreme Court, the Judges of the Court of Civil Appeals, the Chancellors and the Judges of the Circuit and Criminal Courts, while going to and from Court and in holding Court in counties other than the county of the judge’s residence, shall be payable to said Judges and Chancellors quarterly out of the treasury of the State on the warrant of the Comptroller; provided, that the same shall be, by said Judges and Chancellors, duly itemized and certified as such actual expenses.

Sec. 2. Be it further enacted, That all laws in conflict with this Act be, and the same are hereby repealed, and that this Act take effect from and after its passage, the public welfare requiring it.

A BILL TO BE ENTITLED AN ACT TO PROHIBIT ALL JUDGES AND CHANCELLORS FROM ACCEPTING OR USING FREE TRANSPORTATION FROM ANY RAILROAD COMPANY OR OTHER COMMON CARRIER, AND FROM ACCEPTING OR USING FRANKING OR OTHER FREE PRIVILEGES FROM ANY PUBLIC UTILITY COMPANY OR CORPORATION, OR PERSON OR PARTNERSHIP ENGAGED IN A PUBLIC UTILITY BUSINESS.

Section 1. Be it enacted by the General Assembly of the State of Tennessee. That hereafter it shall be unlawful for any Judge of the Supreme Court, Judge of the Court of Civil Appeals, Chancellor, Judge of the Circuit Court, Criminal Court or County, or Special Court, to use or accept a free pass or free transportation from any railroad company or other common carrier, or to use or accept any franking or other free privilege from any public utility company or corporation, or person or partnership engaged in the business usually done by what is known as a public utility company or corporation.

Sec. 2. Be it further enacted, That a violation of any provision of this Section One (1) hereof shall be a misdemeanor, and shall be punishable by a fine of not less than $50.00 nor more than $250.00.

Sec. 3. Be it further enacted. That this Act shall take effect from and after its passage, the public welfare requiring it.

The President called for the report of the Committee on Legal Education and Admission to the Bar, and said report was presented and read by Thomas J. Tyne, Chairman of the committee. At the conclusion of the reading of this report,
Thomas J. Tyne, Chairman, presented the report of the same committee on American Bar Association 1908 Preliminary Report in re Canons of Professional Ethics, which report was on the day previous referred to the Committee on Legal Education and Admission to the Bar. L. M. G. Baker moved that both of said reports be received, and that their recommendations be adopted and that they be spread of record on the minutes. Major E. C. Camp seconded the motion, and upon vote it was unanimously carried. Said reports are in the words following, to-wit:

REPORT OF COMMITTEE ON LEGAL EDUCATION AND ADMISSION TO THE BAR.

To the President of the Bar Association of Tennessee:

Your Committee on Legal Education and Admission to the Bar begs leave to submit the following report:

At the last meeting of the Association this committee, through its Chairman, Mr. S. L. Cockcroft, who is the Secretary of the State Board of Law Examiners, submitted an able and interesting report, in which he reviewed at length the work of the Board from its creation in March, 1903. With the added experience of another year, and viewing the results obtained through the work of this Board, as shown in the qualities of those admitted to the Bar by its approval, and also the increased respect and dignity which admission to the Bar now brings to the successful applicant, we again approve this step taken by the State looking to the improvement morally and intellectually of a profession which is no doubt of more importance to the State than all others combined. Because on the Bar depends, more than on any other organization or profession, the peace, security and permanence of our institutions. Lawyers being the intermediaries of conflicting interests, the advisers and representatives of contenders under the law, their opportunity to soften or provoke strife is so frequent and widespread that it might be truly said that the peace and security of the State or the individual is largely in their keeping. However important is the influence of the lawyer in handling the controversies between man and man, or however strong is the influence of the profession in the political affairs of the land, its chief importance to the State and citizen lies in the fact that it is the source and the inspiration of our judiciary. The judiciary of any State must, in the nature of things, have qualities like the Bar from which it is selected, and the permanence of our institutions—political and social—depends upon the character and capacity of those who sit in judgment on the rights of the people.

There is now standing in an European country a castle, which typifies
with wonderful accuracy our form of government. It is attractive in its lines and massive in its proportions—every part shows wonderful strength, and is apparently independent of the support of any other part, but it is so designed that there is not a stone in that grand structure that is not supported by one central column, without which the building could not stand, and which could not be weakened or impaired without endangering the whole, however sound the other parts might be, and so long as the strength of this column is preserved from the elements of decay the castle is safe.

The supporting column in our system of government is the judiciary. and, notwithstanding weakness, corruption, and political hysteria, in the other departments, the plan of government by the people can never fail until the seed of these destroying elements find fertile soil in the hearts and minds of our judiciary.

While the character of the judiciary in our country is wholly dependent upon the Bar, yet the influence of the profession is by no means confined to the judicial department of our State or National Government. It has dominated State and National Governments from the beginning. The government of our nation is and has always been a lawyer's government. All but four of our Presidents were lawyers, and more than three-fourths of our cabinet ministers, and a large majority of both houses of Congress have always been members of the Bar, and in like proportion has been the history of the political activity of the Bar in this State.

This brief reference to the dominating influence of the bar of the departments of government, State and National, is not intended merely to felicitate the Bar on the good it has accomplished; we have a more serious and practical purpose—we intend it as a reminder to you of the dependence of the State as a unit upon the members of our profession, and of the urgent need of such regulation of the practice of law by the State as will insure as far as possible a clean and able Bar.

Recognizing the value and importance of the establishment and maintenance of a high moral and intellectual standard for those engaged in the practice of law, to the State as a unit, we should not be unmindful of the obligation it owes to its people on account of the peculiar privileges it extends to the Bar and its relations with the members thereof, to protect as far as possible its people against the ignorance, dishonesty and sharp practice of those whom it holds out as officers of its courts. If the life, liberty or property of a person is threatened by a proceeding in the Courts of this State, and he desires counsel, he is limited in his selection to those whom the State has approved and authorized as proper persons to practice law. He cannot, however dissatisfied he may be, make any other selection. Into the hands of this officer of the State he must yield absolutely the control and management of his affair and upon whom he must rely implicitly, and in committing this broad trust no security can be required and none is offered save the traditions of the profession. While this condition is necessary and proper, and we would not suggest anything that might even remotely impair the confidence so necessary of
clients in their counsel, and which is so amply justified by the history and traditions of our profession, yet we feel that Tennessee has not done all that she might towards the preservation and perpetuation of the high traditions of our profession, and to prevent the growth of practices hurtful to the profession, and more so to its people.

By the creation of the State Board of Law Examiners under the Act of 1903, a step was taken, which, as we have hereinbefore repeated, has produced good results, but we respectfully submit that the proper end of such legislation has not been reached. The examination of the Board of Law Examiners is under its present powers limited in a practical sense to the mental qualifications of the applicants, and although knowledge and capacity are essential to the proper practice of law, and their value cannot be overestimated, yet we submit that good morals is more important, or, to state it differently, bad morals in the practice of law is immeasurably more hurtful to the profession and dangerous to the public than lack of mental attainments. The incapable lawyer is short lived, but the dishonest lawyer under our present laws may live long and prosper.

It is true that the Board of Law Examiners as now constituted has the power, and that it is its duty to consider the moral character of the applicants for admission to the Bar, but inasmuch as nearly all of the applicants are young men just entering upon their careers, with their moral natures or tendencies undeveloped by the conflicts of life, such an examination is necessarily of little value.

We therefore believe that another step should be taken by the State in regulating the practice of law, so as to provide additional, efficient and persistent means for the investigation of the misconduct of members of the Bar as defined by Section 5781 of Shannon's Code, and punishment for such misconduct as now provided by law. And purposely avoiding the suggestion of the details of the needed legislation, we recommend that this Association propose an amendment to the Act creating the Board of Law Examiners, whereby the Board may have the power to try any member of any Bar of the State upon charges of misconduct as a lawyer as before indicated on its own motion or complaint of any other person, reserving to the accused the right of appeal or certiorari from the decision of the Board to the Supreme Court, or to an inferior court should there be any doubt of the jurisdiction of the Supreme Court under the Constitution to try a cause appealed directly from an administrative tribunal. Although we do not regard it necessary or useful to disturb the jurisdiction of the courts in any such cases arising within their respective jurisdictions, we recommend that such legislation should exclude the jurisdiction of the court in any case pending before the Board of Law Examiners.

It may be said in opposition to this recommendation, that the Courts of this State now have ample power to investigate the conduct of the members of their respective Bars, and to punish them for any misconduct incompatible with the faithful discharge of the duties of their profession. This, we must admit, is true, but it is also true that, unfortunately for the profession, this power is not exercised nearly as often as the welfare of
the Bar requires; and when exercised the punishment is usually so slight that the proceeding does little more than bring disgrace upon the Bar.

It may be further said, that the same conditions which required the passage of the Act creating the State Board of Law Examiners and regulating admission to the Bar prevail with regard to expulsion from the Bar. The Courts before the creation of this Board had power to examine into the qualifications of applicants to the Bar, just as unlimited if not broader than that given the Board, yet the marked change in the character of the Bar due solely, as we believe, to the careful and efficient work of our State Board, indicates that the Courts did not, through indifference or lack of proper system, give to the matter of admission to the Bar the attention it deserved, and so it is we believe regarding the disbarment of those guilty of misconduct. Our Courts are too indulgent in such matters, and rarely act except in flagrant cases, and it must be admitted that they do not give the conduct of their lawyers the close and persistent scrutiny which is always necessary to correct and deter evil doing in any class or profession.

The Board of Examiners, with a single purpose and undisturbed by other duties, can establish and maintain a close supervision of the conduct of lawyers, and being free as a whole from local bias or prejudice can be relied upon, not only to find the wrong, but promptly and efficiently correct it.

Respectfully submitted,

THOS. J. TYNE, Chairman
STITH M. CAIN,
S. L. COCKROFT,
ROBERT BURROW,
LUKE LEA.

To the President of the Bar Association of Tennessee:

Under the direction of the Association, we have considered the following canon of professional ethics recommended by a committee of the American Bar Association:

THE CANON OF ETHICS.

No code or set of rules can be framed, which will particularize all the duties of the lawyer in the varying phases of litigation or in all the relations of professional life. The following canons of ethics are adopted by the American Bar Association as a general guide, yet the enumeration of particular duties should not be construed as a denial of the existence of others equally imperative, though not specifically mentioned:

1. Duties of Lawyers to Courts and Judicial Officers. The law enjoins respect for Courts and for judicial officers for the sake of the office, and not for the sake of the individual who for the time being administers its functions. A bad opinion of the incumbent, however well founded, cannot justify withholding from him the deference due the office while he is administering it. The proprieties of the judicial station limit the ability of judges to defend themselves, and in the discharge of their duties, courts
and judicial officers always should receive the support and countenance of the Bar against unjust criticism and popular clamor.

2. The Selection of Judges. It is the duty of the Bar to endeavor to prevent political considerations from outweighing judicial fitness in the selection of Judges. It should protest earnestly and actively against the appointment or election of those who are unsuitable for the Bench; and it should strive to have elevated thereto only those willing to forego other employments, whether of a business, political or other character, which may embarrass their free and fair consideration of questions before them for decision. The aspiration of lawyers for a judicial position should be governed by an impartial estimate of their ability to add honor to the office and not by a desire for the distinction the position may bring to themselves.

3. Attempts to Exert Personal Influence on the Court. Marked attention and unusual hospitality on the part of a lawyer to a Judge, uncalled for by the personal relations of the parties, subject both the Judge and the lawyer to misconstructions of motive, and should be avoided. A lawyer should not communicate or argue privately with the Judge as to the merits of a pending cause, and he deserves rebuke and denunciation for any device or attempt to gain from a Judge special personal consideration or favor. A self-respecting independence in the discharge of professional duty, without denial or diminution of the courtesy and respect due the Judge's station, is the only proper foundation for cordial personal and official relations between Bench and Bar.

4. When Counsel for an Indigent Prisoner. A lawyer assigned as counsel for an indigent prisoner ought not to ask to be excused for any trivial reason, and should always exert his best efforts in his behalf.

5. Defending One Whom Advocate Believes to Be Guilty. A lawyer may undertake with propriety the defense of a person accused of a crime, although he knows or believes him guilty, and, having undertaken it, he is bound by all fair and honorable means to present such defenses as the law permits, to the end that no person may be deprived of life or liberty but by due process of law.

6. Adverse Influences and Conflicting Interests. It is the duty of a lawyer at the time of retainer to disclose to the client all the circumstances of his relations to the parties, and any interest in or connection with the controversy, which might influence the client in the selection of counsel.

It is unprofessional to represent conflicting interests in the same suit or transaction, except by express consent of all concerned, given after a full disclosure of the facts. Within the meaning of this canon, a lawyer represents conflicting interests when, in behalf of one client, it is his duty to contend for that which duty to another client requires him to oppose.

The obligation to represent the client with undivided fidelity and not to divulge his secrets or confidences forbids also, the subsequent acceptance of retainers or employment from others in matters adversely affecting
any interest of the client with respect to which confidence has been reposed.

7. Professional Colleagues and Conflicts of Opinion. A client's proper assistance of additional counsel should not be regarded as evidence of want of confidence, but the matter should be left to the determination of the client after frank advice from counsel. A lawyer should decline association as colleague if it is objectionable to the original counsel. If the lawyer first retained is relieved, another may come into the case, but efforts, direct or indirect, in any way to encroach upon the business of another lawyer are unprofessional.

When lawyers jointly associated in a cause cannot agree as to any matter vital to the interest of the client, the conflict of opinion should be frankly stated to him for his final determination as to the course to be pursued. His decision should be accepted unless the nature of the difference makes it impracticable for the lawyer whose judgment has been overruled to co-operate effectively. In this event it is his duty to ask the client to relieve him.

8. Advising Upon the Merits of a Client’s Cause. A lawyer should endeavor to obtain full knowledge of his client's cause before advising thereon, and he is bound to give a candid opinion of the merits and probable result of pending or contemplated litigation. The miscarriages to which at times justice is subject, by reason of surprises and disappointments in evidence and witnesses, and through mistakes of juries and errors of Courts, even though only occasional, admonish lawyers to beware of bold and confident assurances to clients, especially where the employment may depend upon such assurance. Whenever the controversy will admit of fair adjustment, the client should be advised to avoid or end the litigation.

9. Negotiations with Opposite Party. A lawyer should not in any way communicate upon the subject of controversy with a party represented by counsel; much less should he undertake to negotiate or compromise the matter with him, but should deal only with his counsel. It is incumbent upon the lawyer most particularly to avoid everything that may tend to mislead a party not represented by counsel, and he should not undertake to advise him as to the law.

10. Business Dealings with Clients. Lawyers should avoid becoming either borrowers or creditors of their clients; and they should scrupulously refrain from bargaining about the subject matter of their litigation.

11. Dealing with Trust Property. Money of the client or other trust property coming into the possession of the lawyer should be reported promptly, and except with the client's knowledge and consent should not be commingled with his private property or be used by him.

12. Fixing the Amount of the Fee. In fixing fees, lawyers should avoid charges which overestimate their advices and services, as well as those which undervalue them. A client's ability to pay cannot justify a charge in excess of the value of the service, though his poverty may require a less charge, or even none at all. The reasonable requests of brother
lawyers, and of their widows and orphans without ample means, should receive special and kindly consideration.

In determining the amount of the fee, the following elements should be considered: (1) the time and labor required, the novelty and difficulty of the questions involved and the skill requisite properly to conduct the cause; (2) Whether the acceptance in the particular case will preclude the lawyer's appearance for others in cases likely to arise out of the transaction, and in which there is a reasonable expectation that otherwise he would be employed, or will involve the loss of other business while employed in this particular case or antagonisms with other clients; (3) the customary charges of the Bar for similar services; (4) the amount involved in the controversy and the benefits resulting from the services; (5) the contingency or the certainty of the compensation; and (6) character of the employment, whether casual or for an established and constant client.

-No one of these considerations in itself is controlling. They are mere guides to ascertaining the real value of the service.

- In fixing fees it should never be forgotten that the profession is a branch of the administration of justice, and not a mere money-getting trade.

13. Contingent Fees. Contingent fees may be contracted for, but they lead to many abuses and should be under the supervision of the Court.

14. Swing a Client for a Fee. Controversies with clients concerning compensation are to be avoided by the lawyer so far as shall be compatible with his self-respect and with his right to receive compensation for his services; and lawsuits with clients should be resorted to only to prevent injustice, imposition or fraud.

15. How Far a Lawyer May Go in Supporting a Client's Cause

Nothing operates more certainly to create or to foster popular prejudice against lawyers as a class and to deprive the profession of that full measure of public esteem and confidence which belongs to the proper discharge of its duties than does the false claim, often set up by the unscrupulous in defense of questionable transactions, that it is the duty of the lawyer to do whatever may enable him to succeed in winning his client's cause.

A lawyer "owes entire devotion to the interests of his client, warm zeal in the maintenance and defense of his cause and the exertion of the utmost skill and ability," to the end that nothing may be taken or withheld from him, save by the rules of law, legally applied. Nevertheless, it is steadfastly to be borne in mind that the great trust is to be performed within and not without the bounds of the law. The office of attorney does not permit, much less does it demand for any client, violation of law or any manner of fraud or chicanery. No lawyer is justified in substituting

*Hon. James G. Jenkins of the committee dissents from Canon 13, as he is opposed to contingent fees under any circumstances.
another's conscience for his own. A lawyer should not do for a client what his sense of honor would forbid him to do for himself.

16. Restraining Clients from Improprieties. A lawyer should use his best efforts to restrain and to prevent his clients from doing those things which the lawyer himself ought not to do, particularly with reference to their conduct towards Courts, judicial officers, jurors, witnesses and suitors. If a client persists in wrongdoing to the detriment of the administration of justice, the lawyer should terminate their relation.

17. Ill-Feeling and Personalities Between Advocates. Clients, not lawyers, are the litigants. Whatever may be the ill-feeling existing between clients, it should not be allowed to involve counsel in their conduct and demeanor toward each other or toward suitors in the case. All personalities between counsel should be scrupulously avoided. In the cause of a trial it is indecent to allude to the personal history or the personal peculiarities and idiosyncrasies of counsel on the other side. Personal colloquies between counsel which cause delay and promote unseemly wrangling should also be carefully avoided.

18. Treatment of Witnesses and Litigants. A lawyer should always treat adverse witnesses and suitors with fairness and due consideration, and he should never minister to the malevolence or prejudices of a client in the trial or conduct of a cause. The client cannot be the keeper of the lawyer's conscience in professional matters. He cannot demand as of a right that his counsel shall abuse the opposite party or indulge in offensive personalities. Improper speech is not excusable on the ground that it is what a client would say if speaking in his own behalf.

19. Appearance of a Lawyer as Witness for His Client. When a lawyer is a witness for his client, except as to merely formal matter, such as the attestation or custody of an instrument and the like, he should leave the trial of the case to other counsel. Except when essential to the ends of justice, a lawyer should avoid testifying in Court in behalf of his client. Similarly it is improper for a lawyer to assert in argument his personal belief in his client's innocence or the justice of his cause.

20. Newspaper Discussion of Pending Litigation. Newspaper publications by a lawyer as to pending or anticipated litigation may interfere with a fair trial in the Courts and otherwise prejudice the due administration of justice. Generally they are to be condemned. If the extreme circumstances of a particular case justify a statement to the public, it is unprofessional to make it anonymously. An ex parte reference to the facts should not go beyond quotation from the records and papers on file in the Court; but even in extreme cases it is better to avoid any ex parte statement.

21. Punctuality and Expedition. Lawyers owe it to the Courts and to the public, whose business the Courts transact, as well as to their clients, to be punctual in attendance, and to be concise and direct in the trial or disposition of their causes. They should try their cases on the merits, and should not resort to any legal technicalities not necessary to establish the merits.
22. Candor and Fairness. The conduct of the lawyer before the Court and with other lawyers should be characterized by candor and fairness.

It is not candid or fair for the lawyer in opening his case, to mislead his opponent by concealing or withholding positions upon which he then intends finally to rely; or in argument to assert as a fact that which has not been proved; or knowingly to misquote the contents of a paper, the testimony of a witness, the language or the argument of opposing counsel, or the language of a decision or a text-book; or with knowledge of its invalidity, to cite as authority a decision that has been overruled, or a statute that has been repealed.

It is unprofessional and dishonorable to deal other than candidly with the facts in taking the statements of witnesses, in drawing affidavits and other documents, and in the presentation of causes.

A lawyer should not give evidence, which he knows the Court should reject, in order to get the same before the jury by argument for its admissibility, nor should he address to the Judge arguments upon any point not properly calling for determination by him. Neither should he introduce into an argument, suitably addressed to the Court, remarks or statements intended to influence the jury or bystanders.

These and all kindred practices, appropriately termed "pettifoggery," are unprofessional and unworthy of an officer of the law charged, as is the lawyer, with the duty of aiding in the administration of justice.

23. Attitude Toward Jury. All attempts to curry favor with juries by fawning, flattery or pretended solicitude for their personal comfort are unprofessional. Suggestions of counsel, looking to the comfort or convenience of jurors, and propositions to dispense with argument, should be made to the Court out of the Jury's hearing. A lawyer must never converse privately with jurors about the case; and both before and during the trial he should avoid communicating with them, even as to matters foreign to the cause.

24. Right of Lawyer to Control the Incidents of the Trial. As to incidental matters pending the trial, not affecting the merits of the cause, or working substantial prejudice to the rights of the client, such as forcing the opposite lawyer to trial when he is under affliction or bereavement; forcing the trial on a particular day to the injury of the opposite lawyer when no harm will result from a trial at a different time; agreeing to an extension of time for signing a bill of exceptions, cross interrogatories and the like, the lawyer must be allowed to judge. In such matters no client has a right to demand that his counsel shall be illiberal, or that he do anything therein repugnant to his own sense of honor and propriety.

25. Taking Technical Advantage of Opposite Counsel; Agreements With Him. A lawyer should not ignore known customs or practice of the Bar or of a particular Court, even when the law permits, without giving timely notice to the opposing counsel. As far as possible, important agreements, affecting the rights of clients, should be reduced to writing; but
it is dishonorable to avoid performance of an agreement fairly made because it is not reduced to writing, as required by rules of Court.

26. Professional Advocacy Other Than Before Courts. A lawyer openly, and in his true character, may render professional services before legislative or other bodies, regarding proposed legislation and in advocacy of claims before departments of the government, upon the same principle of ethics which justify his appearance before the Courts; but it is unprofessional for a lawyer so engaged to conceal his attorneyship, or to employ secret personal solicitations, or to use means other than those addressed to the reason and understanding to influence action.

27. Advertising, Direct or Indirect. The most worthy and effective advertisement possible, even for a young lawyer, and especially with his brother lawyers, is the establishment of a well-merited reputation for professional capacity and fidelity to trust. This cannot be forced, but must be the outcome of character and conduct. The publication or circulation of ordinary simple business cards, being a matter of personal taste or local custom, and sometimes of convenience, is not *per se* improper. But solicitation of business by circulars or advertisements, or by personal communications or interviews, not warranted by personal relations, is unprofessional. It is equally unprofessional to procure business by indirectation through touters of any kind, whether allied real estate firms or trust companies advertising to secure the drawing of deeds or wills or offering retainers in exchange for executorships or trusteeships to be influenced by the lawyer. Indirect advertisement for business by furnishing or inspiring newspaper comments concerning causes in which the lawyer has been or is engaged, or concerning the manner of the conduct, the magnitude of the interests involved, the importance of the lawyer's positions, and all other like self-laudation, defy the traditions and lower the tone of our high calling, and are intolerable.

28. Stirring Up Litigation, Directly or Through Agents. It is unprofessional for a lawyer to volunteer advice to bring a lawsuit, except in rare cases where ties of blood relationship or trust make it his duty to do so. Not only is stirring up strife and litigation unprofessional, but it is disreputable in morals, contrary to public policy and indictable at common law. No one should be permitted to remain in the profession who hunts up defects in titles or other causes of action and informs thereof in order to be employed to bring suit, or who breeds litigation by seeking out those with claims for personal injuries or those having any other grounds of action in order to secure them as clients, or who employs agents or runners for like purposes, or who pays or rewards, directly or indirectly, those who bring or influence the bringing of such cases to his office, or who remunerates policemen, Court or prison officials, physicians, hospital *attaches* or others who may succeed, under the guise of giving disinterested friendly advice, in influencing the criminal, sick and the injured, the ignorant or others, to seek his professional services. A duty to the public and to the profession devolves upon every member of the Bar, having.
knowledge of such practices upon the part of any practitioner, immediately
to inform thereof to the end that the offender may be disbarred.

29. Upholding the Honor of the Profession. Lawyers should expose
without fear or favor before the proper tribunals corrupt or dishonest con-
duct in the profession, and should accept without hesitation employment
against a member of the Bar who has wronged his client. The counsel
upon the trial of a cause in which perjury has been committed owe it to
the profession and to the public to bring the matter to the knowledge of
the prosecuting authorities. A lawyer should aid in guarding the Bar
against the admission to the profession of candidates unfit or unqualified
because deficient in either moral character or education. He should strive
at all times to uphold the honor and to maintain the dignity of the pro-
fession and to improve not only the law but the administration of justice.

30. Justifiable and Unjustifiable Litigations A lawyer must decline
to conduct a civil cause or to make a defense when convinced that the
purpose is merely to harass or injure the opposite party, or to work op-
pression and wrong.

He may counsel and maintain only such actions and proceedings as
appear to him just. His appearance in Court should be deemed equivalent
to an assertion, on his honor, that in his opinion his client is justly entitled
to some measure of relief refused by his adversary. Upon that measure
he may insist, though he disapprove his client’s character.

31. Responsibility for Litigation. No lawyer is obliged to act either
as adviser or advocate for any person who may wish to become his client.
He has the right to refuse retainers. Every lawyer must decide what
business he will accept as counsellor, what causes he will bring into Court
for plaintiffs, what cases he will contest in Court for defendants. The
responsibility for advising questionable transactions, for bringing ques-
tionable suits, for urging questionable defenses, is the lawyer’s responsi-
bility. He cannot escape it by urging as an excuse that he is only follow-
ing his client’s instructions.

32. The Lawyer’s Duty in Its Last Analysis. No client, corporate or
individual, however powerful, nor any cause, civil or political, however
important, is entitled to receive, nor should any lawyer render, any service
or advice involving disloyalty to the law whose ministers we are, or dis-
respect of the judicial office, which we are bound to uphold, or corruption
of any person or persons exercising a public office or private trust, or
defection or betrayal of the public. When rendering any such improper
service or advice, the lawyer lays aside his robe of office, and in his own
person invites and merits stern and just condemnation. Correspondingly,
he advances the honor of his profession and the best interests of his client
when he renders service or gives advice tending to impress upon the client
and his undertaking exact compliance with the strict principles of moral
law. He must also observe and advise his client to observe the statute
law, though until a statute shall have been construed and interpreted by
competent adjudication, he is free and is entitled to advise as to its validity
and as to what he conscientiously believes to be its just meaning and extent.
But above all a lawyer will find his highest honor in a deserved reputation for fidelity to private trust and to public duty, as an honest man and as a patriotic and loyal citizen.

**OATH OF ADMISSION.**

The general principles which should ever control the lawyer in the practice of his profession are clearly set forth in the following Oath of Admission to the Bar, formulated upon that in use in the State of Washington, and which conforms in its main outlines to the "duties of lawyers as defined by statutory enactments in that and many other States of the Union"—duties which they are sworn on admission to obey and for the wilful violation of which disbarment is provided:

I DO SOLEMNLY SWEAR:

I will support the Constitution of the United States and the Constitution of the State of __________________;

I will maintain the respect due to Courts of Justice and judicial officers;

I will counsel and maintain only such actions, proceedings and defenses as appear to me legally debatable and just, except the defense of a person charged with a public offense;

I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and will never seek to mislead the Judge or jury by any artifice or false statement of fact or law;

I will maintain the confidence and preserve inviolate the secrets of my client, and will accept no compensation in connection with his business except from him or with his knowledge and approval;

I will abstain from all offensive personality, and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged;

I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay any man's cause for lucre or malice.

SO HELP ME GOD.

We commend this form of oath for adoption by the proper authorities in all the States and Territories.

We approve the foregoing code of ethics, and recommend its adoption by the Association. We also recommend that the next General Assembly of Tennessee be asked to enact these rules into law for the guidance and

* Alabama, California, Georgia, Idaho, Indiana, Iowa, Minnesota, Mississippi. Nebraska, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington and Wisconsin. The oaths administered on admission to the Bar in all the other States require the observance of the highest moral principle in the practice of the profession, but the duties of the lawyer are not specifically defined by law as in the States named.
control of Bench and Bar. We urge this in order that they may be binding and not merely persuasive on every judge and lawyer in Tennessee.

We further recommend the appointment by the Association of a legislative committee composed of the President and Central Council, to whom shall be entrusted the preparation and presentation of all matters of legislation approved and proposed by this Association, with full discretion to modify the terms of such proposed legislation in any way it deems best to attain the ends desired.

Respectfully submitted,
Thos. J. Tyne, Chairman.
Stith M. Cain,
S. L. Cockroft,
Luke Lea,
Robert Burrow,

President Bryan called for report of Secretary and Treasurer, and the same was presented and read by Charles H. Smith, Assistant to the Secretary. Upon motion duly seconded and unanimously passed said report was accepted and ordered spread of record, which is accordingly done, as follows:

To the President and Members of the Bar Association of Tennessee:

As Secretary and Treasurer of the Association I submit the following report for the period ending May 20th, 1908:

MEMBERSHIP.

<table>
<thead>
<tr>
<th>Members Type</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Active members</td>
<td>374</td>
</tr>
<tr>
<td>Honorary members</td>
<td>53</td>
</tr>
</tbody>
</table>

Total: 427

RECEIPTS AND DISBURSEMENTS.

Debits.
Cash balance from last year $220.55
Collection from admission fees and annual dues to date 855.15

Total: $1,075.70

Credits.
Disbursements as per vouchers exhibited $623.40
Balance on hand $452.30

Respectfully submitted May 20, 1908.

R. H. Sansom, Secretary and Treasurer.
By Chas. H. Smith, Asst. Secretary and Treasurer.

Approved.

George N. Tilman, Chairman Central Council.
President Bryan called for the report of the Committee on Publication. Said committee made no report.

The report of the Committee on Grievances was called for, and W. D. Spears of Chattanooga, Chairman of said committee, announced that said committee had no report to make, there having been no grievances, and the committee having therefore not been called together.

President Bryan called for the report of the Committee on Obituaries and Memorials. No member of this committee was present and no report was offered.

Park Marshall of Nashville moved that a committee of five be appointed to prepare a report on Obituaries and Memorials to be published in the minutes of the Association. F. Zimmerman seconded the motion, and upon vote it was unanimously carried. The Chair appointed on this committee, Park Marshall of Nashville, Chairman; W. G. M. Thomas, Chattanooga, L. M. G. Baker, Knoxville, W. P. Metcalf, Memphis, and Joseph H. Acklen, Nashville.

Since the adjournment of the recent meeting of the Association, the foregoing committee furnished to the Secretary and Treasurer, its report, which is copied into the minutes in compliance with the above motion. Said report appears in the appendix.

President Bryan in well-chosen terms introduced Hon. Martin Littleton of New York, who delivered a most interesting address, which appears in the appendix.

After the conclusion of Mr. Littleton's address an informal reception was held for fifteen minutes, during which those composing the large audience present took advantage of the opportunity to meet Mr. Littleton personally.

After the recess W. L. Frierson of Chattanooga moved that the Association proceed to the election of officers for the ensuing year, and that the afternoon session be not held inasmuch as the election of officers was the only business remaining before the Association. The motion was duly seconded and unanimously carried, and thereupon the Association proceeded to the election of officers.

Hon. G. N. Tillman placed in nomination Hon. Foster V. Brown of Chattanooga for President. The nomination was
seconded by Major E. C. Camp and Judge R. M. Barton. John H. Thornburgh of Knoxville moved that nominations be closed, and that the rules be suspended and the Secretary be instructed to cast the unanimous vote of the Association for Hon. Foster V. Brown. Said motion was seconded and unanimously carried. Thereupon R. H. Sansom, Secretary, cast the unanimous vote of the Association for Mr. Brown, who thereupon assumed the chair and expressed his thanks to the Association in a brief speech of acceptance.

The election of Vice-President being next in order, R. H. Sansom nominated C. J. St. John of Bristol, for East Tennessee; F. Zimmerman nominated Luke E. Wright of Memphis, for West Tennessee, and J. M Anderson nominated Percy D. Maddin of Nashville, for Middle Tennessee.

Upon motion of W. L. Frierson, nominations were closed, the rules suspended, and the Secretary directed to cast the unanimous vote of the members present for the three gentlemen named, which was done, and they were declared duly elected Vice-Presidents of the Association.

The election of Secretary and Treasurer being next in order, L. M. G. Baker placed in nomination for said office Charles H. Smith of Knoxville. It was moved by Judge R. M. Barton that the nominations be closed and that the Secretary cast the unanimous vote of the Association for Mr. Smith. Said motion was seconded and carried, and under a suspension of the rules the Secretary cast the unanimous vote of the members present for Mr. Smith, and he was declared unanimously elected Secretary and Treasurer of the Association.

The following gentlemen were chosen by unanimous vote to constitute the Central Council, their names being recommended by the President:

W. L. FRIERSON, Chairman ..........................Chattanooga
J. B. SIZER ........................................Chattanooga
J. J. LYNCH ........................................Chattanooga
T. A. WRIGHT ......................................Rockwood
JAMES H. MALONE ..................................Nashville

As delegates and alternates to the next annual meeting of the American Bar Association, the following gentlemen were selected by the unanimous action of the Association: Mr. Chief Justice Beard, Memphis: Hon. M. T. Bryan, Nashville, dele-
Mr. J. H. Acklen of Nashville presented and moved the adoption of the following resolutions, which motion being duly seconded was passed:

Whereas, The State Convention held in Nashville June 2, 1906, adopted in its platform a plank advocating the enactment of legislation for the protection of our forests from waste and destruction; for a general law to protect the fish in the waters of our State, and approving and commending the creation by the Fifty-fourth General Assembly of the Department of Game, Fish and Forestry; and,

Whereas, The press of Tennessee, that powerful exponent of public opinion, with remarkable unanimity brought its great influence to further the cause of protection to our forests, fish and game until public sentiment on these subjects was fully awakened; and,

Whereas, The Fifty-fifth General Assembly, for the first time in the history of the State, enacted a comprehensive general fish and forestry law, thus placing upon our statute books general laws only for the protection of the game, the birds, the fish and the forests of the State; and,

Whereas, The protection and preservation of the forests of our country was voiced in unmistakable terms at a recent and important conference held in Washington, D. C., to consider the conservation of the natural resources of the nation; and,

Whereas, The lawyers of Tennessee, to whom the people generally look for advice and counsel in matters affecting their material welfare, can, by their united influence greatly aid in the enactment of judicious legislation; therefore,

Resolved, That the Bar Association of Tennessee urge upon its members throughout the State to use their influence with the members and Senators of their respective counties and districts to preserve and maintain the general laws only on these subjects and to improve these laws by amendment where necessary; and further, that the thanks of this Association are tendered the press of Tennessee for the support heretofore accorded these important public measures, and the hope is hereby expressed that the press will continue its good work in educating the public generally on the importance of these subjects.

Hon. T. Asbury Wright of Rockwood was recognized by the Chair and presented the following motion, which was duly seconded by J. S. Pilcher, and upon vote was unanimously carried:

"Mr. President: I have for a number of years attended all the meetings of this Association, with the exception of the one held at Memphis last year, and while I do not want to say anything, and would not say anything in disparagement of the
former meetings of this Association, still I believe that it is nothing but right that expression should be given to the fact that this has been one of the most enjoyable meetings of the Association that it has been my pleasure, or the pleasure of many others of this Association, to attend, as evidenced by the expressions heard on all sides. In view of this splendid meeting, I believe that this Association ought not to adjourn without making some expression of their feelings on the subject, both with reference to the officers and local association, and to the distinguished guests that we have had the honor and pleasure of having with us.

I therefore move that the Association tender its thanks to the retiring President, Secretary and Treasurer and Assistant Secretary, to the Central Council and the Committee on Entertainment for their indefatigable work, and for the splendid arrangements made and carried out, that has made this such a successful meeting of our Association; and that the thanks of the Association also be extended to our distinguished guests, who have contributed so much to the profit and enjoyment of the occasion, especially to the Secretary of War, Judge Taft, and to the Honorable Martin W. Littleton of Tennessee and New York, and also to our own distinguished citizen and member of the Association, General Luke E. Wright, for his able address to the Association. And that we also extend a vote of thanks expressive of our high appreciation to that prince of entertainers, Judge Dickinson, for the royal manner that we were entertained at Belle Meade, and to the management of the Hermitage Association and to the Country Club for the courtesies extended to the Association and visitors.

I also move that the thanks of the Association be tendered the Watauga Club, in whose building we have held our meetings, and to the L. & N. Railroad and the N. C. & St. L. Railroad and the Nashville Street Railway Company for favors and courtesies to the Association and visitors, and last, but not least, I move that the thanks of the Association be expressed to the reporters and members of the press, who have so generously and kindly reported the proceedings of our meeting.”

Judge R. M. Barton moved that Hon. Martin W. Littleton of New York be elected an honorary member of the Association.
The motion was duly seconded and upon vote was unanimously carried, and Mr. Littleton was declared an honorary member of the Association. Mr. Littleton expressed his thanks for the honor in a short speech.

Hon. Percy D. Maddin made a plea in behalf of the American Bar Association, urging that the Tennessee lawyers join the American Bar Association, of which Judge J. M. Dickinson, a Tennessean, is this year President. Mr. Maddin announced that the dues in said Association were $5.00 a year, and that he would be glad to present to the next meeting of the American Bar Association the names of any members of our Association who desired to join.

Upon motion of Judge R. H. Sansom, duly seconded and carried, the Association adjourned until the next annual meeting.
APPENDIX

ADDRESS OF PRESIDENT M. T. BRYAN.

As President of the Bar Association of Tennessee, I am required in my address to notice the different laws of general and important character that have been passed since the last session, either by the General Assembly or by Congress. I am, of course, relieved of any notice of State legislation by reason of the fact that we have had no meeting of the General Assembly since the last session of the Association.

As to national legislation, there has been no complete session of Congress since our last meeting, the last and short session of the Fifty-ninth Congress having closed on the 4th of March, 1907. The first session of the Sixtieth Congress, which began December 2, 1907, is still in progress, and very few laws of a general nature have been passed to this time. Other laws of importance are under consideration, some of them of a somewhat radical nature, or at least not in line with the recognized common law principles, or precedents, and are awakening interest, especially those under the recommendations of the President.

So far several appropriation bills have been passed. The first is the urgent deficiency bill, which bill always carries several million dollars to meet deficiencies, but there is nothing out of the ordinary either in principle or amount that is necessary to be noted in the Act that has been passed. Another is the Indian appropriation bill, and still other are the army and navy bills. It is clear that the appropriations, when footed up, will exceed one billion dollars, which is much in excess of the estimated revenues.

The following important bills have passed one House or the other and are likely to become laws: A bill appropriating $25,000 for the care of the Hermitage, a movement started at the suggestion of the President; an appropriation of $5,000,000 for a Southern Appalachian reserve on the watersheds of Mary-
land, Virginia, North and South Carolina, Georgia, Alabama, Kentucky, and Tennessee, and in the White Mountains of New Hampshire and Maine, a measure of the greatest importance. Similar measures are pending for Minnesota and certain parts of the West. Also a bill for the continuance of the Inland Waterways Commission.

There has been an act of considerable importance passed at the present session and approved April 22, 1908, known as the Employers' Liability Act, which is of importance since it changes the existing law relating to the liability of employers in cases of injury to employees. The general principle of the act which relates alone to interstate common carriers by railroads while engaged in interstate business, and those of the District of Columbia, Territories, and Canal Zone, is that in cases where the lines pass from one State or Territory to another, and in the case of the Canal Zone of Panama, District of Columbia, and all Territories, where injuries are inflicted upon employees of the common carriers by railroad by the negligence of its officers, agents or employees, or by defect or insufficiency of vehicles and appliances, the common carrier will be liable for damages in the same manner as if one independent person, through negligence or carelessness or ill-will, inflicts damage or injury upon another. The persons entitled to sue in case of death are enumerated and set forth in the act: they are: the administrator for the benefit of the wife or husband, and children, and if none, then the parents, and if none of this class, the next of kin dependent upon the employee. Suit must be brought in two years. There are strict provisions in the act against all agreements whereby employees might be required to waive damages in advance, and no carrier can in any way absolve itself from damages in any case where it has failed to perform all the requirements of the law. Contributory negligence does not bar a recovery, but only goes to a diminution of damages in proportion to the amount of such negligence on the part of the injured employee. The cause or reason for this law seems to have its rise in the changed conditions and vastly increased volume of transportation business which necessarily makes a different state of affairs altogether from that which existed in England when transportation inter-
ests were small and of little importance, and employees were comparatively few, under which state of affairs the English laws had their origin and grew up and developed. With more than two hundred thousand miles of railway tracks in the United States, and vast waterways, with thousands of millions of dollars invested, with enormous numbers of employees, the conditions seem to have arisen which called for additional legislation on this subject. There seems to be no question but that the statistics of the vast numbers of persons killed and maimed every year in the United States show that an unreasonable amount of negligence and carelessness exists and that injuries are needlessly inflicted every year upon thousands of persons who were without remedy under the pre-existing laws. As to whether this remark is justified by the facts or not, one can see by turning to the actual statistics of England, or any other European country, and comparing them with those of the United States. Although England has far less railway mileage than the United States, it may surprise not a few to know that the English lines in a given time carry vastly more passengers than the American lines do. And yet the number of killed and maimed in the United States exceeds many times the number given for the English lines. In fact, the number killed and injured in the United States annually is said to be thirty or forty times greater. The principle upon which rests this rather stringent legislation seems to be that a competent, careful and efficient employee of a common carrier has a legal right to expect that his employer will employ and associate with him, in carrying out the work of the company, other employees who are competent and efficient, and that it shall not operate roadbeds, cars, engines, boats, wharves, or equipment and appliances that are not constructed with a view to security and safety, both to its passengers and employees; and it is certainly the duty of the Government which fathers these carriers by granting them their charters, giving to them certain exclusive privileges and rights, as to the railroads such as the right of eminent domain, the right of making fixed rates, the right of crossing navigable streams on bridges or ferries, the right of establishing terminal stations and depots where smoke and gases inflict injury upon surrounding property owners, to
fellow up these things with provisions which reasonably protect employees of these companies, who, of course, cannot themselves have any voice in saying how the companies shall be operated or who the other employees shall be.

Previous to the passage of this act, it is well to add that Congress had passed an act on June 11, 1906, entitled "An Act Relating to Liability of Common Carriers in the District of Columbia and Territories, and Common Carriers Engaged in Commerce Between the States and Foreign Nations, and Their Employees." This is the Act that was known as the "Employers' Liability Act," being the former Act so named, and that act related to common carriers both by land and by water. It gave rise to several very notable lawsuits which went through the courts to the Supreme Court of the United States. They were decided January 6, 1908, in the "Employers' Liability Cases," 207 U. S., where the Court says, among other things, in a very lengthy opinion, that: "An Act addressed to all common carriers engaged in interstate commerce, and imposing a liability upon them in favor of their employees, without qualification or restriction as to the nature of the business at the time of the injury, of necessity includes subjects wholly outside of the power of Congress under the commerce clause of the Constitution." To make a long story short, the Court held in those cases that the Employers' Liability Act described the common carriers as "common carriers engaged in interstate commerce business and common carriers engaged in business in the District of Columbia and in the Territories," and imposed this liability upon them as such without saying that it was imposed upon them only in cases where they were at the time engaged in interstate commerce, or in business in the District or the Territories, that this was a power that Congress had no right to put into effect because it naturally controlled cases of intrastate commerce as well as cases of interstate commerce, although the persons liable were persons who were ordinarily engaged in interstate commerce. Then the Court argues the question as to what extent is an Act wholly void and unconstitutional in cases where some of its provisions are unconstitutional. As to this aspect of the case the Court held in line with what has been held so often before.
that the entire act is void unless it should clearly appear that
the Congress would have passed the act anyhow without those
void provisions, or, in other words, that Congress probably,
without those provisions now declared void, would not have
passed the other parts of the act which are not of themselves
void. This is a principle which has been decided before, both in
the United States Courts and in our State Courts. The result
was that the entire act was set aside by the Supreme Court,
although it would be within the Constitution to provide for
employers' liability in the District and Territories, and in cases
of shipment from State to State.

It will be noted that the act so set aside begins in this way:
"That every common carrier engaged in trade or commerce in
the District of Columbia, etc.," whereas, the act approved April
22, 1908, which has just gone into effect, begins as follows:
"That every common carrier by railroad while engaging in
commerce between any of the several States or Territories, etc."
It will be observed also that the earlier act was not limited
to railroads, but the present act is so limited. I have not taken
the trouble to fully investigate why this course was pursued.
The President had some doubts about this latter legislation for
this very reason, but finally approved the act on April 22.

In line with the Employers' Liability Act is another meas-
ure, recommended by the President at the same time and which
has now passed the House and will doubtless soon become a
law. I refer to the bill to grant compensation to employees of
the Government who may be killed or injured in its employ
without negligence or misconduct on their part. The compen-
sation is to be equal to one year's pay, which, in case of death,
is to go to widow and children, or to dependent parents.

Another law at the present session is an amendment to the
act passed by the Fifty-ninth Congress forbidding common
carriers to furnish free transportation indiscriminately. This
act is entitled "An Act to Amend 'An Act to Regulate Com-
merce.'" The present amendment, passed at this session, is
carefully drawn and points out the classes of persons to whom
interstate common carriers are permitted to issue passes, or to
carry without charge. The classes seem to be carefully chosen
and the permission for the companies to carry such persons free
of charge seems to be reasonable and just. The persons to whom railroads are permitted to issue free transportation are the following:

"No common carrier subject to the provisions of this Act shall, after January 1st, nineteen hundred and seven, directly or indirectly, issue or give any interstate free ticket, free pass, or free transportation for passengers, except to its employees and their families, its officers, agents, surgeons, physicians, and attorneys at law; to ministers of religion, traveling secretaries of Railroad Young Men's Christian Associations, inmates of hospitals and charitable and eleemosynary institutions, and persons exclusive engaged in charitable and eleemosynary work; to indigent, destitute, and homeless persons, and to such persons when transported by charitable societies or hospitals, and the necessary agents employed in such transportation; to inmates of the National Homes or State Homes for Disabled Volunteers, and of Soldiers' and Sailors' Homes, including those about to enter and those returning home after discharge and boards of managers of such Homes; to necessary caretakers of live stock, poultry and fruit; to employees on sleeping cars, express cars, and to linemen of telegraph and telephone companies; to railway mail service employees, postoffice inspectors, customs inspectors, and immigration inspectors; to newsboys on trains, baggage agents, witnesses attending any legal investigation in which the common carrier is interested, persons injured in wrecks and physicians and nurses attending such persons; provided, that this provision shall not be construed to prohibit the interchange of passes for the officers, agents and employees of common carriers, and their families; nor to prohibit any common carrier from carrying passengers free with the object of providing relief in cases of general epidemic, pestilence or other calamitous visitation; provided further, that the term 'employees' as used in this paragraph shall include furloughed, pensioned, and superannuated employees, persons who have become disabled or infirm in the service of any such common carrier, and the remains of a person killed in the employment of a carrier and ex-employee traveling for the purpose of entering the service of any such common carrier; and the term 'families' as used in this paragraph shall include in the
families of those persons named in this proviso, also the families of persons killed while in the service of any such common carrier. Any common carrier violating this provision shall be deemed guilty of a misdemeanor, and for each offense, on conviction, shall pay to the United States a penalty of not less than one hundred dollars nor more than two thousand dollars, and any person, other than the persons excepted in this provision, who uses any such interstate free ticket, free pass, or free transportation, shall be subject to a like penalty. Jurisdiction of offenses under the provision shall be the same as that provided for offenses in an Act entitled 'An Act to Further Regulate Commerce with Foreign Nations and Among the States,' approved February 19, 1903, and any amendment thereof."

Approved April 13, 1908.

The vast numbers of persons to whom common carriers were accustomed to issue free transportation with apparently no reason except political influence and personal favor of the different companies and their agents, seems to be the argument of the law. So vast is the carrying business of the railroads and boat lines of the country that enormous numbers of free passes were issued, taking up a vast amount of the time of the clerical force of the roads and various connecting lines over which the passes were given and reducing the receipts from passenger traffic, so that some legislation on this line seemed to be imperatively demanded. I have heard that when the Baltimore & Ohio Railroad, some ten years ago or more, was placed in the hands of a receiver, all the outstanding passes were called in and amounted to over thirty thousand in number on the system.

If one principle is more prominent than another in connection with the law of common carriers it is that they are quasi-public corporations, have valuable privileges granted to them, and that they are in duty bound to return therefore to run on fixed schedules and carry freight and passengers on certain fixed and definite rates to which all persons similarly situated are entitled. It is hardly consonant with this principle that carriers should issue enormous amounts of free transportation, involving expense to themselves and necessitating possibly
higher rates to those who do pay their way than would exist if no free transportation was given.

Another act which may be noticed is a resolution inviting foreign nations to a tuberculosis congress. There is no subject involving the public health that is awakening more interest than the war on "the great white plague" that is now being waged with a great deal of zeal and enthusiasm, and it is praiseworthy in the National Government to give its active aid in furthering this campaign.

There are numerous minor acts that have been passed, chiefly of a local character, but it is hardly worth while to mention them. Several of them may be mentioned, however, not on account of the importance of any particular one, but as showing the spirit of amity which exists between the sections. One of these is an act directing the Secretary of War to present four cannon to the Confederate Monument Association at Franklin, Tennessee, which are to be used as ornaments by being placed in position around the Confederate monument that stands in the center of the public square in that town. On one day Congress passed an act to present one hundred Springfield rifles to a Union organization in Ohio, all the members of which served in the Union Army; and on another day an act to present a number of Springfield rifles to a Confederate bivouac in Texas all the members of which served in the Confederate Army. And there are numerous acts of a similar nature to distribute these Civil War mementoes both North and South in cases where the articles given are not needed by the Government in the opinion of the Secretary of War.

Congress has also passed a joint resolution extending for two years the time for appropriately marking the graves of the soldiers and sailors of the Confederate army and navy who died in Northern prisons and were buried near the prisons where they died. This includes all such places except the Confederate Mound in Oakwood Cemetery at Chicago, which is otherwise fully provided for by private persons.

An act has also been passed which largely increases the list of pensioners. Under this act the rate of pensions for widows, children under sixteen years of age and helpless minors now on the pension roll or hereafter to be placed on
the pension roll, are given twelve dollars per month, and noth-
ing in the act is to be construed to affect the existing amount
of two dollars additional per month for each child under the
age of sixteen years and for each helpless child. It is also pro-
vided that, if any officer or enlisted man who served ninety
ciys or more in the army or navy of the United States during
the Civil War, and has been honorably discharged, or has died,
or shall hereafter die, leaving a widow, said widow shall re-
ceive twelve dollars per month without proving his death to be
the result of army or navy service, provided that said widow
shall have married said soldier or sailor before June 27, 1890.
Under this act, if a soldier or sailor, before June 27, 1890, shall
have married a woman of the age of twenty, and this woman
should live to be ninety-five years of age, the pension would be
in existence one hundred years after the close of the Civil War.
That it is possible that a pension should so long exist is shown
by the fact that 117 years after the close of the Revolutionary
War there were still seventeen pensioners of that war, all
widows, and possibly some of them still survive.

INTERSTATE COMMERCE ACTS AND THE $29,000,000
FINE.

A very great deal of interest is felt in the Interstate Com-
merce Law under which the enormous fine of over $29,000,000
was imposed upon the Standard Oil Company, by Judge
Landis. A brief mention of that case here can but be of inter-
est. The case, as is well known, has been appealed and is now
on the docket of the Supreme Court of the United States. The
point upon which this case was decided seems to be of rather
a technical nature. Under the Act to regulate commerce,
known as the "Interstate Commerce Act," the original Act
having been passed in 1887 and another import Act having
been passed in 1893, known as the "Elkins Act," and an addi-
tional Act amendatory and expanding, to some extent, the
other Acts, having been passed and approved June 29, 1906, this
litigation arose. The Act under consideration was fully dis-
cussed by one of my predecessors, the Hon. Edward T. Sanford,
in his able presidential address delivered to the Bar Association
in 1906, and published in its proceedings. Under that Act com-
mon carriers engaged in interstate business are required to file with the Interstate Commerce Commission, and keep open to public inspection, schedules showing the rates, fares, and charges for transportation between different points on their own routes, and points on the route of any other carrier by railroad, pipe line or by water, when a through rate has been established. "No change shall be made in the rates, fares and charges, or joint rates, fares and charges when the rates, fares and charges are joint rates, which have been filed and published by any common carrier in compliance with the requirements of this section, except after thirty days' notice to the Commission and to the public, published as aforesaid, which shall plainly state the changes proposed to be made in the schedule then in force and the time when the changed rates, fares or charges will go into effect, etc." The carriers are forbidden otherwise to charge any greater or less rates or to give any rebates or concessions or discriminations in respect to the transportation of any property in interstate or foreign commerce whereby such property shall be by any device whatever transported at a less rate than that mentioned in the tariffs published by said carrier as required by said Act to regulate commerce and the Act amendatory thereof, or whereby any other advantage is given or discrimination is practiced. Every person or corporation, whether carrier or shipper, who shall knowingly offer, grant, give or solicit, accept or receive any such rebates, concessions or discriminations, shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not less than $1,000 or more than $20,000. In addition thereto, any person or any officer or director of any corporation who shall give or receive such rebates, etc., or any receiver or trustee, lessee or agent, doing the same, shall be subject to this fine and be liable to imprisonment in the penitentiary for a term not exceeding two years, or both, in the discretion of the Court. The acceptance by shippers of money or other valuable considerations as rebate or offset against regular charges as fixed by the schedules provided in the Act shall, in addition to the penalties prescribed by the Act, make them liable to forfeit to the United States a sum of money three times the amount of money so received or accepted, and
three times the value of any consideration so received or ac-
cepted, to be ascertained by the trial court. The Attorney
General of the United States, whenever he has reasonable
grounds to believe that such offense has been committed, is
authorized to institute civil action in any United States Court
of competent jurisdiction to collect such forfeits, and in the
trial of said action all such rebates or other considerations dur-
ing a period of six years prior to the commencement of the
action may be included therein, and the amount recovered shall
be three times the total amount of money, or three times the
total value of such considerations so received or accepted, or
both, as the case may be. The Act specifically relates to carry-
ing "oils and other commodities."

Now, in the case of the Standard Oil Company, it seems
that the Chicago & Alton Railroad gave to the Commission its
schedule of rates, wherein the rate for carrying oils was set
down at eighteen cents, petroleum being placed in the fifth
class at that sum. After this the railroad, in common with
other roads, shipped the oil of the defendant company at a six
cent rate, but failed to file any notice that its rate had been
reduced from the eighteen cent rate given to the Commission;
Other railroads were shipping at this lower rate and defendant
company would have shipped its product by lines other than
the Chicago & Alton. This fact was set up by the company
to show that in so shipping at the six cent rate, it was guilty of
no criminal act or intent. The shipments were made from
Whiting, Indiana, to East St. Louis, Illinois, and defendant
was found guilty on 1,463 counts.

There is another case reported in 208 U. S., the case of the
Armour Packing Company, wherein the question arose as to
whether a company shipping from one State through another
State and thence to a foreign country would be guilty under the
Interstate Commerce Act, and the Supreme Court in that case
found that it would be guilty and subject to the penalties of
the law, notwithstanding the fact that the shipment was made
honestly and without any intention of breaking the law; that
i.e., without any actual criminal intent on the part of the com-
mon carrier or on the part of the shipper, there being room for
argument and legal advice perhaps that it was not illegal.
Thus, the gist of the Standard Oil case seems to be that the rate was reduced without giving the legal notice thereof that is required by the Interstate Commerce Act. It is claimed by the company's friends that they had no criminal intent and that the fact is further shown that they had been shipping at a reduced rate for many years, and that the failure to give proper legal notice was due to oversight or clerical error. But the company has undoubtedly incurred the dislike of a vast number of persons in this country, owing to its methods of transacting its business, and its alleged endeavors to break up competition, an instance of which is shown by the Gallatin case in this State; and it may almost be said, as was once remarked in this State by a wealthy citizen who sustained a heavy loss in a bank failure, "It seemed to meet with general satisfaction."

I will mention a little later on the movement to compel the reduction of passenger rates.

A great deal of criticism has been brought in some particular quarters against the President of the United States, Mr. Roosevelt, for his activity in seeking to regulate and control the corporations of the country, and for the prevention of combines and trusts among them, as well as subjects suggested by the Acts which we have been discussing. He has even been charged with being the cause of the financial panic from which we seem to be just emerging, as being the disturber of the vast business interests of the country of which transportation lines and manufacturers and producers constitute such a vast part. Some of the language used toward Mr. Roosevelt has been exceedingly intemperate. For instance, Mr. James R. Day, Chancellor of Syracuse University, has gone to the trouble of writing a book of 352 pages called "The Raid on Prosperity." In this book he says: "A law-making, court-controlling executive department, a government by commissions, a personal construction of the Constitution, is not a republic." He also says: "We have too many laws and too many lawyers—in some places our troubles have been precipitated largely by statute making, and making of statutes is due to too many lawyers in Congress. Every lawyer is making a law in order to justify his election among his constituents. We ought to send to Congress fewer lawyers or say to the lawyers we send, we want you to see that
there is not another law made for twenty years, and help to
repeal half of those that have been made in the last twenty
years. We are overlawed until about every form of business
in the country is outlawed. It has come about by men con-
 founding forms for principles. The principles of society and
government are few and simple and plain; for their definition
and enforcement they call for few laws.

I do not believe that Mr. James R. Day has established a
reputation himself for either good judgment or moderation in
his public assertions. As to the President of the United States,
I believe Mr. Roosevelt to be both honest and sincere and that
the main idea of his endeavors is to see that the vast corpo-

tions of the country shall treat the public fairly and honestly
in all their dealings, and, above all, shall treat all citizens as
they should be treated, fairly and without discrimination, and
that the tariff wall which has been placed around the country
shall not be made use of, by those who enjoy its protection, to
injure and impose upon the citizens of the country.

I will now revert to the passenger rate laws.

General laws have been passed in the States of Minnesota,
North Carolina, Georgia and Alabama, fixing the passenger
fare in the first of these States at two cents per mile and in the
others at two and one-half cents. In Tennessee we have passed
no law on this subject, but our situation is somewhat analogous
to the position we would be in if we had passed such a law
within the past year; therefore the subject is perhaps in order.

After these laws were passed in the States named, there
was a movement in Tennessee to secure the same reduction as
had been enacted in the three Southern States. The Governor
had stated that he had assurances that the railroads would
come to some understanding with the State on this subject. In
course of time the State Railroad Commission called a meeting
and adopted and issued an order fixing the rates at two and
one-half cents. At a still later day the point was made that the
Commission had not given the notice that was necessary to put
such an order into effect. Then a meeting was called by the
Governor which was attended by the Railroad Commissioners
and also by the representatives of the different railroad com-
panies.
It is not my purpose to either give or deny credit to either the Governor or the Commission; that is entirely outside of the subject. At any rate, the Governor and Railroad Commissioners and representatives of the railroad companies discussed the matter at length and the railroads naturally made the point that they were contesting the laws in the other States, and as rates are naturally in law based on reasonableness, they could not agree to put in force a two and one-half cent rate in Tennessee without abandoning their contention in the other States touched by their lines, for, if two and one-half cents is reasonable in Tennessee, there is no good argument why it should not be reasonable in Alabama. The railroads thereupon agreed to a proposition to attach coupons to their tickets stating that they were issued under the order made by the Railroad Commission, and the railroad company selling the ticket would pay on this coupon an amount equal to the difference between their existing rate and that fixed by the Railroad Commission on its order dated February 15, 1908, the meaning of this being that the railroad would do this whenever the validity of the Alabama law should be tested and the law should be found valid and operative. This is what was done by all the railroads except the Southern Railway. The Southern Railway positively agreed, without regard to the result of the litigation, to give two and one-half cent rate, and it did this both in Tennessee and in North Carolina.

Now, while all four of these Acts are being tested in the courts, there has been a decision in the case of North Carolina, but not a complete and final decision of the matter, and there has also been a decision in the Minnesota case. The Minnesota case is entitled "In the Matter of Edward T. Young, Petitioner." The North Carolina case is entitled "Thomas F. Hunter, Sheriff of Buncomb County, North Carolina, vs. James H. Wood." Both of these cases are important. In Minnesota the State passed a law creating a State Railroad and Warehouse Commission and fixed the rates of the various railroad companies for the carriage of merchandise between stations in that State, materially reducing the rates theretofore existing and imposing heavy penalties. "If a natural person, he shall be guilty of a gross misdemeanor and shall be punished by a fine
of not less than $2,500 and not more than $5,000 for the first offense, and not less than $5,000 nor more than $10,000 for each subsequent offense." And if a carrier or warehouseman be a corporation it is made subject to the same fine or forfeiture. The penal provisions cover cases of disobedience to the orders of the Commission.

After this the Legislature passed a two-cents-a-mile Act as the maximum rate, and provided that any railroad company or officer, agent, or representative thereof, who should violate the Act should be guilty of a felony and upon conviction should be fined not exceeding $5,000, or by imprisonment not exceeding five years, or both. The Act went on to say that any officer, director or agent or employee of the company violating the section, or who counsels or assists any such railroad company to violate any of the provisions of the Act, shall be guilty of a misdemeanor and may be prosecuted in any county into which the railroad extends, or in which it has a station. Upon conviction he shall be punished by imprisonment in the county jail not exceeding ninety days. When this Act was about to go into effect, suits were commenced in the Circuit Court of the United States, brought by stockholders of certain railroads against the railroads of which they were stockholders and against the Railroad and Warehouse Commission and against the Attorney General, Young, of Minnesota. The Attorney General moved to dismiss the bill as to him, and averred that the State had not consented and did not consent to the commencement of the suit against him as Attorney General, and that it was in effect a suit against the State, contrary to the Eleventh Amendment to the Constitution of the United States. The Court ordered a temporary injunction restraining the railroad company from putting into effect the rates provided by the statutes and also enjoined the State Attorney General, Young, from instituting any proceeding to enforce the penalties or remedies specified in the statutes. But on the following day the Attorney General applied to a State Court and obtained a writ of mandamus requiring the railroad company to comply with the statute. For this action the United States Circuit Court ordered him to show cause why he should not be punished as for contempt for his misconduct in violating the in-
junction, and he was adjudged in contempt. Then habeas corpus was asked in his behalf, and that is the case heard and determined by the Supreme Court of the United States.

In the North Carolina case a ticket agent was arrested and carried before a State Court, convicted and sentenced to imprisonment in the county jail for thirty days for selling a ticket at the old rate, but a suit in equity had been commenced in the United States Circuit Court against the Commission and the States Attorney General to enjoin the taking of any proceedings, or the commencement of any suit or action to enforce the statute. By the way, the statute provided that the railroad company violating the Act should be liable to a penalty of $500 for each violation, payable to the person aggrieved, and penalties of imprisonment were included.

The United States Circuit Judge (Pritchard) held that this provision was on its face unconstitutional and void. He enjoined the State officers. Notwithstanding this injunction, the prosecution above referred to was instituted by the State authorities, and upon conviction the defendant applied to the United States Circuit Judge for a writ of habeas corpus, and was discharged from custody, and the Sheriff appeals from the order. That was the North Carolina case, about which it was said that a clash was threatened at one time.

Now in the Supreme Court's decision in the North Carolina case it is said that the United States Circuit Court Judge had the power to issue the writ of habeas corpus, as the petitioner was then in custody for an act done pursuant to an order, process or decree of a judge of a court of the United States. Justice Harlan dissented, saying that the appellee should have been put to a review of the judgment against him in the highest court of the State; thence on writ of error from the United States Supreme Court. These two cases were heard together in the Supreme Court, and Judge Peckham delivered the opinion. It is discussed in this connection as to whether the court had jurisdiction under the Eleventh Amendment forbidding the State to be sued. To give in a few words the result of the opinion, it is that an Attorney General of a State, taking action under a law that proves to be held to be unconstitutional by the Supreme Court of the United States, is not in reality sued
as the Attorney General of the State, and the State itself is not really sued. The Attorney General of the State has not status as a representative of the State in respect to the Act in question if the law under which he is acting is unconstitutional; he is simply acting as an individual, because the law under which he claims to act is no law and has no force or effect to give him a status as the representative of the State. Judge Harlan, as is stated, did not hold this view, but thought that the case should proceed through the State courts and then the questions be examined by the Supreme Court of the United States under a writ of error. The great and distinguished justice seems to make much of this distinction, but I believe that an ordinary citizen would not think that there was any real distinction. Laws at this day should not be so much occupied in considering how and when the case gets into court, but rather deal with results and effects; and the real question is whether or not the States can put such laws into operation without being proceeded against and enjoined by the United States Courts, whether the injunction be against the Attorney General in his individual capacity or otherwise.

Again it will be noticed that the penalties and punishments inflicted under the North Carolina and Minnesota Acts are so severe and heavy that no railroad company and no individual could undertake to do any business that would result in the testing of those laws without running the risk of these great penalties, which would surely be inflicted in case they should lose their suits. In this way they are prevented in effect from the proper freedom in resorting to the courts at all for fear of the imposition of these penalties; and this is the main ground of the decision. But another point in the cases is of very great importance, because the Court says: "In the case, however, of the establishment of certain rates without any fraud, the validity of such rates necessarily depends upon whether they are high enough to permit at least some return upon the investment (how much is not now necessary to state), and to inquire as to that fact is a proper subject of judicial investigation. If it turns out that the rates are too low for that purpose, then they are illegal. Now to impose upon a party interested the burden of obtaining a judicial decision of such a question (no prior
hearing having ever been given) only upon the condition that if unsuccessful he must suffer imprisonment and pay fines as provided in these Acts, is, in effect, to close up all approaches to the Courts, and thus prevent any hearing upon the question whether the rates as provided by the Acts are not too low, and, therefore, invalid.'

Without entering further into the discussion of these cases, the perusal of which is interesting, I will add that the substance and effect of these decisions is as follows:

1. That when the constitutionality of an Act is attacked, notwithstanding that that Act refers solely to transportation altogether within the State, the United States Circuit Courts have power to entertain bills in equity attacking their validity, and making the State's Attorney General and other State officers parties, notwithstanding the Eleventh Amendment; or, rather, the suit not being in conflict with it.

2. That rates fixed by the Legislature at definite amounts are doubtful of enforcement because the chartered corporations have vested rights, and such rates, if not based upon evidence of reasonableness, may be adjudged to be confiscatory, and the Acts may be declared void for this reason.

3. Fines, forfeitures and penalties of a nature that frighten and intimidate individuals or corporations so that they fear to risk a test of the law will invalidate such Acts.

These things seem to be about the extent of these decisions. Is there any ground left under which rates may be fixed by law? It seems to me that there is sufficient open ground for this, and that is this: The State may perhaps pass an Act empowering a Railroad Commission to fix and adjust rates based on grounds of reasonableness so as to leave good and fair profits to the common carriers and so as not necessarily to impede them in their business nor frighten them from a safe and easy access to the courts for the purpose of testing the validity of the law, or of the orders made by the Commission.

The President of the United States, as said before, has made a number of recommendations to Congress in the four or five messages which he has sent to the present session. Some of these have been enacted into law and some bills looking to the enactment of others are pending. These are bills not passed
into laws, and it does not come strictly within the scope of my duty to discuss them, though it would be of interest to do so in the hands of one more competent than I. To undertake it, however, in the short space which I have at my disposal would necessarily fail to do justice to the general scope of the ideas which our very able President has advanced on these subjects.

I may notice, however, the pending revision of the laws of the United States. In 1897 Congress appointed a joint committee on revision and codification of the penal laws of the United States, which committee made its report in December, 1905. After this the commission was charged with incorporating in this report such additional legislation as had been enacted subsequent to the creation of the commission. That commission has been at work, and by the end of 1906 completed the criminal code. Another report was made afterwards on January 7, 1908, and was placed before Congress in the form of a bill introduced in each House. These bills are being considered by Congress at present. The joint committee is now engaged in revising and codifying the laws of the United States other than those pertaining to crimes, and have incorporated all the new legislation since the revision of 1878, which was called the George S. Bouttell Revision. The committee is now engaged on the judiciary title. Their work seems to be of a general and thorough nature, and a number of changes are being made, especially in regard to the United States Circuit Court of Appeals, substituting therefor the Circuit Court, making the Circuit Court an Appellate Court only, conferring upon the District Courts the jurisdiction now possessed by the Circuit Courts and District Courts, and providing for an appeal from the District Court to the Circuit Court, with a right of appeal under certain limitations from the Circuit Court direct to the Supreme Court of the United States. The work of preparing this code and having it adopted can hardly be completed during the present year.

This paragraph was not written by me from the Acts and Resolutions and Reports (originals), but is culled from an article by Hon. Mr. Heyburn, and contains about the substance of my information on the subject.

Congress is now rapidly drawing to a close and it is prob-
able that other measures of public interest now pending before it will pass into laws before a final adjournment is taken, and if so they will fall for review to my successor in office, to whom I extend in advance my sympathy for the no inconsiderable labor required in complying with that provision of the Constitution directing the President to communicate in his annual address the noteworthy changes made in the laws, State and National, since the last annual meeting of the Association. However onerous as this duty may be and usually is, I regard it a wise provision for that it will at least inform the President of what he might not otherwise find out.

ADDRESS OF JUDGE WILLIAM H. TAFT.

Gentlemen of the Bar of Tennessee:

It is a great pleasure to renew my friendship for, and acquaintance with, the members of the Bar toward whom I sustained such a delightful relation during the eight years of my incumbency as United States Circuit Judge in this Circuit. If there is any more pleasant relation between men, not of the same family, than that which exists between a Judge and members of the Bar who entertain for each other a mutual respect, and have that constant intellectual association resulting from the trial and argument of cases and their decision, I do not know it. And no one can have enjoyed that relation, as I did, with members of the Bar of Tennessee, without looking back upon it with the utmost regret as something which has ended.

Since 1900, when I resigned to go to the Philippines, it has become my duty to make some acquaintance with the civil law as administered in Spain and her colonies, and this contact has been of value in broadening my views and reducing somewhat that insularity and provincialism which characterizes the student and follower of the Anglo-American law in his attitude toward civilians and the civil law. There is no doubt that, while the common law, as applied in England and in this country, has a muscular strength of individualism, characteristic of the people, it lacks greatly in scientific and systematic arrangement, in certainty and in ease of application. It still has the rudeness exemplified in the maxim "caveat emptor," set forth
so curtly and with so little explanation in the judgment of the United States' Supreme Court in Laidlaw vs. Organ, and seems to preach the doctrine, "Every man for himself and the devil take the hindmost." The civil law has in it the element of paternalism, and we find traces of this wherever the common law has been modified by principles of the civil law, as in our equity jurisprudence. The tendency in modern days in our own law to codification finds a model in the civil code, and as yet we have failed to equal the simple, direct, but comprehensive style of the Code Napoleon, and those codes from which that was derived. No one can come intellectually in contact with civilian lawyers without feeling a touch of the scholastic reasoning and noting a disposition to refinement with which we can have but little sympathy. The study of the cival law exalts form and system to such a degree as sometimes to seem to common law lawyers to ignore or sacrifice the substance of things. But no common law lawyer can come into the atmosphere of civil law and listen to the arguments of civilians and have to decide points involving civil law, without a profound respect for that system, and an acknowledgment in his heart that the common law might be vastly improved by codification and by the embodiment of something more of the paternal spirit of the civil law. Indeed I think it would not be difficult to discover in the tendency of modern legislation a disposition on the part of legislators to adopt into our common law something of the charity, something of the kindlier spirit of the Roman and civil law.

In the Philippines the civil code is a Spanish code, much resembling the Code Napoleon. There are in addition the mortgage code and the commercial code, and there was a code of civil procedure. The latter code illustrated the tendency toward refinement already alluded to, and it offered an opportunity to those who would take advantage of it, to delay the enforcement of rights by frequent appeals on questions of procedure until by delay there was a defeat of justice. It became necessary, therefore, for us to adopt an American code, and we did so. Similarly it was found necessary to adopt a modification of the California criminal code of procedure, because the Spanish criminal code of procedure failed to observe those re-
restrictions of the Federal Constitution intended to protect the accused in criminal trials. We found it necessary also to introduce into our code of procedure what was substantially a code of evidence, for at the civil law, as you know, the rules of evidence are largely within the discretion of the Court. Professor Thayer has shown how our own law of evidence grew out of the use of the jury in the trial of issues of fact at common law, because it was thought necessary to restrict the kind and character of proof which ought to have the effect upon the lay mind. While this may, and doubtless was, the reason for the growth of the law of evidence with us, it has proven to be so useful in the sifting, rejecting and weighing of evidence, whether before court or jury, as to justify its introduction into the trial of civil and criminal cases by a court. We were directed, in the instructions which Mr. McKinley gave to Mr. Root for our guidance, not to interfere in any way with the substantive law of the islands as affecting the rights of individuals, and that injunction we religiously obeyed; but in the law of procedure, we have, as I have already pointed out, made some radical changes, and the introduction of the common law evidence has been one of them.

What I have said is merely by way of introduction, for I do not expect this evening to go into any detail as to the jurisprudence of the Philippine Islands. I have thought it might be of interest to invite your attention to certain questions of legal and ecclesiastical right and policy which arose and have been settled between the Government and the people of the Philippine Islands, on the one hand, and the Roman Catholic Church, on the other.

One of the most serious objections that many of us felt to taking over the Philippines and making them a dependency of this country was the difficulties which were sure to arise in the transfer of sovereignty from a monarchy like Spain, in which the church and the state seem to be in their interests and jurisdiction inextricably united, to a sovereignty like that of the United States, in which both by Constitution and by tradition and custom the state is entirely separate from the church. To understand the relation which Spain bore to the Roman Church, one must go far back in history at the time when Pope Alex-
ander the Sixth issued the bull by which he divided the newly discovered east and west between Spain and Portugal. By several bulls he delegated to the King of Spain his power as the ecclesiastical patron of the many religious enterprises and organizations which were instituted under the authority of the church, and he made an agreement with the King of Spain called the "Concordat," in respect to the government of the colonies, under which the King appointed bishops and priests, paid them, and agreed to construct, maintain and repair churches and religious edifices in his dominions.

The necessary and actual result of this delegation of power contained in the Papal bulls and this Concordat between the Vatican and the Spanish Crown was to give to the church in the Spanish possessions, a Spanish rather than a Roman coloring, and it placed at a much longer distance from Rome than the other Catholic countries, the church organization in the colonies of Spain. At first in these colonies, the church work was conducted by the regular or monastic orders as distinguished from the secular priests. The continuous war, however, which was waged between these two branches of the church organization, led to the expulsion or at least the diminution in power of the regular orders in all the Spanish colonies save the Philippines. A good many years before we went to Cuba and Porto Rico, the regular clergy had ceased to exercise any marked influence in the government of those two important Spanish dependencies; but in the Philippines it was otherwise. Ordinarily the monastic orders are not allowed to act as parish priests, but in the Philippines, treating it as a missionary country, substantially all the parish priests that were Spaniards were of the four monastic orders, the Dominicans, Augustinians, Recollects and Franciscans. In taking over the Philippines, therefore, our government, in which the church and state must be separate, was taking over a country where they had not only long been united, but one in which the union was medieval in its intimacy, one which might almost be described as a theocracy.

In order to understand conditions in the Philippines, social, political and religious, it should be said that the Philippine Islands were in effect a Christian mission, set on foot by Philip
the Second of Spain, and carried on by the regular monastic orders whose names I have given above. The mission was really begun in 1571, when Legaspi with five Augustinian friars, took possession of the present site of Manila, and established a city there. The monks with him and those who subsequently joined him at once began the work of the conversion of the natives, and it was so successful that five-sixths of them became Christians within the next fifty years, and today seven million out of eight millions in round numbers of the population are Christians. The friars became the parish priests in the islands, taught the natives the arts of agriculture, lived among them, learned their dialects, preached in the dialects and died in the islands. They were thus enabled to exercise complete government over the Filipinos. They did not encourage the coming of lay Spaniards to the islands, nor, except in the case of the sons of the wealthy, did they encourage higher education. They did found the University of St. Thomas, which is older than Harvard or Yale, and they did found several excellent schools of a secondary education, but the mass of their parishioners and followers were kept in a state of Christian tutelage, and generally were quiet, God-fearing, domestic people, without the energy and persistence of peoples of the Temperate Zone. They had great manual dexterity, artistic tastes, loving music and drawing, and were much devoted to the Roman Church, the beauty of whose ceremonial deeply attracted and affected them. For two hundred years or more, indeed down to the beginning of the last century, there was no apparent friction between the clergy and their parishioners. Native priests had been accepted as members of the order, and native bishops had been appointed and ordained, but early in the last century there appeared a feeling of jealousy on the part of the native clergy that they were not permitted to enjoy some of the better parishes, and during the entire century this feeling as between the native clergy and the regular Spanish clergy increased. After 1820, no native clergy were admitted to the monastic orders, and the hierarchy became solely Spanish.

In 1950 the Jesuits, who had been expelled in 1768, were permitted to return, and their coming led to the further expul-
sion from the parishes of native priests in order to make room for the members of this order.

In 1870, or shortly after, the Suez Canal was opened, and the time of passage from Spain to the islands was reduced from six months to forty days. This greatly increased the coming of the Spaniards to the islands, and spread doctrines among the educated native of republicanism which were then rife in Spain. The Spanish authorities in the islands sought to restrain with a heavy hand the spread of the seditious doctrine, and in doing so did not hesitate to use the most powerful element in the island, to-wit, the Spanish monastic clergy. They increased their civil functions, and gave them greater and greater control of everything in the way of municipal government, and called upon them for assistance in the matter of the detection and punishment of those who were spreading doctrines likely to excite the people to revolt and insurrection against the absolute government which then prevailed there. The power of the friars was not confined to the municipalities. Each order had a large church and convent of its own in the city of Manila, with a provincial or head of the order for the Philippines. Then its main or chief officer was in Spain, and the influence exerted by the friars in the islands directly through their provincials in Spain upon the Spanish Government was powerful, and was reputed to be quite as powerful as it actually was. The exercise of the civil functions, together with their great political power, taken with the prejudice which native priests sought to create against the orders, led ultimately in 1896 to the revolution headed by Aguinaldo, beginning in the province of Cavite. There were a good many bloody battles, and the loss of life on both sides was great before the leaders of the insurrection were induced by an offer of immunity and the payment of a large sum of money to leave the islands. There was a dispute as to what the terms of this settlement or treaty of peace were, and in 1898, when Dewey fought the battle of Manila, Aguinaldo had no difficulty in finding reasons why the treaty had not been complied with, and in justifying his return to conduct a revolution in aid of the American troops. The friars had accumulated in the course of the 300 years of their stay in the islands, agricultural lands, many of them improved, aggregat-
ing in area 400,000 acres, and of these, 250,000 were situate in the province of Cavite, and in other provinces immediately surrounding the city of Manila. Upon these lands were 60,000 tenants, and although there is very little evidence that they were avaricious or oppressive landlords, there grew up an agrarian hostility to the friars as landlords, perhaps out of sympathy with the general political feeling against them among the people.

Before it was determined by the United States what the attitude of the Government should be in respect to the holding of the Philippines, Aguinaldo and his generals had exercised a certain sort of government over a number of the provinces in Luzon and in some of the other islands, and had called what was known as a constitutional convention at Malclos, in the province of Bulacan, near Manila. In this convention the attitude of the revolutionists towards the friars, which had already been shown by the killing of 40 of them and the imprisonment of 300, was further manifested by the enactment of a decree nationalizing the friar's lands, or confiscating them to the use of the Government of the so-called Philippine Republic. As you know, the hostility to the authority of the United States continued in the form of guerrilla warfare until 1902, and in order to bring about peace and end this warfare, it was necessary to increase the number of troops to some 60,000, and the number of posts to 600 in order to reach nearly all the towns in the islands. The only large buildings in any of the villages in the islands were the churches and convents. They were the only buildings of strong material, and the conventos were the rectories or priests' houses adjoining the churches, and these were occupied for some two or three years, sometimes longer, by the troops of the United States, and in many instances they were damaged by the occupation.

As soon as a condition of peace was restored, and the new government had established a comprehensive judicial system, the question which thrust itself on the authorities was the danger to the peace of the community growing out of the assertion by the friars who owned these large tracts of agricultural lands, of their title, and their bringing suits to collect rents, past and present. Of course the courts could not give any countenance
or validity to the decree of confiscation passed by the Malolos Convention which appropriated the lands without compensation to the so-called Philippine Republic, and yet the tenants who had paid no rents since 1896 were determined not to recognize the ownership of the friars, and gave evidence of their intention to resist the collection of rents or their eviction which must in law follow their refusal to pay rent. The prospect of the eviction of 60,000 tenants in the provinces immediately surrounding Manila was one pregnant with a new disturbance of the peace and a new insurrection. Something had to be done. It seemed quite apparent from the investigation that if the Government could acquire title to the lands, the tenants would be willing to recognize its title, as they would have done the title of the so-called Philippine Republic, and that the only peaceful solution was the acquisition of these titles by the Government, and then an adjustment of yearly payments upon such a basis that ultimately enough should be paid to justify the transfer of the titles to the tenants. This matter, however, it was impossible to arrange in the islands, because the heads of the orders were in Spain, and the power on their part to sell the lands was said to depend upon the Pope at Rome, who was the supreme authority in all such matters.

President Roosevelt and Secretary Root had to decide, therefore, whether it was wise to send an agent of the Government to carry on negotiations in Rome for the settlement of this question. Of course in so far as this negotiation should take the appearance of establishing diplomatic relations between the United States and the head of the Roman Catholic Church, it would have been contrary to the traditions and customs of our Government, and would naturally cause adverse comments by other denominations than the Roman Catholic Church. Conferences were had, however, with the leading ministers of all the churches, and it was explained that it was purely a business proposition which we were trying to carry out. The plain, direct American way in seeking a solution was to deal with the person having authority, and if that was the Pope of Rome in such a property matter, the plain simple way was to send an agent to him to see what could be accomplished. This view was acquiesced in by the leaders of all the denominations. Ac-
accordingly an agent was sent, and presented to Leo XIII a letter from the President, the Secretary of State and Secretary of War, explaining the object of his visit, and stating the issues between the Government and the Roman Catholic Church in the islands, and suggesting a method for their settlement. I ought to say that it was the hope of our Government that other questions in addition to the mere purchase of the friars’ lands might be settled in the same negotiation, and that one of these was the substitution for the Spanish friars of some other priests as the parish priests in the islands. I have already alluded to the hostility which had been manifested by the people in revolt against the Spanish regime, toward the Spanish friars, and the political reasons for their attitude. This was no fancied difficulty. The church was lacking in priests after the war, and it felt it essential at times to send back to a parish, as a parish priest, a Spanish friar. With very few exceptions, this action on the part of the church caused great disturbance among the natives, and led to all sorts of violence against the priests and to incipient insurrection in the whole parish. It was therefore of the utmost importance that as a result of the negotiations we should be able to reduce the number of Spanish friars likely to be parish priests in the islands. Of course under the treaty of Paris, the Spanish friars had the right to preach and to officiate as clergymen and celebrate the rites of the church peaceably. The concession we sought was one which must be willingly made by the church and could not be enforced by the Government. The difficulty was that the natives were so ignorant and so suspicious, and found it so difficult to understand any difference between the Spanish and the American Government, that the coming of a Spanish friar into a parish was supposed to be not only with the permission, but by the authority and mandate of the Government. The people could not comprehend why the Government might not prevent by a mere order the coming into the parish of a priest objectionable to the people. The Government, therefore, found itself between two fires, and was anxious to persuade the church to adopt a policy which would avoid this difficulty.

Another question which arose grew out of the charitable trusts, educational and hospital trusts, and their administra-
tions. It was claimed on the part of those who were opposed to the church that in the case of the San Juan di Dios Hospital, a church hospital of Manila, with a rich foundation; the case of the San Jose College, an educational foundation; the foundation of the Hospicio San Jose, a hospital for the insane, and in the case of the hospital of San Lazaro, a hospital for lepers, the trusts were all civil charitable trusts administered by the Government of Spain, through clerical agents, but which passed by the treaty of Paris to the United States for administration by it in its civil capacity. The questions of civil and canon law presented were very nice ones. The money for the foundation of San Jose College came by the will of the Governor of Mindanao, one Figueroa, who gave it in 1598 to found a school for young men resident in the island, and provided that it should be free from ecclesiastical or government domination, but that it should be administered always by the head of the Jesuit Order resident in the islands. About the same time the Jesuit Order had obtained a license from the King to found a school for the education of young Spaniards resident in the island, and also for the education of young priests. This was all before 1610. The school was founded, the money of the trust expended under the direction of the head of the Jesuits, and it was continued as a school until 1768, the year of the Pragmatic Sanction of Charles VII, expelling the Jesuits from the islands. The Archbishop and the Governor then divided up this foundation between church and state, but when this was reported to the King, he directed a restoration of the property and a continuance of the school under its original plan, and he turned over the administration to the Dominicans. The school continued to be administered under the King as its royal patron, by the Dominicans, and was finally united for practical purposes with the University of St. Thomas, a Dominican university in Manila, and the funds were used for the conduct of a medical school. When General Otis took charge of the islands, the Filipino Medical Society opposed the church domination of the school and secured from him an order forbidding the University of St. Thomas to continue the school as a medical school. Subsequently when the Philippine Commission assumed authority, it heard the case in an executive way, reaching the conclusion
that the question was a nice one at law, and made a provision by special legislation for the hearing of the case before the Supreme Court of the islands. The question was whether this history, as I have given it, made the trust a pious, charitable, religious trust with the church as administrator, the King acting for the Pope as the patron by delegation, or whether it was a mere civil trust administered under the patronage of the King as a part of his civil prerogative. Similar questions arose with respect to the other charitable trusts which I have mentioned, the Hospicio San Jose, the hospital of San Juan di Dios, and the hospital of San Lazaro.

And then there was the question of the amount which was due to the church for rent of the church edifices and the conventos which had been held and used by the army of the United States for two or three years during and after the war of the insurrection, and the damages occasioned by such occupancy. This of course was a debt, if a debt at all, of the United States, payable from its treasury, for obligations incurred on behalf of its military forces.

To secure a general settlement it was proposed by the agent of the United States in the Vatican that the agricultural lands of the friars should be bought by the United States at a price to be fixed by an arbitrator to be selected by the Viceroy of India, and that the same arbitrator should determine the rights as between the Government of the Philippine Islands and the church in respect to the charitable and educational trusts which I have described; that the same arbitrator determine the amount due from the United States for rent and occupation by the army of the conventos and churches in the Philippines, and that this sum thus determined be recommended by the Secretary of War and the President to Congress for appropriation. As a condition of the contract, it was proposed by the agent of the United States that after two years the Spanish friars should be excluded from the islands and that priests—natives and of other nationalities than Spanish—be substituted in their stead. In the negotiations which were conducted in writing, the church declined to enter into a contract with reference to the character of the priests who should be kept in the islands, on the ground that that was a matter of church discipline which ought not to
enter into a church contract. The church announced its intention of supplying, as soon as possible, native priests to administer rites and ceremonies of the church throughout the islands, and its intention of withdrawing as rapidly as possible Spanish friars, and substituting, so far as might be, priests of other nationalities, but it declined to enter into a contract to do so. It proposed, on the other hand, to send to the islands an Apostolic Delegate with full authority to deal with the Philippine Government in reference to the sale of the lands, and to make such a compromise as might be affected with respect to the charitable trusts, and to reach a conclusion by agreement, if possible, as to the amount due for rent and occupation of the lands. The church was willing to submit to arbitration the value of the lands and the amount of the rent and damages due for the occupation by the soldiers. As the church was not willing to enter into a contract for the definite withdrawal of the friars, our government did not deem it wise to go into the uncertainties of an arbitration without having accomplished our whole purpose, and preferred to bring that about in the course of negotiation with the delegate rather than to arbitrate part and leave part to negotiation.

It was hoped by the agent representing the American Government that the Vatican would accept the proposition made, and agree by contract to withdraw the Spanish friars from the Islands, and this hope had been based on the precedents. When France came into possession of Tunis, it found a number of mission parishes of the Catholic Church in charge of Italian priests, and it desired that the nationality of these priests be changed and that French priests be introduced. The Vatican had acquiesced in this and had withdrawn the Italian priests and substituted French priests. Exactly the reverse had happened in an Italian colony on the Red Sea where there were French mission priests when the Italians took possession, and at the request of the Italian Government, the Vatican had withdrawn the French priests and had substituted Italian priests. It was hoped that a similar course would be pursued in the present case, but the difference turned out to be this: The French Government on the one hand and the Italian Government on the other had notified the Vatican that if it did not
withdraw the French priests and the Italian priests respectively then they would be excluded by order of the Government. This relieved the Vatican from any responsibility in respect to the withdrawal of the priests whose presence was objectionable, and it merely acquiesced by substituting priests of the desired nationality. In our case, the Vatican intimated in its correspondence that if it willingly withdrew Spanish friars because they were Spanish, this would be considered by the Spanish Government as a reflection on Spain, and as we did not have power, and as it was contrary to the treaty for us to order the Spanish priests out of the islands, the church would not assume the responsibility of doing so. It is an instance where the freedom of our institutions and of the liberality of the treaty obligations we had been willing to assume, put us at a disadvantage in a negotiation.

As soon as the result was announced in the Islands that Rome would not make a contract to withdraw the friars within a certain time, one Aglipay, an ex-communicated native priest of the islands, organized a schism, and founded what he called the Independent Filipino Catholic Church, and gave himself the name of Obispo Maximo. His church was joined in large numbers by the Filipinos, and the schism for several years was a very serious one, so far as the church congregations were concerned. But Aglipay lacked the elements of a successful religious leader, and the schism, while still existing, is not growing; indeed it has fallen away. The existence of the schism, however, had given rise to another religious question in the islands, which, with your permission, I will state. After the insurrection and the restoration of peace in the islands, the number of priests which the church had at its disposition was very much less than the number of parishes to fill. Accordingly there were a great many vacant churches and vacant conventos throughout the islands, and it was impossible in perhaps half of the parishes for the church to afford to faithful Catholics the administration of the necessary religious rites. The churches and conventos had been constructed by the people of the parishes and municipalities in which they stood, with the assistance of the Government, the Government paid the salaries of the priests. The
work upon the church and the convento was rendered as a public obligation of the residents who worked, as in case of working out a road tax. It was claimed, therefore, by the municipalities that the church and convento belonged to the people of the municipality, and that when the people of the municipality changed their religion from the Roman Catholic Church to the Independent Filipino Church, they had the right to transfer the church building and the convento from the priest of the Roman Catholic Church to the priest of the Filipino Church. Acting on this principle, wherever there was a large schismatic congregaion and an empty Catholic Church and convento, the schismatic priest, with the consent of the people, took possession of the church and the convento. It was a peaceable possession. There was no resistance. There was nobody in the name of the church to make resistance. The hierarchy of the Roman Catholic Church called upon the Government in such cases to use the constabulary and the executive arm of the Government to punish these schismatic priests who had moved in without any possession, on the ground that they were mere intruders, were trespassers, and were in flagrant violation of the rights of the Roman Catholic Church. This gave rise to a great deal of controversy between the Roman Catholic Church and the civil authorities. The position which was taken by the civil authorities was that wherever men were found in peaceable possession, it was neither within the duty or power of the executive to decide that they were trespassers, or to pass on the right of possession or title, and therefore if the Roman Catholic Church wished to oust those in peaceable possession of the churches and conventos, it must resort to the courts and take the usual remedy. Because of the threat to the public tranquillity that such constantly arising controversies had, special acts were passed for the expedition of suits of ouster of this character which permitted them to be brought into the Supreme Court and authorized the uniting of a great many cases in one.

In compliance with the promise of the Vatican, the new Apostolic Delegate, Archbishop Guidi, a Roman ecclesiastic, and a statesman of large experience, was sent to the Philippines in 1902 to conduct the negotiations. They covered a full two
years, and finally the price of the lands was agreed upon. The commission had employed a well-known egrimensor, that is, agricultural surveyor, to go over the lands and give an estimate of their value from an agricultural standpoint, and his report showed that they were worth about $6,000,000 gold. This price was quoted at by representatives of the friars and their assignees (for the friars had conveyed their lands to companies in which they retained a majority of the shares) and they offered to sell the land at $12,000,000. Finally they came down to $10,500,000, and after a long time, just in order to buy peace, and not because the lands were in our judgment worth it, we increased the offer from $6,000,000 to $7,000,000. This was doubtless in excess of the real value of the land. We deemed it of such importance to remove this constant source of irritation, however, that we were willing to pay more than the lands were worth for political and governmental reasons.

Congress had authorized the purchase of the friars' lands, and had inserted in the law giving this authority further authority to condemn the lands, if it was deemed necessary by the Philippine Government. This presented a very serious question of constitutional law, and one which it did not seem wise to us to test. It was whether the power of eminent domain in a government extended to the condemnation of property to be used, not for public purposes, but to be transferred from one private owner to another, through the medium of the government, because the ownership of the first private owner involved political difficulties and was likely to create riot and disturbance. If any of my hearers are instructors in a law school, and are in search of a question for a moot court, I suggest this as presenting some novel and interesting phases. The question was sufficiently doubtful to make us anxious to purchase rather than to attempt condemnation.

It is quite probable that the friars' lands will not prove to be worth what we paid for them, though if agriculture improves in the islands, I think we shall probably be able to escape with a very slight loss. Meantime the friars' lands are being slowly disposed of to the tenants. The rinderpest carried off 75 per cent of the cattle of the islands, and greatly interfered with the agriculture. This of course affected the value of lands and
affects the ease with which the friars' lands may now be disposed of to the tenants. The destruction of so many of the cattle cannot be remedied under a decade. The satisfactory disposition of the friars' lands now owned by the Government will probably be retarded for a number of years, but in the end it will work itself out, I do not doubt. Meantime the insurrection which was impending on this account has been entirely avoided.

In respect to the withdrawal of the Spanish friars, I am glad to say that by the exercise of good temper manifested on both sides, and continued gentle pressure, the number of Spanish friars in the islands was greatly reduced. The original number was 1150. The Dominicans refused to accept any parishes at all, and the Augustinians, Recollectos and Franciscans, many of them were occupied with schools. Then there were a number of the friars in the islands who were of such an age as to unfit them for any service at all, so that ultimately the number available for service in the parishes of the islands was reduced to below one hundred, and as these were used in large cities, their presence did not bring about the ill feeling which was so troublesome in the country parishes.

In addition to this, a radical change was made by the Vatican in the acceptance of the resignation of the Spanish Archbishop of Manila, and the other Spanish bishops of the archipelago, and the appointment of Archbishop Harty, an American from St. Louis, as archbishop of Manila, of three other American bishops, and one Filipino bishop. It took the church out of the Spanish management and gave it an attitude toward the people very different from that which it was before. Its effect was not immediately observed, but it has become more and more decided as the influence of the Americans and Filipino bishop grows in the islands. The education of native priests and their substitution for the Spanish priests has gone on as rapidly as the church could bring it about, and this difficulty as to the nationality and character of the parish priests which was so formidable in the outset has gradually disappeared. The church has manifested a willingness to withdraw any parish priest whose presence in any parish the Governor-General objects to, as provocative of disturbance.
The San Jose College case which was pending in the Supreme Court was never decided by that Court. This delay was really at the instance of the parties, because it was found possible to make a compromise with the Archbishop of Manila with respect to all the charitable trusts which I have named above. That compromise was hinged on the ownership by the Roman Catholic Church of a controlling number of shares in the Spanish Filipino Bank of Manila. The Spanish Filipino Bank had a charter from the Crown of Spain, by which it was permitted to have a capital of 3,000,000 of pesos, that is, $1,500,000 gold. The Government of the islands was given some control of the directory. The bank was authorized in its charter to issue bank notes in a sum three times its capital stock paid in, or in a sum of $4,500,000, assuming the full capital to have been paid in. There was no security required for the redemption of these bank notes, and, after the cession, it was deemed by the American Philippine Commission most dangerous to permit the issue of the notes without something to secure them. The bank claimed that as the Treaty of Paris preserved all the charter rights of corporations in the islands, it was impossible for the Philippine Government to derogate from the right of the bank to issue these notes. The view of the government was that the issue of bank notes was a function of sovereignty and did not pass as a contract from one sovereignty to another, and was subject to modification and qualification by the new sovereign. Accordingly a tax was imposed of 12 per cent on any notes issued by the bank over and above its actual capital paid in. This act was prohibitive and was said to be a violation of the bank's charter rights, and it was proposed to take the matter to the Supreme Court of the United States. By an extensive compromise agreement, the Archbishop of Manila and the Commission agreed that the Hospicio of San Jose, the hospital for the insane, the College of San Jose, and the Hospital of San Juan di Dios, all of them should hereafter be considered as charitable, pious and religious trusts under the administration of the Roman Catholic Church; that the Hospital of San Lazaro, which was actually in the possession of the Government, which had a foundation nearly as rich as the other three, and in which the Government had invested
$150,000, and which owned a large valuable tract of property in the city of Manila, should be considered a civil trust and under the administration of the Government of the Philippine Islands. A small part of the land of San Lazaro, however, about equal in value to the money invested by the Government in the foundation, was transferred to the church for its religious uses. As a part of this agreement, the Spanish Filipino Bank was given authority to increase its capital from $1,500,000 to $4,500,000, and to issue bank notes in the amount of $4,500,000 whenever its capital was increased to that amount, the value of its assets being determined to the satisfaction of the Governor-General and Treasurer of the islands. In this way the matter of the religious trusts has been settled.

A board of military officers was appointed to pass on the claims for rent and claims for damages to property occupied by United States troops, and they reported the sum of about $425,000. I think this was too small, but it was all that could be shown by the church, in view of the time which had elapsed since the damage had arisen. Of course the actual loss to the church was vastly in excess of $400,000, but a great part of the loss was due to the destruction by the insurgents of church property—a destruction of the church property during the war. They deemed this a wise war policy in order to deprive the American troops of a place in which to live. There was also a great deal of destruction immediately in the train of war for which the United States was of course not responsible. Congress at this session appropriated and paid to the Catholic Church in the islands this sum of $425,000.

Finally the question with respect to the title of the churches and conventos under the special proceedings provided by law came on before the Supreme Court, and that body has decided that the title of the churches and conventos is in the Roman Catholic Church, and under the Concordat and under the law; the churches were constructed for the benefit and use of the church and as the property of the church, and they have in a number of typical cases entered a judgment of ouster against the Aglipayan priests and the municipalities. This will doubtless settle all the religious questions which seemed so formidable in the beginning arising in this interest-
ing far distant archipelago which it has fallen to our lot to administer.

The Roman Church is in a deplorable condition from a property and financial standpoint. Its losses during the revolutions and war were very heavy. The deprivation of its priests by the circumstances which I have referred to interfered greatly with its usefulness and influence. This is a most unfortunate matter for the islands viewed from a purely governmental standpoint. The Roman Catholic Church must always be the most important influence for the uplifting of the Filipino people, and its prosperity will always make for the good of the Filipino people. Since the American occupation, other denominations have come into the islands, and are doing great good there, both directly and because the spirit of Christian emulation which their presence creates does good to the older church. As a non-Catholic, I sincerely believe, and I think, that there are no Protestants that know conditions in the islands who do not admit that it will be of much advantage to the islands as a whole to have the Roman Catholic Church restored to a condition of prosperity. This change for the better must be quite slow. The radical difference between a church whose priesthood were paid by the Government and out of the taxes collected from the people, to a church whose priesthood must be paid in some way by contributions of the congregations, is so great that it is very difficult for the people to adjust themselves to the change.

It was hoped that a large part of the $7,000,000 paid for the friars' lands would be retained in the islands for the benefit of the church, and it was intimated in the negotiations in Rome that such would be the case, though it was no part of the contract of purchase. There has been a good deal of difficulty in the settlement of the amount of money which the church proper in the Philippine Islands shall receive from this purchase money, and how much the various religious orders shall keep and use in the Philippines. I have no means of learning the exact facts, but I am told that the church authorities are reaching a satisfactory conclusion, and that a very considerable part of the money paid will be used to assist the church in its needy circumstances in the islands. I sincerely hope that this is true.
I have reviewed at perhaps tedious length the many issues arising between the Philippine Government, representing the United States, and the Roman Catholic Church in the Philippine Islands—issues incident to the transfer of the sovereignty of the islands from the Crown of Spain, united with the church, to the Government of the United States, necessarily separated from it. All these issues have now been satisfactorily settled. For a time they seemed most formidable and hardly possible to overcome. It is a subject for congratulation to everyone having an interest in the successful administration of these islands that in the decade which has elapsed since our taking possession of them, these questions have passed into history and will not trouble the Government of the United States further, so long as the islands remain in our custody and guardianship.

ADDRESS OF GEN. LUKE E. WRIGHT.

Mr. Chairman, Gentlemen of the Bar Association, Ladies Gentlemen: You see before you this morning a man who has had deep trouble. In the first place, I didn't sleep very well last night. There was an amount of noise on the street that disturbed the heavenly calm that ordinarily characterizes Nashville, to which Mr. Malone referred on yesterday, and I really thought for a long time that there was another Republican convention being held in the city (Laughter). But it seems it was simply a primary election, but so it was that I got very little sleep. But that was the very least of my troubles. You have heard a great deal and sympathized very much with a man without a country, and also with a man without a home, but if you have tears to shed, prepare to shed them now, because I am in a much worse situation than either of those people, inasmuch as I am a man expected to speak without a subject. The subject assigned to me by the president was some of the legal problems which confronted the Philippine Commission in their duties in the Philippine Islands. To my horror and disgust (laughter), last night Secretary Taft pre-empted the ground (laughter). Now he said a great many things that I might have corrected, and I am frank to say to you that the
speech I had prepared pleased me greatly, and I am satisfied would have been an admirable production, but if I were to make it this morning, aside from threshing over the grist that he has already dealt with, I might say some things that would seem to conflict with the statements made by the distinguished Secretary, and to guard against that very thing he put me on honor last night not to talk about it. So I am very much in the attitude of the young man who was attending the wedding of one of his former sweethearts, and who, when the minister came to that part of the ceremony, "Who giveth this woman away?" he arose and said, "I could, but I won't." (Laughter.) (Applause.)

Now, therefore, I am forced to choose another subject, and it has occurred to me that possibly I might fill the time that I am expected to take as well in talking about my observations and experiences in the "Land of the Rising Sun" as in any other way. Of course I shall have to invoke your charitable consideration, because I have not had time really to arrange any orderly discussion of the subject I have chosen, but I am consoled somewhat by the same reflection that was suggested by Secretary Taft last night, that whatever I may say will have to pass current, perhaps, because no one of you knows much more about it than I do (Applause).

It has been, of course, one of the marvels of later days, the wonderful progress made by the empire of Japan, the extraordinary facility with which that remarkable people emerged from a state of seclusion, and not only took a respectable position among the nations of the earth, but forged to the very forefront. There must have been of course some underlying forces which had for a long time been operative to make possible such wonderful transformation. Those of us who believe the age of miracles has passed, know full well that it was impossible that this sudden change could have taken place unless there were some great underlying reasons for it, and so that was a matter that when I went to Japan interested me greatly, to ascertain just why and how it was that a people who had been bottled up for hundreds of years could so suddenly readjust themselves to strange and new conditions and adopt Western methods and Western ideas as they did. I found
in talking to Americans who had been residents in Japan for a great many years, and who had themselves been students of Japanese life—as well as talking to prominent Japanese—that as a matter of fact the government of that people prior to the revolution of 1868 when the Mikado was brought out from seclusion and actually from that time began to reign, that they had a system of government which was very nearly like, in fact, was almost an exact replica of the feudal system which obtained in England during the reigns of Henry VII and Henry VIII, and even up to the time of Elizabeth.

The Shogun, as you know, was not the King, but simply a successful general, who had really usurped the power and had for several hundred years governed the empire in the name of the Emperor, or Mikado. The Mikados had their capital at Kioto, the ancient capital of the empire. The Shoguns lived at Yeddo, what is now called Tokio, and there held their courts and actually administered the affairs of government. Under the Shogun were great over-lords called damios. They had power as did the great lords in England, practically the power of life and death over their people. They were a warlike people always: the feudal system, as you know, produces a race of fighting men, and these damios had as their fighting men a class of people called the Samuri. The Samuri were also the real administrators of the government, the damio being practically a figurehead, greatly respected and greatly revered by his people, but still having very little actual duty to do, so that these Samuri became the real backbone, so to speak, of Japanese society. Now there is one feature of a feudal system, that whilst it may have a great many evils, yet produces certain large and heroic qualities among the people of loyalty and devotion, which the man has for his lord, is met by the spirit of duty which the over-lord feels he owes to his people, and which is largely a paternal system which acts and re-acts in the way I have indicated. So that they had among themselves this feudal system and along with it they had a system of local self-government. The over-lord, whilst he had large theoretical powers, as a matter of fact, governed his people justly and gave them a large share in determining their taxes and how the various local interests affecting the various com-
munities should be determined, and that had been going on there for hundreds of years.

Now, curiously enough, the immediate cause of the over-turning of the Shogunate was the appearance of Commodore Perry, who as you remember some fifty odd years ago went to Japan for the purpose of opening up communication with the Japanese people, who had theretofore been bottled up, as I have said. He went ostensibly, I believe, to take a letter from the President to the ruling powers in Japan. Just why the President wanted to write at that time to the Shogun or Mikado is not entirely clear, and upon what sound Christian principles our President had the right to kick open the closed door of Japan also has not been entirely apparent to my mind, that is, from a strictly Christian standpoint, but so it was he went there and forced open the closed door. Following him came an American diplomatic representative and the diplomatic representatives of other foreign powers, who also desired to have written or verbal communication with the Government of Japan, although the topics of discussion are not fully disclosed by the correspondence; but all these diplomats, when they arrived on the ground to treat with the Japanese authorities, were referred, of course, to the Shogun, but when they came to inquire, the Shogun, who did not dare to say that he ruled Japan upon his own authority, but that he was simply the agent of the divine Mikado, who was too great and too holy to trouble himself with mundane matters, had to say that the Mikado was the head of these, and thereupon these diplomatic gentlemen said, "Well, we want to treat with the fountain head; we do not want to deal with simply an agent." There had always been, I suppose, a disposition to really make the Mikado something more than nominally the Emperor. The men who believed in, but were not satisfied with, the government of the Shogun, seized the opportunity and insisted that the Mikado should be brought out from his retirement and should become in reality the Emperor of his people, and curiously enough again and as indicative of what strange quirks and turns politics takes, the cry against the Shogun made by these adherents of the Mikado was that he had permitted the hated foreigners to come in. Well, I have already explained
to you just how the hated foreigner got in. But so it was. The Shogun lost prestige and the adherents of the Emperor gained strength with the people of Japan in their proposition to bring out the Emperor, and he was brought out.

Now, as showing the feeling of the people of Japan, the great masses of the people, lord and common man alike, I can not better illustrate it than by giving you a brief history of the Marquis Ito. Ito was a plain man of the people, of the Samurai class it is true, but his family was not so obscure a family of that class. Of course there were high and low Samurai, as you will readily understand. I was told by Sir Ernest Sarto, who began his career in Japan as an interpreter-secretary when the British legation was first established there, that he knew Ito when both he and Ito were very young men. Indeed Ito and Count Inoi, if I remember his name, who was a son of one of the older statesmen, had seen these men-of-war of the barbarians which sailed into and steamed into the harbor of Yokohama and Tokio, they had observed the equipment for war of these strange people who had thrust themselves uninvited amongst them.

They resented it, and these two boys determined that they would go abroad, although at that time there was an edict in the empire that made it death for any Japanese to go abroad, but they determined that they would go abroad for the purpose of studying Western methods of war in order that they might meet these visitors whom they hated upon equal terms, and they put themselves under the protection of the British diplomatic officials, went over to Hong-Kong and from there they went to the British consulate, from there to England, where they remained a year or two studying English and English methods, especially of making war. About that time, after they had been in England for the time I have indicated, the damio of these two young men, I forget their clan, had been guilty of making some attack upon foreign vessels going through the inland sea along the coast within his jurisdiction, and the foreign men-of-war went down there to teach him what they regarded as a lesson, to remonstrate with him with guns, and about that time Ito and Inoi heard of this and returned to Japan. Sir Ernest Sarto told me that he was directed
to get these young men to get the British men-of-war to put them on shore that they might communicate with their damio and explain to him the utter folly of his attempting to resist the foreigners, so that he could make terms and make the necessary reparation for the outrages committed. They were put on shore, and as soon as their mission was announced they were set upon by their clansmen and Inoi was cut down and left for dead on the ground, and Ito retired gracefully to the protection of the British ship as best he could. As indicative of the change which fifty years has made in the minds of this people, I may say in passing that in the conversation I had with the Englishman, Sir Ernest Sarto, he said that the night before he had been at a dinner at the English Embassy in which the British Ambassador had invited all his old chums among the Japanese, among them Marquis Ito, Count Inoi and various other men he had known in the old days of the Shogun, and Inoi told him—they got to talking about his early experiences in life—and Inoi told him this story: He said a few weeks ago I received a letter accompanied by a sword. I opened the letter and it was to this effect: Forty or fifty years ago—whatever the time was, I am not certain, except that it was a long time ago—with this sword I cut you down because I regarded you as an enemy of my country. I have lived long enough to learn my mistake, and I now know that you were wiser than I and that you were the real patriot. I therefore send you the sword, and if you accept it I shall know that you have forgiven me. And so he was very glad to accept it.

Now I think it may fairly be said that perhaps the immediate, moving cause of the change of government from the Shogun, the real sovereign, to the Mikado, the nominal sovereign, was due primarily to the very cause that moved Ito and Inoi to go abroad, and yet no sooner was the Mikado established upon his throne than he was wise enough and broad enough—or the men around him were—to appreciate the fact that whether they would or not they must get into the game along with the other great foreign powers, and they began systematically the work of study and reorganization looking to that end. It is a long story and a most interesting study to see how they moved by gradual approaches from their original
situation up to their present condition. I may say in that connection that very nearly all the men around the Emperor as a rule belonged to that Samuri class of which I have spoken. They were the real administrators and real warriors of the Emperor. It was a regime of new men coming to the front, and they began systematically and in a most unobtrusive and modest way to study European and American methods, and to that end to send their young men to these foreign countries to study their languages, their customs and their laws. The net result of their investigation, without wearying you with details, was that from this medieval feudal government they gradually emerged by progressive steps of evolution into a constitutional empire. They not only studied the laws of the Western powers, but they adopted them largely. The code of Japan, which I have barely skimmed through, as I may say, is, I am informed, really an adaptation of the German civil code, and their penal code is very much along the same lines as one of our State penal codes. Now, they were largely compelled to adopt a judicial system and foreign laws in so far at least as they related to the punishment of crime, because all the great foreign powers in their treaties with Japan had what is termed extraterritorial jurisdiction, that is to say, any controversy between two foreigners, or between a foreigner and a native Japanese, was determined by the foreign military courts, by the courts of the nationality of the foreigner with whom the dispute arose. That was most galling to Japanese pride, and perhaps that cause more than any other contributed to the establishment of a legislative and judicial system after the fashion of Europe and America. The result was that they gradually broke down this right of the foreigner to determine the cause of his own national disputes of the character I have indicated, and by treaty these extraterritorial rights were abolished, and today the courts of Japan administer justice for native and foreigner alike. In these various changes which were thus gradually made, the United States had always stood the closest friend of Japan. I have been informed, and I have no doubt it is true, that the great breakwater at Yokohama which makes an artificial harbor in that great bay, was built out of the indemnity paid by the Japanese Government to the
United States for injuries done its nationals in cases of real injuries that were done, and which was returned by the United States to the Japanese Government. And so by these treaties relating to extraterritorial question, the United States has always stood close to Japan and been the first to accede to her what we realized were her legitimate demands. Then again, a large number of the most important men of Japan have been educated in the United States. The American missionaries in Japan, if I may judge by those who are there now, have been an unusually high grade of men, who, whilst I cannot truthfully say that they have made any great impression in a religious way upon the masses of the Japanese people, they have been school teachers and doctors and they have lived their lives in a self-sacrificing, simple way among the people and have unquestionably made a profound impression upon them and have done a large good in establishing a most cordial feeling on the part of the Japanese people for the people of the United States (Applause). I say they have not made much impression in a religious way for the reason that all of the Christian churches there I believe only claim about one hundred thousand adherents. At least two-thirds of them are communicants of the Roman and Greek Catholic churches, the rest being Protestants. The total population of Japan is about fifty millions, so that you can yourself form an estimate as to whether I am correct in the statement that no great impression has been made upon the masses of the Japanese people by the Christian religion. This is not extraordinary when you consider the antecedents of those people. The two great religions in Japan are the Buddhist and Shinto. The tenets of the Buddhist faith, the general tenets at least, I need not express that; I should say, however, that the Shinto religion is the state religion; in so far as it is a religion at all, it simply amounts to a worship of ancestors generally, and a worship of the Emperor and his ancestors particularly.

Now the question has often been asked me whether the Mikado or Emperor as he is now termed, of Japan, was a great man. It is needless for me to say that no foreigner can form an opinion on that question at first hands. The Emperor when he came to the throne was a mere boy, I should say. He had
never been outside of Kioto, indeed, I think had never been outside of the palace grounds in which he and his ancestors had lived for hundreds of years. No Japanese had ever looked upon his face, and at the time he was thus brought out, no Japanese subject would have thought of looking upon his face; he would have regarded it as sacrilege, even. As to the Shogun, I have been informed by Japanese gentlemen who know that when he made his pilgrimage from Yeddo, now Tokio, at Tokio he had a much larger, finer palace than the Mikado himself had, the people were warned of his coming and closed their houses. It was death for any man to look upon the face of even the Shogun, the Mikado's lieutenant. How much the more was it impossible in the case of the great man himself. I remember being shown through the palace grounds, the old palace grounds there in Tokio. Our guide, who spoke very good English and was very intelligent, was very particular to point out to me a little, obscure gate, away down in the corner of the enclosure, where, he said, the Shogun or his diplomatic representative always entered when he came to see the Mikado. He was not allowed to come in the front gate, but had to come around the back way, through the kitchen, so to speak. This illustrates the feeling of the Japanese people for their Emperor at the beginning. Now very wisely, I think, he appreciated the fact—or his advisers did—that it would be unwise for him too suddenly to mingle among his people, so he maintained, when he went to Tokio, practically the same impenetrable seclusion from his people. Gradually, however, and very much later, and on rare occasions showing himself. But with the creation of a constitutional form of government which they now have, an upper house and a diet, the latter of which is a popular assembly and in which parties exist, that feeling of extreme awe is dying away; but the underlying feeling of reverence among the people for the Emperor still remains. I attended the opening of the Diet by the Emperor, on which occasion he made a speech as does the English King and other foreign monarchs when opening their assemblies, and I observed that the old men as he spoke were all bowed almost to the ground and never elevated their eyes, but the younger men sat up and looked at him, which seemed to me to mark the gradual
change that is going on among them. It is absolutely true that when he is succeeded by the present Crown Prince, the Emperor will probably be still less exclusive, because he has been educated in quite a different way from his father. But recurring to the question of the ability of the Emperor. It would seem that a man thus reared, who, up to the time he was sixteen had never been outside this limited enclosure; who had never come in contact with the great world, or with its moving affairs; and that that state of affairs had existed for hundreds of years with his ancestors, that he would be very inadequate to handle the situation in which he found himself, and that if he were not actually a degenerate, he would at least be incompetent. But the event has not so proven. Whether he possesses original constructive ability of a high order can only be a matter of conjecture, so far as outsiders at least are concerned, but he undoubtedly has this power which for a ruler is practically more valuable to his people, and that is to select able, wise and strong advisers. The Government of Japan is theoretically composed of the Emperor, who is the head of everything; of the House of Peers, and the Diet or popular assembly. They have a cabinet as have the other great powers, but behind them is what is called the older statesmen, of which Ito at least is the greatest representative among foreigners. That council is composed of five or six very eminent men. They are not named in the scheme of government at all. They are simply the private advisors of the Emperor, responsible to no human being or authority at all save themselves, and the impression prevails that the Emperor in conjunction with this council of the older statesmen is the real governing power of Japan, at least in all its large policies.

Now that the Emperor must be a great man, to my mind at least, is evidenced that in this council of older statesmen the brethren do not dwell altogether in unity and harmony. It is a matter of common notoriety about which the Japanese themselves do not hesitate to speak that Marquis Ito and Marshal Marquis Yamagato, who is the great war lord and is one of the elder statesmen, are rivals not only in the matter of personal ambition, but also that they do not agree on questions of policy in many directions. The Emperor has been large
enough to keep the peace and to be himself the balance wheel in that extraordinary organization, and to see that the wheels of government are not retarded by the clashing ambitions of his greatest subjects. So that he undoubtedly has that sort of ability, that same sort of ability that the Emperor William had when he surrounded himself with Bismarck and von Moltke and a score of great men of lesser calibre, and that he really possesses these two more desirable qualities, for a ruler, than if he had the genius of a Napoleon or a Caesar or an Alexander.

The administration of justice in Japan seems to be efficient. There has been much complaint by foreigners since the extraterritoriality was abolished that they do not get a square deal, to use a classic phrase of President Roosevelt—I am not sure that I know from just what classic he has borrowed it, but he made it a classic—that they get the worst end of the stick always. There is possibly some ground for that.

The judiciary are not as independent of the executive department of the government as they are in our government. With us, you know, the judiciary—and of course I have reference to the judge or ex-judge present—take something of a pride in kicking over the acts of Congress, and especially the executive acts of the president (Applause). But that state of affairs is not found in Japan, and I may say it is not, as far as I am advised at least, found anywhere in Continental Europe, except in England, if it may be called Continental Europe. The Judiciary occupy a more or less dependent position, and even in England they do not attempt to kick over the acts of Parliament, but bow submissively; but the German idea, I think, is prevalent among the Japanese judiciary, and it is entirely probable also, that many of these criticisms above referred to of foreigners grew out of the fact that the Japanese judiciary are themselves administering a code which is comparatively new. I do not know just how old it is, but I do not think it is more than ten or twelve years old; certainly it is of very recent date, and you can easily understand that it is not easy to train men in a new system of judicial procedure and in the administration of new and oftentimes strange laws wholly inconsistent with what they had theretofore known. I found in several matters that I had with the Japanese Foreign Office that they were
extremely tenacious on the point of giving away any of this
exclusive power in dealing with internal questions arising be-
tween their nationals and ours. That was a thing that they
had negotiated for and really had fought for, and which they
did not intend to give up, or to modify, and I am not sure if I
were a Japanese that I would not feel just that way myself.

Now, gentlemen, something, if I do not weary you too
much, about the military system of Japan. When the war
between Japan and Russia broke out, I suppose that it is but
the statement of a simple fact to say that the standing army
of Japan was the highest trained body of soldiery, certainly
of its size, in the civilized world, except perhaps—and I do not
emphasize the perhaps very much—it was the German army.
You have got to understand—in order to appreciate why that
was so—you have got to go back again to the history of the
Japanese people, that they have always been a fighting race
of people, and it is true of the feudal system, of which I have
spoken, that it formed a race of warriors imbued with the
traditions of loyalty and of honor and of personal dignity,
because the reverence of the Japanese must not be taken,
although that mistake has sometimes been made, to be servility,
but imbued with these principles that I have spoken of and
esteeming life itself as of little worth as compared with devo-
tion to the Emperor and the country, and those men trained
after the German method, you can understand that it was an
ideal body of fighting men. Now there is another feature of
the Japanese character that probably has contributed as much
as any other to the efficiency of the military arm, and that is
the simple life which all the Japanese people lead. The country
is a poor country. The social pleasures of the people even are
simple to a degree. They are poetical, they are idealists, but
this sense of poetry and idealism finds expression doing the
simplest things, in taking a little piece of ground and planting
thereon flowers trained in an artistic way, or taking a few
rocks and placing them so as to produce the impression of a
grotto, or the imitation of a waterfall if there is a little water,
and the tea-drinking fashion among the ladies is one of the
fine arts out of which they extract a great deal of pleasure,
simple and inexpensive pleasure. When you think that the
average wage up to the time of the late war of the Japanese workman, even skilled workman, was not more than twelve and a half cents of our money and twenty-five sen of theirs, and that of a common laborer still less, you can readily understand that if they got any joy out of life it must be in a very simple way. Now I want to say this; whilst my duties in Japan were highly honorable, they were at the same time largely ornamental (laughter), and I had abundant leisure to study the people, to go among them, and my habit was daily when the weather was good, to take a rickshaw and go away out to the outworks of Tokio, which covers an immense space and have long walks among the people, generally had company with me, and see the people as they really were, before they came in contact with foreigners, and the thing that struck me more than anything else was the apparent cheerfulness of the people and their affectionate disposition one to the other. You frequently saw young men walking together hand in hand, holding hands like a young man and his sweetheart might do if nobody was looking. Now the life of the people of Tokio at least is in the streets. They have no back yards, the children swarm everywhere. It would gladden the heart of our President to see them (Laughter and Applause). If he could go to Japan, he would see that there was no danger there of race suicide. And yet I have never seen a scowl upon one of their faces. I have no doubt they have their troubles like the rest of us, but if they have, it is not considered good form to show it to the public, and it is astonishing to see the gentle tone of equanimity and good humor which spreads at least all over the surface of the common people of Japan.

Now there is another thing that I was struck with in the year and a half that I was there, during the years I have indicated, I saw just two drunken people, and they were good-humoredly drunk. They both had little knots of people around them who were laughing with them and at them, and that was all. The town is splendidly policed by a corps of big men each armed with a sword, and that is all he carries. They have no firearms of any sort, and they do not interfere with the people unless there is some real reason for it. They never did attempt to interfere with them so far as I am a l-
vised except when there were large meetings called immediately after the treaty of Portsmouth to express the dissatisfaction of the mob at least with the terms of the treaty because they expected that they were going to get a large indemnity from Russia and did not, and they called meetings in two large parks there, and the chief of police directed that they be dispersed by his subordinates, and they were, and the result was a terrific mob which for several days had charge of Tokio to express their resentment at what they considered as an invasion of their individual and legal rights, and the thing went on until finally the Emperor after enduring the thing for a certain length of time sent out a few troops, and all was as serene as a May morning, not a shot fired; they understood that the time had come to behave, and they behaved.

Now, if our working classes, I mean by that the working people, if the masses of our people were forced to live the life of the Japanese, we would have revolution here in forty-eight hours; so you can see just how strong, how simple these people are, and yet how self-respecting they are, and you can understand that when they are put in the hands of trained officers they become a terrible machine. The Japanese soldier perhaps takes his calling more seriously than any other soldier in the world. There is no foolishness about it. Winter and summer, through heat and cold, they are marching day by day. I used to get up, be disturbed in the early morning by the sound of the bugles when the detachments would march by. The bugles would be blown; I have seen them carrying their full marching equipment with the greatest good humor. Those men would go on a march of ten or fifteen miles every day until they became as hard as nails. They did it because they loved it, and they had never been the victims of a complex civilization, and they had never had their simple lives disturbed by the numerous side issues which make up so large a part, and I had almost said, complicate our civilization; but the Japanese as a matter of fact, were not anxious for war with Russia, the truth is they dreaded it, and they didn’t fight Russia until their backs were to the wall; that is the truth about it. They made all sorts of propositions of compromise, but they could not without the greatest jeopardy to their very
existence as a nation, at least without jeopardizing their import-ance as a nation, permit Russia to own Korea with its magnificent seaports that almost touch the western ports of Japan, and in conjunction with Port Arthur made the Japanese Sea an inland Russian lake. They offered to give Russia the north half of Korea; they offered all sorts of accommoda-tion to Russia, but the Russian viceroy was imperious, dicta-torial and arrogant, and had rather a contempt for these little men, and he proceeded to brush them aside until finally they were ready to fight, and they did fight.

Now the most remarkable thing to me was not only the way in which they conducted that campaign, but the good sense they displayed in making peace at the psychological moment. I think Mr. Secretary possibly could tell more inside history on that particular line than I, as to what passed there between Russia and Japan. The truth is the Japanese had largely used up all that magnificent first army, and they had called out their reserves of the middle-aged and older men and boys. Russia was gaining strength; the Russian is noto-riously a man who stands more beating perhaps than any other civilized man in the world. Licking seems to fit him really for real fighting, because he generally starts in a state of un-readiness which makes defeat in the beginning certain. But so it was they made peace and they made peace wisely, and they were too wise to attempt to push the questions in the form of indemnity and further territorial cession from Russia and be content to get control of the Russian possessions in Manchuria and the Russian railroads in that great province of the Flowery Kingdom, which is of itself an empire. Now, if you were to ask a Japanese gentleman if they had any de-signs upon Manchuria, he would disclaim it instantly and doubtless sincerely, but the fact is, gentlemen, in my opinion, I am now giving you my views, and I do not claim to be a prophet or the son of a prophet, but looking at the thing and weighing the situation upon the principles which control national life, it is perfectly obvious to me that Japan must expand or die; retrograde and finally become a power of the second or third class. The total area of Japan is about 160,000 square miles, not quite four times as large as the State
of Tennessee; in that comparatively small area, it is estimated by those in a position to know that there is not at the most exceeding fifteen per cent of that territory fit for cultivation, and the population I should add is about fifty millions, so you have a situation in which the people of that vast empire, rather that vast population, has to be supported, meanly supported by what is produced on about 25,000 square miles of arable land. There is not more, if as much, land fit for cultivation in the whole empire of Japan, as there is in the State of Tennessee; the balance of it is composed of mountains, volcanic in their character, mostly largely denuded of forests, a very little mineral, a limited coal field, a little copper, some traces of petroleum, some of iron, and that is about all. Now they have got to get their living out of the soil and in maritime and commercial pursuits, or perish. You can readily understand, therefore, that they need elbow room, and unless the Japanese people are governed by a natural law which differentiates them from all other peoples, they must get more territory. Now the idea that they want American territory I think is a chimera. In the first place they are now in no position for war, and will not be for many years if it can be avoided. I think whilst that would not be an absolute deterrent as a matter of fact, at least it will until this disagreeable incident in San Francisco, the Japanese people were more sincerely devoted to the American people than any other foreigners in the world, because we had never done them wrong in any shape, form or fashion, and had always held out the hand of cordiality and good will to them, and even after that, there was no real sentiment for war among the people. Of course, they did not enjoy seeing their nationals mistreated any more than we would; but, as a matter of fact, it never reached the dignity of a diplomatic incident, and after President Roosevelt's message in which he spoke as he did, very warmly and highly of the Japanese people, even their ruffled feathers were smoothed; but I think the thing that touched them most deeply was in the school assignments in San Francisco, that the Japanese should be grouped with the Chinese and Koreans. There is quite, I may say in passing, quite a difference of opinion
between the Chinaman and Japanese as to who is the better man.

Now they are taxed almost beyond endurance. You can readily see with the subjects of taxation in a country whose resources are so limited as I have already explained, they must find it a matter of enormous difficulty to keep a standing army and a great navy, and besides develop such resources as they have and make the most of them in a commercial way as they are doing. Now as a matter of fact, as I happen to know from an investigation made by one of our American paymasters who was up there on leave and wanted to study the methods of the Japanese in paying their troops. He found that the pay of a common soldier was thirty-seven a week, that is one yen, that is sixty cents, a month. That is what the common soldier is paid. The paymaster himself told me when he expressed his astonishment he said the officer with whom he was in contact said: "Oh, we do not pay our troops anything; they serve their country as a matter of patriotism. This is simply a little pocket money that we give them to enable them to buy cigarettes and indulge in a few pleasures, and their officers are paid on the same meagre scale, and they serve their country not only with cheerfulness, but with heroic devotion.

Now Japan, I may say in conclusion, has got a tremendous problem in front of her, that of getting more territory and of developing her industrial and maritime resources. You see everywhere in Japan factories and new mills. They employ foreigners in the beginning to show them how to do what is necessary to be done, that is necessary to make everything up to date, then quietly the foreigner is discarded and the Japanese steps in. And that has been going on now for a number of years in Japan. That is bringing about, making, a class of wealthy men. Now until the revolution and indeed for some time afterwards, before wealthy men as such in Japan had any standing, then a wealthy merchant was socially not as high in court circles as the common farmer. He only became respectable when he did some great service for the State, either by founding or endowing some institution, or by establishing some other great public benefaction, and under the old regime the love of money was regarded as disgraceful. Their
taxes were paid in kind. There was very little money in the realm and they cared very little for it; but human nature is the same whether it is in a yellow or a white skin, and you see now evidences showing themselves, and there is a very slight undercurrent already perceptible among the masses of the people of discontent. Now whether they will be able to solve the question of how to adjust the relations between the very rich and the very poor is one of very exceeding seriousness; not now, but in the not very remote life of the Japanese people. As against that you see everywhere the temple and the grove and the work of the artists and see these two, old and new civilizations, one in its bare ugliness, and the other in its infinite charm and beauty, stand juxtaposed; and you will find that same spirit running through and among the Japanese people. The traders are keen and aggressive, and their soldiers are fanatical in their devotion to the Emperor and to their country.

I might mention in that connection that General Kuroki, who commanded the Japanese in the siege of Port Arthur, had just two sons; both were army officers. In the early part of the siege one of them was killed in leading his regiment against the Russian breastworks. His immediate general officer, commander of his division, knowing that these two boys were the apple of the general's eye, and appreciating the fact that the remaining boy if he stayed with his regiment would probably be sacrificed, the general officer detailed him as a member of his staff, thinking in that way he would in some sort shield him from danger and almost certain destruction; but when Kuroki heard of it he ordered him back to his command, and in less than a week he too had poured out his blood in front of the frowning walls of Port Arthur, and Kuroki's expression on the subject in speaking of it said: "I come of an old Samuri fighting family. Our highest pleasure and our greatest glory has been to sacrifice our lives for our Emperor, and I am a proud and happy father that my boys have done so" (Applause). Well, I confess I am not quite able to reach that exalted and sublime state of patriotism that the general displayed, but nevertheless there is not a question but that sort of spirit makes a very ugly adversary.
There is another little story that I will tell you finally which illustrates this fighting spirit of the Japanese people. Not many years ago, I do not remember just how long, after the restoration of the Emperor to his own, as not infrequently happens even in a free country like ours, the Emperor in making his appointments around his person and in the great places of state, neglected quite a number of prominent Japanese who had been largely instrumental in helping him to mount his throne, and they resented it very bitterly, and especially was that true of one of the southern clans, I forget the name, I can't recall their peculiar name. Their daimio was very hostile, not to the Emperor, because that was inexcusable, but to his entourage, and was greatly exercised about it, and finally called a council of his people, of his chief men, among them Sigo; and they held a conference among themselves, and perhaps with representatives of other clans who were equally disaffected, with a view of determining whether they should make war on the ministry. The great bulk of the assembly favored war. Sigo advised very earnestly against and gave his reasons with great force. He said, in the first place we will be defeated and we will bring untold woe upon our people, our immediate following; in the next place, that is not the way in my opinion to get redress; we ought not for that purpose to throw the empire so recently re-established into confusion; we should bide our time and appeal to the justice of the Emperor; but he was overruled promptly by the hotheads in his allegiance to his daimio. They said to him, now you oppose this, we would have looked to you as our leader, but you opposed our policy and we do not expect you to take part; you may retire; but he said, ah, no, I am one of the clan, I am its natural leader, I go with my people; and he became their leader and they in rebellion, I suppose you might call it; it is called the Sigo rebellion, I believe, but the result proved that Sigo was right. Finally Sigo's people, his army, was greatly decimated by battle and worn down by marches and finally he had around him only about a thousand men, and he retired to a stronghold in the south. The regular forces who knew or had learned Sigos' real feeling and at the same time his chivalric spirit, offered him terms, and said, surrender and
your lives shall be spared, your civil rights be unaffected, and we will just wipe out this unhappy episode in our national history. Sigo commanded all his followers to accept the terms except two or three hundred of his immediate family and clan. He called his adherents and sent them out; he said, you go, as for me, my career is ended; and so he retired to the citadel, and they worked on him and hammered on him for eight or ten days, and when gradually the little band was worn down, until there was only a few of them left, and he saw that the end had come, he knelt down and said to his chief retainer, strike off my head, which he proceeded to do, and that was the end of Sigo.

Today at the entrance of the great Wago Park in Tokio, beautiful and historic as it is, there stands an heroic statue of Sigo the rebel, and every Japanese as he goes by bows his head to the man who died for what he regarded as his duty to his clan and to his cause (Applause). I could not help, somehow, I don't know just why, when I had this story told me, of drawing a parallel between his military career and that of our own Gen. Robert E. Lee (Applause). I need not tell how he felt in regard to the great Civil War, and with what reluctance he drew his sword; yet when his people spoke he was their leader and went to the end. The only difference between him and Sigo was that one could not bear the ignominy of defeat and thought that his honor compelled him to die, whilst the other, taking what we would think the nobler and higher view, determined to live with dignity and usefulness for his people and lead them out from the vale (Prolonged applause). Whilst I think that, ladies and gentlemen, we must not forget that sentiments of patriotism and honor are largely conventional, and we must not, therefore, in dealing with the Japanese people, overlook the fact that that sort or a spirit makes a bad man to fool with (Prolonged applause).

TAXATION.

By Judge R. M. Barton.

Mr. President and Gentlemen of the Bar Association of Tennessee: I did not accept the invitation to read a paper at
this meeting because I had a message to be "carried to Garcia" that was too hot to hold. I did not have any particular message for anyone that was burning to be delivered, nor was it a case of the "worm that turns." I did not ache to speak back at you lawyers because of the stream of talk that has so long been turned on me. I consented, because I like your President and I knew when he asked me to read a piece and told me he had secured for addresses at this meeting Judge Taft (I like best to call him Judge in this presence) and Martin Littleton of Roan County, East Tennessee, who now occupies that portion of his orbit passing through New York, and also Governor General Wright, that he was simply hunting for a soft, dark background for his great luminaries.

I knew the modesty of the other judges and most of the other lawyers would induce them to decline, and having always taken such an active interest in the Association, feeling personally indebted to the President, and wishing to save him further trouble in looking for something mild and dark to give the proper chiaroscuro effect at this meeting, I consented.

I had at first decided to decline the honor, though appreciated, mainly because I feared I could not select a live subject to write or speak about without the danger of violating the proprieties which hedge or should hedge a judge "around" on questions which may come before him, and on which he should so far as possible keep himself uncommitted, with his mind open to conviction by right reason. But sincerely desiring to help Brother Bryan with his background, I happened to think of the subject of taxation, that "Wandering Jew" of politico-economic question, old as the eternal hills, trite, stale and generally unprofitable, yet always capable of being made a live wire, of fomenting a revolution or starting a war. I knew that I could treat it so gently and so soporifically as not to excite an emotion or induce antagonism, much less produce a revolt. I knew I could talk ad libitum without saying anything in particular, and certainly without trenching upon any judicial question about which I might be properly criticised. I want it understood, though, that so far as I say anything at all, I speak as a citizen, as a member of this Bar Association, and not from any standpoint of judicial view. If I were speaking officially,
or from a judicial standpoint, I could not properly consider, except as an aid to construction, the wisdom or policy of any tax legislation, but speaking as a citizen and member of this Association, I may, in fact I must, avoid the field of legal questions and speak only of the wisdom, policy, economics and philosophy of measures of taxation.

I thought this was a subject worthy of brief consideration by the members of this Association, because of its great importance and far-reaching effect.

While the Bar has to some extent lost its former commanding place as the leader and molder of the best thought of the day, still it has a very large influence, and while I do not hope to tell you anything really new, or that you do not know as well or better than I, I may, I think, hope through you as educational centers to call attention to some phases of the subject of taxation, which, when sufficiently and generally understood, will, I think, result in the correction of obvious mistakes and evils in our present system.

In stating my subject, I felt sure that the first clause, "the power of taxation misdirected," would commend itself to popular favor, because everyone whom the power of taxation reaches feels that it has either been "misdirected" or become badly wobbled in its course.

I added the word otherwise without any very definite notion of what it might properly cover, but mainly to have a line of retreat and make the subject elastic.

I have both by reading and from personal experience been so much impressed with the desirability of an "elastic currency," one that will expand to meet all our needs, that I have concluded that elasticity so termed is a very desirable element in all subjects, and so I added "otherwise" to make the subject elastic, though it was my purpose to speak mainly of "misdirected taxation."

Axiomatically taxation is certain and concededly it is necessary to conduct and preserve a state of organized society. It has certainly existed in one shape or another since the dawn of creation and will exist as long as time shall last, and two or more men exist and co-operate.

The power of taxation has been exercised in a thousand
forms and methods and under many names—under disguises and without them—as bare-faced robbery, and as a public necessity, as a beneficent agency of civilization and as a fraud, a sham and pretense, as a forced tribute from a conquered nation and as a self-imposed burden by a free and civilized people. It has been levied by the Barbary pirates, by the robber barons and by the nomads of the desert. Sometimes under no pretense of right, except that which comes from "might," and sometimes under the pretense of protection, a soothing and active term, whose use has not altogether been discontinued.

It is not my purpose, however, to enter into any historical review, however entertaining that might be, of this subject as applied by despotic powers, individuals, tribes, monarchs or nations, but only to advert to some phases of the power as exercised in this supposedly free country, where "we live, move and have our being" under constitutional guarantees and institutions, which aim, in theory at least, at justice and equality of rights and burdens and general and individual prosperity and well-being, and where our taxes are self-imposed or are supposed and intended to be, and are levied either by pretense or in reality for the public welfare and necessity.

"Under constitutional government, such as ours," says Judge Cooley in his work on taxes speaking on this subject, "the person of whom the demand is made or whose property is taken owes to the state a duty to do what should be his just proportion towards the support of the government, and the state is supposed to make adequate and full compensation in the protection which it gives to his life, liberty and property, and to the increase of the value of his possessions, by the use to which the money contributed is applied."

Judge Cooley further says: "Taxes differ from the forced contributions, loans and benevolences of arbitrary and tyrannical periods in that they are levied by authority of law and by some rule of proportion which is intended to insure uniformity of contributions and a just apportionment of the burden of government!"

In an exercise of the power to tax, the purpose always is, that common burden should be sustained by common contri-
butions, regulated by some fixed general rule, and apportioned by the law according to some uniform ratio of equality. The power is not therefore arbitrary, but rests upon fixed principles of justice, which have for their object the protection of the taxpayer against exceptional and invidious exactions, and is to have effect through established rules operating impartially." (Cooley, second edition, pages two and three.)

Justice and equality of burden is therefore under any logical and constitutional system of taxation a principle consideration, but the levying and collection by taxation in various ways of the vast sums required for public purposes in this country also have effects and produces results entirely aside from the inconvenience and self-sacrifice, if it be such, suffered by the individual taxpayer, by whom the money is directly paid, and therefore the general results and what is properly termed the "incidence of taxation" must both be carefully considered and guarded in any logical, scientific and just system of taxation.

The two principle considerations therefore are individual justice and the public welfare, as affected by any particular form or method of taxation.

Since the foundation of this government, there has been some effort at regularity and some attempt at equality and justice, and at times, especially on the subject of our national revenues, there has been some discussion and attention given to the effects of particular methods of taxation, that is to say, I think I recall having heard the tariff and its effects mentioned in a few discussions; but in the main, it is too true, as stated by Prof. Charles Lee Roper in a paper read by him at a meeting of the tax conference, on the taxation of incomes, "that taxation upon the principles of the state taking from the citizen whatever it can take, irrespective of the ability to pay which he possesses and irrespective of the general benefits which accrue to him from the state is a principle of taxation in great vogue, even now, when we take upon ourselves much pains to boast of our political fairness and honesty and has no rational defense whatever."

Now, I think this has been the result more of ignorance and mistake than of intentional corruption. It is now begin-
ning to be generally realized that there are certain scientific rules and principles by which every just and wise system of taxation must be measured, judged and tested.

Study, investigation, experience and statistics are revealing and demonstrating these rules and principles, until they are now receiving general recognition, and while some are still in the field of intelligent debate and trial, others are so well understood and demonstrated that no well-informed man will question them.

Now many of these demonstrated rules are constantly being violated by our legislative and tax-levying bodies from pure ignorance of their existence and the effect of their measures, and the main purpose of this paper is to call attention to some of these principles and the effect of some of our measures of taxation.

As stated, a just and wise system of taxation must look both to the justice, to the citizen and the general welfare. As a rule these two interests are so interwoven and dependent that a measure which secures one will promote the other, and a method which violates one will injure the other. Sometimes, however, an apparent inequality finds its compensation in a share of increased general prosperity. Of course one of the main purposes and the excuse or justification of the power of taxation is the raising of the necessary revenues for the support of the government and the promotion of those objects and enterprises necessary or desirable for the public welfare, but in doing this it is unnecessary and unwise to either overlook matters of individual injustice and unfairness or the public and general effects of the measures adopted.

It is too often the case that those who devise and enact taxation measures lose sight of everything except the raising of revenue, thinking it the highest wisdom to enact such measures as will produce the most revenue with the greatest certainty and least general opposition. On the part of such, there is a constant effort to devise or discover another source of revenue and new methods of taxation, without regard either to individual justice or the effect on commerce, industry and the general public welfare.

This is the result of ignorance or inattention to the laws
which underlie this subject of taxation, and it is frequently true that the very class and the very people sought to be benefited by their representatives are injured and additional burdens are added, where the effort has been to give relief and lighten burdens.

Our legislatures rail at the predatory rich; regret the tendency of the age towards the accumulation of vast amounts of wealth in the hands of the few; clamor for new rules for the distribution of wealth, curtailing of its power; proclaim against robbery under the forms of law; clamor for a system that will give the weak and oppressed a better show in life, and then enact measures whose effect is directly contrary to all that they champion, and this is mainly because the effect and incidence of the laws and measures of taxation are not understood.

We all agree that a general distribution of wealth, a fair and just apportion of the burdens of government, freedom of enterprise, a diversity and multiplicity of industries, etc., are desirable, and yet we enact and bear with measures which militate against all these things.

In fact, many of our legislative measures appear to have been framed, some purposely and others carelessly and ignorantly, for the purpose of exploitation for the benefit of the few rather than for development and enterprise for the benefit of the many.

Under a free, fair and just government, the injury of one is in theory, in morals, and in fact, the concern of all. Equality under the law is the aim of our government and the right of the citizen. How that equality and justice is to be obtained and maintained is the problem of statesmanship. It now appears to be universally admitted that the true rule for this purpose in any system of taxation is that the citizen's ability to pay taxes should be the measure of his burden. If all men were alike situated, with like resources, the problem would be simple, as a direct poll tax would accomplish the purpose. If all men owned the same kind and character of property, alike situated and of like value and equal producing capacity, then a direct, equal ad valorem property tax would accomplish the
purpose; but these conditions do not now, and never will, exist in this country.

The problem involves and must be applied to other and greatly varying conditions, at the same time having in view the citizen’s ability to pay, and the effort must be to levy on each justly, only according to his ability to pay. Many of our taxes now in use, especially in this State, are the results of temporary necessities and former conditions which do not now exist. They were brought into force and used under other conditions, when the resulting injustice and inequality were not so great or so apparent.

We now have a citizenship of the most diversified character existing and maintaining the struggle for life and betterment under the most diverse conditions, with ownership of property under many and diverse forms, engaged in occupations and industries of widely differing character and remuneration. And so far as our State and local taxes are concerned having the problem complicated by a residence citizenship and a non-resident ownership; with many of our industries extending into and pursuing their activities in different States and under different jurisdictions and under greatly varying and diverse conditions. All of these things make the problem of a wise and just tax system more and more difficult.

Another and probably the greatest element of difficulty and particularly the one which has been most generally overlooked is what is sometimes termed the incidence of taxation and sometimes the shifting of taxation.

In an article on this subject, A. C. Pleydell, Secretary of the New York Tax Reform Association, says that “technically the incidence of taxation refers to the final resting place of the taxes, and shifting indicates the method by which the tax is passed on from the one who first pays it to the one who finally pays it.” The fact that there is a continual shifting of taxes under many of our measures of taxation is now a thoroughly established fact, and it is that fact which causes much of the injustice and inequality of all measures of taxation, and causes taxes to be paid in a large measure by those least able, and upon whom have already fallen other burdens of taxation.

Much of the inequality of our taxes is the result of de-
fective, evasive and unequal enforcements of our direct tax laws. This is especially true of our taxation in this State upon personal property. This is a subject of which I do not propose to treat at any length, as it is one purely of administration, the remedies for which are obvious or can be worked out by competent and earnest experiment; but some of the measures of taxation found in our legislative enactments are inherently wrong in principle, because they are of necessity affected by this shifting character, which no detail of administration can overcome, and it is to some of these that I wish to direct attention. This is true of all those measures which impose any tax on production, manufacturing and business, and especially that class of our laws known as the privilege tax, business or occupation tax, or license tax. The inevitable tendency and nature of such tax is to shift from the person upon whom directly levied to the consumer. This shifting will inevitably take place to a greater or less extent in every tax levied upon the business or occupation, except in cases where that business is a monopoly, and it may be made to, and frequently is, made to shift, in a case of that kind.

I take it to be axiomatic that all kinds of taxes may be and are shifted in a measure, except those levied upon a person, as an individual, or upon goods in his possession for his use, and taxes on monopoly; and, as I say, sometimes taxes on monopolies are shifted, though they may be controlled. The extent of the shifting of such taxes will of course depend upon varying conditions, the extent sometimes being determined by the business capacity of the person engaging in the business and to a considerable extent on the amount and character of the taxes levied. The taxes on any business constitute one of the fixed charges and must be collected from customers, and consumers or the merchant or manufacturers cannot continue in business.

For instance, take our privilege tax on dealers in ice, dealers in fresh meat, and, in fact, all of our taxes on merchants of every kind; necessarily the merchant and dealer in order to continue to do business has to add to the price that he pays for or that his products and merchandise cost him all his fixed charges, such as rent, storage, the cost of handling,
interest, insurance and taxes. All of these things enter into the absolute cost of the merchandise to him, and he must add them on and charge them to the consumer, and the consumer must pay them, or the dealer must go out of business, and, therefore, unless there is a monopoly the tax necessarily shifts and the consumer pays it.

Up to a certain point, the consumption of the necessaries of life are approximately equal for all people. The result of this system of taxation is that to a very large extent, the burden of such taxes has to be borne in equal proportion by the common laborer (who also pays an unequal tax on account of the home he occupies, due to the defective administration) and by the millionaire. This additional burden may to many seem trifling, and yet to many of the people of this country the margin between independent existence and penury is very narrow, and the small addition on the many articles that enter into consumption may, and I do not doubt does, vitally affect this margin so as to produce an unjust inequality.

The general effect of this system of taxation is also worthy of careful thought and investigation. The inevitable effect of occupation, privilege or license tax is that of restriction. So well is this recognized that measures of this kind have been generally and in almost universal use as a proper and wise method of exercising the police power. The extent to which privilege or occupation tax will control or restrict any particular business depends of course to a very large extent on the amount. Sometimes it is so used purposely with the intention of practically destroying a particular class of business, and often with the intention of largely restricting it and limiting the number of those who will engage in it. For instance, in the neighboring State of Georgia, there was recently advocated the passage of a law that would make the storage or keeping of liquors in social clubs so costly a privilege that it was thought it would totally prevent such a thing, and I believe a law was passed imposing a very high tax, with the avowed purpose of limiting to a very large extent such indulgences by social clubs.

A measure has also recently been advocated in the public prints making the dealers in futures and on stock exchanges
such a costly and expensive privilege as would destroy that character of business, but as I say, the effect of such taxation is now well and generally understood, and it appears to be self-evident without argument.

What, then, is to be said of a system of taxation that seems to be growing in this State of making the pursuit of every character of business a privilege not to be engaged in without the payment of a privilege tax? I respectfully submit that it is unwise to levy a privilege tax upon any business unless it is deemed wise to restrict and restrain and encumber that business, and it is manifestly unfair to levy such taxes when they have to be paid mainly by people who already are bearing more than their just shares of the burdens of government.

It appears to me that the privilege, occupation or license tax is only justifiable when the public welfare requires restraint and restriction of the business or when the business is of such a character as to constitute a species of monopoly, and such as derives a special privilege and its main source of revenue from the public, and the tax is levied as a means and measure for taking a part of the unearned increment, and as a price that such business should pay to the public from whom it derives its profit.

And I further say that when taxes are levied on such supposed monopolies, it should be done under such conditions as will exact only justice from the supposed monopolies and under such restrictions as will prevent the monopoly from shifting the burden upon the consumer or other taxpayers.

In all other cases of privilege tax the measures are wrong in principle, and more or less hurtful in effect. Of course, the extent to which general business and industry is affected by such a tax depends upon varying conditions and largely on the amount of the taxes and in many instances these privilege taxes appear to be so trivial that it may be thought they can not materially affect business, but the extent to which business and development may be affected by such things is probably little known and not accurately appreciated.

Too often, especially in hard times, which periodically come in this country, the margin of the continued existence or
destruction of a business is very small. Frequently it is a hair
that breaks the camel's back.

It has been a matter of boast in this our great country that
it is the land of freedom and opportunity, and there can be no
freedom without opportunity.

It is certainly true in morals, and I take it to be true as
an accepted theory of government in this country that each
individual is entitled to the product of his heart, and of his
brawn and of his brain, subject only to a deduction of his just
contribution to society and government, and I think I know it
to be true, although not universally recognized as a practical
fact in our social economy, that every child born into the
world is entitled to a fair and equal opportunity to exercise
that heart, that brawn, and that brain, so as to make them
produce the most to opportunity, God-given, man-withheld and
restricted.

It must inevitably be true that any and every burden and
restriction thrown around any business or imposed as a condi-
tion upon entering any business, narrows opportunity and pre-
vents many from entering therein. As said before, the burden
sometimes may seem small, but in many instances the means
of those who might otherwise enter a business is equally small.

Now, bearing in mind that the imposing of a privilege
tax has the effect to limit and restrict a business and is only
justified when there is a purpose of willingness to restrict and
restrain a business, it will be interesting to look over our privi-
lege tax law and note the increasing of privileges. Liquor
dealers, breweries and distilleries might well be taxed a privi-
lege tax under the theory heretofore mentioned, because it is
a justified exercise of the police power, and at least is generally
supposed to be desirable to restrain and limit and in this State
to totally abolish business of this character, but upon what prin-
ciple except that of limiting opportunity, restraining commerce,
and industry and business transactions, should abstract com-
panies, auctioneers, dealers in bicycles, brokers, butchers,
wholesale dealers in meat, coal and coke dealers, cotton seed
oil mills and cotton compresses, cotton buyers, fruit stands, ice
dealers, lumber dealers, livery, sale feed stables, real estate
dealers, restaurants and cafes, soda fountain dealers, security
dealers and merchants be required to pay a tax? Some busi-
nesses may appear to be trivial matters, but certainly neatness
and cleanliness are to be encouraged, and why, then, should
we levy a tax on pressing and dyeing, on laundries? Why
should hucksters or farmers who bring their produce to sell
in the town, be taxed? It is certainly to the public interest
that the building of homes for people of small means should
be encouraged. Why, then, do we levy a privilege tax on
building associations, and why, unless we are marching under
the banner of the white plague, should public parks, where
about the only opportunity that some of our poor class have
for amusement and fresh air is afforded, should be restricted,
when it is well known that many of our municipalities do not,
as they should, furnish such places free.

I suppose that it may be a matter of debate as to whether
circuses and things of that kind, which come into our State and
take money out of it, may not justly and wisely be taxed, but
in the interest of education, relaxation and amusement, I my-
self very much doubt it. and I wish to be put down as voting
for the free circus.

A number of these things, as I say, may seem trivial, and
yet the general effect of all such legislation is to restrict op-
pportunity and to limit commerce and development.

It is one of the recognized principles of the common law
in force in this State, that contracts and conspiracies in re-
straint of trade are illegal, and it is an axiom of political
economy that the encouragement of diversity of occupations,
the development of resources, the promotion of industries, are
all for the well-being and good of the government, and it
should be one of the highest aims of the governing power to
accomplish this, and yet we adopt measures of taxation having
directly the contrary effect.

Another consideration that is worthy of thought is that
by our system of taxation we are placing our own people and
our own industries at a disadvantage with competing indus-
tries and institutions in other States. The true principles of
taxation are beginning to be recognized and understood and
are receiving intelligent attention in other States, and any
measures that we may have in force in this State which in any
way restricts commerce, industry and production, to that extent place our own citizens and producers at a disadvantage, as compared with those operating under more intelligent systems.

I have not taken the time and trouble to secure or deal with figures, or indulge in illustrations or arguments, but the principles, I think, are apparent on suggestion, and I am satisfied that our heavy and unjust taxation on merchants especially is unfair and unwise. It is unjust to them in the first place in so far as they have to compete with similar industries outside of the State, and is unjust to their consumers in this State, upon whom the burden must be shifted. That is, a case where the burden is shifted to local consumers and the disadvantage arising from unjust competition also affects the merchant.

Why our legislatures should consent that a burden should rest upon the wholesale dealer in Knoxville, Chattanooga, Nashville, or in Memphis or elsewhere in the State that would place him at a disadvantage with a like dealer in Atlanta, Birmingham, Little Rock or Louisville, is something that I cannot understand. Other inequalities and disadvantages that result from these laws are that if the privilege taxes on a merchant were rigidly enforced they would become very burdensome indeed and there are constant efforts at evasion so that the honest, conscientious man is unequally and unjustly taxed and placed at a serious disadvantage as compared with his dishonest competitor.

Another matter of shifting of taxes deserving note is that of a tax on mortgages or loans. It has been a matter of considerable dispute and controversy for some time as to whether or not the borrower or lender had to pay this tax, but experience and statistics have finally demonstrated this fact, that it is bound to fall at last upon the borrower in an increased rate of interest. As all of our enterprises, including merchants, farmers, and others, have frequently and generally to borrow money to carry on their business successfully, it follows that this is an additional burden and restriction upon our own enterprises and production.

While on this subject, I might also call attention to Chap-
ter 434 of the Act of 1907, which without regard to its constitutionality, as to which I understand a case is now pending before our Supreme Court, I think it may be truthfully said that it proceeds on the wrong principle and is subject to the same objections heretofore mentioned. Whether so intended or not, the Act appears to me to be simply another measure for raising taxes. A sort of graduated privilege tax on a corporation according to its capital stock. I submit that it is a wise policy to encourage all sorts of industrial enterprise.

As a rule all of our manufacturing is carried on by corporations, and I think it apparent that it is a wise policy to encourage the organization and existence of small corporations, and corporations of moderate size, rather than to allow all our resources to be purchased by large non-resident corporations, and I think the effect of this Act will be to discourage small enterprises by locally organized corporations, though foreign corporations are taxed also.

It has been contrary to my purpose to extend this paper to too great a length, or to enter what I consider could be a debatable field on this subject, but I must be permitted to make another suggestion in regard to what I believe to be a true and wise principle of taxation, and that is the general theory of taxation as advocated by Henry George, and generally known as the single tax theory.

While I do not believe that it would accomplish the millennium or the abolition of poverty to the extent that Henry George appeared to think that it would, still I have no doubt and I believe that most investigators and thinkers upon this subject are coming to the conclusion that the principle advocated by him, with certain practical modifications, is a just, true, correct and beneficial principle, and it appears to me that it is deserving of the most thoughtful consideration by the best minds of our State especially.

In the group of Southern States known as such, we undoubtedly have the greatest and richest field of natural resources in the world, and we also have one of the purest and best populations that exists, and it appears to me that a wise statesmanship would be to develop these resources for our own people and our own race, rather than to seek to dispose of them
to foreign capital, or seek to have them developed by cheap labor of alien races, and certainly a system of taxation which would encourage the development of these things by our own people to their advantage and discourage the non-resident ownership and holding of them by foreign capital and for future speculation would be wise. But outside of any question of non-resident ownership, or cheap foreign labor, it is apparent that what is known as the single tax, that tax to be levied on land according to its situs and not on its improvements or, its fertility is both the most just tax and has a tendency to encourage production, energy, enterprise and increased prosperity.

This question has been argued out so thoroughly in the great book of Henry George and by other subsequent writers on this subject that it would be unwise for me to discuss it in this paper, but I only suggest it as a matter worthy of the greatest consideration in any attempted revision that should be made in our tax laws. All who have given the matter any consideration have noted the attempts that have been made from time to time to encourage manufacturing industries, in different sections of the South, especially by means of the exemption and remission of taxes.

Our State Constitution has prevented anything in that line in this State, and I have known instances where industries have been removed from this State and into others on account of the benefits to be derived by an escape from taxation.

However lawful it may be under our present social system to buy up and withhold land from occupation for the purpose of speculation and to enable or allow the private owner to reap the benefits of the labor and enterprise and efforts of others by this unearned increment, it is obviously naturally unjust. It is a withholding of opportunity and a discouragement of energy, production and enterprise, and it is obvious that if the burdens of government were laid heavily on unused lands, and withdrawn from improvements, enterprise and production, that such lands would be forced into the fields of production, opportunity would be increased, and the burdens of the poor and struggling would be lightened.

From the standpoint of both justice and a wise political
economy, energy, enterprise and productions should never be taxed, and that which is earned by and belongs to the people in common should be enjoyed by the people in common, and without arguing this question I suggest that a single tax on land valued according to the situs, not including its fertility, and not including any improvements or anything added there-to by the owner's industry, energy, and enterprise would be a wise, just measure and the best from every standpoint.

Aside from the privilege taxes on those occupations that need for police reasons to be restrained and restricted, which are wise and just: privilege tax on monopolies, which derive their value from the public, are wise and just, but should be so levied as to do both justice to those interested in the monopoly, as long as private ownership of such monopoly is permitted, and should be hedged by such restrictions as not to allow the monopoly to shift the burden to the consumer. And upon this subject I also venture to add that in endeavoring to tax under the power of the privilege tax such businesses as are considered monopolies or such as are of public or a semi-public character, that the legislation should receive careful thought and study, and should be engaged with a spirit of moderation and absolute justice.

The work may be somewhat difficult to accomplish, I fear under the present state of the public mind. What the provisions of such legislation should be, I have not for myself attempted to figure out, but it is obvious that the subject is one of such complication and so many phases that a just and wise result can only be reached after much study and a proper acquaintance with all the facts that enter into the problem.

Whenever any corporation by reason of its location or of a franchise granted to it, acquires great wealth and exorbitant profits, it is but fair and just and wise that it should be required to pay a just compensation, for profits and benefits so acquired from the public, but in requiring this, the public nor its government cannot afford to be unfair or unjust. A fair return on the capital invested should always be allowed with a margin for contingencies and depreciation.

It would also seem a wise policy in any government, local or State, to offer some inducements for the beginning and de-
velopment of such enterprises to cover the risk that the promoters may take, and when such inducements are offered, contracts, providently and honestly made, should be lived up to. Under these limitations, I think such legislation may justly and properly be engaged in.

Another suggestion may be pardoned. A suggestion which is probably covered by what is already said, but which may be made more plain. It would certainly be to the interest of this State that its own public debt and the debts of its counties and municipalities should be exempted from taxation, and in this connection I wish to say that after I had selected the subject upon which I have written and had commenced the preparation of this paper, by the kindness of Mr. John Spence of the University of Tennessee, I was furnished a copy of the report of the first national conference on State and local taxation, held under the auspices of the National Tax Association, which held a meeting at Columbus, Ohio, Nov. 12, 1907. In that book I found many most valuable papers upon various subjects of taxation, and I am indebted to all of the writers. It is a book that is certainly worthy of study and consideration by all who are interested in our State's increase and prosperity. If I have succeeded in making any of my ideas clear it is, I think, that our own system of taxation seriously needs revision, that the interest and prosperity of our State demand it; that a wise, just, efficient system of taxation must be based upon laws that are certain in operation and their effects easily ascertainable and known, and they must conform to well-known and settled principles of political economy. That to work out such a system covered by such principles is a work calling for the highest talent and the most careful study to accomplish is obvious.

To accomplish the needs and purposes of this State, it will be clear from an investigation that while much can and may be done by legislative enactment our Constitution will require some revision, and before that is done a plan and system should be studied out and ready for adoption, or its adoption commenced by and provided for by a revision of our Constitution. I therefore suggest as a practicable remedy the creation of a tax commission of the highest character and the highest
talent in the State. Men whose ability and character will be so well known and whose work will be of such a character as to secure its adoption without wrangling and delay, and without being muddled and crippled by our legislature, whose members have not had the time and opportunity to discuss and understand this intricate subject. The legislature should create such a commission and provide such salaries as would secure the highest and best talent in the State.

Without intending any invidious distinctions, I would suggest that if we could have such a commission composed of such men as Luke E. Wright, or Senator Turley of Memphis, John J. Vertrees, J. C. Bradford, Ed Baxter, and Major Lewis of Nashville, Judge Snodgrass of Chattanooga, or G. W. Pickle of Knoxville, or men like ex-Gov. Porter, Prof. Hoskins of the University of Tennessee, and Dr. Kirkland of Vanderbilt University, that the State could well afford to pay such men salaries of $20,000 a year if necessary, as there would be no question of adopting their work after it was done, nor of the immense benefits that would result to the State from doing so.

I only make these suggestions, not to compliment these gentlemen, but to indicate my idea of the necessity for the best talent and character to be engaged in this work and of the importance of the work. I do not suggest such a commission as a permanent one for the administration of any system after it is once adopted, though such a commission might be a wise and necessary thing, but my suggestion at the present is for a commission to devise and provide a permanent system of taxation for adoption.

This subject is now receiving serious consideration everywhere, and if it is not given attention by the best thought in this State, our own people may suffer as the result of the adoption of improved better systems in sister States with whose industries we are bound to be in more or less competition.

One other thought—in any wise system of taxation there must and should be consideration given to a logical and just apportionment of taxes and the subjects of taxation between the nation, the state and local communities. I can only suggest the thought, not dwell upon it.
As matters now stand, I would suggest the following forms of taxation: first, the single land tax, the land to be valued according to situs, excluding so far as practicable the element of fertility and excluding altogether improvements; second, a license tax on those businesses which the police power justify restricting; third, a license tax on monopolies and public service corporations, but only to a just and wise extent, such that would require an accounting and a fair division of unearned increment, but not such as would cripple service or discourage further enterprise and development. We are yet but in the infancy of our development. And, fourth, an income tax.

The income tax is concededly the most just of all the systems of taxation. The only valid objection that has ever been suggested to such a tax is the difficulty of a just, fair, and thorough enforcement, but I do not doubt that proper effort and intelligent provisions could secure approximate justice. It may be properly suggested that our Constitution limits state taxation on incomes to taxes on incomes derived from stocks and bonds, not otherwise taxed. I cannot see the justice of such limitation, but this could be overcome by a constitutional amendment.

I had not intended to refer to national taxation, but I feel justified by the very strong dissenting opinion of the judges of the United States Supreme Court, delivered in the income tax case, in stating that the reasoning of the majority of the Court in that case has not, I think, commended itself to the best thought and judgment of the American Bar, and it is not at all unlikely that the question may be again presented with different results. If it shall not be we should have an amendment to our national Constitution.

In compliance with our rules excluding politics and in deference to our distinguished guest who looks very much like a Republican President, I have avoided any reference to our national tariff, and I now beg to assure him that the term "robber barons" used in this paper referred only to those doughty warriors of the middle ages, and has no reference to the ardent supporters of Senator Knox of Pennsylvania, nor to any Scottish chief now living. If our great guest shall be
made President of the United States, we feel sure that his wisdom and sense of justice will make him an active and powerful factor for reforms we do not need to indicate. It is our purpose to give him a cordial greeting and to learn from him and not to volunteer advice or suggestions to him.

EXTENT AND LIMIT OF THE TREATY-MAKING POWER OF THE UNITED STATES.

John W. Judd.

In this paper I propose to consider the extent and limit of the treaty-making power as conferred by the Constitution upon the United States, in connection with the question discussed by the President in his annual message to Congress, concerning the action of the School Board of San Francisco, as to the admission of Japanese children into the public schools of that city. The action of the School Board is made the occasion by the President of quite an extended discussion of our relations with the Empire of Japan. Coming to the concrete question immediately before him, he says:

"One of the great embarrassments attending the performance of our international obligations is the fact that the statutes of the United States are entirely inadequate. They fail to give to the National Government sufficiently ample power through the United States Courts and by the use of the army and navy to protect aliens in the rights secured to them under solemn treaties which are the law of the land. I, therefore, earnestly recommend that the criminal and civil statutes of the United States be so amended and added to as to enable the President, acting for the United States Government, which is responsible in our international relations, to enforce the rights of aliens under treaties. Even as the law now is, something can be done by the Federal Government toward this end, and in the matter now before me, affecting the Japanese, everything that it is in my power to do will be done, and all the forces, military and civil, of the United States, which I may lawfully employ, will be employed."

The language employed by the President, as quoted, to express his views, is certainly strong, and is open to criticism
by those who do not like him, or who are disposed to find fault with him. I do not propose to indulge in any fault-finding criticism. In the first place, I am a great admirer of the President, both for his strong personality, his splendid Americanism, as well as for his great accomplishments as President; then, too, the great office which he holds, and the importance of the questions involved, demand our more serious and patriotic consideration.

This language of the President, if it means anything, means that the treaty-making power conferred upon the Federal Government is without constitutional limit. The concrete question which he was discussing was the exclusion of the children of Japanese parents from certain of the public schools of San Francisco, and assigning them to separate schools set apart for their race. To this the Japanese objected, and this objection had been brought to the attention of the Washington Government through the diplomatic agents of the Japanese Empire.

The President seems to assume that the treaty between Japan and our Government—which contains the most-favored nation clause—would of itself be sufficient to meet the exigencies of the case, but that as against the local school authorities of California it cannot be enforced for want of proper and effective power conferred upon the United States by statutes. He says the statutes “fail to give the National Government sufficiently ample power through United States Courts and by the use of the army and navy to protect aliens in their rights, secured to them by solemn treaties, which are the law of the land.”

The public press of the country seems to understand the President as meaning that the matter under discussion is susceptible of control by the treaty-making power, and is discussing it from this standpoint.

So that in its ultimate analysis the question raised by the President comes to this:

Can the Government of the United States, by and under the treaty-making power, conferred by the Constitution, provide that Japanese children resident in California shall be admitted to the public schools with white children, although the
school authorities of that State may order differently? If this can be done it follows as a necessary consequence that the Congress can provide statutes enabling the execution of the treaty by proper procedure in that behalf taken.

My position is that the treaty-making power is a constitutional power delegated to the Federal Government, and that it is therefore a power to be exercised within constitutional limitations the same as the legislative power conferred upon Congress. Much confusion has crept into the discussion of this and kindred questions which I desire to avoid in this paper.

I agree that while the Government of the United States is one of delegated powers, that when and wherever a power is thus conferred, such power finds its limitations only in the discretion of that department of Government upon which it is conferred; provided, always, that in its exercise no encroachment is attempted upon the constitutional rights of the States.

This postulate would seem to open up the question for the broadest possible consideration.

If the Federal Government, under the treaty-making power, can put Japanese children in the public schools of California with white children, the regulations of the authorities of that State to the contrary notwithstanding, then the children of resident aliens of any other nationality—including Chinese, Malay and Ethiopians—can have such rights. It will not do to say that the United States Government can be trusted to exercise the power in a proper manner. This begs the question. The question we are dealing with is one of power, not of its proper exercise.

The race issue upon which this question is precipitated in California assumes a new form. Heretofore the race trouble has been almost entirely sectional, and confined to the discussion of the status of the negro race. It now loses its sectional character and becomes national with the people of the United States. I am not going to discuss the race issue any further than is necessary to elucidate the matter in hand, but I halt here long enough to say that it must now be apparent that the question of the relation of the races cannot be properly considered from the standpoint of the superiority of the one, and
The inferiority of the other. Much confusion will be avoided if we shall come frankly to the admission that these considerations are wholly irrelevant. The fact exists that there are and always have been, so far as we know, different races, with different colors, on the earth. The fact exists that each of these races, moved by racial prejudices and instincts, is attempting to preserve the purity of its blood from contamination with that of the others. Certainly this is so as to the white race, to which we belong. These admitted hypotheses render the question of superiority or inferiority wholly irrelevant, and it is to be hoped that the matter in time will come to be so considered. The Japanese, Chinese, Malay and Arab would none of them admit any superiority in the white race, and the question made by the people of California is one wholly of race instinct. Government, whatever may be its form, is based upon its social system. This is peculiarly so with us. The unit of our social system is the family. The integrity of this family must be preserved; to do this we must preserve the purity of our blood. It is not whether we shall dilute it with negro or Mongolian blood, but whether it shall be mixed with the blood of any foreign race. The people of every section and all sections in our country feel this alike.

The people of California do not want Mongolian children to mix in the white schools and therefore have provided separate schools for them. The question is, Can the United States, under the treaty-making power, or under any other power, compel them to do so? In these strenuous times especially, nor in any time for that, can there be a too frequent recurrence to first principles.

The States composing our republic, called the Federal Government, were in existence and had been for a long time before the Constitution of 1787 was framed.

July 4, 1776, the thirteen colonies, then and before owing and acknowledging allegiance to the Government of Great Britain, by their Declaration of Independence severed their relations with the mother government, and declared themselves to be free and independent States. July 9, 1778, these thirteen States formed a confederacy by what was known as the Articles of Confederation.
The first article is as follows:

"The style of this Confederacy shall be the United States of America."

The second article is as follows:

"Each State retains its sovereignty, freedom and independence, and every power, jurisdiction, and right which is not by this confederation expressly delegated to the United States in Congress assembled."

The third article opens with the following statement:

"The said States hereby severally enter into a firm league of friendship with each other," etc.

So that it results that we had here thirteen separate and independent States, each in and of itself an independent sovereignty, with all that such independence and sovereignty means or can mean. Not only this, but in forming the Confederacy, each State reserved and retained to itself all sovereignty not expressly delegated—I use the word sovereignty advisedly, because no other word so accurately and fully expresses the powers belonging to a political society called a State—and this was the word also used by the States.

But they did not stop with retaining their sovereignty, but their "freedom and independence, and every power, jurisdiction and right not expressly delegated" were also reserved to themselves as States, to be exercised by each of them as they saw proper.

September 17, 1787, these same thirteen States, by their delegates, which each State had appointed for itself, in convention assembled, formed the present Constitution of the United States, and submitted the same to the States for their ratification or rejection. The Constitution, as thus formed, contained no Bill of Rights nor any provision for a reservation of the powers not delegated to the Government of the United States.

Some, if not all, of the States, made serious objection to this defect, and ratified the Constitution with the understanding that Congress would, without delay, submit to the States certain proposed amendments for their ratification or rejection.
This was done, and the Ninth and Tenth Amendments are as follows:

IX.

"The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people."

Then, as if this were not enough, they provided by the Tenth Amendment, as follows:

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people"—plainer than this it could not be made. A Constitution was formed and by it the Government was divided into three departments, and to each department certain powers and a limited sovereignty were delegated, and all such sovereignty as was not thus delegated was "reserved to the States respectively or to the people." Hence it is we have a Federal Government called the United States of America, which is a government of delegated, and therefore limited, powers; while the great residuum of sovereignty remains with the States and the people thereof.

The Supreme Court of the United States has always, from the beginning and now, not only recognized such to be the proper construction of the Constitution, but has so often so decided, that it were useless to cite decisions for a principle that has become axiomatic in our Government.

It is now in order to inquire what is this treaty-making power with which the Federal Government is invested and what its extent. Section 2 of Article 2, amongst other things, provides that the President—

"Shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senate concur."

This simple statement thus quoted from the Constitution is the be-all and end-all of the treaty-making power conferred upon the Federal Government.

By Article 1, Section 8, Paragraph 18, it is provided that Congress shall have power:

"To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other
powers vested by this Constitution in the Government of the United States or in any department, or officer thereof."

In all human probability the Supreme Court would have held that a proper construction of the Constitution conferred this power on the Congress by necessary implication—so that it is not conceived that this clause at all enlarged the powers of Congress.

But it has been supposed by some that Paragraph 2 of Article 6 has greatly enlarged this treaty-making power. It is as follows:

"This Constitution and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding."

It is not conceived that this clause added anything to the powers and jurisdiction of the Government of the United States, but that it simply declared a rule of construction. The laws made by Congress in pursuance of the Constitution, and the treaties made under its authority, would have been the supreme law of the land anyhow. The States, in forming the Federal Government, conferred upon it certain powers, and in the exercise of these powers that Government is necessarily supreme, and all judges, both State and Federal, are bound by such action.

But how and in what manner can this provision be said to enlarge the treaty-making power? This power, like all others, is a delegated power, and therefore it must be exercised, like all others, as a constitutional power, and, like all others, limited in its exercise to the confines of the sovereignty of the United States, and may not infringe upon the reserved rights of the States.

In our system of government there is no such thing as unlimited power lodged anywhere. Ours is a government of law, not of men.

The American people derived no sovereignty from any government. In the people of the thirteen, original political
societies called States all sovereignty resided. In the people of the forty-six States now composing our Union all sovereignty rests. This sovereignty was not conferred upon the people by any government or governments, but it is theirs by right of a God-given grant. By divine right the people hold all sovereignty. This sovereignty rules. It is a part of this sovereignty that the people have conferred upon the Federal Government, and that not so conferred by the Constitution is still held by the people to be exercised by them in their "respective States."

I have said that in our system of government there is no such thing as unlimited power anywhere. Hear the United States Supreme Court on this subject:

"The theory of our governments, State and National, is opposed to the deposit of unlimited powers anywhere. The executive, the legislative and the judicial branches of these governments are all of limited and defined powers."

"There are limitations on such power which grow out of the essential nature of all free government." (Loan Association vs. Topeka, 20 Wallace, 663.)

In discussing the sacredness of the rights of the citizen as against arbitrary power the Court in the same case, at page 662, says:

"A government which recognized no such rights, which held the lives, the liberty and the property of its citizens subject at all times to the absolute disposition and unlimited control of even the most democratic depository of power, is after all but a despotism. It is true it is a despotism of the many, of the majority, if you choose to call it so, but it is none the less a despotism."

In view of this decision, what becomes of Mr. Root's amendment of the Constitution by construction? That the Constitution has been enlarged by construction is probably true, but always under the claim that the acts done or decisions made were within constitutional limitations; never under any other claim until now.

In the suits filed in the State and Federal Courts in California by the Federal Government to enforce what are called the treaty rights of the children of Japanese residents under
the treaty, the position is boldly assumed that so much of the school regulations as exclude such children constitute a flagrant violation of the treaty between the United States and Japan; that properly construed the law of California does not justify them; and that if it does it is null and void.

So that we come back to the question started with and that is: Whether under the reserved rights of the States, they have the power to so regulate their schools as to exclude Japanese children from the schools provided for white children by putting each race in a school to itself. Can there be any doubt on this question? I think not.

As I have said, this question does not and cannot rest upon inferiority or superiority of the one or the other race; nor yet whether the race so excluded from the white schools are Mongolian, Malayan, Indian or Ethiopian. In its last analysis it is solely and alone one of power. If the States have the power it is theirs to dispose as they see proper; if they have not the power then they are at the mercy both of the Congress of the United States and of the treaty-making power.

By an Act of Congress approved October 1, 1888, Chinese laborers were excluded from the United States. At that time there was a treaty existing between the United States and the Emperor of China containing the "most favored nation" clause, by which the citizens and subjects of each were allowed to reside in the country of the other and follow their peaceful callings, under the protection of the government of residence.

The constitutionality of this Chinese exclusion act was attacked by the Chinese upon the ground that it was in conflict with the treaty. This raised the direct question of the reach and power of the treaty-making power. In passing upon this question the Federal Supreme Court, in 130 U. S., at page 600, says:

"The validity of this Act, as already mentioned, is assailed as being in effect an expulsion from the country of Chinese laborers in violation of existing treaties between the United States and the Government of China, and of rights vested in them under the laws of Congress. The objection that the Act is in conflict with the treaties was earnestly pressed in the Court below, and the answer constitutes the principal part of
its opinion. Here the objection made is that the Act of 1888 impairs a right vested under the treaty of 1880 as a law of the United States, and the statutes of 1882 and of 1884, passed in execution of it. It must be conceded that the Act of 1888 is in contravention of express stipulations of the treaty of 1868 and of the supplementary treaty of 1880, but it is not on that account invalid or to be restricted in its enforcement. The treaties were of no greater legal obligation than an Act of Congress. By the Constitution laws made in pursuance thereof and treaties made under the authority of the United States are both made the supreme law of the land, and no paramount authority is given to one over the other. A treaty, it is true, is in the nature of a contract between nations, and is often merely promissory in its character, requiring legislation to carry its stipulations into effect. Such legislation will be open to future repeal or amendment. If the treaty operates by its own force and relates to a subject within the power of Congress, it can be deemed in that particular only the equivalent of a legislative Act, to be repealed or modified at the pleasure of Congress.”

In the Head Money cases, 112 U. S., 580, the Supreme Court held:

“That so far as a treaty made by the United States with any foreign nation can become the subject of judicial cognizance in the courts of this country, it is subject to such acts as Congress may pass for its enforcement, modification or repeal.”

So that at most a treaty is a law made under the Constitution of the United States, under a delegated power, and such treaties are and can stand upon no higher authority than an Act of Congress passed “in pursuance of the Constitution,” and is subject to “modification or repeal by Congress.” If by the treaty-making power the schools of the States are to be put at the behest of Asia and Africa, then the people of the United States will elect a Congress that will be in a hurry to repeal all such treaties. It also results that if this can be done by the treaty-making power, it can be done by an Act of Congress. But I assert that it can be done by neither.

It has been suggested that this question is in some manner affected by the provisions of the first section of the Fourteenth
Amendment; but just exactly how, we are left to conjecture. This amendment was not intended to, and it did not alter the fundamental structure of our government. The amendment provides that no State shall "deny to any person within their jurisdiction the equal protection of the laws." That to establish separate schools for the children of different races does not deprive them of the equal protection of the laws, is to my mind most conclusively established. Before going to the authorities on this subject it may be well enough to inquire what was the effect of this amendment on the constitutional construction of our government as it previously existed.

As has been decided times without number, its first and primal effect was to inhibit State action in certain directions. It provides that no State "shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; or shall deprive any person of life, liberty or property without due process of law, or deny to any person within their jurisdiction the equal protection of the laws."

This amendment, it is now most clearly seen, did not confer upon or delegate any new power to the United States, but simply prohibited the States from doing certain things therein mentioned.

In the case of Hodges vs. United States, 203 U. S., 15, the Supreme Court had before it the question under discussion, and it was then held that the effect of the amendment was protective simply.

The Court in referring to the Slaughterhouse cases, 16 Wallace, 36, quoted from the opinion approvingly as follows:

"It would be the vainest show of learning to attempt to prove by citations of authority that up to the adoption of the recent amendment no claim or pretense was set up that those rights depended on the Federal government for their existence or protection beyond the very few express limitations which the Federal Constitution imposed upon the States—such, for instance, as the prohibition against ex-post facto laws, bills of attainder and laws impairing the obligations of contracts. But with the exception of these and a few other restrictions, the entire domain of the privileges and immunities of citizens of the States, as above defined, lay within the constitutional and
legislative powers of the States, and without that of the Federal Government.'"

The Court then adds:

"Notwithstanding the adoption of these three amendments"—the Thirteenth, Fourteenth, Fifteenth—"the National Government still remains one of enumerated powers, and the Tenth Amendment, which reads, 'The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, respectively, or to the people,' is not shorn of its validity."

Can anything be plainer than this? The constitutional construction of the Federal Government remains the same in so far as the reserved powers of the States are concerned.

We are now up to the question as to whether the providing of separate schools for the children of different races violates the last clause of the first section of the Fourteenth Amendment, which provides that no State shall "deny to any person within their jurisdiction the equal protection of the laws."

The State of Louisiana, by its legislature, enacted a law providing for the separation of the white and colored races in public conveyances, commonly called a "Jim Crow car law."

In the case of Plessy vs. Ferguson, 163 U. S., 537, this law was attacked as unconstitutional, because it was in conflict with the Fourteenth Amendment, in that it denied to Flessy the "equal protection of the laws."

In passing upon this question, the Court said:

"The object of the amendment was undoubtedly to enforce the absolute equality of the two races before the laws, but in the nature of things it could not have been intended to abolish distinctions, based on colors, or to enforce social as distinguished from political equality, or a commingling of the two races upon terms unsatisfactory to either. Laws permitting and even requiring their separation in places where they are liable to be brought in contact do not necessarily imply the inferiority of either race to the other, and have been generally, if not universally, recognized as within the competency of State Legislatures in the exercise of their police power. The most common instance of this is connected with the establishment of separate schools for white and colored children, which
has been held to be a valid exercise of legislative power, even by courts of states where the political rights of the colored race have been longest and most earnestly enforced.'

The Court then cites the case of Roberts vs. City of Boston, 5 Cush., 198, where Chief Justice Shaw, speaking for the Court, said:

"The great principle advanced by the learned and eloquent advocate for the plaintiff"—Charles Sumner—"is that by the Constitution and laws of Massachusetts, all persons, without distinction of age or sex, birth or color, origin or condition, are equal before the law. • • • But when this great principle comes to be applied to the actual and various conditions of persons in society, it will not warrant the assertion that men and women are legally clothed with the same civil and political powers, and that children and adults are legally to have the same functions and be subject to the same treatment; but only that the rights of all as they are settled and regulated by law are equally entitled to the paternal consideration and protection of the law for their maintenance and security."

After quoting this, the United States Supreme Court, 163 U. S., 545, continues:

"It was held that the powers of the committee extended to the establishment of separate schools for children of different ages, sexes and colors."

The Court then cites the Rev. Stat., Secs. 281, 282, 283, 310, 319, of the District of Columbia, to show that Congress had passed laws for the separation of the white and colored races in the schools of that district: and then says that such laws "have been generally, if not uniformly, sustained by the courts," citing State vs. McCann, 21 Ohio St., 198; Lehew vs. Brummell, 15 S. W. Rep., 765; Ward vs. Flood, 48 Col., 36; Bertonnan vs. School directors, 3 Woods, 177; People vs. Gallagher, 93 N. Y., 438; Cary vs. Carter, 48 Ind., 327; Dawson vs. Lee, 83 Ky., 49,

The Court continues:

"The distinction between laws interfering with the political equality of the negro and those requiring the separation of the two races in the schools, theatres and railway carriages
has been frequently drawn by this Court,” citing 100 U. S. 313; 103 U. S., 370; 107 U. S., 110; 162 U. S., 565.

As a necessary corollary from this line of decision the Court cites the case of Hall vs. De Cuir, 95 U. S., 485, where it was held that a law of Louisiana which provided for the equal treatment of white and colored passengers on public conveyances doing an interstate business was unconstitutional, because it undertakes to legislate upon a subject that had been delegated to Congress by the Constitution.

Then comes the civil rights case, 109 U. S., 3, where an Act of Congress was before the Court which provided that all persons within the United States should have the full and equal enjoyment of the accommodations, advantages, facilities, and privileges of inns, public conveyances, on land or water, theatres and other places of amusement.” This Act the Court held void “upon the ground,” said the Court, “that the Fourteenth Amendment was prohibitory upon the States only, and the legislation authorized to be adopted by Congress for enforcing it was not direct legislation on matters respecting which the States were prohibited from making or enforcing certain laws or doing certain acts, but was corrective legislation, such as might be necessary or proper for counteracting and redressing the effect of such acts.”

The Court continues, quoting from the opinion of Mr. Justice Bradley as follows:

The Fourteenth Amendment “does not invest Congress with power to legislate upon subjects that are within the domain of State legislation, but to provide modes of relief against State legislation or State action of the kind referred to. * * Positive rights and privileges are undoubtedly secured by the Fourteenth Amendment, but they are secured by way of prohibition against State laws and State proceedings affecting those rights and privileges and by power given to Congress to legislate for the purpose of carrying such prohibition into effect.” (163 U. S., pp. 546, 547).

The Court then cites with approval the decisions of the States of Mississippi, Pennsylvania, Michigan, Illinois, Tennessee, and from the 23, 37 and 38 Federal Reporter and 3d Inter. Com. Com., upholding laws which provide for separate
coaches in public conveyances for white and colored people. In the case of Cummings vs. Board of Education, 175 U. S., 528, the action of the Board of Education in establishing high schools for white children and not providing the same kind of schools for colored children was attacked as being in conflict with the Fourteenth Amendment, in that it denied to the colored children the equal protection of the laws. The decision of the Court was against the claim, the Court closing its opinion as follows:

"We may add that while we admit that the benefits and burdens of public taxation must be shared by citizens without discrimination against any class on account of their race, the education of the people in schools maintained by State taxation is a matter belonging to the respective States, and any interference on the part of the Federal authority with the management of such schools cannot be justified except in the case of a clear and unmistakable disregard of rights secured by the supreme law of the land."

I think it may be assumed now that the following conclusions are established as settled principles of constitutional law in the United States:

1. The Federal Government is one of delegated, and, therefore, of limited, sovereignty and powers.

2. All powers and sovereignty not delegated by the States to the Federal Government are reserved to the States and the people.

3. The treaty-making power as conferred by the Constitution upon the Federal Government must be exercised as all other powers of that government are, as a delegated power, and can under no pretense infringe upon the constitutional rights of the States.

4. That one of the reserved rights of the States is to establish and maintain public schools, and to regulate their management, and to provide separate schools for the different races, and that with this power neither the treaty-making power, nor the Fourteenth Amendment can interfere.

Before closing this paper it may not be out of place to call attention to the practice of the Federal Government in dealing with complaints of foreign governments, where it has
been claimed that a treaty has been violated on account of some local action in a State, concerning which the Federal Government had no jurisdiction.

In 1851 there occurred an outbreak in New Orleans against some Spanish subjects residing there, wherein their property was destroyed and their personal safety threatened. At the same time the office of the Spanish Consul was attacked. Complaint was made to our Government that the treaty rights of these citizens of Spain resident here had been violated, and much correspondence was had on the subject.

Webster, who was then Secretary of State, informed the Spanish Government that so far as the Spanish Consul was concerned, he was directly under the protection of the United States Government, but that as to the Spanish subjects resident here the rule was different. He said:

"This Government supposes that the rights of the Spanish Consul, a public officer residing here, under the protection of the United States Government, are quite different from those of the Spanish subjects, who have come into the country to mingle with our own citizens, and here to pursue their private business and objects. The former may claim special indemnity: the latter are entitled to such protection as is afforded our own citizens. While, therefore, the losses of individuals, private Spanish subjects, are greatly to be deplored, yet it is understood that many American citizens suffered equal losses from the same cause; and these private individuals, subjects of Her Catholic Majesty, coming voluntarily to reside in the United States, have certainly no cause of complaint if they are protected by the same laws, and the same administration of the law as native-born citizens of this country."

In March, 1891, some Italians were confined in jail at New Orleans, charged with being implicated in the murder of the Chief of Police of that city, amongst whom were some three or four subjects of the King of Italy. On the 14th of that month a mob broke the jail, took the prisoners out and killed them.

There was then existing between the Federal Government and the Kingdom of Italy a treaty containing what is known as the "most favored nation clause."
The Italian Government upon learning what had happened, made a demand upon our Government "to protect the Italian colony endangered, and to punish severely the guilty."

At that time Benjamin Harrison was President. He was a great lawyer; indeed, the only great lawyer who has ever held that office, and Mr. Blaine was Secretary of State.

Blaine at once took the matter up with Governor Nicholls of Louisiana, the only thing he could do, to learn the facts, and also as to the prospects of bringing the guilty parties to trial and punishment.

The Minister of Foreign Affairs at Rome, Marquis Rudini, in his dispatch to Baron Fava, the Italian Ambassador at Washington, said:

"Our requests to the Federal Government are very simple. Some Italian subjects, acquitted by the American magistrates, have been murdered in prison while under the immediate protection of the authorities. Our right, therefore, to demand and obtain punishment of the murderers and an indemnity for the victims is unquestionable.

This demand was not met as the Italian Government thought it should be, and so their Ambassador, Baron Fava, was ordered to quit Washington and return home, which he did, as he informed Blaine by his letter of March 26.

Blaine then sent a telegram to Mr. Porter, our representative at Rome, as follows:

"That the Italian Government, by its demand for immediate punishment of the mob, disclosed an evident misunderstanding of the dual character of the Government of the United States."

This Porter was "instructed to explain fully, as well as the necessity of a thorough investigation before making any decision."

In this letter of April 14 to Marquis Imperiali, with whom Baron Fava had left Italian affairs at Washington, in which, after citing Webster in the trouble with Spain, Blaine said:

"But if it shall be found, as seems probable, that criminal proceedings can only be taken in the courts of Louisiana, the President can, in this direction, do no more than to urge upon
the State officers the duty of promptly bringing the offenders to justice.'

Later on he added:

'The foreign resident must be content, in such cases, to share the same redress that is offered by law to the citizens, and has no just cause of complaint, or right to ask the interposition of his country if the courts are equally open to him for the redress of his injuries.'

How much better if President Roosevelt had frankly told the Japanese Government that the question of admission to the public schools of California was a matter over which the Federal Government had no control. This would have ended the trouble, not only now but for the future. The American people have fashioned their governments, both State and National, as they want them, and they are not going to change them to suit foreign nations. Let it be understood, as both Webster and Blaine said, that when the subjects and citizens of foreign governments come here to reside that they must accept things as they find them. That our Government is made for our convenience, and as we want it, and that it will remain so. I very much fear that our President has by his treatment of the subject put us where we may in the future have serious trouble with Japan or some other nation. In affairs like this it were better to square accounts as we go. The Federal Government has all the power the people want it to have. When they change their notion on this subject they will amend the Constitution, until which time Japan and all others will do well to govern themselves accordingly.

When Judge Harlan had been upon the Supreme Bench twenty-five years a banquet was given to him in Washington, and, among other things, he is reported to have said:

'While the Supreme Court has upheld the Government of the United States in all its constitutional integrity, it can equally boast that it has never unduly intrenched upon the constitutional rights of the States.'

This same great judge, at the celebration of his golden wedding on the 25th of December, 1906, is reported to have said:

'I have served in the Civil War as Colonel and have been
on the Bench twenty-nine years the 10th of this month. I can say now what I have said in many judicial decisions, and such has been the uniform doctrine of our Court, that the Federal Government has no powers except those delegated to it by express grant, or by necessary implication from express grants."

"I think," he adds, "the Federal Government has all the power it need have for the purpose of accomplishing the objects for which the Government was established, and any tendency to enlarge its powers by loose construction of the words of the Constitution ought to be restricted."

Then with great significance he adds:

"I think the preservation of the States with all their just powers is essential to the preservation of our liberties."

So think the American people.

ADDRESS OF HON. MARTIN W. LITTLETON.

Mr. President and Gentlemen: I come here more as a Tennessean to speak to fellow-Tennesseans, than as a lawyer to speak to brother lawyers; and if I had no other reason for my presence here today, it would be sufficient to say that I am a native of your State.

I shall not attempt to discuss any particular phase of statute or common law, not any single aspect of the Constitution, State or Federal. My purpose in coming here is, to call attention, by way of suggestion, to some of the great questions which confront us as lawyers and as citizens, and some of the great changes which have taken place, without regard to the action of any Government, State or National.

It is a singular fact that, in the discussion of governmental and political subjects, we are intensely dogmatic. When the scientist approaches the discussion of a scientific problem, his first effort is to lay aside speculation, surmise and sentiment, and endeavor to ascertain the facts or group of facts underlying his subject. When the public man, in a popular government, approaches the discussion of a public question, his first work is to lay down some definite, dogmatic creed, with which he expects to bring everything else into final harmony. Thus, our public discussion is not suggestive, but assertive.
In what I shall say, I do not mean to take a definite position and render a definite decision. In the suggestions I shall make, I do not mean that they shall be accepted as the result of any wish of mine, nor as a definite opinion as to their wisdom or propriety. I do not believe it possible for any man to come to an abiding conclusion upon the many public questions affecting the welfare of the country; he may be able to study and master some particular subject, so as to be instructive and helpful.

Most of our public questions arise from a sectional interest: most of our political issues have their origin in sectional wealth. The attitude of a given State or a given group of States, and their statesmen, is very largely determined by the growing and nominant interests of those States or group of States. The South, as a section, has been, for more than fifty years, a valiant defender of constitutional government, and its statesmen have contributed more to the constitutional literature of our country than any other section. Yet most of us are willing to acknowledge, as we look back over events of history, that this attitude of the South had its origin in the belief that the institution of slavery was protected under the Constitutional compromise. While there is no doubt that it furnished to the world as great an example of patriotism and statesmanship as any section or nation, its interest was sustained and its attitude defined by the fact that all of its greatest wealth was in peril.

New England and the East, for more than fifty years have been the valiant defenders of American industry; and upon this subject their statesmen have contributed more to the literature of the time than any other section of the country. But the underlying fact which stimulated this statesmanship, and shaped and defined its course, was the great and widespread commercial interests of New England and the East, which derived a great benefit from this so-called American system.

The West suddenly became a valiant defender of bi-metallism; and in the last score of years its statesmen have contributed more to the literature of the country upon that subject than any other section. The great fact underlying this doctrine, and furnishing sustenance for its continued support, was
the extensive silver interests which would be served in the event of success.

Each section of the country has made a definite impression upon the form, framework and developments of our National Government, because of the strong and insistent forces at work in those particular sections. Left to itself, the dominant interests of slavery might have resolved the Government into a loose confederacy of States. Left to itself, the prevailing commercial interests of New England and the East might have twisted the Government into a commercial monarchy. Left to itself, the West, controlled by its great silver interests, might easily have made silver the standard money of this country. In other words, section after section in different periods of the Nation's history, moved by consideration of profound self-interest, has attempted to have the Government adopt that policy which would serve that interest; and all this has been done in the honest belief that it would be for the welfare of the whole Nation.

The South united its politics with its interests in the institution of slavery; and as the institution was destroyed, the political views of the South were thereafter for years discounted or rejected. Its wealth had been dissipated, its lands laid waste, its growth arrested, its statesmanship outlawed; the great battle that it had fought for the Constitution and for slavery had been lost, and with it the accumulated wealth of a half century. If the war had left nothing but ruin and desolation in the South; if it had done no more than to defeat its views of constitutional government; if it had accomplished nothing save the reduction to absolute poverty of the great majority of its people: this could have been in the course of a few years survived. But the war left what was worse for the South's development, what was more fatal to its ascendancy than either ruin or desolation; it left an uneducated and helpless, but a fully enfranchised, race in their midst.

Thereafter the world must hold the South to one particular standard in judgment. If the negro race progressed, became thrifty, acquired education, exercised its franchise rights intelligently, the South would be recognized, as it had before the war. If the negro race remained ignorant, continued
thriftless, and showed its unfitness for suffrage, the South would be snubbed and its policies rejected.

Thus the South was bound to look at every political question through a colored glass; thus it was judged by all the world according to its ability to lift up and set on its feet the negro race. If it acknowledged without dispute the negro's fitness to vote, it was sure to turn over to his political domination the whole of some States, and great sections of others, at a time and under circumstances when not only the South, but the rest of the world knew perfectly well that the negro was totally unfit to vote or to govern.

The South had not only the actual irritation and danger of the race itself, but it had an accusing and complaining world outside who either misunderstood or misrepresented the facts. This unfortunate situation intensified with the passing of the years, until finally the statesmanship of the South, hemmed in and held down by this ever-pressing problem, withdrew itself to a large extent from the larger questions of economics and government, and was compelled to busy itself constantly with what has come to be known as "the race problem." Thus, from having held the highest place in the history of the Government upon the largest questions, and having furnished as much, if not more, of the literature of politics than any other section of the country, the South withdrew the reach and range of its statesmenschip to its own territory, and in a measure gave up its great influence on national affairs.

The institution of slavery, in which the South had honestly invested its money, passed away, carrying with it the destruction of this wealth; and between that time and the time when commerce and transportation invaded its borders and touched its resources, it suffered exile in politics and isolation in business.

On the question of negro suffrage, the opinion of the world generally has changed. If that question were submitted to the people of this country today, the negroes would be denied the right to vote, not so much because the world has turned against the negro or would under any condition reduce him again to servitude, but because of the fact that the East especially has witnessed the arrival upon our shores of millions of immigrants
from other countries, large numbers of whom, it is perfectly plain to see, should not be admitted to the right of suffrage.

In this connection I would like to suggest that the doctrine of universal manhood suffrage in a republic which is taking into its citizenship every race, tongue and color, from everywhere, will before many years require a re-examination, and, in my judgment, a restriction. It is well that we should extend to every people of every country the right to life, liberty and the pursuit of happiness; but it does not follow that it is our duty, nor that it is wise, to couple with this the right of suffrage. The East will be oppressed with the weight of this problem before many years as much as the South is oppressed with the weight of the negro problem now, and when the interests of these two sections at the same time and for the same reason demand a restriction, we may then expect that some common ground will be found upon which the North and the South together shall wisely, but firmly, impose this restriction.

Those who are opposed to a strong central national government, if they hope to prevent its final establishment, must take account of the different races which are rapidly coming to compose our citizenship, and must understand that the world does not furnish an example of a republic deriving its sovereignty from many dissimilar and antagonistic races. A republic may survive, even though its people are uneducated, provided they have a common heritage, a common blood, and a common ambition. Blood means more in the perpetuity of a republic than education. Similarity of taste, of customs, of habits; community of ambition and of hopes; likeness of ancestry and heritage; make much for the permanency of the government, even through illiteracy be marked and widespread. Distant and dissimilar races, foreign tongues, want of the community of hopes and ambitions, widely divergent ancestry, and irreconcilable racial differences, present a problem complex in its character and exceedingly acute when considered in connection with the maintenance of a pure republic. It may be that the only way to preserve such a republic is to fearlessly and manfully impose a restriction upon suffrage at the outset.
The South has struggled with its race problem and with the prejudices of the world for nearly a half century. Its growth as a section, and the growth of its statesmanship, have been cramped and retarded by this question. It has allowed the outside world for too long and much too easily to bring it into a dispute upon the race problem. It has been compelled by outside criticism and natural pride to make this the ultimate aim of its statesmanship. It is not responsible for the presence of the negro race in its midst; it was not responsible for their slavery; it was not responsible for their freedom; it is not responsible for their suffrage; it should refuse to be drawn into dispute upon this question. It owes its duty of justice to the negroes, and this duty is easily discharged. That duty discharged, it should give its genius, its energy and its statesmanship to the development of its great resources. Issues which were necessary in the defense of the institution of slavery, but which are no longer useful in the development of its commerce and business, should be abandoned. If the North and East have permitted great corporate interests to do injustice and wrong, and have allowed great railroad companies to violate the law, let them settle with the wrongdoers and correct the evils and excesses of corporate management. The very agencies which the East and the North would now subject to the most severe restraint, because of their excesses, are the agencies which the South must employ in order to develop its great resources. It need not imitate the example of other sections of the country by permitting them to engage in oppression or wrongdoing. On the other hand, it should not be led into warfare against those instrumentalities of transportation and corporate development which are essential to its prosperity.

Much has been said about preserving the rights of the States as those rights may be affected by commerce and railroads. The fact is, that there is no such thing as the old-fashioned doctrine of State sovereignty. That doctrine arose on account of the isolation of the States, on account of the lack of means of communication, on account of the very physical necessity that each State must look to its own people and its own officers for relief. There was in other differences a distinct
State consciousness and State pride: and it was necessary; indeed, it was inevitable.

With the development of the years, with steam and electricity, with railroads, telegraph and telephones, this isolation was ended, this solitary status was lost, and rapidly this State consciousness disappeared. The traveler making his journey across the country today does not realize the boundary of the States, the limitation of communities.

It is not so much that the law of State sovereignty has been changed, or that the Constitution has been altered, but it is the fact that State sovereignty and State consciousness are no longer felt and realized by the people of the various States. The South waged an unsuccessful and disastrous war under this shibboleth. Now, when commerce and transportation are about to uncover its countless wealth; when it is ready to make a final substitution of railroads and commercial development for slavery and isolation; when it has at last found an opportunity to seize upon the agencies which will bring wealth and comfort to its people, and prosperity and plenty to its borders, and a permanent and indestructible development in its midst; is it not unwise and is it not futile for it to set up again this doctrine of State sovereignty to obstruct, to hinder and to retard this development! Is it not unwise, because the fact is apparent that the old-fashioned State consciousness has passed away? Is it not unwise, because the South has been doing battle for the Constitution in its strictest construction, while every other section of the country has been developing its resources? Can the South afford to always be making a losing fight? Can it afford to continually fail in its policies?

This does not mean that the South shall abandon its convictions on constitutional questions, but it does mean that you shall recognize the fact that the whole aspect of material development has changed. It does mean that you shall take to yourselves the advantage of a civilization which is going on, either with the help of or despite the policies of the time. You cannot insist upon the regulation of the great business affairs of this country by the Government, and at the same time oppose centralization. You cannot maintain that it is the duty of the Government to extend its jurisdiction over the conduct of
corporate enterprise and individual industry, and at the same time prevent the creation of a strong central government. If the affairs of man are to be regulated, if his individual conduct is to be supervised, if the agencies which he has created for the convenience of business are to be restricted, then there must be a strong, firm and resolute hand to do it.

It is not the period nor the time when the South should be in favor of these restrictions and regulations, but rather it is the time when the South should throw wide its doors and invite into its midst those agencies of material development which have proven so successful in other sections of the country. It may be well for the North and East, having drawn their wealth from the influence of those instrumentalities and having become enriched because of the development which they have brought about, to seek to correct such excesses and evils as have grown up as a result of such swift material development; but the South has no occasion to impose such restrictions at the present. It must hold out its great resources as an ever-existing temptation to the thrift and enterprise of mankind everywhere, in order to induce them to invade its borders and create its wealth.

Looking over its fertile valleys and keeping in mind its mineral, agricultural and commercial advantages, I am persuaded that, instead of seeking to make difficult the construction and operation of railroads throughout the Southern States, if it were possible they should be engaged in offering such bounties as would insure the rapid construction of railroads throughout its vast territory. With the already insufficient capacity in the transportation companies to haul its products and to stimulate a surplus production, it seems untimely and unwise that any person in the South should be engaged in an effort to discourage the construction and operation of railroad companies.

Of what practical consequence is it that the State or the nation shall regulate the operation of railroads? What care is it of yours whether the jurisdiction to control these roads is lodged in the Federal Government or in the State Government? What care is it of yours if interstate commerce is regulated by the Federal Government instead of the State Government?
body disputes the proposition that these two subjects are more naturally and easily dealt with by the National Government than by the State. Nobody denies that the States may have the power, but everybody admits that concerted action and unity of purpose cannot be obtained between them. Whom does it hurt? Against what essential principle of government does it offend? Nothing, save the traditional doctrine of State sovereignty, a doctrine which, to be sure, must not be abandoned in so far as it applies to exclusively State purposes. But why obstruct the natural, irresistible and inevitable development of a whole section of the country in order to preserve faith in a doctrine which serves now no essential important public purpose? It will not do to hold this theory, no longer useful, at the expense of your material prosperity. It will not do to say that the South's tradition upon public questions is unchangeable. It will not do to say that the South of 1908 must be consistent with the South of 1850. The material growth of the nation demands that policies shall be changed, that views shall be reversed and that opinion shall be modified. The time, no doubt, will come in the history of this nation when the South, because of its material development, will be desirous of having the protection of a tariff. It is but natural that that time should arrive, whenever the South in its material development shall reach the point which the East and North reached when they demanded it. There is no set and fixed creed to which you can subscribe, from one century to another and from one age to another, which will serve the changing conditions of the earth and the development of its products.

Whatever may be the changes in government brought about by a changing condition of the country, whether it be in the form and manner of State government, or in the form and manner of National government, the substance of man's right to personal liberty and to ownership and dominion over property is its essence. If this right be lost or surrendered, whether it be taken by the National government or whether it be taken by the State government is of no consequence to him. The States are just as capable of taking away these rights of person and of property as is the nation; indeed, they are more
likely to do so, because they have the power to legislate more fully and in a greater variety of ways.

The preservation of the sovereignty of the States accomplishes nothing, if that sovereignty is to be immediately used to interfere with man's personal liberty and his right to own and control property. These rights stand as the substantial elements of freedom in this government, and whenever they are taken away or impaired, to that extent freedom under the government has been assailed; and it makes no difference that it is assailed by the State instead of the Nation.

The particular period through which we are passing is marked with a strong tendency to extend the authority of government over the individual and over his right to earn, to hold and control property. The National Government has not done more in this direction than have the States. The tendency is even more marked in the State governments to thus extend their jurisdiction over the individual activities of man. The era through which we are passing reveals a united purpose upon the part of all political parties to conduct a crusade, which, when it is finished, will leave the rights of the individual and the rights of property much restricted both by the State and by the Nation.

The States are apparently jealous of the authority of the National Government, not so much because they are anxious to preserve these rights of person and of property but because they wish to exercise them, if anything, more radically than the National Government. The National Government is zealous in its effort to bring man and property further under its dominion, and is to some extent oblivious of the States, not because it is anxious to protect property and person from the radical action of the State, but because it feels more capable of reducing them to uncomplaining subjection. In other words, the contest is one as to which shall act first and do the most in an effort to restrain the freedom of the individual to control his person and his property. There is no political party engaged in a determined effort to preserve the substance of individual freedom against government invasion; the struggle is between two masters as to which one shall lay on the lash.

The people of this nation, in a little more than a hundred
years, have taught the world a lesson of progress. They have been enabled to do so, because they have been in fact as well as in form, a free people. When I say “free,” I do not mean simply free to make speeches or to write essays; I mean free to uncover the surface of the earth, to draw forth its riches, and to own and to hold and control those things which come to reward the industrious quest of the individual. I do not mean free to vote or to participate in government, but I mean free to work with the hands, wherever and whenever and for such a price as the individual may choose to work. When I say “free,” I do not mean some vain political cry, but I mean the freedom to contract, the freedom to trade, the freedom to barter, the freedom to traffic, the great universal freedom to move about upon the face of the earth, and to move the things that are upon the face of the earth in exchange for other things. I do not mean so much legal freedom or political freedom, but I mean economic freedom. It has been this, and the substance of this, and the rights of this, which has enabled the people of this country in a hundred years to surpass the united achievements of all the nations of the earth in material progress. If this economic liberty and man’s personal liberty are put under the restraint of government, then the prosperity and development of the nation to that extent are arrested; and it makes no difference whether the restraint proceeds from the State or from the Nation. I, for one, am not interested in the struggle as to which shall impose this restraint—the State or the Nation—but I am interested in the struggle to prevent either of them imposing this restraint in the name of a free government.

The right to work for wages, to earn an income, to acquire property, the right to personal liberty, unhindered by law and unembarrassed by governmental espionage, are the most valuable and fundamental of the rights to which the individual in America is entitled. Against this personal and economic liberty a common warfare is being waged in the State and in the Nation, without regard to party alliance. It is being waged in the name of Equality, and the public mind has been confused by the noise of this cry, so that at times it has not distinguished
between political and legal equality on the one hand, and economic equality upon the other.

Those who would set up in the State and in the nation a despotism over person and property in the name of Equality and under the forms of a free government, either lose sight of or purposely obscure the fact we are not pledged, either by our history, tradition or constitutional organization to bring about economic equality.

Political equality, equality before the law, free speech, rights of personal security and personal liberty, equality of opportunity; these were the fundamentals on which was erected the structure of our government. But the crusaders go further and add one other demand; and, although it may be disguised or obscured with other names, its final and ultimate purpose is to produce, not equality of opportunity alone, but equality in the fruits of opportunity. Their attitude is, that, having democratized the religion of the nation, they will democratize the property of the nation.

Between those who would thus unduly extend the authority of government and restrict the initiative, the industry and the genius of the individual, there stands as the work of our fathers the organic framework of the constitutional government under which life, liberty and property ought to be secure. This constitutional government was set up and made steadfast, to the end that crusades and crusaders should never invade the sacred dominion of these cardinal principles; it was set up to insure stability and permanency against that time when there would come those who would insist that government should issue from the hot bowels of an enraged people, rather than flow from the orderly machinery of organic law. It was the design of the founders of this government that here on this continent should be erected a republic affording the largest liberty to the individual consistent with order, and open up to his genius the widest opportunity for the purposes of creating a continent of wealth, comfort, happiness and content.

For that freedom, personal and economic; for those rights, fundamental and indispensable; for those principles, without which State sovereignty, the doctrine of manhood suffrage, freedom of the press and freedom of worship are but empty
privileges; I plead. And against all those doctrines and crusades and crusaders who would in the name of free government and equality destroy these rights and strangle the genius of a powerful, ambitious and growing republic, I protest.

REPORT OF SPECIAL COMMITTEE ON OBITUARIES AND MEMORIALS.

Hon. Foster V. Brown, President: The Special Committee appointed to draft memorials of the members who have died since the former meeting, to be inserted in the published proceedings of the Tennessee Bar Association, beg leave to submit the following:

ARTHUR ST. CLAIR COLYAR.

Col. Arthur St. Clair Colyar was born in a dwelling situated on the banks of the historic Nolachucky River, in Washington County, seven miles west of Jonesboro, June 23, 1818, and died at Nashville, December 13, 1907. His long life, therefore, extended over a period of more than 89 years. During this lapse of time, beginning almost with the infancy of the country, what a kaleidoscope of change passed before his discerning eyes!

When he was about nine years old his father, Alexander Colyar, removed to Hillsboro in what is now Franklin County, and, as the father was a farmer, Arthur began industrial life as a plow boy, and received only such education as could be had in a pioneer country. At the age of 22 he entered the office of Col. Micah Tane, of Winchester, as a law student. In 1846 he obtained his license and formed a partnership with W. P. Hickerson, at Manchester. Here he soon made a reputation which encouraged him to venture into wider fields; he removed in a few years to Winchester, and formed a partnership with his kinsman, A. S. Marks, who was afterwards Governor, and with John Frizzell, who afterward became a prominent man. Col. Colyar’s public spirit led him into active politics, State and National. He was a member of the national convention in 1860, which nominated Bell and Everett for President and Vice-President respectively, on the Whig ticket, and made an active canvass in favor of the ticket in the hope of saving the Union. He opposed secession, but at the parting of the ways
he cast his destiny with the South. He was elected to the Confederate Congress, in which he served with the same zeal and energy that always characterized the man. After the Civil War he settled at Nashville and practiced law, at one time in partnership with Henry S. Foote, and at other times alone, or in association with various other attorneys.

A few years after the close of the war he came connected as stockholder, director and president, of the Tennessee Coal and Railroad Co., afterward the Tennessee Coal, Iron & Railroad Company. He was not especially gifted as a business man, but by his efforts he saved the company from wreck, and so inspired the financial world with his confidence in the industry that it was placed on the way to a success that has finally brought it to a very high place among the industries of the country. About this time he was very aggressive in his fight against a ring rule in the city of Nashville, which resulted in the city being placed in the hands of a receiver and in its complete relief from its distressing condition.

In 1881 he took charge of the American, a leading paper in the capital city, and so conducted it as to make his power felt throughout the State.

His last important work was of a historic and literary character, and in this, as a fitting climax to his laborious and zealous life, he left behind him the fruit of years of painstaking labor. Nothing that he ever did was perhaps more pleasing and gratifying to him than his authorship of the "Life and Times of "Andrew Jackson," which is truly a monument to his industry in his old age.

Col. Colyar was always prominent as a lawyer, especially as an advocate, being eloquent, strong in debate, and forceful in pursuit of what was right. He was a participant in many of the most important suits in both State and Federal Courts. Among other important cases, he represented the State in the United States Supreme Court in the boundary line case between Virginia and Tennessee, which he won in 1893.

One of Col. Colyar's most pronounced characteristics was his strong and enthusiastic interest in everything pertaining to the public well-being and moral welfare. He was in deep sympathy with everything tending to the material prosperity
of the country, and the intellectual, moral and religious culture of society, and was found among the active promoters of schools, colleges and churches, and was an ardent advocate of the establishment and construction of railroads, manufactories, mines and commercial-and financial enterprises. He was an uncompromising friend of law and order, sobriety and purity in individuals and government. He was a total abstainer, and was the author of the Four Mile Law, one of the most unique and successful bits of legislation that the country has known. His courage was almost unlimited. Like all positive characters he occasionally fell into mistakes of judgment, and was sometimes criticised even when he was in the right. As might be expected of such an one, he sacrificed himself, so far as public office was concerned, and died a poor man, being in active practice almost to the end of his days. The objects and purposes of the Bar Association fell naturally in line with Col. Colyar's instincts and principles, for whatever organization tended or purposed to cultivate right dealing, right thinking and professional ethics could not fail to meet with his warm and enthusiastic sympathy and support. To the end of his life these things were his guiding stars.

JOHN SUMMERFIELD WILKES.

The following from a memorial written by Hon. Z. W. Ewing, and published in the Veteran:

"John Summerfield Wilkes was born in Culleoka, Maury County, Tenn., March 2, 1841, and died in Pulaski February 2, 1908. The father of Judge Wilkes, Hon. Richard A. L. Wilkes, was a prominent citizen of Maury County and reared a large family. He was public spirited and aided in the erection of a church on one side of his farm and a schoolhouse on the other. He served four terms in his State Legislature. He taught his sons to be brave and patriotic, and six of them enlisted early in the Confederate army. The mother, who was Judith Harris, left home with her husband, going South, because of the hardships and privations to which they were subjected at home.

Judge Wilkes was educated at the school established by his father, at Florence, Ala., and under a private teacher in
Nashville. Upon the outbreak of the war he went to Pulaski, and on May 7, 1861 enlisted in the company raised by Hon. John C. Brown, which became the first company (A) of Brown's 3d Tennessee Infantry. That regiment was organized at Lynnville May 16, 1861. (Captain Brown was then chosen colonel, and speedily advanced to brigadier and then to major general. Subsequent to the war he was chosen to the State Constitutional Convention, was elected Governor of Tennessee, and became a useful and forceful man of affairs.)

"Comrade Wilkes was made commissary sergeant of the regiment under his brother Capt. R. L. Wilkes, and in that capacity was developed his high efficiency as an accountant noted in his subsequent career. The regiment was in the surrender of Fort Donelson, and on being sent to prison the brothers were separated. Captain Wilkes, commissary, was sent to Camp Chase, where he died, and John S. was sent to Camp Douglas.

"In the reorganization of the regiment, at Jackson, Miss., on September 26, John S. Wilkes was chosen to the position that had been held by his deceased brother. So efficient was Capt. John S. Wilkes in the position as commissary that he was retained in a more important relation; and to him was assigned the gathering of supplies over a large territory in Tennessee and Mississippi, a position that he filled efficiently to the close of the war, when he was paroled at Aberdeen. It was there that he met and wooed Miss Florence A. Barker, to whom he was soon married, and the union was a most happy one to the end.

"Locating in Pulaski, Captain Wilkes read law, studying in the office of General Brown. He became a law partner with Judge A. J. Abernathy, and later with General Brown. When General Brown became Governor he selected Captain Wilkes as his secretary and ex-officio attorney-general. There was much confusion in the order of things in those offices; but the painstaking Wilkes, by accuracy of plans and diligence in service, arranged them systematically. This service being done at a time when much legislation was had in regard to the State debts, he became so conspicuously familiar with its finances that he was ever afterwards considered the best au-
tority on the subject. Afterwards Captain Wilkes was officially connected with banking interests in Pulaski, and later he and Governor Brown engaged in the practice of law together.

"In 1875, when Governor Brown was called to the service of the Texas & Pacific Railroad Company by Tom Scott, of national reputation as builder and operator of railroads, Captain Wilkes acquired the law practice of the firm, and not only maintained but increased it. In 1886, however, Governor Brown, as receiver of the Texas and Pacific Railroad Company, secured the services of Captain Wilkes as treasurer, which took him from his State for the time and required the relinquishment of his law practice. In this position he handled millions of dollars and was greatly helpful to his chief in restoring the road to the stockholders. On leaving Texas a magnificent testimonial was given to Captain Wilkes in appreciation of his services.

"Captain Wilkes succeeded Governor Brown as President of the Board of Trust of Martin College, an institution founded by Mr. Martin, father of the late Mrs. O. M. Spofford, and to this Captain Wilkes devoted his best energies for its success. He returned to Pulaski in 1889 and resumed the practice of law.

"In 1893, when Chief Justice Peter Turney became Governor of Tennessee, his first official act was to appoint Captain Wilkes to the vacancy in the Supreme Court. This appointment removed Judge Wilkes from the practice of law, for he was elected to succeed himself in 1894 and in 1902, which high office he held until his death. He soon became known and esteemed as indeed a judge "learned in the law." It is said that he almost knew the code from memory."

Not only was Judge Wilkes noted for his wide and accurate memory of statutory law, but he was learned in all branches of jurisprudence. He never had any amusements nor dissipations, and was exceedingly quick to catch the points of a case. One of his friends said that it was doubtful if Judge Wilkes was entitled to credit for his industry, since to be busy was a great pleasure to him, and he was unhappy when not exercising his mind in the unraveling of intricate legal prob-
ICMS. Nevertheless, Judge Wilkes possessed, at the same time, a very strong and vivid sense of humor. Several of his opinions, which turned into this strain, were exceedingly amusing to the attorneys present in Court at the time, and were printed in the newspapers and repeated by word of mouth all over the State. There was never anything in them in any way unbecoming or tending to lower the dignity of the Court. They were only a few sporadic instances wherein the natural absurdity of the situation invited treatment in a vein of pleasantry.

Judge Wilkes’ strong predisposition to work showed itself even after his health, gradually deteriorating, had left him physically hardly more than a shadow; his mind was bright, vigorous and lively, even while it was apparent that Death was pointing “his slow, unmoving finger at him.” At last he became literally, through physical weakness, unable to attend the term of the Court, and a special judge was appointed to serve until his recovery; but Judge Wilkes grew weaker and finally passed away, much regretted by Bench and Bar.

Judge Wilkes is survived by his wife, two daughters (Mrs. W. B. Romine and Mrs. Furman Hooper), two sons (John B. and Stewart), and three grandchildren; also by one brother (James H. Wilkes, of Nashville) and a sister (Mrs. John T. Steele, of Washington, D. C.).

The John H. Woodridge Camp, U. C. V., of Pulaski, officiated at his burial, designating that as a soldier he was “true and tried.” The funeral was largely attended, all of his associates and other jurists being present.

JOHN WHITSETT CHILDRESS.

Judge John Whitsett Childress was born in Rutherford County, Tennessee, near Murfreesboro, on April 20, 1845, and died at Nashville, March 29, 1908, having reached the age of 63 years. He was the son of Major John W. and Mrs. Sarah Williams Childress, who were respected members of a highly esteemed family. His early life was spent on the farm. He attended Bradley Academy at Murfreesboro, and, later, the University of Nashville.

When a student of the university, and a little over sixteen
years old, he enlisted October 10, 1861, in the Confederate army, and was made first-lieutenant of the First Tennessee Battalion. He was at the battle of Fort Donelson, where he was taken prisoner with his comrades and sent first to Camp Chase and then to Johnson's Island. Upon his exchange he rejoined the Confederate army, and participated in the battles around Vicksburg and in the battles of Dalton, Kenesaw Mountain, Atlanta, Franklin and other battles, being wounded four times. He was finally paroled at Greensboro, N. C., April 20, 1865, having been before advanced to the rank of captain in the Second Tennessee Consolidated Infantry. He enjoyed a high reputation as a brave and efficient soldier and officer.

When the war was over Mr. Childress, then not quite of age, returned to his home and soon made a trip West with one of his army companions, but remained only a brief time in the West; and thence he went, by way of New Orleans, to Europe and the Holy Land, spending sixteen months in travel. He spent most of the time in Egypt and in the other lands of the early Christians, visiting the European cities before his return. He always claimed afterwards that this trip furnished the most useful and valuable part of his education.

After his travels he studied law in the offices of Major J. M. Avent at Murfreesboro and was in due time admitted to the Bar and formed a partnership with Major Avent, which continued until the early eighties, when Major Avent retired and his son Frank Avent took his place in the firm.

December 13, 1870, the subject of this sketch was united in marriage at Columbus, Miss., to Miss Mary Adair Lyon, a daughter of Rev. James Adair Lyon.

In the early eighties Judge Childress removed to Nashville and formed a law partnership with Col. A. S. Colyar and Gov. Marks, the style of the firm being Colyar, Marks & Childress. But in a few years he was made business manager of the Nashville American, and while in this position his health failed and he was compelled to go to Florida to recuperate. He remained in Florida nearly three years, and returning went into the banking business with W. M. Duncan at South Pittsburg.

His love for the legal profession, however, drew him back to the law, and he returned to Nashville and resumed the
practice. In 1893 or 1894 he became assistant U. S. district attorney under Hon. Tully Brown, in which position he discharged his duties with distinguished ability until 1896, when he was appointed by the Governor as judge of the Second Circuit Court of Davidson County, to succeed Judge Claude Waller, resigned. He was elected by the people to fill out the unexpired term, and in 1902 was elected for a full term of eight years as judge of the First Circuit Court of Davidson County, which latter position he held until the time of his death.

Judge Childress, previous to assuming the duties of a judge, always took an active interest in politics, but did not himself seek political preferment. He was one of the active leaders, and was only relieved, at his own desire, from the party duties imposed on him, because it seemed unfair to so long impose on his good nature. His judgment in political matters was excellent.

Judge Childress was for more than twenty-two years an active and consistent member of the Presbyterian Church, having joined Moore Memorial Church, Nashville, in 1885, of which he was a ruling elder for several years just preceding his death. His daily walk and conversation were such as became a true Christian; yet it was against his nature to make any great public display of piety; in which respect one may doubtless display a pride no less than may be shown in other things.

These are mere outlines of the things in the life of a citizen who made his impress strongly upon the localities in which his lot was cast at different times.

As a lawyer, Judge Childress was able, strong, clear and safe; and in all situations kind, courteous, and respectful to everyone. He enjoyed a good practice both at Murfreesboro and at Nashville. The active life which his condition compelled him to pursue did not give him time for the most profound study, and it is not intended to say that he was a lawyer of the first rank in learning. But his good common sense, and his fair extent of study, coupled with his high character and devotion to truth and justice, ever led him to just conclusions both at the Bar and on the Bench. As a man and as a judge he was pleasant and agreeable in his conduct and deportment.
He was at all times a pleasant, quiet, mild-mannered gentleman whom it was ever a pleasure to meet. Nevertheless no one was more firm and resolute in his legal opinions, carefully, and reasonably formed, and in the enforcement of the rules of the court made in sound judgment for the prompt and fair trial of causes.

When a case came up for trial Judge Childress was ready to try it, and he expected the attorneys also to be ready; and if they were not ready, the case passed, under a rule applicable to all alike. As he never made any discriminations among cases or lawyers in like situations, and as his rules were just, he won and held the highest esteem of the Bar. His decisions were characterized by the strongest common sense, based on the law, and carried conviction of their justness with them, so that very few of them were ever overruled.

He was a true Christian, and an honest and gentlemanly man, a sincere friend, and an upright judge. His memory will long survive in the hearts and minds of those who knew him.

CHARLES DICKENS CLARK.

Judge Charles Dickens Clark was born October 7, 1847, in Van Buren County, Tennessee. He was reared on the farm, and, when a mere lad, became a student, and a desire for an education marked those early years. He attended the common schools of his neighborhood, and went to college at Burritt College, at Spencer, in his native county. At the age of 17 he left Spencer to go into the Confederate army, and he served from that time in the army under General Geo. G. Dibrell. After the war he returned to school at Burritt College, from which he graduated in 1872. Before his graduation he had made up his mind to study law, and in the fall of the year 1873 entered the Law School of the Cumberland University at Lebanon, from which he graduated, bearing the honors of his class. He settled in Manchester, and there began the practice of law, marrying soon after the daughter of Judge W. P. Hickerson. His wife died a little more than a year after the marriage. In 1882 Judge Clark came to Chattanooga to live and practice his profession. His first partner was Judge D. L.
Snodgrass, and, after the promotion of that gentleman to the
Bench, he became a member of the firm of Key, Richmond &
Clark. This firm was dissolved by the election of Judge Key
to the position of chancellor, and retirement of Mr. Richmond
from active practice. Judge Clark then became a partner with
Hon. Foster V. Brown, and this partnership was maintained
until the appointment by President Cleveland of Judge Clark
to the Bench, and the election of Mr. Brown to Congress. His
second wife was a widow whose maiden name was Miss Lucy
Dumas, and by this union he had a daughter, Miss Lucy Lee
Clark, now about eighteen years of age. His second wife died
some years ago, and Judge Clark married a third time to Miss
Willie Kimbrough, a relative of his former wife.

In the practice of his profession, before he was promoted
to the Bench, he displayed signal ability and skill. He had
none of the polish of a trained orator; he did not especially
shine as an advocate in jury trials; but before the courts on
legal questions he was a tower of strength. His briefs for the
Supreme Court were prepared with the utmost care and always
evined thorough investigation of the authorities bearing on
the questions involved. Upon his coming to Chattanooga to
live in 1882, he at once took rank with the foremost of our
lawyers. He quickly secured an extensive practice, and han-
dled with rare skill many of the great law and equity cases
which came before our courts. He was a wise counsellor, and
many of our large corporations sought his advice in their
most complicated affairs.

He had a most remarkable capacity for centering his
mind in intensive study of law books. When he had a ques-
tion before him for solution, he was untiring—unremitting—
until he had solved it to his satisfaction. But as a member of
the Federal Judiciary he shone more conspicuously than in
his other walks of life.

He undermined and destroyed what was a healthy and
vigorous constitution by hard and incessant work on the
Bench. He literally worked himself to death. He felt that a
conscientious discharge of his duty to litigants required him
to study the authorities cited, and to search among the books
for others which the lawyers had failed to find. Thus his
health became impaired; thus his robust constitution yielded, until he became an easy prey to the dread disease, tuberculosis.

He was held in high esteem by the lawyers in all the cities where he held court. His brother judges spoke in the highest terms in eulogy of him. Judge Taft said: "I knew Judge Clark in all the close intimacy and friendship of a judicial colleague. No man ever brought to the Bench a higher sense of judicial duty, a closer and greater industry, and a more conscientious disposition of judicial business than he did. The Bar of his district, State and Circuit, will greatly mourn his loss."

Judge Lurton's tribute is as follows: "Judge Clark's quick grasp of the vital points of litigation was conspicuous. He was upright, independent and united a frank courtesy with a singular rapidity in rulings, which rightly won for him all over the Sixth Circuit the encomium of being a model judge. His death will be universally regretted."

A great star has fallen from our judicial firmament. Tennessee has lost one of her best and most public-spirited citizens. The Bar of the State and this Association have lost one of its purest and wisest members.

A REVIEW OF THE CONFLICT BETWEEN THE STATES AND THE FEDERAL COURTS.

By Chas. T. Cates, Jr.

The conflict between the States and the Courts of the United States began soon after the ratification of the Federal Constitution, but it is not my purpose at this time—nor would it be possible within the time allowed me—to attempt a review of all the circumstances and the decisions wherein a State has been made a party defendant, or the rights of a State, directly or indirectly, assailed. In but few cases where a State or an officer of a State, has been made a defendant in a Federal Court, has there been a failure to challenge the jurisdiction of the Court, either on the ground that the State was immune from suit or that the subject matter of the controversy was not within the jurisdiction of the court. To review all of these
cases might be interesting to the student of constitutional history, but such was not my purpose in selecting for submission to you a review of the conflict between the States and the Federal Courts.

But if the student of our constitutional history would obtain a clear and just conception of the principles moving the framers of this government, let him thoroughly acquaint himself with the history of those provisions of the Federal compact conferring judicial power upon the courts of the United States, and the decisions of the Supreme Court construing such provisions. He will find that, whatever affected the common interests of the people of all the States—whether in their domestic relations or arising from their relations with foreign powers—was delegated to the Federal Government, and the Federal Courts were clothed with power to hear and determine controversies in relation thereto. By the Federal compact the States extinguished their diplomatic relations with foreign countries, and surrendered to the United States the right to control their general intercourse, not only with foreign countries but with each other, and, therefore, in order to preserve and enforce the rights of the States inter se, it became necessary to establish a tribunal clothed with full power to hear, determine and enforce such rights.

Therefore, it was ordained (Article 3, Sec. 2), that the judicial power of the United States should extend to such controversies between two or more States, and Congress, pursuant to the power conferred upon it, provided, in substance, in the Judiciary Act of 1789, that the Supreme Court should have exclusive jurisdiction of all controversies of a civil nature between the States.

No more frequent cause of controversy—oftentimes resulting in war—between sovereign States, can be found in history than that affecting boundary lines or territory. The States had surrendered to the general government their right to make war or to enforce their just claims in respect of boundary lines and territory, and early in the history of the government controversies in respect of boundary resulted in suits instituted by one State against another before the Supreme Court of the United States. Of this class of cases we
need only refer to Rhode Island vs. Massachusetts (12 Peters, 657; 13 Peters, 23), and Tennessee vs. Virginia (148 U. S.), wherein the history of the provisions of the Federal Constitution authorizing such suits is fully set out and their policy justified by the principles underlying the constitutional fabric of this government.

Even in these cases the jurisdiction of the Federal Supreme Court was challenged, but the wisdom of the fathers, in providing a tribunal for the settlement of such disputes, is now recognized by all men.

It is not the conflict involved in questions of boundary between sovereign States—nor where a state as parens patriae has attempted to enforce a right common to all her citizens, or protect them in their general conduct, security and health (Missouri vs. Illinois, 180 U. S., 208), Kansas vs. Colorado, 185 U. S., 125), which the foresight and wisdom of the framers of the Constitution and the first Judiciary Act made justiciable alone in the Supreme Court of the United States, to which I would direct your attention, but it is to that conflict which seems to arise inevitably between the States and individuals or corporations whenever a State attempts to assert its inherent and reserved police power to protect the security, comfort, convenience, safety and health of its people. 

The growth of this country, the peopling of its widespread domain, and the development of its natural resources, have been attended with a like growth and development of corporate agencies, which now practically cover every department of human activity, constituting the channels of trade and commerce, and controlling the mode, manner and cost of intercourse between the people. It is not my purpose to decry or cavil at the increase in the number of corporations, because under modern conditions we must recognize in them an agency for great good, but we must not blind ourselves to the fact that self-interest and greed are not confined to the individual, but seem to increase as individuals combine and merge their natural characteristics into that artificial being called a corporation. We must bear in mind that while the States surrendered to the general government full and exclusive control over the commerce and the modes of intercourse between the States,
and between the people of this Union of States and foreign countries, nevertheless, except in so far as it might be incident to such powers so delegated, the States reserved to themselves their police power, which in its very nature can receive no fixed definition, but has been held to include the right, yea, the duty, to do all things necessary to guard the morals, comfort, health, order and safety of the people within a State, and to secure therein such economic conditions as an advancing civilization of a highly complex character requires. This power is an inherent attribute of sovereignty, and (Morrison vs. State, 116 Tenn., 542) was vested in the original States before they entered into the Federal compact; and not being among the powers granted to the general government, was reserved to the States, to be exercised within their respective jurisdictions.

In addition to the police power, or, rather, as a part thereof, there inheres in every government intrusted by the very terms of its being with powers and duties to be exercised and discharged for the general welfare, a right to apply to its own courts for any proper assistance in the exercise of the one and the discharge of the other, and the conclusion, based not only upon sound canons of logic, but just principles of government, is inevitable that whenever a State exercises its police power in relation to those matters and subjects to which it may properly apply, if such exercise, either in the manner thereof or on account of its effect, be challenged, the States should have the right to an adjudication thereon in the first instance in their own courts.

Prior to the Civil War and the adoption of the Fourteenth Amendment, cases of serious conflict between the States and the Federal judiciary seldom occurred; but it is a significant fact that since the Fourteenth Amendment to the Federal Constitution has been construed by the Supreme Court of the United States to apply to matters, conditions and subjects but little, if at all, within the minds of the framers thereof, there has been hardly any important police legislation which has not been challenged as violative of said amendment, by suits instituted, either in the name or interest of some public service corporation, in some inferior court of the United States against a State, or officer of the State, seeking to regulate and control
the operations and business of such corporation within that particular State.

It is not my purpose either to criticise or defend any particular attempt or effort at regulation. I am one of those who believe that the vexed questions now at issue between the people of this country and the great public service corporations can only be settled, consistently with the basic principles of our constitutional fabric, by just and proper regulation of the powers, operations and business of these corporations; a regulation and control which will conserve the rights of the public and at the same time afford to the corporation a fair and just return upon the money invested in its business, and insure to it the largest liberty of action consistent with the good, safety and comfort of the people from whom it derives its powers.

Resistance of State regulation by means of Federal injunctions against State officials acting for and representing the State, has more than once brought a State and Federal Court into serious conflict, and it is this conflict between the States seeking only to maintain inviolate their sovereign rights, and the Federal Courts enforcing control over the internal affairs of the States, to which I call your attention.

It is not my purpose at this time and within the limits of this address to suggest a remedy, but rather as a sentinel to sound an alarm to the defenders of the Constitution, the American lawyers, that we may well fear that under the holding of the Supreme Court of the United States in what is commonly known as the Minnesota Rate Case (Ex-parte Edward T. Young), the sovereign States of this Union are practically open to any attack which may be made upon them in a Federal Court under color of enforcing or protecting a right claimed under the Federal Constitution.

That the holding in that case—which I will hereafter more fully advert to and analyze—that a Circuit Court of the United States has power and jurisdiction to indirectly restrain and prohibit the sovereign State of Minnesota from attempting to enforce in her own courts, by formal judicial proceedings, a statute of that State regulating the intra-state business of a public service corporation, by directly restraining the chief
law officer, the attorney general, of that State from prosecuting such formal judicial proceedings, and punishing him for his effort to do so, has not more thoroughly aroused the American lawyer and patriotic citizen to the dangers lurking in that decision, is, to my mind, but an evidence of the insidious centralizing tendencies of the times.

A more direct, but not less dangerous, assault upon the rights of a State resulted in an amendment to the Constitution, and while it is not my purpose at this time to suggest a remedy, but believing that any remedy or additional safeguard to the just and proper rights of the States, to be effectual, must be considered in the light of our constitutional history, a brief review of the leading cases, and the results therefrom, will not only be interesting, but helpful, in arriving at a solution of this question, which, in my opinion, threatens the autonomy and integrity of the States.

In considering this question, it will be borne in mind that the Federal compact was a compromise between the theory of a strong national government and a confederacy in which the constituent States would be supreme. It will also be borne in mind that if there was one question about which the States were sensitively jealous, it was their dignity and sovereignty. It had been written into the Federal compact (Art. 3, Sec. 2), submitted to the thirteen States for their ratification, that "the judicial power (of the United States) shall extend to controversies between a State and citizens of another State," and that "in cases in which a State shall be a party, the Supreme Court shall have original jurisdiction." And one of the serious objections to the adoption of the Constitution most vigorously urged by such great patriots as Patrick Henry and George Mason, was that under this provision a State was liable to be sued by a citizen of another State. This contention was denied with great power and force by Hamilton, Madison, Marshall and other great defenders of the Constitution. Responding to this contention in the "Federalist," No. 81, Alexander Hamilton said:

"I shall take occasion here to mention a supposition which has excited some alarm upon very mistaken grounds: It has been suggested that an assignment of the public securi-
ties of one State to the citizens of another would enable them to prosecute that State in the Federal Courts for the amount of those securities. A suggestion, which for the following considerations proves to be without foundation:

"It is inherent in the nature of sovereignty not to be amenable to the suit of an individual without its consent. This is the general sense, and the general practice of mankind; and the exemption, as one of the attributes of sovereignty, is now enjoyed by every State in the Union. Unless, therefore, there is a surrender of this immunity in the plan of the convention, it will remain with the States, and the danger intimated must be merely ideal. The circumstances which are necessary to produce an alienation of State sovereignty were discussed in considering the article of taxation, and need not be repeated here. A recurrence to the principles there established will satisfy us that there is no color to pretend that the State governments would, by the adoption of that plan, be divested of the privilege of paying their own debts in their own way, free from every constraint but that which flows from the obligation of good faith. The contracts between a nation and individuals are only binding upon the conscience of the sovereign, and have no pretension to a compulsive force. They confer no right of action, independent of the sovereign will. To what purpose would it be to authorize suits against States for the debts they owe? How could recoveries be enforced? It is evident that it could not be done, without waging war against the contracting State: and to ascribe to the Federal Courts, by mere implication, and in destruction of a pre-existing right of the State governments, a power which would involve such a consequence, would be altogether forced and unwarrantable."

When the delegates of the people of the State of New York assembled in convention for the purpose of considering the adoption of the Federal Constitution, they in solemn form set forth their understanding of certain clauses of that instrument, and the rights of the States thereunder, and, among other things, declared "that the judicial power of the United States in cases in which a State may be a party, does not extend to criminal prosecutions or to authorize any suit by any person against a State"; and being "under these impressions
and declaring that the rights aforesaid cannot be abridged or violated," the people of New York did "assent to and ratify this said Constitution." *1 Elliott's Debates, 327, 329.*

In Virginia, more than any other State, was the war fiercely waged between the assailants and defenders of the proposed Constitution. There the proposed compact was assailed by the eloquence of Henry and the logic of Mason and defended by James Madison, oftentimes called the father of the Constitution, and by John Marshall, afterwards Chief Justice of the Supreme Court of the United States, and its principal expounder. In the Virginia convention, Madison said:

"Its jurisdiction" (the Federal jurisdiction) "in controversies between a State and citizens of another State is objected to, and perhaps without reason. It is not in the power of individuals to call any State into court. The only operation it can have is that if a State should wish to bring a suit against a citizen it must be brought before the Federal Court. This will give satisfaction to individuals, as it will prevent citizens upon whom States may have a claim being dissatisfied with the State courts. • • • It appears to me that this clause can have no operation but this—to give a citizen a right to be heard in the Federal courts: and if a State should condescend to be a party, this court may take cognizance of it."

In the same convention and replying to the same contention upon the part of Mason and Henry, Marshall said:

"With respect to disputes between a State and the citizens of another State, its jurisdiction has been defined with unusual vehemence. I hope that no gentleman will think that a State will be called to the Bar of a Federal Court. • • • It is not rational to suppose that the sovereign power should be dragged before a court. The intent is to enable States to recover claims of individuals residing in other States. • • • But, say they, there will be partiality in it if a State cannot be made a defendant—if an individual cannot proceed to obtain judgment against a State, though he may be sued by a State. It is necessary to do so, and cannot be avoided. I see a difficulty in making a State defendant which does not prevent its being plaintiff."

There can be no doubt but that these arguments of Hamil-
ton and Madison and Marshall resulted in the ratification of the Constitution by the several States. Yet the ink was scarcely dry upon the signatures affixed to the acts or resolutions of ratification by the several State conventions, and the eloquence of Henry and solemn assurances of Marshall had hardly died away from the halls of the Virginia Assembly House, when the direct question came before the Supreme Court of the United States in the case of Chisholm vs. Georgia, 2 Dall., 419, decided in 1793, wherein it was held, with only Justice Iredell dissenting, that under the language of the Constitution above quoted, and the Judiciary Act of 1789, a State was liable to suit in that court by a citizen of another State or of a foreign country. That decision, as said by Mr. Justice Bradley, in Hans vs. Louisiana, 134 U. S., 1, created such a shock of surprise and consternation throughout the country that, at the first meeting of Congress thereafter the Eleventh Amendment to the Constitution of the United States was almost unanimously proposed and in due course adopted by the legislatures of all the States. This amendment expressed the will of the ultimate sovereignty of the whole country superior to all legislatures and all courts, and actually reversed the decision of the Supreme Court. It did not in terms prohibit such suits by individuals against the States, but declared that the Constitution should not be construed to import or authorize the beginning of such suits. The language of the amendment is: "The judicial power of the United States shall not be construed to extend to any suit, in law or equity, commenced or prosecuted against any one of the United States by citizens of another State or by citizens or subjects of any foreign State."

As stated above, only Justice Iredell dissented. He insisted, and conclusively showed, that the suability of a State without its consent was a thing unknown to the law—that it was not the intention of the framers of the Constitution to invent new and unheard of remedies or to confer upon the Federal judiciary cognizance of suits and actions unknown to the law, and forbidden by the law, that is, the common law, as the people of England and the colonies then understood it, and therefore that there was no jurisdiction conferred upon the
Supreme Court of the United States to entertain and determine a suit against a State, instituted by a citizen of another State or of a foreign State.

Nearly one hundred years after the decision in the Chisholm case, the Supreme Court of the United States, in Hans vs. Louisiana, 134 U. S., 1, speaking through Justice Bradley, fully approved the reasoning and holding of Justice Iredell, and discussing the ground upon which the majority holding in the Chisholm case was predicated, said:

"In view of the manner in which that decision was received by the country, the adoption of the Eleventh Amendment, the light of history, and the reason of the thing, we think we are at liberty to prefer Justice Iredell's view in this regard."

So effective in reversing the decision of the Supreme Court in the Chisholm case was the Eleventh Amendment considered to be that though said amendment was not finally adopted until 1798, ne'ertheless, no effort was made to execute the judgment of the court in that case, and after the adoption of the amendment, when Attorney-General Lee, in the case of Hollingsworth vs. Virginia (1798), 3 Dall., 378, submitted the question to the court whether the amendment did or did not supersede the suits depending against any one of the United States by citizens of another State, the Court on the next day delivered an unanimous opinion:

"The amendment being constitutionally adopted, there could not be exercised any jurisdiction in any case, past or future, in which a State was sued by a citizen of another State or by citizens or subjects of any foreign State."

It having been thus settled by the Eleventh Amendment that the Federal Courts were not to assume or exercise jurisdiction of any suit, in law or equity, by an individual against a State, the Supreme Court in 1799, speaking through Mr. Justice Washington, in the case of Flower vs. Lindsay, 3 Dall., 411-412, in substance held that it might be considered a safe rule, in determining whether a State is a party to any given case, to ascertain not only whether the State is by name made a party to the controversy, but whether it is substantially the party in interest. It would seem to be the clear and logical
deduction from this holding that a State need not be, by name, a party to the record to bring it within the inhibition of the Eleventh Amendment, and that, if a State be substantially the party in interest—the party whose rights and interests will be affected by the holding of the court—it is within the protection of said amendment.

It appears that no other construction was sought to be given the Eleventh Amendment for a quarter of a century, during which time no effort, so far as is shown by the official reports, was made to hale a sovereign State before a Federal Court at the suit of a citizen of another State, either by making the State a party to the record, directly by name, or indirectly through an officer or agent, but in 1824, the Bank of the United States instituted a suit in equity against one Ralph Osborn, Auditor of the State of Ohio, for the purpose of enjoining him from executing a statute of that State alleged to be in conflict with the Federal Constitution, and charging that the said Osborn had unlawfully seized the property of the bank and had committed divers and sundry trespasses against and upon the property of said bank under the color of said alleged unconstitutional statute. This case ultimately came before the Supreme Court of the United States under the title of Osborn vs. Bank of the United States, 9 Wheat., 739, and replying to the contention made on behalf of the State of Ohio, that the suit was virtually and in substance against said State, and therefore prohibited by the Eleventh Amendment, it was held, the opinion being delivered by Chief Justice Marshall, that:

"The Eleventh Amendment which restrains the jurisdiction granted by the Constitution over suits against States is of necessity limited to those suits in which a State is a party on the record."

Inasmuch as a State can only act by her agents and through them carry out and execute the purposes for which all governments are created, the practical effect of the decision in the Osborn case was to nullify the Eleventh Amendment and restore the rule established by the majority holding in the Chisholm case, which had been so promptly reversed and repudiated by the people of these United States. It needs no argument to demonstrate that the provisions of the Eleventh
Amendment are as valueless and unsubstantial as "the baseless fabric of a dream," if they apply only to suits where a State is made a party to the record, if the relief sought can in substance and effect be attained by coercing into action or restraining from action those officers and agents of a State through whom alone it can or must act to perform its functions of government.

The force of these or like considerations must have been recognized by the Supreme Court of the United States, because, in 1828, in Governor of Georgia vs. Madrazo, 1 Peters, 110, we find that the Court, again speaking through Chief Justice Marshall, said:

"Where the Chief Magistrate of a State is sued, not by his name, but by his title of office, and the claim made upon him is entirely in his official character, we think the State itself may be considered as a party to the record."

In Cunningham vs. Railroad Co., 109 U. S., 447, it was in effect held that where, upon the face of the record, it is manifest that a defendant has no individual interest in the controversy, and that the only relief sought is against such defendant in his official capacity as the representative of the State, the suit is in law against the State, and a Federal Court has no jurisdiction thereover.

In Poindexter vs. Greenhow (114 U. S., 270, 287) it was regarded as the settled doctrine of the Supreme Court "that the question whether a suit is within the prohibition of the Eleventh Amendment is not always determined by the nominal parties to the record."

In Haygood vs. Southern, 117 U. S., 52, there was involved the validity of certain warrants alleged to have been issued by the State of South Carolina, but the State denied any obligation therefor, and relief was sought by a bill in equity filed against certain State officers without making the State a formal party. In this case, the court recognized that it was not necessary for a State to be a formal party to the record in order to receive the protection of the Eleventh Amendment, and, among other things, said:

"Though not nominally a party to the record, it is the real and only party in interest, the nominal defendants being the
officers and agents of the State, having no personal interest in
the subject matter of the suit; and defending only as represen-
tatives of the State. And the things required by the de-
crees to be done and performed by them are the very things
which, when done and performed, constitute a performance
of the alleged contract by the State. The State is not only the
real party to the controversy, but the real party against which
relief is sought by the suit, and the suit is therefore substan-
tially within the prohibition of the Eleventh Amendment to
the Constitution of the United States, which declares that 'the
judicial power of the United States shall not be construed to
extend to any suit in law or equity commenced or prosecuted
against one of the United States by citizens or another State,
or by citizens or subjects of any foreign State.'"

Further, Mr. Justice Matthews, speaking for the Court,
said:

"If this case" (Hagood vs. Southern) "is not within the
class of those forbidden by the constitutional guaranty to the
States of immunity from suits in Federal tribunals, it is diffi-
cult to conceive the frame of one which would be. If the State
is named as a defendant it can only be reached either by mesne
or final process through its officers and agents; and a judgment
against it could neither be obtained nor enforced, except as
the public conduct and government of the ideal political body
called a State could be reached and affected through its official
representatives. A judgment against these latter, in their
official and representative capacity, commanding them to per-
form official functions on behalf of the State according to the
dictates and decrees of the Court, is, if anything can be, a
judicial proceeding against the State itself. If not, it may
well be asked what would constitute such a proceeding? In
the present case the decrees were not only against the defend-
ants in their official capacity, but, that there might be no mis-
take as to the nature and extent of the duty to be performed,
also against their successors in office."

In this way the Court gradually enlarged its holding in
the Osborn case to conform to the manifest purpose and inten-
tion of the Eleventh Amendment so as to afford immunity to a
sovereign State from suit, whenever it may be a party either
by name to the record or in substance and effect through its chosen officers charged with administering its functions of government.

But whatever doubts may have existed in respect of the effect of the Eleventh Amendment and as to whether it was necessary for a State to be a party to the record to be entitled to its protection from suit in a Federal Court by a citizen of another State, such doubt would seem to have been removed and the question finally settled by the decision of the Supreme Court in the case of In re Ayres, 123 U. S., 443, decided in 1887, which arose upon substantially the following facts:

Under a bill in equity filed by the holders of sundry bonds and tax receivable coupons of Virginia, against the Attorney General and Auditor of Virginia, and certain county officers, a Circuit Court of the United States for the Eastern District of Virginia had entered an order enjoining the Attorney General of that Commonwealth from bringing suit under a certain statute of Virginia, in its name and on its behalf, for the recovery of taxes in payment of which the taxpayers had previously tendered said tax receivable coupons, which were refused under the authority of a later statute of said Commonwealth. The Attorney General did not obey the injunction, and having been proceeded against for contempt of court and fined $500 and committed to the custody of the marshal until the fine was paid, the Attorney General sued out in the Supreme Court of the United States a writ of habeas corpus and asked to be discharged upon the ground that the Circuit Court had no jurisdiction of the original case, because it was, in substance and effect, a suit against the State of Virginia, though that Commonwealth was not made a party to the record.

The contention made on behalf of the Attorney General was sustained by the Supreme Court in an opinion wherein the question now under consideration was exhaustively considered, and thereon the Court, speaking through Mr. Justice Matthews, among other things, said:

"The relief sought is against the defendants, not in their individual, but in their representative, capacity as officers of the State of Virginia. The acts sought to be restrained are the bringing of suits by the State of Virginia in its own name
and for its own use. If the State had been made a defendant to this bill by name, charged according to the allegations it now contains—supposing that such a suit could be maintained—it would have been subjected to the jurisdiction of the court by process served upon its Governor and Attorney General, according to the precedents in such cases (New Jersey vs. New York, 5c Pet., 284); if a decree could have been rendered enjoining the State from bringing suits against its taxpayers, it would have operated upon the State only through the officers who by law are required to represent it in bringing such suit, viz.: the present defendants, its Attorney General and the Commonwealth's attorneys for the several counties. For a breach of such injunction these officers would be amenable to the Court as proceeding in contempt of its authority, and would be liable to punishment therefor by attachment and imprisonment. The nature of the case as supposed is identical with that of the case as actually presented in the bill, with the single exception that the State is not named as a defendant. How else can a State be forbidden by judicial process to bring actions in its name except by constraining the conduct of its officers, its attorneys and agents? And if all such officers, attorneys and agents are personally subjected to the process of the Court, so as to forbid their acting in its behalf, how can it be said that the State itself is not subjected to the jurisdiction of the Court as an actual and real defendant? * * * 

The very object and purpose of the Eleventh Amendment were to prevent the indignity of subjecting a State to the coercive process of judicial tribunals at the instance of private parties. It was thought to be neither becoming nor convenient that the several States of the Union, invested with that large residuum of sovereignty which had not been delegated to the United States, should be summoned as defendants to answer the complaints of private persons, whether citizens of other States or aliens, or that the course of their public policy and the administration of their public affairs should be subject to control by the mandates of judicial tribunals, without their consent and in favor of individual interest. To secure the manifest purposes of the constitutional exemption granted by the Eleventh Amendment requires that it should be interpreted, not literally
and too narrowly, but fairly and with such breadth and largeness as effectually to accomplish the substance of its purpose. In this spirit it must be held to cover not only suits brought against a State by name, but also those against its officers, agents and representatives, where the State though not named as such, is nevertheless the only real party against which alone, in fact, the relief is asked, and against which the judgment or decree effectively operates."

We submit that this holding and the sound reasons upon which it was predicated should have settled the question that whether a State is an actual party in the sense of the prohibition of the Constitution is not to be determined alone by an inspection of the record.

In Pennoyer vs. McConnaughy (1890), 140 U. S., 1, the Supreme Court of the United States maintained the jurisdiction of the Circuit Court of a bill in equity filed by a citizen of California against the Governor, Secretary of State and Treasurer of Oregon, comprising the Board of Land Commissioners of that State, to restrain and enjoin them from selling and conveying a large amount of land in that State to which the plaintiff asserted title. The Federal jurisdiction was invoked upon the ground that the defendants were claiming to act under a statute of Oregon which impaired the obligation of the contract between the vendor of plaintiff and said State. The jurisdiction of the court was challenged upon the ground that the suit in legal effect was against the State, and the Supreme Court, speaking through Mr. Justice Lamar, recognized the doctrine established in the Ayers case, and, among other things, said:

"It is well settled that no action can be maintained in any Federal Court by the citizens of one of the States against a State, without its consent, even though the sole object of such suit be to bring the State within the operation of the constitutional provision which provides that 'no State shall pass any law impairing the obligation of contracts.' This immunity of States from suit is absolute and unqualified, and the constitutional provision securing it is not to be so construed as to place the State within the reach of process of the court. Accordingly, it is equally well settled that a suit against the officers
of a State, to compel them to do the acts which constitute a
performance by it of its contracts, is, in effect, a suit against
the State itself.

"In the application of this latter principle two classes of
cases have appeared in the decisions of this Court, and it is in
determining to which class a particular case belongs that dif-
ferring views have been presented. The first class is where
the suit is brought against the officers of the State, as repre-
senting the State's action and liability, thus making it, though
not a party to the record, the real party against which the
judgment will so operate as to compel it to specifically per-
form its contracts. Re Ayers, 123 U. S., 433 • • •

"The other class is where a suit is brought against defend-
ants, who, claiming to act as officers of the State, and under the
color of an unconstitutional statute, commit acts of wrong and
injury to the rights and property of the plaintiff, acquired
under a contract with the State. Such writ, whether brought
to recover money or property, in the hands of such defendants,
unlawfully taken by them in behalf of the State, or for com-
pensation in damages, or, in a proper case, where the remedy
at law is inadequate, for an injunction to prevent such wrong
and injury, or for a mandamus, in a like case, to enforce upon
the defendant, the performance of a plain legal duty, purely
ministerial, is not within the meaning of the Eleventh Amend-
ment as an action against the State. Osborn vs. Bank of the
United States, 22 U. S., 738." • • •

And then, as showing that the suit was not against the
officers of the State as representing its action and liability, the
Court said:

"In this connection it must be borne in mind that this suit
is not nominally against the Governor, Secretary of State and
Treasurer, as such officers, but against them collectively as the
Board of Land Commissioners."

Following the Pennoyer case, we come to the cases of
Reagan vs. Trust Co., 154 U. S., 362, decided in 1893, and
Smythe vs. Ames, 169 U. S., 466, decided in 1897, in which,
upon a mere casual examination, it might seem that the doc-
trine so clearly enunciated in the Ayers case had been some-
what departed from, but a careful examination into the facts
and statutes involved in those cases discloses nothing which should abate the scope and effect of the holding in the Ayers case. These suits may be generally described as having been instituted by stockholders, as in Reagan's case, and by railroad companies, as in Smythe vs. Ames, against administrative boards of the States of Texas and Nebraska, to enjoin the enforcement of statutes of those States which were claimed to violate the rights of complainants under the Federal Constitution. The Attorney General of Texas was enjoined as a defendant in the Reagan case, and in Smythe vs. Ames, the Attorney General of Nebraska was made a defendant.

In the Texas case the Attorney General was not a member of the board whose action was sought to be restrained, but he was specially charged with the duty of enforcing the orders of said board. In the Nebraska case the Attorney General of that State was a member of the board and was made a defendant as a member of the board and not as Attorney General (Proutt vs. Starr, 188 U. S., 537). In both of these cases one of the grounds upon which the jurisdiction was maintained as against the Attorney General was that he was specially charged with the administration and execution of an unconstitutional statute. But an examination of these cases shows another independent ground which clearly barred either Texas or Nebraska from claiming indemnity from suit under the Eleventh Amendment.

In Reagan's case it was shown that the very act the constitutionality of which was assailed, and under which the Board of Railroad Commissioners claimed authority to act, provided that suits might be instituted by any individual interested against the Railroad Commission "in any court of competent jurisdiction in Travis County, Texas," with right of appeal to a higher court. And the Supreme Court of the United States, speaking through Mr. Justice Brewer, in answer to the contention that under the provisions of this statute only the State court had jurisdiction to proceed against the commissioners, said:

"It may be laid down as a general proposition that whenever a citizen of a State can go into the courts of a State to defend his property against the illegal acts of its officers, a
citizen of another State may invoke the jurisdiction of the Federal Courts to maintain a like defense. A State cannot tie up a citizen of another State having property rights in its territory invaded by enforced acts of its own officers to suits for redress in its own courts. Given a case where a suit can be maintained in the courts of the State to protect the property rights, a citizen of another State may invoke the jurisdiction of the Federal Courts. ** It comes, therefore, within the very terms of the act. It cannot be doubted that a State, like any other government, can waive exemption from suit.”

So we submit the holding of the Supreme Court in Reagan’s case that that suit was not to be regarded as a suit against the State, and therefore within the protection of the Eleventh Amendment, must be taken in connection with the further holding in the same case, that where a State has consented that its officers may be sued in one of its own courts in respect of rates established by a statute, it must be held to have waived its immunity from suit in respect of the same matter in the Circuit Court of the United States, instituted by a citizen of another State.

In Barney vs. New York, 193 U. S., 432, in referring to the case of Reagan vs. Trust Co., Mr. Chief Justice Fuller stated that the jurisdiction was sustained in that case on the ground that the suit was “authorized by the State statute.”

And in Smythe vs. Ames, it is shown that the Nebraska statute assailed as unconstitutional, and under which the members of the Board of Transportation made defendants in that case were acting, authorized any railroad company claiming that the rates were unreasonable to bring an action against the State of Nebraska before the Supreme Court of that State, in the name of the railroad company or companies constituting the same. In this way the State of Nebraska waived its immunity from suit, and though the defense was made in the answer, nevertheless, it was not argued upon the argument of the case in the Supreme Court, and that court, speaking through Mr. Justice Harlan, reaffirmed its holding in the Reagan case, and quoted therefrom the excerpt from Justice Brewer’s opinion, hereinbefore set out, to the effect that wherever a citizen of a State can go into the courts of a State to defend
his property against the illegal acts of its officers, a citizen of another State may invoke the jurisdiction of the Federal Court to maintain a like defense.

Further, that the Supreme Court had not intended to depart from its holding in the Ayers case or to weaken the authority of that case by its decision in Reagan's case and in Smythe vs. Ames, is demonstrated by its holding in the case of Pitts vs. McGhee, 172 U. S., 516, decided in January, 1899, the opinion of the Court being rendered through Mr. Justice Harlan, who delivered the opinion in Smythe vs. Ames. This suit was instituted by McGhee and Fink, receivers of a railroad company, in the Circuit Court for the Northern District of Alabama, against the Governor and Attorney General of that State, to restrain the enforcement of the provisions of a statute of Alabama prescribing maximum rates of toll to be charged on a certain bridge across the Tennessee River. The act assailed imposed a penalty for each time the owners or operators of the bridge in question demanded or received any higher rate of toll than was prescribed by it. The relief asked was an injunction prohibiting the Governor and Attorney General from instituting or procuring the institution of any proceedings against the receivers of said railroad company, or either of them, by mandamus, or otherwise, to compel the observance of and obedience to the statute in question in reference to the rate of tolls fixed thereby, and from instituting or procuring to be instituted any proceeding against said receivers, or either of them, for the forfeiture of the franchise of said railroad company in and to the bridge in question, on account of the refusal to charge the rates of toll over it fixed by said act. The injunction as prayed for was granted. After the suit was instituted, the prosecuting attorney in the district in which the cause was pending was made a defendant and the injunction extended to him. In the progress of the cause complainants dismissed the suit as to the State and the cause was discontinued as to the Governor. But the case was heard upon the motion to dismiss the bill upon the ground that suit was, in effect and law, one against the State, in violation of the Constitution of the United States.

It is proper to note that the injunction in this case was
asked for upon the ground that the Alabama statute in question was in contravention of the Constitution of the United States (Art. 10, Sec. 1, and the Fourteenth Amendment), in that it violated the terms of a previous contract, and that the tolls or rates prescribed were "unreasonable and virtually amounted to a confiscation of plaintiff's property, in that such a legislative enactment deprived the owners of the bridge of their property without due process of law, and denied to them the equal protection of the law." The Court held that the suit was against the State, and therefore prohibited by the Eleventh Amendment. After reaffirming the principles settled in the Ayers case, the Court, speaking through Mr. Justice Harlan, said:

"If these principles be applied to the present case there is no escape from the conclusion that, although the State of Alabama was dismissed as a party defendant, this suit against its officers is really one against the State. As a State can act only by its officers, an order restraining those officers from taking any steps, by means of judicial proceedings, in execution of the statute of February 9th, 1895, is one which restrains the State itself, and the suit is consequently as much against the State as if the State were named as a party defendant on the record. If the individual defendants held possession of or were about to take possession of, or commit any trespass upon, any property belonging to or under the control of the plaintiffs, in violation of the latter's constitutional rights, they could not resist the judicial determination, in a suit against them, of the question of the right to such possession; by simply asserting that they held or were entitled to hold the property in their capacity as officers of the State. In the case supposed they would be compelled to make good the State's claim to the property, and could not shield themselves against suit because of their official character (Tindall vs. Wesley, 167 U. S., 204). No such case is before us. It is to be observed that neither the Attorney General of Alabama nor the prosecutor for the Eleventh Judicial Circuit of the State appears to have been charged by law with any special duty in connection with the Act of February 9, 1895. In support of the contention that the present suit is not one against the State, reference was
made by counsel to several cases, among which were Poindexter vs. Greenhow, 114 U. S., 270; Allen vs. McConnaughty, 140 U. S., 1; Re Tylor, 149 U. S., 164; Reagan vs. Trust Co., 154 U. S., 362; Scott vs. Donald, 165 U. S., 158; Smythe vs. Ames. 169 U. S., 466. Upon examination it will be found that the defendants in each of these cases were officers of the State, specially charged with the execution of a State enactment alleged to be unconstitutional, but under the authority of which, it was averred, they were committing, or were about to commit, some specific wrong or trespass to the injury of the plaintiff's rights. There is a wide difference between a suit against individuals holding official positions under a State, to prevent them, under the sanction of an unconstitutional statute, from committing by some positive act a wrong or trespass, and a suit against officers of a State merely to test the constitutionality of some State statute, in the enforcement of which those officers will act only by formal judicial proceedings in the courts of the State. In the present case, as we have said, neither of the State officers named held any special relation to the particular statute alleged to be unconstitutional. They were not expressly directed to see to its enforcement. If so, because they were law officers of the State, a case could be made for the purpose of testing the constitutionality of the statute by an injunction suit brought against them, then the constitutionality of every act passed by the Legislature could be tested by a suit against the Governor and Attorney General, based upon the theory that the former as the executive of the State was, in a general sense, charged with the execution of all its laws, and the latter, as Attorney General, might represent the State in litigation involving the enforcement of its statutes. That would be a very convenient way for obtaining a speedy judicial determination of questions of constitutional law which may be raised by individuals, but it is a mode which cannot be applied to States of the Union consistently with the fundamental principle that they cannot, without their assent, be brought into any court at the suit of private persons. If their officers commit acts of trespass or wrong to the citizen, they may be individually proceeded against for such trespasses or wrongs. Under the view we take of the question, the citizen
is not without effective remedy when proceeded against under a legislative enactment void for repugnancy against the supreme law of the land; for, whatever the form of proceeding against him, he can make his defense upon the ground that a statute is unconstitutional and void. And that question can be ultimately brought to this court for final determination."

Therefore, we submit that it is manifest that the decision in Fitts vs. McGhee clearly shows that the Supreme Court, up to 1899, had no thought of departing from its holding in the Ayers case, and did not intend that its decisions in the Reagan case and in Smythe vs. Ames should weaken the authority of the Ayers case, expressly reaffirmed in Fitts vs. McGhee. We further submit that the holding in Fitts vs. McGhee can be subject to no other construction, but that any suit against an officer of a State in which it is sought to restrain him from instituting "a judicial proceeding to enforce the laws of a State is as much against the State as if the State were made and named as a formal party defendant on the record."

Further, we submit that with confidence it may be insisted that prior to the decisions of the Federal Supreme Court in the Minnesota Rates case no decision of that court in any way departed from the rule supposed to have been settled in the Ayers case and reaffirmed in no uncertain terms in Fitts vs. McGhee. On the contrary, an examination of the decision discloses express recognition of that rule, even as late as Gunter vs. Atlantic Coast Line Railroad, 200 U. S., 293, decided in 1905.

In this case the jurisdiction of the Federal Circuit Court against an officer of the State of South Carolina was sustained upon the ground that in the main case the State of South Carolina had voluntarily waived the question of jurisdiction, and submitted herself to the decision of the court, and upon well-settled principles it has been more than once adjudged that a State may do this in the exercise of her sovereignty—she may either plead her immunity from suit or she may voluntarily submit herself to the jurisdiction of a court. Upon this ground jurisdiction was maintained, but the authority of Fitts vs. McGhee was expressly recognized in the following language taken from the opinion of Mr. Justice White, speaking for the Court:
"It is insisted that the court below had no power to restrain the Attorney General of South Carolina and the counsel associated with him from prosecuting in the State courts actions authorized by the laws of the State, and hence that the court erred in awarding an injunction against said officers. Support for the proposition is rested upon the terms of the Eleventh Amendment and the provisions of Sec. 40 of the Revised Statutes. * * * The soundness of the doctrine relied upon is undoubted. In re Ayres, 123 U. S., 443; Fitts vs. McGhee, 172 U. S., 516. The difficulty is that the doctrine is inapplicable to this case."

We have stated the reasons for the sound distinction made by the Court.

The question as to whether any given case is a suit against a State has been considered by the Supreme Court in cases instituted against officers of the United States and it has been held "that the question whether a particular suit is one against a State within the meaning of the Constitution must depend upon the same principles that determine whether a particular suit is one against the United States." Tindal vs. Wesley, 167 U. S., 216.

And in Oregon vs. Hitchcock, 202 U. S., the Court, in determining whether a suit against an officer of the United States was in effect a suit against the United States, further recognized the principle of Ayers and Fitts vs. McGhee cases, and, speaking through Mr. Justice Brewer, said:

"The question whether the United States is a party to a controversy is not determined by the merely nominal party on the record, but by the question of the effect of the judgment or decree which can be entered."

It would be interesting, but time forbids, to examine the numerous decisions of the Federal Circuit Court recognizing soundness and authority of Fitts vs. McGhee. We will not attempt to analyze these cases, but merely cite some of them:

Union Trust Co. vs. Starnes, 119 Fed., 790.
Morenci Copper Co. vs. Freer, 127 Fed., 199.
W. U. Telegraph Co. vs. Andrews, 154 Fed., 95, in which Judge Triber made an exhaustive review of the authorities bearing upon the question under discussion here.

It might be interesting to note that the opinion in the Arbuckle case (113 Fed., 616), refusing an injunction against a State official upon the authority of Fitts vs. McGhee, was written by Mr. Justice Day, while Circuit Judge, and concurred in by Judges Lurton and Wanty. This was affirmed, upon appeal to the Supreme Court of the United States (Arbuckle vs. Blackburn, 191 U. S., 405), but the particular question of jurisdiction, under consideration here, was not discussed by that Court.

From these decisions, prior to the decision in the Minnesota Rate case, the following rules or principles would seem to have been firmly established:

First: No Federal Court has jurisdiction of a suit against an officer of a State by a citizen of another State when the State, though not named in the pleadings, is the real party against whom relief is asked and the judgment will operate.

Second: A State must be considered the real party in interest when the relief will have the effect of depriving the State of funds or property in its possession.

Third: When an officer of a State seeks to enforce a State law or collect a payment due to a State by formal judicial proceedings instituted in the exercise of his discretion in the courts of a State in such proceedings representing the State's action and liability, his action is the act of the State.

Fourth: A State can act in the enforcement of its laws in its own courts only through its properly selected and authorized agents and officers, and, therefore, when it is sought to enjoin a State officer as such from instituting such a suit, an injunction against such officer is in effect against a State, proceeding in the only way in which it can act to secure an observance of its laws.

Fifth: If an individual, although he be an officer of a State, claims to hold property under the color of an unconstitutional statute, or is about to take possession or commit any trespass upon such property, he cannot resist judicial determination in a suit against him on the question of the
right of such possession or threatened trespass by merely asserting that he held or was entitled to hold or seize the property in his possession as an officer of the State, and that for this reason the suit is one against the State.

Sixth: The exemption of the State from judicial processes does not protect its officers and agents from being personally liable to an action of tort by a private person whose rights or property they have wrongfully invaded or injured, even by the authority of the State, and when the remedy at law is inadequate, its officers may be restrained by injunction from doing positive acts for which they would be personally liable for taking or injuring the plaintiff's property, in violation of the Constitution or laws of the United States.

Seventh: That an action to restrain the enforcement of an unreasonable and confiscatory schedule of rates against a board or commission charged with its enforcement, the members of which act merely in an administrative or ministerial capacity, is not one against the State, if the act itself be unconstitutional and void.

Note: Such is practically the classification by Judge Treiber in W. U. Telegraph Co. vs. Andrews, 154 Fed., 95.

With these principles enforced as the measure and limit of Federal jurisdiction in suits against a State, or an officer of a State representing its action and liability, while we may think that as applied to administrative boards the jurisdiction has been construed so as to extend beyond what was within the intention of the framers of the Constitution, nevertheless, the sovereignty of the State and the just rights of the people thereof not surrendered to the general government, could not be seriously impaired, but would be preserved for the continued performance of those functions of government which were intended to be exercised by the States under our constitutional system.

But what has become of the rule that a suit against an officer of a State representing the State's action and liability is a suit against the State itself? What has become of the just principle supported by repeated adjudications of the Federal Supreme Court, that Federal judicial power shall not be construed to extend to prevent a State from instituting by formal
judicial proceedings in its own court an action to test or enforce one of its own laws? With all respect to that magnificent tribunal, whose history we revere, and the members of which we admire for their learning and ability, and respect for their conscientious devotion to duty as it is given to them to see it, we submit that the decision in the Minnesota Rate case, in respect of the constraint imposed upon the State of Minnesota, through her Attorney General, will, if it remains the law of the land or the rule of interpretation to be applied in similar cases, leave the States open to attack in the inferior Federal courts, and prevent enforcement by orderly and formal judicial proceedings of the statutes of the States in their own courts.

In the discussions of the Minnesota case, both by the profession and among the laity, to which my attention has been called, it has seemed to me that the real and dangerous point adjudged has been somewhat overlooked or obscured by the consideration given to that part of the decision holding that the Minnesota rate statutes were void upon their face by the drastic and excessive penalties imposed for any violation thereof. We may concede that such holding furnished abundant cause for discussion, or that such decision was startling, even to the profession. But the real point decided, and the one in which, to my mind, far-reaching danger lurks, was the holding, contrary to the manifest intention of the Eleventh Amendment, as I view it, and certainly in the teeth of the decisions in the Ayers and Fitts vs. McGhee cases, that a Federal Circuit Court has power to coerce a State through her chief law officer, and enjoin the institution of formal judicial proceedings in a court of the State to test and enforce the provisions of a State statute. In other words, that power is conferred upon a Federal Court to deny to a State admission into its own courts, or the right to proceed therein in the only way and through the only officers in and by which a State can act.

I may be pardoned for agreeing with that distinguished jurist, Mr. Justice Harlan, who, in effect, stated in his dissenting opinion, that the question of the validity of the Minnesota statute itself was immaterial to the real question before
the Court. Ana it would seem that upon sound principles, even under the Fourteenth Amendment, unless the action of the Attorney General of Minnesota was the action of the State, the Federal Circuit Court was without jurisdiction. If the action of the Attorney General was the action of the State, then unless the Eleventh Amendment to the Constitution has been nullified, the State and its officers were immune from suit.

But this phase of the question it is not my purpose to discuss, because, as I view it, the question as to whether a particular statute is valid or invalid by reason of its drastic terms and provisions, is unimportant when considered in connection with the holding that the court had power to coerce the sovereign State of Minnesota through her Attorney General—the only officer through whom she might institute judicial proceedings in her own courts. That this holding of the court is not supported by any of its previous decisions, and particularly the cases of Reagan vs. Trust Co., Smythe vs. Ames, and Pennoyer vs. McConnaughy, hereinbefore referred to, and that it is in direct opposition to the principles announced and supposed to be settled in the Ayers and Fitts vs. McGhee cases—neither of which, however, was overruled in terms—we have but to refer to the statutes and facts upon which the holding was predicated.

In 1906 and 1907, the Legislature of Minnesota passed certain acts regulating the intra-state carriage of freight and passengers by railroads operating in that State. The rates prescribed materially reduced those theretofore in force, and drastic penalties were provided for each violation of the provisions of said acts by the railroads, their officers and agents—some of the acts making such violation a misdemeanor punishable by imprisonment in a county jail for a period of three months, while other acts declared a violation to be a felony punishable by a fine not exceeding $5,000 or by imprisonment in the State penitentiary for a period not exceeding five years, or by both such fine and imprisonment.

The Attorney General of Minnesota was not a member of the Railroad and Warehouse Commission of that State, and neither he nor said commission was charged in and by said
acts with any special duty in relation thereto, as was the case in the Texas and Nebraska acts to which reference has been made.

The suit in which the Attorney General was punished for contempt was instituted by two shareholders of the Northern Pacific Railroad Company by bill in equity filed in the Federal Court against said railway company, Edward T. Young, Attorney General of Minnesota, the several members of the State Railroad and Warehouse Commission, and others. The relief sought was predicated upon allegations that the rate statutes denied to the railway companies and their stockholders the equal protection of the law, and deprived them of their property without due process of law, in violation of the Fourteenth Amendment to the Federal Constitution. A temporary injunction was prayed against all of the defendants from enforcing said acts—the injunction as to Young was made against him as Attorney General of the State of Minnesota. He was enjoined from instituting any suit or action to enforce said statutes or compel obedience thereto.

Prior to the issuance of the injunction against him, the Attorney General specially appeared in the Federal Court and in proper manner challenged the jurisdiction of said court and moved to dismiss the suit against him on the ground that the State had not consented to be sued, and because the bill was exhibited against him "as, and only as, the Attorney General of the State of Minnesota," to restrain him from exercising the discretion vested in him to commence appropriate proceedings on behalf of the State to enforce or test the validity of the State laws; and he directly raised the question that the suit as to him in his official capacity was, in effect and law, against the State, in violation of the Eleventh Amendment.

On the day following the granting of said injunction the State of Minnesota "on the relation of Edward T. Young, Attorney General," instituted an action in one of the State courts against said railway company, in which the only relief sought was a mandamus ordering said railroad company to put in force and effect the freight rates and charges prescribed in what was known as the Commodities Act. Thereupon a rule was entered in the Federal Court against the Attorney General
to show cause why he should not be punished for contempt. Answering said rule the Attorney General renewed his objections to the jurisdiction of the court, and, disclaiming any intention to treat the court with disrespect in the commencement of the proceedings for mandamus, insisted that said mandamus proceedings were brought and instituted by him solely on behalf of the State of Minnesota, and that no other action or proceeding was pending or contemplated by him against said railway company except said mandamus proceedings to test and enforce the statutes of the State of Minnesota; and that the injunction issued against him by said Federal Court was in conflict with the Eleventh Amendment to the Constitution of the United States, as the same had been interpreted and applied by the Federal Supreme Court, and therefore he conceived it to be his duty as Attorney General to commence said mandamus proceedings for and on behalf of the State. Upon the hearing the rule was made absolute, and the Attorney General was ordered to dismiss the mandamus proceedings in the State Court, and for his disregard of said injunction in instituting said mandamus proceedings he was fined the sum of $100, and ordered to "stand committed to the custody of the marshal" of the court until said fine was paid and until he had purged himself of his contempt by dismissing or causing to be dismissed said mandamus proceedings.

Thereupon the Attorney General applied to the Supreme Court of the United States by petition for writ of habeas corpus and certiorari, upon the ground that he was held in 3ο υωμοια μη λεγοντα the Constitution of the United States. In his petition he set out the provisions of the Constitution and statutes of Minnesota, showing that the duties imposed upon the Attorney General of that State are of an executive and discretionary nature, and by apt averments insisted that he neither intended to commit, nor could he commit, any trespass upon the property of the railway company, and that all that he was doing, or intended to do, was to commence formal judicial proceedings in the appropriate State Court against said railway company, its officers and agents, to compel them to put in force the freight rates and charges prescribed by said Commodities Act, and thereupon he again, as he had in
response to the rule to show cause, challenged the jurisdiction of the Federal Circuit Court upon the ground that the suit was "one against said State, in violation of the Eleventh Amendment to the Constitution of the United States, and that, therefore, the same is and was, in so far as he is concerned, beyond the jurisdiction of said court."

Upon the hearing of the questions raised by the petition the Supreme Court, after maintaining the jurisdiction of the Federal Court upon the ground that the suit involved the decision of a Federal question, held:

That the statutes assailed by the bill were unconstitutional upon their face, without regard to the insufficiency of the rates, because the enormous fines and possible imprisonment denounced for each violation thereof operated to deny to the railroad companies the equal protection of the law by practically repelling them from the courts except at the risk of possible confiscation of their property.

It is not this holding, except that, in my opinion, it was not material to or controlling of the real question before the court, upon the habeas corpus proceedings, that I challenge and bring before the bar of your judgment. Men may differ about it, but, in my opinion, it is sound. The door of the court house should ever be open, and the right to a judicial hearing should not be so fettered and burdened as to compel the citizen believing himself to be injured in his person or property to suffer the wrong, where an insistence upon his rights means a possible destruction of his property.

But, upon the vital question, and, in my opinion, the only one, before the court in the habeas corpus proceedings, the could held that, notwithstanding the original suit was against Mr. Young, not as an individual but as the Attorney General of the State, representing not himself but the State of Minnesota, and through whom it was sought to prevent the State from instituting formal judicial proceedings in her own courts to test in an orderly manner the validity of her laws, nevertheless, the suit was not against the State, within the prohibition of the Eleventh Amendment, even assuming that said amendment "exists in full force."
It is this holding which, in my opinion, is pregnant with peril to the autonomy and integrity of the States.

If there be one right or attribute of sovereignty that a State possesses under our constitutional system which ought to be beyond the control in any mode of the Federal Government, or any of its courts, it is the right to appear in its own courts and institute therein formal judicial proceedings through its law officers for the purpose of "seeking the guidance of those courts in matters of a justiciable nature." No irreparable wrong or trespass is thereby committed, and if a Federal right is invaded by the judgment of a State court, the citizen has the right to have that judgment reviewed by the Supreme Court of the United States. In this way, no injury is done the citizen, and the power and rights, both of the States and the Union—both of whom are sovereigns under our dual system of constitutional government—are preserved in harmony and given their full constitutional force and effect.

That this decision, that a Federal Court has power to seize upon the law officer of a State and imprison him for merely instituting formal judicial proceedings on behalf of the State in one of its courts, denies to the State the right of appearance and representation in her own courts, would seem obvious to anyone giving any sort of consideration to the practical effect of such holding, and that it contains elements of danger far-reaching and threatening disaster to our constitutional system would seem equally manifest. More than once, has that august tribunal said that an indestructible State under our constitutional system is necessary to an indestructible Union, but a State cannot be a sovereign, its rights cannot be indestructible, if placed under the tutelage and control of the inferior Federal Courts.

The perils threatened to our institution from this, in my opinion, revolutionary holding, are so well stated by Mr. Justice Harlan in his dissenting opinion, that I may call your attention thereto. Among other things, he said:

"This principle, if firmly established, would work a radical change in our governmenetal system. It would inaugurate a new era in the American judicial system and in the relation of the National and State governments. It would enable the
subordinate Federal courts to supervise and control the official action of the States as if they were 'dependencies' or provinces. It would place the States of the Union in a condition of inferiority never dreamed of when the Constitution was adopted or when the Eleventh Amendment was made a part of the supreme law of the land. I cannot suppose that the great men who formed the Constitution ever thought the time would come when a subordinate Federal Court, having no power to compel a State, in its corporate capacity, to appear before it as a litigant, would yet assume to deprive the State of the right to be represented in its own courts by its regular law officer. That is what the court below did as to Minnesota, when it adjudged that the appearance of the defendant, Young, in the State Court, as the Attorney General of Minnesota, representing his State as its chief law officer, was a contempt of the authority of the Federal Court, punishable by fine and imprisonment.'

"If the Federal Court could thus prohibit the law officer of the State from representing it in a suit brought in the State Court, why might not the bill in the Federal Court be so amended that it could reach all the district attorneys in Minnesota and forbid them from bringing to the attention of grand juries and the State Courts violations of the State act by the railroad company? And if a grand jury was about to inquire into the acts of a railroad company in respect to the matter of its rates, why may not the Federal Court, proceeding upon the same grounds on which it has moved against the Attorney General, enjoin the finding or returning of indictments against the railway company? If an indictment was returned against the railway company, and was about to be tried by a petit jury, why could not the Federal Court, upon the principles now announced, forbid the jury to proceed against the railroad company, and, if it did, punish every petit juryman as for contempt of court? Indeed, why may it not lay its hands on the Governor of the State and forbid him from appealing to the courts of Minnesota in the name of the State to test the validity of the act in question? And why may not the Federal Court lay its hands even upon the judge of the State Court-
itself whenever it proceeds against the railway company under
the State law?"

These far-reaching consequences threatened by their hold-
ing must have been deemed worthy of serious consideration by
the majority of the court, because we find, in their opinion,
they say:

"It is proper to add that the right to enjoin an individual,
even though a State official, from commencing suits under cir-
cumstances already stated, does not include the power to re-
strain a court from acting in any case brought before it, either
of a civil or criminal nature, nor does it include power to pre-
vent any investigation or action by a grand jury. The latter
body is part of the machinery of a criminal court, and an in-
junction against a State court would be a violation of the
whole scheme of our government. If an injunction against an
individual is disobeyed, and he commences proceedings before
a grand jury or in a court, such disobedience is personal only,
and the court or jury can proceed without incurring any pen-
alty on that account."

But, may I ask, if an injunction issuing out of a Federal
Court, restraining a State, or its grand jury, from attempting
to enforce a statute of the State would be a "violation of the
whole scheme of our government," is it not difficult to perceive
why an order of the court forbidding the chief law officer of
the State to represent it in its courts in a particular case and
thus closing the doors of the State Court against the State,
would not be equally violative of the whole scheme of our gov-
ernment? The majority opinion holds that the law officers—
those officers only through whom that intangible thing called
a State can appear and be represented in court—may be re-
strained, seized and imprisoned, but that the "court or jury
can proceed without incurring any penalty on that account."
How, I ask, could a court proceed in the absence of the officer
representing the State? Could the court prepare the pleadings,
enter motions, elicit proof? Can the judge through whom the
court speaks sit as an impartial arbiter between the parties
and at the same time represent one of them? We submit that
such course would be a monstrous perversion of the functions
of a court, and equally "violative of the whole scheme of our
government."

Further, it is important to consider the next restriction
by judicial interpretation upon the constitutional rights of the
States which may be foreshadowed by the majority opinion.
I have shown that the majority holding was that the suit was
not in effect and law against the State of Minnesota within the
prohibition of the Eleventh Amendment, even if it be assumed
that said amendment "exists in full force and * * * 
without cutting it down," but evidently the argument had been
made that the adoption of the Fourteenth Amendment abro-
gated the Eleventh Amendment, or at least removed its inhibi-
tion upon the exercise of Federal judicial power over a suit
against a State, whenever State action conflicted with the pro-
visions of the later amendment. And it is significant to note
that, in disposing of this contention, the Court said:

"We think that whatever the rights of complainants may
be, they are largely founded upon that amendment, but a de-
cision of this case does not require an examination or decision
of the question whether its adoption in any way altered or
limited the effect of the earlier amendment. We may assume
that each exists in full force."

Does this indicate that we may look to see the next wave
in the tide of judicial construction further lap over the land-
marks of the Constitution, and that the barriers against as-
sault upon the State set up by the people in the Eleventh
Amendment were torn away by the adoption of the Fourteenth
amendment, restoring the doctrine of the Chisholm case, that
the Federal Courts have power to entertain a suit directly
against a State by a citizen of another State? And if by a
citizen of another State, why not by a citizen of the same State?
While such a holding would more openly proclaim the humili-
ation of these proud commonwealths—the people of which
thought that by the Federal compact they were forming an
indestructible Union of indestructible States—it would not
more effectually place every department, legislative, executive,
and judicial, of the States, and the States themselves, under
the control of and subject to supervision by inferior Federal
Courts, than the holding that these departments and arms of
government can be manacled by coercing the officers through whom alone the State can perform its functions of government.

I know that in certain quarters, and from men in high position—whose devotion to their ideals of government must be admitted—there has been a demand for more power in the Federal Government. Less than two years ago (October 4, 1906), in his speech at Harrisburg, we find the amazing declaration from the executive head of this government, that the power of the Federal Government should be increased "through executive action * * * and through judicial interpretation." Never before in the history of this or any other constitutional government has the chief executive thereof, sworn to preserve and defend its fundamental provisions, publicly advocated their subversion "through executive action and judicial interpretation." Has this virus infected our Federal Supreme Court—the Court which declared (Texas vs. White, 7 Wall., 700), that "the Constitution in all its provisions looks to an indestructible Union of indestructible States!"

If an increase of power in the general government has become necessary to the execution of the purposes of its creation, and to an adequate performance of its obligation to conserve the common interests and general welfare of all the people of this country, in respect of matters either surrendered by the States or with which, under changed conditions and modern development, they cannot effectively deal, let that increase in power come, not through "executive action" or through "judicial interpretation," but by proper amendments to the Constitution, in the manner provided by the people themselves when they entered into the Federal compact. Let us stick to the old ways and apply constitutional methods, if need be, to constitutional amendment.

I would appeal from the brilliant and versatile Roosevelt to the warning of the incomparable Washington, who said:

"If in the opinion of the people the distribution of the constitutional powers be in any part wrong, let it be corrected in the way which the Constitution designates. But let there be no change by usurpation, for this, though it may in the one
instance be an instrument of good, is the ordinary weapon by which free governments are destroyed."

It is true that this is an age of intense activity. Events are rapidly marching into history, but if the process of amendment or regeneration pointed out by the Constitution should be deemed too slow the answer is sufficient that the wisdom of the fathers so provided. As said by Mr. Chief Justice Fuller (Pollock vs. Farmers’ Loan & Trust Co., 168 U. S., 165), upon the question of amending the Constitution:

"The ultimate sovereignty may be thus called into play by a slow and deliberate process, which gives time for mere hypothesis and opinion to exhaust themselves and for the sober second-thought of every part of the country to be asserted."

The process of amendment cannot be too deliberate. The phraseology in which the change is sought to be made cannot be too clear. Suppose that Congress, when proposing the Eleventh Amendment, had appended thereto a proviso that nothing therein contained should be construed to deprive a Federal Court of jurisdiction of a suit against a State officer by a citizen of another State to enjoin such officer from appearing for or representing the State in its own courts to test or enforce a statute of the State; or suppose that Congress, in proposing the Fourteenth Amendment, had added to the provision "No State shall deprive any person of his life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws," a proviso to the effect that "the judicial power of the United States shall extend to suits at law or in equity to restrain an officer of a State from instituting judicial proceedings in the courts of such State to test or enforce a statute thereof in conflict with this amendment"—can it be conceived that these provisions or additions to either of said amendments would have been sanctioned and ratified by the people or by the States?"

There is now no question before the American people more vitally affecting their interests and deserving of more serious consideration by the patriotic American lawyer, than is demanded by this attack upon the rights of the sovereign States. The validity of the statutes in question, or for that matter of
any particular law, is of minor importance, but the question of the rights of the State to perform their governmental functions without Federal intermeddling or coercion goes to the very foundation of the governmental compact.

Unless the rights of the States shall be kept inviolate, and particularly the right of each to order and control its own affairs and domestic relations, the inevitable result will be the destruction of that nice "system of checks and balances" resultant from the distribution of power between the States and the general government, so essential to the harmony and permanence of our political institutions.

How shall these rights be kept inviolate? In what way shall the perils that threaten to mar the symmetry and sap the strength of the fair fabric of constitutional liberty, erected by the fathers, be averted, and the powers of government be restored to their proper channels? Is an amendment to the fundamental law necessary, or can it be accomplished by amending the Federal judiciary acts so as to limit and curb the power of the inferior Federal Courts as now exercised?

These questions confront the American lawyer. If their ultimate solution results in restoring to the States their autonomy and political integrity, and secures their domestic affairs from the intermeddling of inferior Federal Courts, it will be due to the patriotism and statecraft of the American lawyer.

As I have said, it is not my purpose at this time to suggest a remedy, but sound an alarm that the forces of centralization, by most insidious approaches, threaten the safeguards and barriers of constitutional government. I do not altogether agree with Senator Bailey in his statement in the United States Senate on April 10, 1906, that "for thirty years the people of this country have been accustomed to see the courts exercise arbitrary and extraordinary power; and a new generation of lawyers has come to the Bar who think it treason and call it anarchy to restrain these powers," yet there have been times when this has seemed too near the truth. But I am one of those who believe that, in the mad race for power and wealth, which would seem to be the dominant characteristics of the times, there still exists an uncorrupted devotion to the Constitution of the fathers that can best be awakened to the dangers threat-
ening those institutions by a patriotic, independent and free-
spoken Bar. The untrammelled and unbought press, that en-
gine of publicity and mighty agent for good, will carry your
warning and reinforce your arguments to the people, the ulti-
mate sovereigns of this country, before whom the President,
the Congress and even the Supreme Court, the mightiest ju-
dicial tribunal in all history, must bow. This is your mission.
You are the hereditary defenders of the Constitution, whose
history is the record of the devotion of American lawyers to the
principles of civil liberty and constitutional government.

It has been said that this is a government of lawyers—
certain it is that in every period of our national life they have
been upon the heights of citizenship and in the vanguard when-
ever there was need for champions of constitutional govern-
ment to lead an assault upon, or withstand the encroachments
of, centralized power. From their ranks great men tower.
The colossal figure of Jefferson, with the Declaration of Inde-
pendence held aloft as a beacon light, will be a herald of liberty
to the people of all ages.

But it is that magnificent rank and file of American law-
yers, the leaders of thought, the trusted counsellors in every
community, to whom I would appeal to guard well the sacred
fire upon the altar of civil and political liberty. In every crisis
in our history, duty has called the American lawyer to the
service of the State. Our country is his client—the perpetuity
of her institutions will be his compensation.

And if he shall continue true to the traditions of his pro-
fession—if he remains superior to the fascination of power
and the charm of wealth—he is best equipped to serve and
save his country; and he "who saves his country saves all
things, and all things saved do bless him."
CONSTITUTION

ARTICLE I.

Objects.

The objects of the Association are to foster legal science, maintain the honor and dignity of the profession of law, to cultivate professional ethics and social intercourse among its members, and to promote improvements in the law and the modes of its administration.

ARTICLE II.

Election of Members.

All nominations for membership shall be made by the Local Council of a county or Bar Association when such Local Council or Bar Association exists; when there is no such Local Council or Bar Association in any county, nominations for such county shall be made by the Central Council. All nominations thus made or approved shall be reported by the council to the Association, and all whose names are reported thereupon become members of the Association; provided, that if any member demands a vote upon any name thus reported, the Association shall thereupon vote thereon by ballot. Five negative votes shall be sufficient to defeat any election for membership. But interim, the Central Council, upon recommendation of any Local Council, shall have the power to elect applicants to membership.

ARTICLE III.

Membership.

Any person shall be eligible to membership in this Association who shall be a member of the Bar of this State, in good standing, and who shall also be nominated as herein provided.

ARTICLE IV.

Officers.

The officers of this Association shall consist of one President, three Vice-Presidents, a Secretary and Treasurer, a Central Council, who shall be the Board of Directors, under the charter, to be chosen by the Association. One of the members of the Central Council shall be its chairman. Each of these officers shall be elected at each annual meeting for the next ensuing year, but the same person shall not be elected President for two years in succession. All such elections shall be by ballot. The officers
elected shall hold office until their successors are elected and qualified according to the Constitution and By-Laws.

**Article V.**

**Central Council.**

The Central Council shall consist of five members, and shall be, at all times, an advisory board of consultation and conference, when called on for that purpose by the President, or any Vice-President who may, for the time being, be acting as President.

**Article VI.**

**Local Council.**

The President, by and with the advice and consent of the Central Council, may establish a Local Council in any county in the State by issuing a warrant to that effect, naming therein the persons composing such Local Council. Each Local Council shall consist of not less than three nor more than seven members. No person shall be eligible to appointment as a member of any Local Council who is not at the time a member of this Association.

**Article VII.**

**Election of Members.**

All members of this convention signing the charter, and all members elected as herein provided shall become members of the Association upon the payment of the admission fee as herein provided for. But after the adjournment of this convention all nominations for membership shall be made as herein provided.

**Article VIII.**

**Annual Dues.**

Each member shall pay three dollars to the Treasurer as annual dues, and no person shall be qualified to exercise any privilege of membership who is in default. Such dues shall be payable, and the payment thereof enforced, as may be provided by the By-Laws. Members shall be entitled to receive all publications of the Association free of charge. The admission fee shall be three dollars, to be paid as the member is elected. The admission fee shall be in lieu of all dues for the first year.

**Article IX.**

**Adoption of Amendments of By-Laws.**

By-Laws may be adopted or amended at any annual meeting of the Association by a majority of the members present.
ARTICLE X.

Committees.

The following committees shall be annually appointed by the President for the year ensuing, and shall consist of five members each:
2. On Judicial Administration and Remedial Procedure.
3. On Legal Education and Admission to the Bar.
5. On Grievances.
6. On Obituaries and Memorials.

A majority of those members of any committee, or of the Central Council, who may be present at any meeting of such committee or council, shall constitute a quorum for the purpose of such meeting. Vacancies in any office provided for by the constitution shall be filled by appointment by the President, and the appointees shall hold office until the next meeting of the Association.

ARTICLE XI.

Central Council.

The Central Council shall perform such duties as may be assigned to them by the President, or as may be defined by the By-Laws, except as herein otherwise directed.

ARTICLE XII.

Meeting of the Association.

This Association shall meet annually at such time and place as the Central Council may select, and those present at such meeting shall constitute a quorum. The Secretary shall give sixty days' notice of time and place of such meeting, either by publication in a public newspaper or by personal communication.

ARTICLE XIII.

Duties of the President.

The President shall open each annual meeting of the Association with an address, in which he shall communicate the most noteworthy changes in the statute law, on points of general interest, made in the State and by the Congress during the preceding year.

ARTICLE XIV.

Alterations or Amendments of the Constitution.

This Constitution may be altered or amended by a vote of three-fourths of the members present at any annual meeting, but no such change shall be made at any meeting at which less than twenty members are present.
ARTICLE XV.

Duties of the Local Council.

Each Local Council shall perform such duties as it may be called upon to perform by the President, or as may be defined by the By-Laws.

ARTICLE XVI.

Suspension of Members.

Any member of the Association may be suspended or expelled for misconduct in his relations to this Association, or in his profession, on conviction thereof, in such manner as may be prescribed by the By-Laws.
BY-LAWS

I.—PRESIDENT.

The President shall preside at all meetings of the Association, and in case of absence, one of the Vice-Presidents shall preside.

II.—SECRETARY.

The Secretary shall keep a record of all meetings of the Association, and of all other matters of which record shall be deemed advisable by the Association, and shall conduct the correspondence of the Association, with the concurrence of the President. He shall notify the officers and members of their election, and shall keep a roll of the members, and shall issue notices of all meetings.

III.—SECRETARY AND TREASURER.

The Secretary and Treasurer shall collect, and, under the direction of the Central Council, disburse all funds of the Association; he shall report annually, and oftener, if required; he shall keep regular accounts, which shall be at all times open to inspection of the members of the Association. His accounts shall be audited by the Central Council. Before discharging any of the duties of this office the incumbent shall execute a bond, with good and sufficient surety, to be approved by the President, payable to the President and his successors in office, in the sum of one thousand dollars, for the use of the Association, and conditioned that he will well and faithfully perform the duties of his office so long as he discharges any of the duties thereof.

IV.—CENTRAL COUNCIL.

The Central Council shall meet at least once every three months, and oftener if called together by the President. They shall have power to make such regulations, not inconsistent with the Constitution and By-Laws, as shall be necessary for the protection of the property of the Association, and for the preservation of good order in the conduct of its affairs. They shall keep a record of the proceedings, which shall be read at the ensuing meeting of the Association; and it shall be their duty to present business for the Association. They shall have no power to make the Association liable for any debts amounting to more than half the amount in the Treasurer's hands in cash, and not subject to prior liabilities. They shall perform such other duties as are required of them by the Constitution, or as may be assigned to them by the President.

V.—ORDER OF BUSINESS.

At each annual, stated, or adjourned meeting of the Association the order of business shall be as follows:

1. Reading minutes of preceding meeting.
2. Address of the President.
5. Election, if any, to membership.
8. Miscellaneous Committees.

The order of business may be changed by a vote of the majority of the members present.

No person in discussion shall occupy more than ten minutes at a time, nor be heard more than twice on the same subject.

The parliamentary rules and orders contained in Cushing's Manual, except as otherwise herein provided, shall govern all meetings of the Association.

VI.—MEMBERS ELECT.

If any person elected does not, within one month after notice of his election, signify his acceptance of membership by a letter to the Secretary to that effect, and by payment of his admission fee, he shall be deemed to have declined to become a member.

VII.—COMMITTEES.

In pursuance of Article X of the Constitution, there shall be the following standing committees:

1. A Committee on Jurisprudence and Law Reform, who shall be charged with the duty of attention to all proposed changes in the law, and of recommending such as, in their opinion, may be entitled to favorable consideration of the Association.

2. A Committee on Judicial Administration and Remedial Procedure, who shall be charged with the duty of the observation of the working of our judicial system, the collection of information, the entertaining and examination of projects for a change or reform in the system, and of recommending from time to time to the Association such action as they may deem expedient.

3. A Committee on Legal Education and Admission to the Bar, who shall be charged with the duty of examining and reporting what change it is expedient to propose in the system and mode of legal education, and of admission to the practice of the profession in the State of Tennessee.

4. A Committee on Publication, who shall be charged with the duty of examining and reporting upon all matters proposed to be published by authority of the Association, and pertaining to any of the subjects for the advancement of which the Association is created.

5. A Committee on Grievances, who shall be charged with the hearing of all complaints which may be made in matters affecting the interest of the legal profession and the practice of law, and the administration of justice, and to report the same to this Association, with such recommendations as they may deem advisable; and said committee shall, in behalf of
the Association, institute and carry on such proceedings against offenders, and to such extent as the Association may order, the cost of such proceedings to be paid by the Treasurer, on the warrant of the Central Council, out of moneys subject to be appropriated by them.

VIII.—APPOINTMENT.

Each of the standing committees shall consist of five members, and shall be appointed annually by the President of the Association, and shall continue in office until the annual meeting of the Association next after their appointment, and until their successors are appointed, with power to adopt rules for their own government, not inconsistent with the Constitution or these By-Laws. Any standing committee of the Association may, by rule, provide that three successive absences from the meetings of the committee, unexcused, shall be deemed a resignation by the member so absent from his place upon the committee. Any standing committee of the Association may, by rule, impose upon its members a fine for non-attendance, and may provide for the disposition of the fines collected under such rule.

IX.—CHARGES AGAINST MEMBERS.

Whenever any complaint shall be preferred against a member of the Association for misconduct in his relation to this Association, or in his profession, the member or members preferring such complaint shall present it to the Committee on Grievances, in writing, and subscribed by him or them, plainly stating the matter complained of, with particulars of time, place and circumstances.

The committee shall thereupon examine the complaint, and if they are of the opinion that the matter therein alleged is of sufficient importance, shall cause a copy of the complaint, together with a notice of not less than five days, of the time and place when the committee will meet for the consideration thereof, to be served on the member complained of, either personally or by leaving the same at his place of business during office hours, properly addressed to him. If, after hearing his explanations, the committee shall deem it proper that there shall be a trial of the charge, they shall cause a similar notice of five days of the time and place of trial to be served on the party complained of.

The committee shall be furnished with a list of the witnesses, their names and place of residence, who it is proposed shall be examined to sustain the charge, which shall accompany the complaint when made to the committee; and when the day is set for trial the member complained of, upon his demand therefor, shall be entitled to a copy of said list of witnesses. At the time and place appointed for the trial, or at such other time as may be granted by the committee, the member complained of shall file a written answer or defense. Should he fail to do so, the committee may proceed thereupon to the consideration of the complaint.

The committee shall thereupon, and at such other times and places as they may adjourn to, proceed to hear the evidence adduced and try the complaint, and shall determine all questions of evidence.
The complainant, and the member complained of, shall each be allowed to appear personally and by counsel, who must be members of the Association; and the complainant, and the member complained of, shall each be competent witnesses. The witnesses shall vouch for the truth of their statements on their word of honor. The committee shall have power to summon witnesses; and if any such witnesses are members of the Association, a neglect or refusal to appear may be reported to the Association by the committee, and treated as a misconduct.

The committee, of whom at least four must be present at the trial, except that a less number may adjourn from time to time, shall hear and decide the allegations submitted to them; and if they find the complaint or any material part of it, to be true, they shall so report to the Association, with their recommendation as to the action to be taken thereon.

The decision of the committee shall be served on the member complained of, and if the decision be that the complaint, or any material part thereof, is true, and in that case only, the committee shall also serve a copy of the complaint, answer, if there be an answer and decision on the President of the Association; and if requested, either by the member or members complaining, or the member complained of, shall annex thereto a copy of the evidence taken, which said document shall be regarded as a report of the committee to the Association.

Every such report shall be acted on only by the Association at an annual, stated or adjourned meeting of the Association, and of which the member complained of shall have due notice, to be served upon him by direction of the Committee. The Committee shall thereupon proceed to take such action on said report as they may see fit, provided only that no member shall be expelled unless by the vote of two-thirds of the members present and voting.

Whenever any trial shall be determined on, the member complained of may object, for cause, to any of the members of said committee, which said causes he shall state in writing and present to the committee. Thereupon the committee shall report the facts to the President, and inclose to him a copy of the objections for cause; and the President shall forthwith summon the Central Council to meet with him and determine what weight, if any, the objections for cause are justly entitled to have; and if the President and a majority of the Central Committee present and voting shall determine that the objections for cause are not well taken, and the same are overruled, the President shall so inform the Committee on Grievances; but if the President and a majority of the Central Council, as aforesaid shall determine that any of said objections for cause, to any member of the Committee on Grievances is well taken, then the President shall so inform said committee, and forthwith appoint another member or members to supply the temporary vacancy caused thereby; and the method herein provided shall be resorted to until a committee is obtained against whom the member complained of urges no just objection for cause.
If any member of the Bar of the State of Tennessee shall collect money in his professional capacity for a client, and wrongfully fail or refuse to account for the same, it shall be the duty of the President, or any Vice-President of the Bar Association of Tennessee, on complaint being made to him by any person, to appoint a suitable committee from among the members of this Association to investigate the case, and report the facts to the officer appointing this committee; and if, in the judgment of that officer, a case can be made out against the offender, said appointing officer shall order same or another committee to prosecute the offender in the courts for disbarment.

If any member of the Bar of Tennessee shall be guilty of any unprofessional conduct, for which he could, under the then existing laws of the land, be disbarred, it shall be the duty of the President and Vice-Presidents of the Bar Association of Tennessee to proceed to have him disbarred, as indicated in the by-law just preceding this.

All the foregoing proceedings shall be kept secret, except as their publication is hereinbefore provided for, unless otherwise provided for by this Association.

X.—NOMINATIONS AND ELECTIONS.

Nominations of candidates to fill the respective offices may be made at the time of election by any member, and as many candidates may be nominated for each office as members may wish to name, but all elections, whether to office or membership, must be by ballot. A majority of the votes cast be sufficient to elect to office, but five negative votes shall be sufficient to defeat an election to membership.

XI.—SUPPLYING VACANCIES.

All vacancies in any office or committee of this Association shall be filled by appointment of the President, and the person thus appointed shall hold for the unexpired term of his predecessor; but if a vacancy occur in the office of President, it shall be filled by the Association at its first stated meeting occurring more than ten days after the happening of such vacancy, and the person elected shall hold for the unexpired term of his predecessor.

XII.—ANNUAL DUES.

All annual dues of this Association shall be paid on or before the first day of March in each year, and any member failing to pay his annual dues by that time shall be in default, and, upon the order of the President, the Secretary shall strike the name of such member from the rolls of membership, unless for good cause shown the President shall excuse such default, in which last event the name of such member shall, upon the order of the President be restored by the Secretary to the roll of membership.

XIII.—AMENDMENT OF BY-LAWS.

These by-laws may be amended at any stated, adjourned or annual meeting of the Association by a majority of those present.
XIV.—RESIGNATION OF OFFICERS AND MEMBERS.

Any officer may resign at any time upon settling his accounts with the Association. A member may resign at any time upon the payment of all dues to the Association; and from the date of the receipt by the Secretary of a notice of resignation, with an endorsement thereon by the Treasurer that all dues have been paid as provided, the person giving such notice shall cease to be a member of the Association.

XV.—SALARY OF SECRETARY AND TREASURER.

The annual salary of the Secretary and Treasurer shall be two hundred dollars, one-half of which shall be due on the first day of May, and the other half on the first day of November in each year, but may be paid earlier, or at other times, if the Central Council shall, in writing, so direct; but this shall be in full of all compensation to him. No other officer of the Association shall receive any salary or compensation.

XVI.—SPECIAL MEETING.

If the President and Central Council shall determine that it is necessary for the Association to hold any other meetings during the year than the regular annual meeting, the same shall be held at such time and place as the President and Central Council may fix, upon twenty days' notice of such time and place, to be given by the Secretary by publication in a newspaper; and the Secretary shall give this notice upon the order of the President.

XVII.—NUMBER OF PAPERS.

Not more than six papers, in addition to the regular order of business, shall be read at each annual meeting, and not more than one at each of the sessions of the Association.

XVIII.—LENGTH OF PAPERS.

No paper read before the Association shall occupy more than thirty (30) minutes.

XIX.—CENTRAL COUNCIL TO FURNISH SUMMARY OF REPORT.

It shall be the duty of the chairman of each standing committee of the Association to send to the Secretary of the Association at least thirty (30) days before each annual meeting the report and recommendations which his committee intends to present to the meeting. The Secretary shall, as soon as practicable after the receipt of the same, print and distribute to the members of the Association a brief summary of the recommendations contained in said reports.

XX.—HONORARY MEMBERS.

All Chancellors and Judges of the Superior Courts of this State, and resident Judges of the Federal Courts, are honorary members of this Association, and they are relieved from the payment of admission fees and dues.
# LIST OF MEMBERS

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<tr>
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<th>Name</th>
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<td>1</td>
<td>Acklen, Jos. H.</td>
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<td>Adcock, B. G.</td>
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<td>3</td>
<td>Adgood, A.</td>
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<td>Ailor, J. R.</td>
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<td>Akers, Albert W.</td>
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<td>Albright, Edward</td>
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<td>Anderson, J. H.</td>
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<td>Andrews, Garnett S.</td>
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<td>Atchley, J. Arthur.</td>
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<td>Armstrong, C. A.</td>
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<td>Bachman, E. K.</td>
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<td>Baker, Lewis M. G.</td>
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<td>Banks, Geo. E., Sr.</td>
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<td>Banks, Lem.</td>
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<td>Barber, Clarence W.</td>
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<td>Bartels, R. Lee.</td>
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<td>Bates, Wm. B.</td>
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<td>Baxter, Ed.</td>
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<td>Baxter, Perkins</td>
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378 Terry, W. L. .................................................... Memphis
379 Thomas, W. G. M. ............................................. Chattanooga
380 Tillman, A. M. ............................................... Nashville
381 Tillman, G. N. ............................................... Nashville
382 Tipton John W. ............................................... Elizabethton
383 Thornburgh, Jno. M. ........................................... Knoxville
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405 Warriner, H. C. ............................................... Memphis
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415 Welcker, W. L. ................................................ Knoxville
416 White, George T. ............................................ Chattanooga
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LIST OF HONORARY MEMBERS.

1 Allison, John, Chancellor ........................................ Nashville
2 Allison, Judge M. M. ........................................ Chattanooga
3 Barton, Judge R. M., Jr ........................................ Chattanooga
4 Beard, Judge W. D. ........................................ Memphis
5 Bearden, W. S., Chancellor ..................................... Shelbyville
6 Bell, Judge B. D ........................................ Gallatin
7 Bond, Judge John R. ........................................ Brownsville
8 Bright, Judge John M. ........................................ Fayetteville
9 Burke, Judge George L. ........................................ Kingston
10 Cartwright, Judge J. A ........................................ Nashville
11 Cooper, John S., Chancellor ................................. Trenton
12 Eldridge, Judge Thos. E ........................................ Memphis
13 Everett, Judge S. J. ........................................ Jackson
14 Frazier, Hon. Jas. B ........................................ Nashville
15 Galloway, Judge J. S ........................................ Memphis
16 Hawkins, A. G., Chancellor ................................ Huntingdon
17 Haynes, Hal. H., Chancellor ................................. Bristol
18 Heiskell, F. H., Chancellor ................................ Memphis
19 Heiskell, Gen. J. B ........................................ Memphis
20 Higgins, Judge Joe C ........................................ Fayetteville
21 Holding, Judge Samuel ......................................... Columbia
22 Houston, Judge W. C ........................................ Woodbury
23 Hull, Judge Cordell ........................................ Gainesboro
24 Kyle, H. G., Chancellor ....................................... Rogersville
25 Lamb, Judge A. B ........................................ Paris
26 Lansden, D. L., Chancellor ................................ Cookeville
27 Laughlin, Judge H. W ........................................ Memphis
28 Littleton, Martin W ........................................ New York
29 Lurton, Judge H. H ........................................ Nashville
30 Maiden, Judge R. F ........................................ Dresden
31 Malone, Judge Walter ........................................ Memphis
32 Malone, Judge Thos. H ........................................ Nashville
33 McAlister, Judge W. K ....................................... Nashville
34 McCall, Judge John E ........................................ Memphis
35 McConnell, T. M., Chancellor .............................. Chattanooga
36 McHenderson, Judge G ........................................ Rutledge
37 Moss, Judge John T ........................................ Memphis
38 Neil, Judge M. M ........................................ Trenton
39 Nelson Judge T. A. R ........................................ Knoxville
40 Palmer, Judge Horace E ...................................... Murfreesboro
41 Pittman, Judge A. B ........................................ Memphis
42 Richardson, Judge John E ................................ Murfreesboro
43 Sanford, Judge E. T ........................................ Knoxville
44 Shields, Judge John K. ........................................Knoxville
45 Sneed, Judge Jos. W. ........................................Knoxville
46 Spencer, Judge Selden P. ....................................St. Louis, Mo.
47 Stout, J. W., Chancellor .....................................Cumberland City
48 Taft, Judge Wm. H. ........................................Washington, D. C.
49 Taylor, Judge John M. .......................................Lexington
50 Tyler, Judge A. J. .............................................Bristol
51 Wilson, Judge S. F. ..........................................Gallatin
52 Woods, Judge Levi S. ........................................Lexington
53 Young, Judge J. P. ...........................................Memphis
PROCEEDINGS OF THE
TWENTY-EIGHTH
ANNUAL MEETING
OF THE
BAR ASSOCIATION
of
TENNESSEE

Held at Chattanooga, Tenn.
June 23rd, 24th, and 25th
1909
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BAR ASSOCIATION OF TENNESSEE

PRESIDENTS SINCE ORGANIZATION

1881-2.
W. F. COOPER........................................Nashville

1882-3.
B. M. ESTES........................................Memphis

1883-4.
ANDREW ALLISON.................................Nashville

1884-5.
XENOPHON WHEELER..............................Chattanooga

1885-6.
W. C. FOLKES......................................Memphis

1886-7.
J. W. JUDD.........................................Springfield

1887-8.
H. H. INGERSOLL.................................Knoxville

1888-9.
L. B. McFARLAND.................................Memphis

1889-90.
J. M. DICKINSON.................................Nashville

1890-1.
G. W. PICKLE......................................Dandridge

1891-2.
M. M. NEIL..........................................Trenton

1892-3.
ED. BAXTER........................................Nashville

1893-4.
W. A. HENDERSON...............................Knoxville

1894-5.
JAMES H. MALONE...............................Memphis
PROCEEDINGS OF THE

1895-6.
ALBERT D. MARKS.................................................Nashville

1896-7.
W. B. SWANEY.................................................Chattanooga

1897-8.
C. W. METCALF.................................................Memphis

1898-9.
J. W. BONNER.................................................Nashville

1899-1900.
W. L. WELCKER.................................................Knoxville

1900-1901.
GEORGE GILLHAM.................................................Memphis

1901-1902.
J. H. ACKLEN.................................................Nashville

1902-1903.
R. E. L. MOUNTCASTLE........................................Morristown

1903-1904.
JNO. E. WELLS.................................................Union City
EDWARD T. SANFORD........................................Knoxville

1904-1905.
JOHN H. HENDERSON........................................Franklin

1905-1906.
EDWARD T. SANFORD........................................Knoxville

1906-1907.
F. H. HEISKELL.................................................Memphis

1907-1908.
M. T. BRYAN.................................................Nashville

1908-1909.
FOSTER V. BROWN.............................................Chattanooga

1909-1910.
HARRY B. ANDERSON.............................................Memphis
OFFICERS FOR 1909-1910.

PRESIDENT.
HARRY B. ANDERSON........................................Memphis

VICE-PRESIDENTS.
L. D. SMITH.......................................................Knoxville
PERCY D. MADDIN.................................................Nashville
A. B. LAMB..........................................................Paris

SECRETARY AND TREASURER.
CHAS. H. SMITH.....................................................Knoxville

CENTRAL COUNCIL.
JOHN W. FARLEY, Chairman...................................Memphis
FRANCIS FENTRESS, Jr..........................................Memphis
HUBERT FISHER................................................Memphis
JAS. H. ANDERSON..............................................Chattanooga
JOHN BELL KEEBLE..............................................Nashville

JURISPRUDENCE AND LAW REFORM.
JULIAN WILSON, Chairman .................................................. Memphis
H. R. BOYD .............................................................................. Memphis
R. G. BROWN ........................................................................... Memphis
D. C. YOUNG ............................................................................ Sweetwater
FLOYD ESTILL ........................................................................ Winchester

JUDICIAL ADMINISTRATION AND REMEDIAL PROCEDURE.
T. A. WRIGHT, Chairman ......................................................... Knoxville
JOHN H. FRANTZ ...................................................................... Knoxville
FOSTER V. BROWN ................................................................. Chattanooga
W. B. SWANEY ......................................................................... Chattanooga
CHAS. M. BRYAN ....................................................................... Memphis

LEGAL EDUCATION AND ADMISSION TO THE BAR.
LYMAN CHALKLEY, Chairman .................................................. Sewanee
H. H. INGERSOLL ..................................................................... Knoxville
W. L. FRIERSON ....................................................................... Chattanooga
H. N. CATE ................................................................................. Newport
CHAS. C. TRABUE .................................................................... Nashville

PUBLICATION.
W. J. DONALDSON, Chairman ................................................... Knoxville
H. H. SHELTON ......................................................................... Bristol
JOHN S. FLETCHER .................................................................. Chattanooga
S. M. FOSTER ............................................................................ Rockwood
R. H. STICKLEY ......................................................................... Memphis

GRIEVANCES.
R. LEE BARTELS, Chairman ..................................................... Memphis
D. W. De HAVEN ....................................................................... Memphis
A. S. BUCHANAN ....................................................................... Memphis
ROBERT T. CAMERON ............................................................. Chattanooga
C. J. ST. JOHN ............................................................................. Bristol
OBITUARIES AND MEMORIALS.

JESSE M. LITTLETON, Chairman..............................................Winchester
GEORGE W. CHAMLEE..........................................................Chattanooga
R. A. HAGGARD......................................................................Waynesboro
C. W. METCALF......................................................................Memphis, his
ERNEST R. TAYLOR................................................................Morristown

COMMITTEE TO MEMORIALIZE THE SUPREME COURT OF TENNESSEE RELATIVE TO RAISING THE STANDARD FOR ADMISSION TO THE BAR OF TENNESSEE.

HARRY B. ANDERSON, Chairman..................................................Memphis
H. H. INGERSOLL.....................................................................Knoxville
JNO. W. GREEN.......................................................................Knoxville

COMMITTEE TO DRAFT AN OATH TO BE ADMINISTERED TO THOSE ADMITTED TO PRACTICE LAW IN THE STATE OF TENNESSEE.

C. J. ST. JOHN, Chairman.............................................................Bristol
PAUL CAMPBELL..................................................................Chattanooga
HILL McALLISTER................................................................Macon
O. C. CONATSER....................................................................Monterey
I. W. CRABTREE.....................................................................Winchester
PROCEEDINGS
OF THE
Twenty-eighth Annual Meeting of the Bar Association of Tennessee,
HELD AT
Chattanooga, Tenn., July 23rd, 24th and 25th, 1909.

FIRST DAY—WEDNESDAY, JUNE 23rd.
MORNING SESSION.

The Twenty-eighth Annual Meeting of the Bar Association of Tennessee was called to order at Hotel Patten, Chattanooga, Tennessee, at 10 o'clock A. M., June 23rd, 1909, by the President, Hon. Foster V. Brown, of Chattanooga. The president introduced Hon. James M. Trimble, of Chattanooga, who delivered the address of welcome, speaking as follows:

MR. PRESIDENT AND MEMBERS OF THE STATE BAR: I will not endeavor to make a formal address of welcome. Addresses of welcome have been delivered so appropriately and on so many different occasions, and in so many different cities that words of any kind are without form and void.

The man who coined the phrase "glad hand" understood the human heart. A fitting welcome requires the extension of a friendly hand. I cannot reach all now, but I want to assure you on behalf of the Chattanooga Bar that to all of you from all of us there is reaching forth a glad hand of friendly greeting.

We welcome you, not mainly—I will not say because—not because you have among you men of eminent attainments and lofty position—we greet you mainly as representatives of a profession which stands second to none in devotion to the highest ideals of citizenship. We are glad to have with us an organized body of men whose lives are not solely given to the acquisition of money. Your Association has done much to raise the standard of our profession and
to remove the abuses existing in our laws. We know you would have
done much more if you had the power. It has strongly organized
resistance to the efforts to make our profession a business devoted
to the pursuit of gain; and we would strengthen that resistance and
courage it by every means in our power. Lawyers, as a general
thing, meet each other in some form of contest. Almost daily we
see in the public prints criticism of the law, and of lawyers, and of
courts; and we hear the complaints of our disappointed clients and
defeated suitors. We find as we go along some man giving us a new
discovery of the joke about dishonest lawyers, which was first pub-
lished in the first year book. In the midst of all this we often for-
get that a man who makes a gibe about dishonest lawyers, trusts
them with his life, with his honor and his fortune. We forget that a
lawyer's word is seldom broken; that other men are required to give
bond and surety, but a lawyer's naked word is accepted as his bond.
We may forget that in every struggle for human rights the lawyer
has been a leader. He more than others, in peace and war, without
counting the cost, has given his time, his knowledge and his life for
the public good. We may forget that without fear of public opinion
or hope of reward he maintains and conducts his cases to the extent
of his ability, and sees that even the vilest of men will not be de-
prived of the rights which are his by law.

Now, it is fit that we, as lawyers, will not forget these things,
but that we should be mindful of the dignity of our high calling.
Therefore, at times we come together, not as adversaries or con-
tenders, but laying aside for the time the practice of our profession
we come as other people and consider it as a theory and as a science.
Because you have come in that way to meet with us in friendly fel-
lowship, we rejoice at your coming. While you are here our court
houses are silent, our offices are closed, and we are all here to give
you a continual welcome. If any member of the local bar shall fail
in anything that would make your stay more pleasant or advance the
purposes of your meeting, be assured that the failure is of ability or
of knowledge, not of good wishing. We are one in our welcome, and
we are all at your service.

President Brown then introduced Col. W. A. Henderson
of Knoxville, who responded to the address of welcome as
follows:

Mr. President, Lawyers of Tennessee, Their Wives and Sweethearts:

I will bear in mind, Mr. President, the promise you extracted from
me that I will quit talking after I have said my piece one time.

I have had the pleasure, I may say the kindness of having attend-
ed nearly every Bar Association meeting of the State of Tennessee.
It has always been a delightful occasion, and none more so than the
promise of the present one. I see before me many faces that I have known a long time, and I like to be with you; and I know from your generous welcome that you like for me to be with you. (Great applause.)

Since we last met we have had another year's campaign; and no profession of people have been busier than the lawyers during the past twelve months. New questions have arisen, new questions are now before you, diversified questions that extend from Greasy Rock to Forked Deer, from the mountains to the river, and from the caves of the Moonshiner to the haunts of the Night Rider. (Applause.) After having got through thus far on another year, we have met to hold a council of war, to speak of the past, and prognosticate as to the future. What has the Tennessee lawyer done, and what confronts him now, in the present time?

You are now chewing over the income tax and the dividend tax, and you are reading speeches every day that the Senate at Washington are making for the home folks, and those that they do not make to the Senate. You have had every variety of question. You have initiated and put into harness a new Federal Judge—and he is making good. (Applause.) You do not see him at his best in Chattanooga. I want to tell you, because he is all the time watching for fear some one will ask him what town he is from. (Applause.) He claims that it was not his fault that he was not born in Chattanooga. The other day I heard a compliment on him, which he told me he had not heard himself. A man up in the mountain regions—a "plain mounting man"—said: "I've been noticing him; and I want to tell you that in one day he can dispense with more justice than Dave Young and George Burke both together!" (Great applause.)

I am very glad always, and all of us are, to meet, Mr. President, in this fair city of Chattanooga. In my opinion, it is the best city in the State of Tennessee—(Applause)—except Knoxville. The lawyers of Chattanooga welcome us and give us the glad hand, and we are always glad to meet you; we are especially glad to meet you on this occasion, on this side of the first of July. (Applause). The fact is, Gentlemen, there are only four big towns in Tennessee. There, at the bottom of the map, Memphis; a little higher up there is Nashville; still higher up, Chattanooga; and away up there at the top is LaFollette. (Applause.)

After the first of July Knoxville will feel very kindly towards you. She knows what fix you will be in on July second, for she is right there now; and any time later on that you want help, she will send you down a couple of dozen bootleggers. You may need them. (Laughter and applause).

Now I say that the bar of Chattanooga, and the bar of Tennessee—in my experience, from my observation—are as good lawyers as exist
in the United States of America; and I know many of them throughout the principal States east of the Rocky Mountains. (Applause).

I know lawyers in the East that make more money than the Chattanooga lawyers do; but the Chattanooga lawyer don’t know how to charge, and the Eastern lawyer does, and out-charges him. He knows better how to do it. I know a lawyer in New York City who makes on an average of seven hundred and fifty thousand dollars a year—and I can throw a rock right into this crowd and hit a better lawyer than he. (Applause).

It will teach you—to use the same illustration that I did at the outstart—from the experience of the past how to conduct the campaign that lies ahead of you. The man at the outpost in Bristol has quite different questions to confront than the man at the outpost in Trenton. They are both good lawyers, but one is fighting afoot and the other is fighting bushwhackers. It helps to meet and tell of the troubles in their front, and to gather courage for the future.

I know, Mr. President, that we shall have a pleasant and helpful meeting. And we return to you our thanks for the welcome you have so kindly given us on this occasion. (Prolonged applause).

Hon. W. L. Frierson, Chairman of the Central Council, presented the report of the Central Council, and upon motion duly seconded and passed said report was accepted and ordered spread of record. The following were recommended in said report for membership and were unanimously elected members of the Association:

Lee Douglass..................................................Nashville
John R. Turney.................................................Nashville
William R. Manier...........................................Nashville
Larkin E. Crouch.................................................Nashville
Hill McAlister..................................................Nashville
J. Norment Powell............................................Johnson City
W. W. Belew....................................................Johnson City
C. C. Collins.................................................Elizabethton
John H. Tipton.................................................Elizabethton
L. N. Spears...................................................Jasper
J. Will Taylor................................................LaFollette
D. B. Johnson................................................Gainesboro
Fred L. Mansfield..........................................Athens
W. J. Donaldson..............................................Knoxville
Lewis Tillman................................................Nashville
W. B. Lamb ........................................ Fayetteville
George M. Templeton .................................. Knoxville
George H. Newman ................................... Fayetteville
Isaac G. Philips .................................... Winchester
J. B. Templeton ..................................... Winchester
H. M. Templeton ..................................... Winchester
T. A. Embry .......................................... Winchester
Arthur Conover ....................................... Winchester
Fred G. Haggard ................................... Rockwood
Lyman Chalkley ..................................... Sewanee
G. L. Tyler ........................................ Chattanooga
R. F. McClure ....................................... Chattanooga
Thomas S. Myers .................................. Chattanooga
Miss Eleanor Conrod ................................ Chattanooga
James F. Finlay .................................. Chattanooga
John S. Fletcher ................................ Chattanooga
I. A. Vincent .................................... Chattanooga
Paul Campbell ................................ Chattanooga
Francis Martin ................................ Chattanooga
C. S. Littleton .................................. Chattanooga
A. B. Littleton ................................ Chattanooga
J. R. Woodard, Jr. ................................ Chattanooga
Jeptha Bright .................................. Chattanooga
W. A. McClure ................................ Chattanooga
J. L. Johns ........................................ Chattanooga

At the request of President Brown, Secretary Smith read a letter from the Judges of the Supreme Court of Tennessee expressing their regret at being unable to be present at the meeting of the Association on account of the extraordinary amount of work which they had to complete in a limited time.

Hon. Foster V. Brown then delivered the President's annual address, which appears in the appendix.

President Brown next introduced Judge Floyd Estill of Winchester, who read a paper on "The Life, Character and Public Services of Col. A. S. Colyar," which appears in the appendix.
BAR ASSOCIATION OF TENNESSEE

The President next called for the report of the Committee on Judicial Administration and Remedial Reform, but announcement was made that J. B. Sizer, chairman of this committee, was out of the city and the committee had no report to make.

Thereupon the President called for the report of the Committee on Legal Education and Admission to the Bar, which report was read by the Secretary, Charles H. Smith, in the absence of Robert Burrow, chairman of the committee. The report was as follows:

REPORT OF COMMITTEE ON LEGAL EDUCATION AND ADMISSION TO THE BAR.

To the Tennessee Bar Association:

The committee on Legal Education and Admission to the Bar has nothing of special local interest to report since the last meeting of the association.

The Law still has its allurements and a large number of young men have appeared before the Board of Law Examiners for examination as to their fitness to work in that wide field of endeavor.

It will no doubt be gratifying to the profession to know that during the past few years there has been a marked improvement in the standard of legal learning of applicants for law license in Tennessee. Much of the credit for this improvement is due to the statute creating a Board of Law Examiners, but no little credit is due in this regard to the law schools of the State, which have increased their course of study and lengthened the period of service before graduation. Of the four law schools in Tennessee all have as much as a two year course except one. One school has increased its course of study from one year to two years, and another has raised its standard from two years to three years.

In this connection we call attention to two of several recommendations made by the American Bar Association, to which its secretary was directed to invite the attention of all State bar associations:

1. "Recommending preliminary education equivalent to graduation from a high school as a condition of admission to the bar."

2. "Recommending three years study for candidates for admission to the bar."

Tennessee is one of the states that does not require any particular period of time for study for a candidate for law license. The time was when a license could be obtained almost for the asking. We have passed that condition of affairs, but we ought not to go too fast. It is perhaps too early to ask for a rule requiring a three year course
of study. We think, however, that conservative action will warrant us in recommending a rule in this State that will require at least two years study of the law as a condition precedent to applying for law license.

The recommendation of the American Bar Association of a rule requiring a preliminary education equivalent to graduation from a high school as a condition of admission to the bar, is in our judgment a proper one and should be adopted. We have not overlooked the argument that this will prevent some poor boys from becoming lawyers. The lawyer must have this primary education before he is qualified to practice his profession. Would it not be better for him and for the public to require the candidate to acquire this preliminary education before he is given license, and before he is held out to the public as one qualified to practice law, when, as a matter of fact, he is not capable of doing so properly or successfully?

A large majority of the failures to pass satisfactory examination is due to defective primary education, and for this reason it would seem that some such rule as that recommended by the American Bar Association should be adopted.

The Tennessee statute, creating a State Board of Law Examiners, provides that "the Supreme Court shall prescribe rules providing for a uniform system of examinations which shall govern such Board of Law Examiners in the performance of their duties." It is believed that this provision contains sufficient authority for the Supreme Court to adopt rules such as those herein suggested. If these recommendations should meet the approval of the Tennessee Bar Association, they would probably receive prompt and friendly consideration by the Supreme Court.

This report has been prepared in the absence of the other members of the committee, and without the opportunity to secure their approval.

Respectfully submitted,

ROBERT BURROW,
Chairman.

After the reading of this report, Judge H. H. Ingersoll moved the adoption of the following resolution:

Resolved, (1) That this Association has heard with pleasure and approval the report of its Committee on Legal Education and Admission to the Bar, and hereby adopts its recommendations as to literary qualifications and time of study required of candidates for admission to the bar.

(2) That the Association hereby requests the Supreme Court to so amend the rules for examination for law license and admission to the bar as to require as a condition precedent to examination that every
applicant shall have an education equal to that given in a standard high school of the state, and shall have studied law at least two years, either in a law school or in a reputable law office.

(3) That the incoming President appoint a committee of three members, himself the chairman, to memorialize the Supreme Court for the adoption and promulgation of such rule.

This motion was seconded by Col. W. A. Henderson. The following members of the Association spoke in support of said motion and urged its passage: J. L. Johns, Chattanooga; Lyman Chalkley, Sewanee; Harry B. Anderson, Memphis; H. H. Ingersoll, Knoxville, and W. B. Swaney, Chattanooga. Those who spoke in opposition to the passage of said motion were: Thomas S. Myers, Chattanooga and George L. Templeton, Knoxville. The question being called for and placed before the meeting resulted in the passage of the motion by the following vote: Ayes 37; Noes 9. The President thereupon announced that the resolution introduced by Judge Ingersoll had passed and was adopted.

Upon motion the meeting adjourned to 2 o'clock P. M.

AFTERNOON SESSION.

President Brown called the meeting to order at 2 o'clock P. M. and introduced H. H. Shelton, Referee in Bankruptcy at Bristol, who read a paper on "Bankruptcy Law, Its History and Purpose," which paper appears in the appendix.

President Brown next introduced Judge D. L. Lansden of Cookeville, who delivered an address on "Random Observations on the Police Power," which appears in the appendix.

At the conclusion of this address the Central Council, through its chairman, recommended J. H. Underwood of Clinton, and W. F. Holland of Kingston for membership in the Association. Upon vote these gentlemen were unanimously accepted and elected to membership.

The Chairman of the Central Council announced that a smoker would be tendered by the Association to its members on Friday night, June 25th at 8:30 o'clock P. M., in Hotel Patten.
On motion adjournment was taken to Friday morning and thereupon the members, their wives and friends of the Association were given a delightful automobile ride to Chickamauga Park, where they witnessed guard mount by the Eleventh United States Cavalry, after which they were tendered an informal reception by the Staff Officers of the Regiment. The automobile ride then continued through Chickamauga Park to the City of Chattanooga by the Crest Road from which beautiful views of the valley below were obtained.

This courtesy of the Chattanooga Bar was sincerely appreciated by each and every one of the more than seventy-five members of the Association who took the ride.

SECOND DAY—THURSDAY, JUNE 24th.

MORNING SESSION.

The meeting was called to order at 9:30 A. M. by President Brown who received another report from the Central Council, through its chairman, recommending the following additional names of attorneys for membership in the Association, who on motion were unanimously accepted and elected to membership.

Ewin L. Davis........................................Tullahoma
J. A. Thompson........................................Rogersville
J. F. Swingle........................................Greeneville
S. M. Foster........................................Rockwood
F. H. Mercer........................................McMinnville
W. B. Lamb, Jr........................................Fayetteville
Alfred D. Johnson................................Chattanooga
J. M. Brady..........................................Spencer

The report of the Committee on Jurisprudence and Law Reform was presented and read by the Chairman of the Committee, W. B. Garvin of Chattanooga. On motion of H. H. Ingersoll, duly seconded and passed the report was adopted and ordered to be published and the recommendations of the committee on the question of municipal gov-
ernment were referred to the Committee on Jurisprudence and Law Reform to be appointed by the incoming President, which committee is directed to make a report on this subject at the next annual meeting. The report as read by W. B. Garvin, Chairman, is as follows:

REPORT OF THE COMMITTEE ON JURISPRUDENCE AND LAW REFORM.

To the President and Members of the Bar Association of Tennessee:

At the last meeting of this Association, the report of the Committee on Jurisprudence and Law Reform suggested reform in the government of our cities as the one most vital subject for consideration. That report was brief, and was as follows:

"Out of many subjects that have suggested themselves to your Committee, we deem it advisable only to select one. We select this one for the reason that it is a vital question today in our country, and one upon which our best students of municipal government are devoting their time and talents.

"Your Committee, while recognizing the evils that have grown up in the government of our cities, and that such government has not kept pace with the administration of State and National affairs, yet we are not able to agree upon any method that we think would solve the difficulty. We therefore do nothing more than suggest the subject, and recommend that it be referred to either one of our regular Committees to report a careful study of the question and report more fully at our next regular meeting.

"We are agreed that there should be a change in the manner of governing our large cities, and we invite the discussion of this question by the members of this Association, and its reference to a committee as above stated. Very respectfully,

(Signed) JORDON STOKES,
Chairman."

By unanimous action of the Association, the subject thus broached was referred to this committee, "for a report thereon at the next annual meeting."

Undoubtedly serious evils have grown up in the government of our cities. Viewing our country at large, it is a fact patent to every observer that in most if not all of the larger cities, municipal government has become inefficient and disproportionately expensive. In many instances it has become notoriously corrupt. We are glad to be able to say that illustrations of these conditions in their acute forms must as yet be looked for outside of Tennessee. Nevertheless, it cannot be denied that the same causes which have operated elsewhere are beginning to manifest themselves in our own state and under our
present system may confidently be expected in time to produce like results.

It has been said that every self-governing community has as good a government as it deserves to have; that at the bottom of all the evils in the government of our cities lies what has been aptly called the bad citizenship of good citizens, the indifference and neglect of duty on the part of those who complain most and who have most at stake. All this is as true as it is trite, but it is only half of the truth. The other half is that the great majority of the citizens of every community want good government and, when correctly informed, may always be depended upon to vote for good government; but they are not always able to locate the responsibility for the evils which afflict or threaten them, nor are they always able to give effective expression to their wish to correct or prevent those evils. The chief cause of the inability of the people to locate the responsibility for evils is found in a complicated and cumbersome organization and the division of power and authority among a swarm of officials, and one chief difficulty in the way of the correction of evils is found in the fact that the person or persons responsible hold their positions by the vote of only a limited portion of the people. Behind many a board of mayor and aldermen sits unseen a boss safely ensconced by reason of his control of the vote of a few precincts, when neither he nor his henchmen would be allowed to exercise power for one moment, if the people as a whole could effect their will.

Another, and perhaps, the greatest defect, in our existing system of municipal government is that it is framed and administered upon the idea that the city is a political entity to the exclusion of the idea that it is also a business enterprise, in which all the citizens have a community of interest. Under such a system considerations of partisan politics enter into every election to obscure the vision and warp the judgment of the voters. The government of our cities should as far as possible be divorced from party politics and be assimilated more nearly than at present to that of an ordinary business corporation.

It is the opinion of your committee that the evils referred to would be largely eradicated and prevented under a form of government embodying the three following principles, viz:

1. The concentration of power, and consequently of responsibility, in a body composed of a few members (say five) who would exercise all the functions of government by themselves and their appointees for whose conduct they would be responsible.

2. The election of this governing body by the voters of the entire municipality, instead of by wards or districts or other sub-divisions.

3. The elimination, as far as possible, of party politics, by a
legalized non-partisan general primary for the nomination of all candidates for city offices, the two candidates for any office receiving the highest number of votes in the primary, without regard to their party affiliations to be the only candidates eligible for that office in the final election.

These three principles have been applied in what is called the commission form of government and constitute the essential features of that plan, as we understand it. Reports from the cities which have lately adopted the commission form of government, including especially the leading cities of Texas and Iowa, indicate that it has proved highly satisfactory and beneficial, wherever fairly tried. In the charters of all these cities there are in addition to the features above mentioned, other provisions designed still further to give the people immediate and direct control of their affairs, such as the recall, the initiative and the referendum. Upon these features your committee are not agreed, and we make no recommendation as to them.

Your Committee has not undertaken to work out the details of a form of charter embodying the principles upon which we are agreed. As stated by our predecessors, the subject of reform in the government of our cities is a vital one and has engaged the attention of some of the best minds of the country. We recommend that the Association refer it for further consideration and to the end that the views of the Association may be reduced to concrete form and submitted to our Legislature at its next session.

No legislation upon this subject, however, will ever be of value, if it is to be regarded as subject for change, alteration and amendment, as city charters are now, at every session of the legislature, to meet the fancied needs or to accomplish the transient purposes of the faction in power in every community. Whatever form of government shall be adopted should be broad enough in its outlines to answer the requirement of growth and development in all our large cities, and then should be made uniform throughout the State for all cities of a given population, with provisions bringing all other cities automatically under its operation upon their attaining the given population. So important do we regard this rule of uniformity that we think it should be secured, if necessary by a constitutional amendment.

Intimately connected with the subject of city government, is the subject of incorporation and overcapitalization of public utility corporations operating in our cities, including especially Street Railway Companies, Gas Companies, Water Companies, Electric Light & Power Companies, etc.

For many years the management and control of such corporations has been too often in the hands of speculators, who are more interested in the unloading of stocks and bonds upon the investing public
than they are in the fair and efficient service to the public which such corporations are intended to supply.

Gross overcapitalization of many such public service corporations has resulted in many cases, carrying with it high rates of charges to be paid by the people for the utilities furnished, great profits to the manipulators, who issue and sell the illegitimate stocks and bonds, and corruption in municipal politics and government. The rapid growth of many of the cities of the country has made them easy and tempting marks for exploitation in this line.

The final and continuing result is bad for the people who have to use and pay for the utilities furnished, and bad for the city government which has to meet the strain and pressure naturally applied by the manipulators in their efforts to bring about the conditions necessary to the successful issuance and sale of the stocks and bonds in question.

As a measure for the protection of the people of our cities as well as in aid of better city government in Tennessee, we suggest that provision should be made by law for the supervision of public service corporations with the purpose among others of preventing their overcapitalization and requiring the proceeds of all stocks and bonds issued by them to be applied to legitimate corporate purposes.

Respectfully submitted,

W. B. GARVIN,
Chairman.

The President read a letter from Hon. C. W. Metcalf of Memphis expressing his regret at being unable to attend this meeting of the Association.

President Brown next introduced Judge Lewis Shepherd of Chattanooga, who read a paper on "Judges John Baxter and D. M. Key," which appears in the appendix.

President Brown announced that Gov. M. R. Patterson was present and invited him to address the Association. Gov. Patterson thereupon spoke as follows:

Mr. President and Gentlemen of the Tennessee Bar:

It is always a sincere pleasure for me to come to Chattanooga, where I have so many friends, and it is a genuine pleasure to meet occasionally the members of a profession to which at one time I belonged (Laughter), and to which I may likely return. (Laughter.)

I feel that before a company of lawyers, at least, no excuse should be made for not making a speech. I am with
my brothers now, and one of the pleasures of coming to Chattanooga on this occasion and meeting you in this informal and social way, was the knowledge that I would not be called upon to make a speech of any character. However, I do want to offer this observation, rather combative of the idea that seems to generally prevail among the laity, and also among some of the members of the profession, that the influence of the bar in America is deteriorating. While its influence has changed, its influence today is greater than it has ever been in the history of this country. If we should judge the influence of the bar on the law-making department of the government, it is far more today than it was even in the days of the Continental Congress. There were 102 members of the first Congress of the United States; and of this number 40 were lawyers. There were 423 members of the Continental Congress, 134 of whom were lawyers. There are, or there were 483 members of the last—the 60th Congress—and 343 of those members were lawyers. The President of the United States is himself a distinguished lawyer and Judge; and seven out of the nine members of his cabinet are lawyers. So it seems to me that these figures, short as they are, are extremely eloquent as illustrating the position of the American lawyer in this government.

It is a great pleasure to be with you, as I say. It is also a great pleasure not to make an address, especially when one is not prepared to make an address. I thank the President of this Association for the honor he has paid me, and I assure you again and again that it is a great delight to me to be with you. (Great applause.)

At the conclusion of Gov. Patterson's remarks, President Brown introduced Judge E. C. O'Rear, of Frankfort, Kentucky, who read a paper on "Trial by Jury," which appears in the appendix.

At the conclusion of this paper Col. W. A. Henderson moved the election of Judge O'Rear as an honorary member of the Association. The motion was seconded and upon
vote unanimously carried. In thanking the Association for the honor conferred upon him Judge O'Rear spoke as follows:

Mr. President and Gentlemen:

I am profoundly impressed with the honor you have done me. I do not feel that I can adequately express it. Do you know that as a judge it has frequently been borne in on me, as it must on every lawyer who goes upon the bench, that the reputation of a judge, at last, and rightfully, belongs to posterity; that what he says and what he writes is not accepted by these independent, combative fellows, the lawyers, until we have tried it out. He does not, in overruling a petition for rehearing, settle the question, either in their minds or elsewhere, until the principle the judge has declared to be the standard, or law, has been tried out in the practical affairs of men, until it has been buffeted and struck sledge-hammer blows and has been tried in every joint—it is not accepted as conclusive. So it is that the far e of a lawyer depends, and safely and rightfully depends, upon the estimate of his brethren generally.

Upon an occasion such as this, when you pay tribute to such distinguished men as Baxter, and Key, and Jackson, men who have in their lives enriched American jurisprudence, and give the honor due them after their final test, to be in the flesh called worthy of membership in a Bar Association such as this, as I believe, is one of the highest honors that has ever been paid, and I thank you from my heart. (Applause.)

Charles H. Smith, Secretary and Treasurer of the Association, presented and read his annual report. Upon motion of Judge Ingersoll, duly seconded and passed, the report was ordered referred to the Central Council to be audited.

Upon motion of Charles H. Smith, duly seconded and passed, President Brown appointed Judge H. H. Ingersoll of Knoxville, John H. Cantrell of Chattanooga and Hill McAlister of Nashville, a committee to compare the Canons of
Professional Ethics adopted by the Bar Association of Tennessee at its last annual meeting with the Canons of Professional Ethics adopted by the American Bar Association at its last annual meeting, and make such recommendations concerning the amendments to the Canons of Professional Ethics approved by our Association last year as they may deem wise. Said committee was directed to report at the present meeting of the Association.

Upon motion duly seconded and passed adjournment was taken to 9:30 o'clock Friday morning, and the members, their wives and friends of the Association, repaired to the Chattanooga Country Club where they were entertained at luncheon by the Chattanooga Bar. After luncheon the Chattanooga Bar tendered a delightful boat ride down the Tennessee River for some miles, and on the return trip to the city supper was served. On this trip there were more than three hundred guests and all were delighted with the ride, beautiful scenery, and the cordial hospitality of the members of the Chattanooga Bar and their wives.

THIRD DAY—FRIDAY, JUNE 25th.

MORNING SESSION.

President Brown called the meeting to order at 9:30 o'clock A. M. and received another report from the Central Council recommending the following for membership in the Association, all of whom were unanimously accepted and elected to membership:

W. E. Wilkerson........................................Chattanooga
Sam H. Seymour........................................Chattanooga
James W. Scott........................................Chattanooga
H. J. Denton........................................Chattanooga
Jno. A. Chambliss, Jr................................Chattanooga
B. F. Thomas........................................Chattanooga
J. Frank White.......................................Cumberland Gap
R. C. M. Cunnyingham...............................Spring City
John C. Locke........................................Spring City
S. E. N. Moore.......................................Johnson City
The Central Council through its Chairman, W. L. Frierson, announced that they had audited the report of the Secretary and Treasurer, and having found the same correct they approved said report. Upon motion duly seconded and passed it was ordered that the report of the Secretary and Treasurer be accepted and published, which is accordingly done in the words and figures following, to-wit:

REPORT OF SECRETARY AND TREASURER.
To the President and Members of the Bar Association of Tennessee:

As Secretary and Treasurer of the Association I submit the following report for the period ending June 22nd, 1909:

MEMBERSHIP.

Active Members.............................................................417
Honorary Members..........................................................52

Total .................................................................................469

RECEIPTS AND DISBURSEMENTS.

DEBITS.

Cash Balance from last year..............................................$ 452.30
Collections from Admission Fees and Annual Dues to date.....1,017.00

Total..................................................................................$1,469.30

CREDITS.

Disbursements as per vouchers exhibited..........................$790.80
Balance on hand....................................................................$678.50

Respectfully submitted,

CHAS. H. SMITH,
Secretary and Treasurer.

Audited and Approved,

W. M. L. FRIERSON,
Chairman Central Council.

The President then called for the report of the committee appointed to urge the Legislature of 1909 to enact into statutes certain measures recommended by committees of 1907-1908. This report was read by Hon. Percy D. Maddin of Nashville, a member of the committee. Upon motion duly seconded and passed the report was accepted and ordered published, which is accordingly done as follows:

To Hon. Foster V. Brown, President, and to the Members of the Bar Association of Tennessee:

At the last meeting of the Bar Association held at Nashville in
June 1908, the Committee on Judicial Administration and Remedial Procedure recommended to the Association that it bend all of its energies at the next session of the Legislature next to be held in June 1909, to obtain legislation increasing the salaries of the Judges and Chancellors of the State.

It was apparent that before the next Legislature should meet, a new election for judges would be held whose term of office would continue for eight years. During this term, no change in their compensation could be made. It was therefore of the greatest importance that action should be taken at once or nothing could be done for the next eight years.

The Bar Association recognized the fact that the Judiciary of Tennessee was insufficiently paid. The present salary basis had been established in 1885 at which time a law was passed fixing the salary of the Judges of the Supreme Court at $3,500.00 and the Chancellors and Circuit and Civil Judges at $2,500.00. No change had been made from these figures for twenty-four years. During this period the cost of living had very greatly increased and it was manifest that something should be done to put the judges upon a more fair basis of compensation.

The Bar Association was unanimous in its recommendation that legislation to this effect should be passed, if possible by the Legislature of 1909. After the Bar Association adjourned, the President appointed a committee composed of Messrs. Robin Cooper, Jno. Bell Keeble, Geo. D. Lancaster, Joe V. Williams and P. D. Maddin to take such steps as might be advisable to urge the passage of this legislation.

Shortly after the Legislature met, bills were introduced to increase these judicial salaries, one of the bills providing for a salary of $7,500.00 to the Supreme Judges, $6,000.00 to the Judges of the Court of Appeals, and $4,200.00 to the other Judges and Chancellors. Another bill provided for a salary of $6,000 to the Supreme Judges, $5,000 to the Judges of the Court of Appeals, and $4,200 to the other Judges and Chancellors.

These bills had to run the gauntlet of the two committees in each house to-wit: The Judicial Committee and the Committee on Ways, Means and Finance. Upon consideration of the bills, the Judicial Committee was quite favorable to an increase of salaries, but when they came before the Committee on Ways, Means and Finance, they met with considerable opposition. Fearing this, your Committee had communicated with a number of lawyers throughout the State, and when the bills came up for consideration before the Committee on Ways, Means and Finance, quite a delegation of lawyers was present from Memphis, Chattanooga, Shelbyville, Nashville, and other places. The Committee listened to the argument on behalf
of an increase of salaries with great patience and apparent interest. Before we had finished, however, one of the members of the House Committee announced that he was against the bill; that he had not heard of any judge who was going to resign or refuse to run again on account of insufficient pay. That he himself was only receiving $4.00 a day as a member of the Legislature and managed to live on that and take about half of it home with him and that he thought the judges were being paid enough.

The House Committee did not take final action upon the bills but waited for further consideration.

We also went before the two Committees of the senate and arranged to have a joint meeting of those committees at which arguments would be heard in behalf of the increase of Judicial salaries. The date of this meeting was fixed for April 20th. In the meantime, the members of your committee living in Nashville thought it expedient to call a meeting of the Nashville Bar which was done on March 29th, 1909; about sixty or seventy members of the Bar attended this meeting and passed resolutions recommending an increase of salaries for Supreme Judges to $6,000; for Judges of the Court of Appeals $5,000 and for other Judges and Chancellors $3,600, and that in addition to this, there be allowed a reasonable sum for traveling expenses of all the Judges and Chancellors and for a stenographer for the Supreme Judges and Judges of the Court of Appeals.

The Nashville Bar appointed eight of its members a committee to appear before the Legislature and urge the passage of this legislation. Copies of these resolutions were printed and sent out to members of the bar in all towns in Middle Tennessee. Somewhat similar action was being taken in East and West Tennessee. The various bars throughout the State were requested to hold Bar meetings and pass similar resolutions, to furnish copies of these resolutions to their Senators and Representatives and to send delegates to attend the hearing before the Senate Judiciary, Finance, Ways and Means Committee.

The efforts of your Committee met with a most cordial, prompt and hearty response throughout the State. A number of local bars held meetings as requested and sent copies of their resolutions to their Senators and Representatives and to your committee. When the bills came up for hearing before the Senate Committee, there was a generous representation of the bars of many of the cities and towns throughout the State. The question was ably presented by various representatives of the various bars and finally carried.

While we did not succeed in getting all we hoped for, still the result taken all together is satisfactory. The Senate Committee approved of the bill which will give the newly elected judges salaries as follows: For the Judges of the Supreme Court and the Court of
Civil Appeals $5,000; Circuit Court and Criminal Judges and Chancellor $3,000 until September 1st, 1914, and $3,600 thereafter. The bill becomes effective September 1st, 1910.

This bill was finally passed both in the Senate and the House and received the signature of the Governor and became a law.

Your committee desires to extend its most cordial thanks to the various members of the Bar throughout the State for their prompt, active and generous co-operation. Without this, the efforts of your committee would have been in vain.

We feel that the Bar Association of Tennessee can accomplish any good object which it undertakes. This Association ought to be a leader in all matters regarding legislation for the State of Tennessee and its recommendations should be such an endorsement to the people of the State and to the members of the legislature as to practically guarantee the passage of such legislation.

Our Judiciary has always been a credit and honor to the State. In the future, they will be better paid and will be enabled to have that sense of satisfaction which comes with a suitable reward for laborious efforts. We congratulate them upon the result and we likewise congratulate the Bar Association upon the strength and weight of its influence.

Respectfully submitted,

GEO. D. LANCASTER,  
JOE V. WILLIAMS,  
ROBIN COOPER,  
JOHN BELL KEEBLE,  
P. D. MADIN, Chairman.

Committee.

June 1909.

President Brown called for the report of the Committee on Obituaries and Memorials and in the absence of members of this committee, the report was read by J. Pike Powers, Jr., of Knoxville. Upon motion duly seconded and passed the report was adopted and ordered published. The report appears in the appendix.

President Brown next introduced Judge Edward T. Sanford of Knoxville, who delivered an address on “The Organization of the Federal Courts, Historically Considered.” This address was received with marked interest and at its conclusion Judge Sanford was requested to permit the Secretary to publish his address in the proceedings of this meeting. Judge Sanford consented that the address might be published in the event he found time to prepare
it for publication. The Secretary regrets that Judge Sanford has not found time to prepare this address for publication and that those members of the Association who expected to obtain the address in this volume are to be disappointed.

President Brown introduced John Bell Keeble of Nashville, who read a paper on the "Life and Character of Judge Wm. F. Cooper," which appears in the appendix.

At the conclusion of this paper Judge H. H. Ingersoll, Chairman of the Special Committee on Canons of Professional Ethics, presented and read the report of the committee, which upon motion duly seconded and passed, was adopted and ordered published. This report appears in the appendix.

W. B. Swaney moved that a committee be appointed by the President to present these Canons of Professional Ethics to the next Legislature of the State of Tennessee, and urge that they be enacted into statutes. The motion was seconded by Col. Tomlinson Fort. Considerable discussion resulted from this motion. Hon. T. A. Wright of Knoxville, opposed the motion, but favored the enactment of the oath into statute. Judge H. H. Ingersoll and Judge H. B. Lindsay of Knoxville, J. J. Lynch of Chattanooga and John A. Pitts of Nashville took the same position as Mr. Wright. Mr. Swaney spoke in support of his motion. Judge C. J. St. John of Bristol moved to amend Mr. Swaney's motion so that the President should appoint a committee of three who should urge the Legislature to enact into statute an oath which should embody the oath approved in the Canons of Professional Ethics. Thereupon Mr. Swaney and Col. Fort withdrew the first motion and the second thereto. Hon. Percy D. Maddin of Nashville moved as an amendment to Judge St. John's motion, that a committee of five be appointed to draft an oath to be administered to those admitted to practice law in the State of Tennessee, which the Legislature should be asked to enact into statute, and to report said oath to the next meeting of the Asso-
ciation. This motion was duly seconded and upon vote was unanimously passed. President Brown thereupon appointed said committee as follows: C. J. St. John, Bristol, Chairman; Paul Campbell, Chattanooga; Hill McAlister, Nashville; O. C. Conatser, Monterey; I. W. Crabtree, Winchester.

On motion an adjournment was taken until 2:30 o'clock P. M.

AFTERNOON SESSION.

President Brown called the meeting to order at 2:30 o'clock P. M. and at once introduced Judge John A. Pitts of Nashville, who read a paper on "The Recent Primary Election Law," which appears in the appendix.

At the conclusion of the reading of this paper John Bell Keeble of Nashville, moved that the daily papers of Tennessee be requested to print Judge Pitts' paper in full. The motion was duly seconded and upon vote unanimously carried.

President Brown introduced Col. W. A. Henderson of Knoxville, who delivered an address on "The High Art of Cross Examination," which appears in the appendix.

W. W. Belew of Johnson City, addressed the meeting on the question of a revision of the corporation laws of the state and the enactment of a uniform corporation law for Tennessee. Upon motion of Mr. Belew duly seconded and passed, this question of a uniform corporation law for the State of Tennessee was referred to the incoming Committee on Jurisprudence and Law Reform, for report at the next annual meeting.

The next order of business was the election of delegates and alternates to the next annual meeting of the American Bar Association. The following gentlemen were selected by the unanimous action of the Association: Hon. Foster V. Brown of Chattanooga, and Hon. Percy D. Maddin of Nashville, delegates; Hon. John A. Pitts of Nashville and Mr. S. Bartow Strang of Chattanooga, alternates.

The Association next proceeded to the election of officers for the ensuing year. Hon. T. A. Wright placed in nomina-
tion Hon. Harry B. Anderson of Memphis for President. The nomination was seconded by Judge H. B. Lindsay. Hon. John M. Bright moved that nominations be closed and that the rules be suspended and the Secretary be instructed to cast the unanimous vote of the Association for Hon. Harry B. Anderson. Said motion was seconded and unanimously-carried. Thereupon Charles H. Smith, Secretary, cast the unanimous vote of the Association for Mr. Anderson. President Brown declared Mr. Anderson the newly elected President, and appointed Judge St. John of Bristol, and Mr. Johns of Chattanooga to conduct Mr. Anderson to the chair. Before relinquishing the gavel to his successor in office President Brown addressed the Association as follows:

REMARKS OF THE RETIRING PRESIDENT.

Now, before turning over the gavel to my successor, I desire to say a few brief words to this Association. My service as your president has been a very pleasant and a very agreeable one. There has been a great deal of work connected with it, but it has been very pleasant work to me, and it has been made pleasant, gentlemen of the Association, because of the loyal support of the members of this Association. (Applause). And especially, gentlemen, have I had the cordial and loyal support of the members of my own bar. (Applause). And whatever—however successful, and whether this Association has been a success or not, I leave to you. I claim no credit for myself further than this, that I had the good sense to select a good central council and good associates on the entertainment committee, and they have worked out this thing to a success, as I believe; and brethren, you will all say that we have at least done the best we could. I made the promise when elected that we were going to make a success of it, and we feel that we have and I take just pride in the success which has been attained. And I trust that this Association will, and feel that it must, do good in Tennessee, not only for the lawyers but for the people of the state, for we have no selfish interest in the objects and purposes of this Association. It is not like a manufacturers' association, or these other commercial associations, that work out things for their own ends, for their own selfish purposes. What we do is done for the benefit of the people of the state in general and not for the promotion alone of our own interests.

I hope, gentlemen, that you will give to my successor the same loyal and cordial support you have given me. If you do, he can make a success next year. I thank you. (Great applause).
BAR ASSOCIATION OF TENNESSEE

Thereupon President Brown delivered the gavel to President Anderson, who assumed the chair and expressed his thanks to the Association in a brief speech of acceptance as follows:

ADDRESS OF THE INCOMING PRESIDENT.

My Dear Brothers of the Bar: I thank you from the bottom of my heart. A lawyer crowned with years, schooled in practice, learned in the law, known and loved by his brethren throughout the state, might well feel flattered and complimented at this honor. But to a young man, a very young man, it is absolutely overwhelming. It is an especial honor to be chosen as president of the Bar Association of Tennessee, composed largely of ripe and mellowed lawyers. I believe that I can say truthfully that there is no man in the world as broad, as liberal and as wise as an old lawyer, for he has touched life on more points than any other individual man. He does not see as much pain as a doctor, or as much hypocrisy as a preacher; but he has made it his life business to see the manifold relations of man with man in every walk of life, business, social and domestic. And I may say that all of us, young and old, members of the bar, are sworn as soldiers of a great army, sworn to throw the shield of our profession around the weak and helpless, and the enemies against whom we are to fight are fraud, oppression and injustice; and the lawyer who is faithless to his profession is not only a traitor to his client and his cause, but a traitor to his fellow soldiers, and by all the rules of war deserves professional death.

In my opinion, the creed of the Bar Association is simply this: To keep high our standard; to keep firm our resolution; and to maintain unsullied our principles. (Applause).

I think that this has been a great and inspiring meeting, and no man, particularly a lawyer, could be here and hear these papers and these speeches without being instructed. And no man could receive the hearty, whole-souled hospitality of the clever men who make up the bar of Nashville without being touched as a man—(Laughter)—I mean Chattanooga. (Laughter and applause). And I believe that no man could, as we did, visit the battlefield of Chickamauga, with its memorials and mementoes, and doubt the bravery of American citizens; or could have seen the magnificent drill of the 11th Regiment of the regular cavalry of the United States without having greater patriotism as an American citizen. And, gentlemen, next year, when the Bar Association of Tennessee meets in West Tennessee, we cannot offer you the beautiful mountains and scenery of Chattanooga, and perhaps we cannot equal the hearty hospitality of East Tennessee, but our hearts, our homes and our hands will be extended to you.
Again I want to thank you and say, God bless you all. (Prolonged applause).

The election of Vice-Presidents being next in order, W. D. Wright nominated L. D. Smith of Knoxville for East Tennessee; W. B. Swaney nominated Percy D. Maddin of Nashville for Middle Tennessee; and Foster V. Brown nominated Judge A. B. Lamb of Paris for West Tennessee.

Upon motion the nominations were closed, the rules suspended and the Secretary instructed to cast the unanimous vote of the members present for the three gentlemen named, which was done and they were declared duly elected Vice-Presidents of the Association.

The election of Secretary and Treasurer being next in order Foster V. Brown placed in nomination for said office Charles H. Smith of Knoxville. Upon motion duly seconded and carried Charles H. Smith was unanimously elected Secretary and Treasurer of the Association for the ensuing year.

The following gentlemen were chosen by unanimous vote to constitute the Central Council, their names being recommended by the President:

John W. Farley, Chairman........................................Memphis
James H. Anderson.................................................Chattanooga
John Bell Keeble................................................Nashville
Francis Fentress, Jr...............................................Memphis
Hubert Fisher.......................................................Memphis

Judge H. B. Lindsay of Knoxville moved that a rising vote of thanks be tendered to the members of the Chattanooga Bar for their cordial hospitality and many courtesies extended to the Bar Association of Tennessee. The motion was duly seconded and carried, and the thanks of the Association were duly tendered by a rising vote.

W. D. Wright of Knoxville moved that a vote of thanks be extended to the retiring President Foster V. Brown, to the Secretary and Treasurer Charles H. Smith, to W. L. Frierson, Chairman of the Central Council, and to each member of the Central Council for the services rendered
the Association by them during the preceding year. The motion was duly seconded and unanimously carried.

C. W. Rankin of Chattanooga moved that an expression of thanks be voted to all of the Judges and Chancellors of the State of Tennessee, who so kindly adjourned their courts in order that attorneys might attend this meeting of the Association, and that the Association request that all Judges and Chancellors in the State of Tennessee adjourn their courts during the next annual meeting of the Association, in order that all attorneys so desiring may attend the Twenty-ninth Annual meeting of the Association. The motion was seconded and unanimously passed, and the Secretary was thenceupon directed to give notice of this action in the name of the Association to all of the Judges and Chancellors of the state next year in ample time for them to arrange for said adjournment.

Upon motion of Hon. John A. Pitts of Nashville, duly seconded and carried, a vote of thanks was extended to the press of the state for their many courtesies to the Association and to Hotel Patten for the splendid entertainment it had afforded its guests and for its many courtesies extended the Association during this meeting.

Upon motion of Charles H. Smith of Knoxville, duly seconded and unanimously carried, a vote of thanks was extended the Chattanooga Railway Company for its kindness and courtesy in furnishing transportation and otherwise aiding in the entertainment of the members of the Association.

Hon. Percy D. Maddin of Nashville made a plea on behalf of the American Bar Association, urging the members of the Bar Association of Tennessee to become members of the American Bar Association, which meets in Detroit, Michigan, in August of this year. Mr. Maddin announced that the dues of the American Bar Association are $5.00 a year and that he will be glad to present to the next meeting of the American Bar Association the names of any members of our Association who may desire to become members of the American Bar Association.

Upon motion, duly seconded and carried, the Association adjourned sine die.
APPENDIX.

Address of President Foster V. Brown.

The constitution of the Bar Association of Tennessee provides that the President shall open each annual meeting with an address, in which he shall communicate the most noteworthy changes in the statute law on points of general interest, made by the General Assembly of the State and by Congress, during the preceding year.

I shall content myself with noting the laws passed by Congress and our General Assembly of a most general nature. Since our last meeting there has been a session of Congress, a short session meeting last December; also a session of the Legislature of Tennessee. Inasmuch as our meeting this year is earlier than usual, I have not had access to the Acts of the General Assembly of Tennessee, except such as I have been able to procure through the courtesy of the Secretary of State, and this address, therefore may not cover all the laws of a general character.

Most of the Acts passed by the Legislature are local in their nature, and therefore it will not be necessary to notice them at all. The Legislature having properly adjusted all county lines, seems now bent on authorizing the various counties, cities and small towns of the State to vote all kinds of improvement bonds.

Acts of Congress.

An Act approved March 4th, 1909, entitled "An Act to codify, revise and amend the penal laws of the United States."

This Act contains 345 sections, and is a complete codification and revision of the penal laws of the United States. Of course, we all understand that the crimes against the
United States government are altogether statutory. By this Act, Congress intends to cover, and does cover, the whole field of criminal laws against the United States. This Act, however, does not take effect until the first day of January, 1910.

An Act approved February 1st, 1909, provides for the refunding of stamp taxes paid under the Act of June 13th, 1898, upon foreign bills of exchange, drawn between July 1st, 1898, and June 30th, 1901, against the value of products or merchandise actually exported to foreign countries, and authorizing rebate of duties on anthracite coal imported into the United States, from October 6th, 1902, to January 15th, 1903.

An Act approved February 1st, 1909, to change and fix the time for holding the Circuit and District Courts of the United States for the Middle and Eastern Districts of Tennessee, provides that the terms of the Circuit and District Courts of the United States for the Northeastern Division of the Eastern District of Tennessee, should be held at Greeneville on the last Mondays in March and September of each year; that the terms of said Courts for the Middle District of Tennessee should commence on the second Mondays in April and October of each year, and that the terms of said Courts for the Southern Division of the Eastern District of Tennessee, should be held on the fourth Mondays in May and November in each year.

An Act approved February 13th, 1909, created a new division of the Middle Judicial District of Tennessee, known as the Northeastern Division, and composed of the following counties: Putnam, Jackson, Clay, Overton, Pickett, Fentress, Cumberland, White, Van Buren, DeKalb, Smith and Macon. It is provided that the Court shall be held at Cookeville on the second Mondays of May and November of each year.

An Act approved February 15th, 1909, to amend section 714 of the revised statutes of the United States relating to
the resignation of judges of the Courts of the United States, provided that said section should be amended so as to read:

"When any judge of any court of the United States appointed to hold his office during good behavior, resigns his office, after having held a commission or commissions as judge of any court or courts at least ten years continuously, and having attained the age of seventy years, he shall, during the residue of his natural life, receive the salary which is payable at the time of his retirement from the office that he held at a time ten years before his resignation."

An Act approved February 1st, 1909, granted the franking privilege to Frances F. Cleveland, widow of the late Grover Cleveland, and to Mary Lord Harrison, widow of the late Benjamin Harrison.

An Act approved February 9th, 1909, provided that after the first day of April, 1909, it should be unlawful to import into the United States opium in any form, and preparations and derivatives thereof, other than smoking opium, or opium prepared for smoking, might be imported for medicinal purposes only, under such regulations as the Secretary of the Treasury is hereby authorized to prescribe, and when so imported shall be subject to the duties which are now or may hereinafter be imposed by law.

An Act approved February 16th, 1909, established Courts for the trial of enlisted men in the naval and marine corps for such minor offenses as are now triable by summary court-martial. These courts are called "Deck Courts," and are constituted of one commissioned officer only. The Court seems to have been established for the trial of minor offenses in the navy, and the regulations and rules governing the Courts are to be prescribed by the President.

An Act approved February 17th, 1909, fixes the compensation of the Secretary of State at $8,000, instead of $12,500, as provided by an Act approved February 26th, 1907, which fixed the compensation at $12,500.

An Act approved February 10th, 1909, relating to the registration of trade marks, provided that the application in
order to create any right whatever in favor of the party filing it, must be accompanied by a written declaration, verified by the applicant, or member of the firm or officer of the corporation or association applying, to the effect that the applicant believes himself to be the owner of the trade mark sought to be registered, and that no other person, firm, corporation, or association, to the best of the applicant’s knowledge and belief, has the right to use such trade mark in the United States. If the applicant is located in a foreign country, the statement required shall, in addition to the foregoing, set forth that the trade mark has been registered by the applicant, or that application for the registration thereof has been filed by him in the foreign country in which he resides, etc.

An Act approved February 19th, 1909, amending Section 10, Chapter 252, Vol. 29, of the Public Statutes at Large, provides that the Attorney General, on recommendation of the marshal, may allow the marshal to employ necessary office deputies or clerical assistants, upon salaries to be fixed by the Attorney General from time to time, and paid as provided.

An Act approved February 20th, 1909, appropriated the sum of $12,000.00 for the purpose of investigating treatment and prevention of trachoma among the Indians.

An Act approved February 25th, 1909, amended the inter-state commerce law, so as to provide that any person who should wilfully make any false entry in the accounts of any book of accounts, or any record or memoranda kept by a carrier, or who should wilfully destroy, mutilate or alter, or by any means or device falsify the record of any such account, record or memoranda, or who should wilfully neglect or fail to make full, true and correct entries in such accounts, records or memoranda of all facts and transactions pertaining to the carrier’s business, or shall keep any other accounts, records or memoranda than those prescribed or approved by the commission, shall be deemed guilty of a misdemeanor.
The Act further provides that the Interstate Commerce Commission, in its discretion might issue orders specifying such operating, accounting or financial papers, records, books, etc., which might be destroyed by such carrier, after a reasonable time.

By an Act approved March 4th, 1909, to be effective the first day of July 1909, the copyright laws of the United States were amended and consolidated into one Act. There are sixty-four sections to this Act. It is only necessary to say that this Act of Congress covers the entire subject of copyright. It takes the place of all other acts on the subject heretofore.

By an Act approved March 4th, 1909, the President was requested to re-enter negotiations with the nation of Russia, to secure by treaty or otherwise uniformity of treatment and protection to American citizens holding passports duly issued by the authorities of the United States, in order that all American citizens should have equal freedom of travel and sojourn in such countries, without regard to race, creed, or religious faith, including the provision that the honoring of passports, when duly issued and held by citizens of the United States, shall not be withheld because or on account of the race, creed or religious faith of their holders.

By an Act approved March 4th, 1909, a commission was named to select a sight upon property belonging to the United States in the City of Washington, other than the Capitol and Library Grounds, for the erection of the Alexander Hamilton Memorial, to be presented by the Alexander Hamilton Memorial Association to the people of the United States.

By an Act approved March 4th, 1909, a sub-committee consisting of five Senators and five members of the House of Representatives, were appointed to examine, consider and submit to Congress recommendations upon the revision and classification of laws reported by the statutory revision committee heretofore authorized to revise and codify the laws of the United States, including all laws of a general nature,
permanent in character, passed since the submission to congress on December 15th, 1906, of the final report of said commission.

By an Act approved March 2nd, 1909, the Director of the Census was authorized and directed to collect and publish in addition to the cotton reports now being made by him, statistics of stocks of baled cotton in the United States, to be summarized as of November 1st, January 1st, and March 1st.

By a joint resolution approved February 11th, 1909, the 12th day of February, 1909, being the centennial anniversary of the birth of Abraham Lincoln, was made a special holiday in the District of Columbia, and the Territories of the United States.

By a joint resolution approved February 4th, 1909, Congress gave its consent to the States of Tennessee and Arkansas to enter into such agreement or compact as they might deem desirable or necessary to fix the boundary line between said states, where the Mississippi River now, or formerly formed the said boundary line, and to cede respectively each to the other such tracts or parcels of the territory of each State, as may have become separated from the main body thereof by changes in the channel of the Mississippi River, and also to adjudge and settle the jurisdiction to be exercised by said States, respectively, over offenses arising out of the violation of the laws of said States upon the waters of the Mississippi River.

By a joint resolution approved January 22nd, 1909, the Postmaster General was authorized to design and issue a special postage stamp of the denomination of two cents, in commemoration of the anniversary of the birth of Abraham Lincoln.

By an Act approved February 5th, 1909, the sum of $800,000.00 was appropriated out of the Treasury to enable the President of the United States to procure and distribute among the suffering and destitute people of Italy, such provisions, clothing, medicine and other necessary articles, and
take such other steps as he should deem advisable, for the purpose of rescuing and succoring the people who were in peril and suffering with starvation.

Statutes of the State, 1909.

CHAPTER 1.

Provides that it shall not hereafter be lawful for any person to sell or tipple any intoxicating liquors, including ale or beer, as a beverage, within four miles of any school house, public or private, where a school is kept, whether the school be then in session or not.

The Act further provides that any one violating the provisions thereof shall be guilty of a misdemeanor, and on conviction shall be punished by a fine for each offense of not less than $50.00 nor more than $500.00, and imprisonment for a period of not less than 30 days, nor more than six months. Grand juries are given inquisitorial powers with respect to violations of this act. It is made the duty of the Circuit and Criminal judges of the State to give the same in charge to the grand jury.

The Act takes effect from and after July 1st, 1909.

CHAPTER 10.

Makes it unlawful to manufacture in this State for the purpose of sale any liquor, including all vinous, spiritous or malt liquors, and fixes the penalty.

The Act provides that the law shall not be so construed as to prohibit the manufacture of alcohol of not less than 188 proof for chemical, medical and bacteriological purposes.

Grand juries are given inquisitorial powers with respect to the violation of this act.

The Act takes effect January 1st, 1910.

CHAPTER 13

Provides that hereafter all licenses issued for the sale of intoxicating liquors, shall be issued so as to expire on or before July 1st, 1909.

CHAPTER 14

Provides for the refunding to the parties paying licenses
for the sale of intoxicating liquors for that portion of the time after July 1st, 1909, covered by such licenses.

CHAPTER 384

Provides that in all prosecutions for violations of the liquor laws of this state, copies of the records in the office of the Revenue Collectors of the United States for the District of Tennessee showing that the defendant has paid the Internal Revenue special tax as a liquor dealer, or showing the issuance to the defendant of an Internal Revenue tax stamp, shall be deemed competent evidence, when such copies are certified to be full, true and complete by the District Internal Revenue Collector.

CHAPTER 385

Provides that the Attorney General of the various judicial districts of Tennessee, shall, between the first and fifteenth of January and July of each year procure from the office of the United States Internal Revenue Collector for the District of Tennessee, duly certified copies of the records of said office, showing the name and place of business of each firm, person, or corporation to whom Internal special tax permit or license for the manufacture or sale of liquor has been issued within his jurisdiction.

It is further provided that the expense incurred in obtaining these copies shall be paid by the State.

It is further provided that such copies shall be sufficient prima facie evidence for finding indictment or presentation by the grand juries against the violators of the laws prohibiting the manufacture and sale of intoxicating liquors in the State.

CHAPTER 178

Makes it unlawful for any person, at any place in this State where the sale of liquor as a beverage is prohibited by law, to solicit in person orders for intoxicating liquors, as a beverage, whether said intoxicating liquors be situated in this State or some other State.

CHAPTER 179

Makes it unlawful for any officer, agent, or employee of
any common carrier in this State to directly or indirectly solicit, accept or receive from any person or corporation, any money or other thing of value, in consideration for which said officer, agent or employee does, or agrees to do or perform any act for or on behalf of such carrier, or in the interest of such firm, person or corporation.

CHAPTER 232.

This Act gives the grand juries of this State inquisitorial power over the offense of official drunkenness.

CHAPTER 24.

This Act provides that leasehold estates and improvements thereon shall be exempt from taxation in the hands of the Lessee holding under incorporated institutions of learning in this State, when the rents therefor are used by such institutions primarily for educational purposes, where the fee in the same is exempt from taxation to such institutions of learning by charter granted by the State of Tennessee.

CHAPTER 54.

Authorizes the organization of banks, and provides that holders of stock in the same shall be liable to depositors, in addition to their stock, individually, to the extent of the par value of their stock.

CHAPTER 84.

This act provides that every warehouse company or person engaged in warehouse or storage business, who receives goods and wares for stores shall have a lien superior to unregistered liens or titles, for storage charges, and means are provided for enforcing this lien.

CHAPTER 86.

Establishes a board of commissioners to be appointed by the Governor for the promotion of uniformity of legislation of the United States.

Section 2 provides that it shall be the duty of the board to examine the subjects of marriage and divorce, insolvency, the descent and distribution of property, the execution and probate of wills, and other subjects upon which uniformity
of legislation in the various states and territories of the United States is desirable, and which are outside the jurisdiction of the Congress of the United States, and confer upon these matters with the commissioners of the other states and territories, and consider and draft uniform laws, to be submitted for approval and adoption by the several states in general, and advise and recommend such other and further course of action which shall accomplish the purpose of the Act.

This bill was introduced by Senator Mansfield at the request of the State Bar Association.

CHAPTER 87.

Provides for the probate of wills of residents of foreign countries devising lands in this State, and for the recording in this State of such wills and foreign probate thereof; and also declares the effect of such probate or recording.

The Act is a very comprehensive one and covers the subject fully.

CHAPTER 99.

Makes provision for and authorizes fraternal beneficial associations to do business in this State on the legal reserve plan, to issue contracts for term insurance, limited payment, accident, paid-up insurance, etc.

CHAPTER 101.

This Act is to establish a compulsory system of legalized primary law for political nominations, creates the agencies for its operation, and penalizes its violations. It applies to all offices except Judges of the Supreme Court of the State, Judges of the Court of Civil Appeals, Chancellors, Criminal and Circuit Judges, and Attorneys-General.

There are forty-nine sections to this Act. I do not deem it necessary to explain the provisions of the law. Judge John A. Pitts will read a paper to the Association, fully explaining the purposes and provisions of the Act.

CHAPTER 103.

This is an Act to provide for a State board of elections. Under this Act members of the board of elections shall be
elected by the General Assembly, instead of being appointed by the Governor as heretofore. The board is to be composed of three persons. The Act fixes their term of office, provides for the filling of vacancies, etc.

Section 4 provides that the board of elections shall select and appoint the second Monday in May, 1909, or as soon thereafter as practicable, and on the second Monday in May every two years thereafter, three commissioners of elections from each County in the State, etc.

CHAPTER 104

Amends the election laws so as to provide that it shall be the duty of the commissioners of elections in each county within sixty days prior to any election held within the county to which they are appointed, and at least ten days prior to such election, to appoint and announce by publication in a newspaper in the county, if there shall be one, the appointment of three judges for each and every voting place in the county, to superintend the election. Not more than two judges shall be of the same political party, and they shall be appointed from the two political parties most numerously represented in the ward, district, or precinct in which such judges are appointed.

There is a further provision that each member of the board of election commissioners shall have the right and power to designate and appoint one of said judges, without the consent of his associates on the board.

The Act further provides for two watchers to be appointed by the majority party, and two watchers representing the minority party, to be at each and every precinct or voting place. One of the watchers representing the majority party shall be appointed by the county executive committee of the majority party in the State, and the other by a majority of the candidates of the majority party, and the watchers representing the minority party shall be appointed in like manner.

The Act further provides for the appointment of clerks so as to give each party representation at each voting place.
CHAPTER 113

Authorizes stock yards, provision and packing companies to be chartered as one business, and to operate under one charter.

CHAPTER 127

Amends the corporation laws so as to provide for the organization of corporations for water, electric light, heat and water power companies.

CHAPTER 150

Provides that there shall be a lien upon any vehicle whether propelled by horse, steam, water, motor, or electric or muscular power, or otherwise, for any repairs or improvements made, or fixtures or machinery furnished at the request of the owner or his agent, in favor of any mechanic, contractor, founder, or machinist, who undertakes the work, etc., and provides further, how the lien may be enforced.

CHAPTER 151

Enacts that water and electric light, heat and power companies created under the laws of this State shall have and exercise the same rights, in respect to the erection and maintenance of poles and wires for the transmission of electricity for light and power purposes, as are now conferred by the laws of this State upon telephone and telegraph companies.

CHAPTER 155

Amends the Act prohibiting prize fighting, so as to encourage athletic exhibitions in regularly chartered athletic clubs or gymnasiums.

CHAPTER 156

Regulates the time of opening and holding elections in this State, so as to provide that the poles shall remain open from nine a. m. to seven p. m. in cities of population of fifteen thousand and over.

CHAPTER 159

Creates and establishes a state board of embalmers, defines its duties and fixes the compensation of its members. It provides a system of examination, registration and licens-
ing of embalmers, and legalizes the issuance of license to embalmers by the state board of embalmers.

CHAPTER 160

Regulates the taking of depositions in shorthand, upon a typewriter, or in writing, and provides, in short, that any Clerk of a Court, Justice of the Peace, Notary Public, or other officer now empowered by law to take depositions, may employ, upon request of either party, a reputable and competent stenographer or typewriter, who may take down the testimony of the witness in shorthand and thereafter transcribe it in long hand or upon the typewriter, and when certified, as provided, may be read as evidence.

It is further provided that the stenographer or person taking down the testimony, shall append his affidavit, setting forth that he took down the testimony correctly, and correctly transcribed it, and delivered it to the officer before whom the deposition was taken; that the testimony as delivered to the officer correctly sets forth the testimony of the witness, that he is no way interested in the suit, or related, etc.

It is further provided that the party calling for the employment of the stenographer or typewriter shall be liable for his or her compensation.

CHAPTER 177.

An Act to promote the establishment, organization and efficiency of free public libraries, school libraries, traveling libraries, and other libraries, and for this purpose creates a free library commission. The commissioners are to be appointed by the Governor, three of them.

CHAPTER 185.

This Act provides for the establishment and levying of drainage districts, for the purpose of draining and reclaiming flooded and swampy lands, and lands subject to overflow in this State, and provides the methods of so doing.

CHAPTER 199.

This Act regulates appeals to the Supreme Court and the Court of Civil Appeals, and provides that hereinafter
and in all cases where such appeals are now pending and undetermined in either of said Courts, if the Court to which any case is appealed shall be of the opinion the jurisdiction to try and determine the same is not in said Court, and is in the other Appellate Court, it shall be the duty of said Court if it be the Court of Civil Appeals, to transfer said case to the Supreme Court for trial, where the case shall be tried. Likewise, if the Supreme Court shall be of the opinion the jurisdiction to try and determine any such case which has been appealed to that Court is within the Court of Civil Appeals, it is made the duty of said Court to transfer any such case to the Court of Civil Appeals for trial by that Court.

CHAPTER 202

Makes it unlawful for any person, firm or corporation to draw any check upon any other person, firm, or corporation, where the drawer of said check has not had an account or credit with the person, firm, or corporation upon whom such check is drawn within a period of sixty days from the date of the drawing of such check. And for any person drawing any check on any person, firm, or corporation, knowing that there are not funds to meet the same, and that the same will not be honored. Both acts are declared misdemeanors.

CHAPTER 207

Makes it a misdemeanor for a man to abandon or fail to provide for his wife or children under twelve years of age, except for good cause.

CHAPTER 249.

This is an Act to provide for the qualification of jurors in criminal cases. It provides in substance that a person presented as a juror in a criminal case is not disqualified from serving as a juror, though he has formed and expressed an opinion as to the guilt or innocence of the accused, based upon newspaper statements or like source of information, if he further state, on oath, that, notwithstanding such information, if chosen as a juror he feels he can give the defendant a fair and impartial trial, upon the law
and the evidence; and provided the trial judge shall be of the opinion that he is a fair juror.

CHAPTER 264.

This Act is known as the "General Educational Bill." It provides in short for the establishment of a general educational fund, by appropriating thereto annually twenty-five per cent of the gross revenues of the State. It provides for the apportionment of this fund among the several counties of the State; what part shall be used in paying salaries of the county superintendents; what part shall be used to increase and assist in the establishment and maintenance of county public high schools, what part shall be used for the establishment and maintenance of school libraries; provides for the grading and instruction of high schools, provides for the establishment and maintenance of three normal schools for white teachers, one in each grand division of the State, and one agricultural and normal school for negroes; also provides what part shall be apportioned to the University of Tennessee, and its various stations.

CHAPTER 265.

An Act to require insurance companies incorporated under the laws of this State, to appoint the insurance commissioner and his deputy, and their successors, attorneys for the service of process.

CHAPTER 392

Authorizes street railway companies in Tennessee to carry baggage or parcel freight.

CHAPTER 393.

This Act proposes to amend Article 7, Section 5, of the Constitution, so as to make election of all State officers on the same date.

CHAPTER 341.

This Act provides for the annual collection and registration of births and deaths in Tennessee, and provides compensation for such collection and registration.

CHAPTER 409

Proposes to amend Article 7, Section 1, to the Consti-
tution, so as to make the term of office of sheriff and trustee four instead of two years.

CHAPTER 352.

This Act provides that Street Railway Companies and inter-urban railroad companies operating their cars by electricity are given power and authority to contract with each other for the use of the tracks of either by the other, both within and without the corporate limits of any incorporated towns, etc., provided that the governing authorities of the towns shall consent thereto.

CHAPTER 347.

This is an act to fix the compensation of the trial and appellate judges of the State. The appropriate committee of this Association will make full report in regard to this Act.

CHAPTER 371.

This Act provides for the filing of a bill on behalf of the State in the proper equity Court against the West Tennessee Land Company, or any other person setting up title or claim to Reelfoot Lake, to annul or cancel all entries or grants heretofore issued or made upon the waters of said lake, and to reclaim the same for the use of the State and its citizens.

CHAPTER 305

Enacts that the county court, when in quarterly session, is authorized to adopt a resolution to contract with a bank or banks, making the highest and best bid to pay interest on the daily balance of the county funds. It provides for the appointment of a finance committee, to make the contract with the bank. The trustee of the county is required to make the deposit in accordance with the contract.

Certain counties in the State are exempted by the act from its operation.

CHAPTER 395.

This is an Act to regulate the sale of agricultural seeds. It provides the standard of variety of such seed, prescribes penalties for the violation of the Act, etc.
CHAPTER 400.

An Act to organize the militia of the State and for the government of the same, and repeals all laws in conflict therewith.

CHAPTER 273

Provides that election commissioners shall publish notices of all elections together with the names of all the officers, judges and clerks appointed to hold the same, in some newspaper not less than ten days preceding such election, for not less than two issues of such paper, etc.

CHAPTER 404

Amends the election laws so as to provide that supplemental registration authorized under the laws shall be held preceding primary elections, the same as in the case of other elections.

CHAPTER 470

Proposes to amend the constitution so as to make the governor's term of office four instead of two years.

CHAPTER 469

Proposes to amend the constitution so as to make the Attorney General and Reporter of the State elective by popular vote.

CHAPTER 468

Proposes to amend the constitution so as to make the State Treasurer and Comptroller elective by popular vote.

CHAPTER 447


The first section enacts that insurance companies shall on all policies hereafter issued on buildings and other property in the state, other than stocks of goods, merchandise and other species of personal property changing in specie and quantity by the usual custom of trade, be bound to pay the full amount of the policy in the event of total loss of such building or property. There is a provision that this shall not apply to policies containing a co-insurance clause; and it is provided further that the insurer shall have the
right to stipulate in the policy the insurable value of the property insured, and that any policy containing such stipulation shall be voided if, at the time of the loss, the whole amount of insurance on such property shall be in excess of such stipulated insurable value.

The second section provides for insurance on stocks of goods, merchandise, etc., and provides that in the event of loss, the insurer shall not be liable for an amount greater than three-fourths of the actual cash value of the property covered by each item of the policy at the time of the loss; and in case of other insurance, the insurer shall be liable only for its pro rata proportion. In order for this contract to be binding, the words "Three-Fourths Value Contract" must be printed or stamped in red ink across the face of the policy.

CHAPTER 463

Is a game and fish law for Reelfoot Lake, and prescribes that it is unlawful to catch, take or wound fish in Reelfoot Lake by poison, dynamite, or any other contrivance, and provides that the only manner to get fish there is by angling by rod and line, by trot line, seine, gun, grab or gig.

Second section provides that persons fishing in Reelfoot Lake in a lawful way for profit, shall pay a privilege tax of twenty-five cents per hundred pounds on all such fish caught from said lake and sold. It is enacted that this does not apply to persons fishing for pleasure, or for their own consumption.

Section third makes it a privilege to shoot ducks or geese for profit on said lake, the tax being $25.00 per annum to a resident of the State, and to non-residents, $50.00 for shooting for profit, and $10 for shooting for pleasure.

Section fourth prohibits shooting ducks and geese on the lake between April 15th and October 1st, except that Coots, Teal, Summer or Wood ducks may be shot at any season of the year. It also prohibits and makes unlawful to shoot ducks or geese before sun rise and after sun down.
CHAPTER 475.

An Act to protect the health of all domestic animals in the State, and prohibits the importation of dairy cows or meat cattle into the State, except in cases where such cows and meat cattle are accompanied by a certificate from a competent inspector, whose competency shall be certified to an authority from the State whence such cattle come, which certificate shall show that such cattle have been examined and subjected to the tuberculin test and are free from disease.

CHAPTER 545

Regulates the peremptory challenges of jurymen in criminal cases.

Section 1 enacts that in the trial of capital cases the State shall be allowed six and the defendant fifteen peremptory challenges. In the trial of all other felonies, the State shall have four and the defendant eight peremptory challenges. In the trial of misdemeanors, the State and defendant shall each have three peremptory challenges.

Section 2 enacts that if more than one defendant be put on trial at the same time, each additional defendant shall have the number of peremptory challenges allowed in the first section of the Act, and the State shall be allowed six for each defendant.

CHAPTER 565

Establishes and creates a bureau to be known as the "State Geological Survey." The Act defines its objects, powers and duties; provides the appointment of a State Geologist, defines his powers and duties, and permits cooperation with the Federal and State bureaus in furthering the objects of the Act.

CHAPTER 553

Makes it unlawful for any person to remove beyond the limits of the State any personal property, the title to which was retained at the time of the sale thereof, unless the consent of the seller of the article be obtained in writing prior to the time of such removal.
CHAPTER 534
Sets apart and establishes Reelfoot Lake and the shores and islands thereof as a common fishery and game preserve for the use of the people of the State, subject to the control and regulation of the State, and for that purpose authorizes the condemnation and appropriation to public use any and all private interests and rights which may be found to exist in or upon said property under the laws of eminent domain, and authorizes suit to be brought to this end.

CHAPTER 535
Provides for the better management and control of the main and branch prisons of the State penitentiary; authorizes the board of Prison Commissioners to order witnesses to appear before the Court and testify under oath in regard to any matter relative to the State penitentiary, etc.

CHAPTER 562
Provides that in any town or city maintaining a separate school system, the board of education is empowered and directed to enumerate the school population of said town under the rules prescribed in the Act. One rule is that, in addition to giving the name of the child, the name of the parent shall be given, stating whether the child can read and write, and the name of the street and number of the residence shall also be given. The enumerator shall make affidavit that he has carefully made the enumeration.

CHAPTER 509
Enacts that any person who, either individually or in a representative capacity, shall knowingly make a false statement in writing to any person, firm or corporation respecting his own financial condition, or the financial condition of any firm or corporation with which he is connected, as member, director, officer, employee, or agent, for the purpose of procuring credit in any form, or an extension of the credit already given, or to be used as a basis of credit, either for his own use or for the use of the firm or corporation with which he is connected, or having previously made, or having knowledge that another has previously made a
statement in writing to any person respecting his own financial condition, or the financial condition of any firm or corporation with which he is connected, shall afterwards procure on the faith of such statement, either for his own use or for the use of the firm or corporation with which he is connected, credit in any form, or an extension of credit already given, knowing at the time of such procuring that such previously made statement is in any material particular false, with respect to the financial condition of himself or the firm or corporation with which he is connected, shall be guilty of a misdemeanor.

CHAPTER 551

Authorizes any Chancellor in the State to adjourn any regular or special term of Court within his division to such subsequent date beyond the time fixed by such term, not beyond other intervening terms of Court of such division as may be convenient. The adjournment may be made by an order entered on the minutes of the Court, stating the date to which the adjournment is had, and on which the said term of Court will convene.

CHAPTER 490

Creates a board to be known as the "Board of Fair Trustees," and provides for what is popularly called a "State Fair."

CHAPTER 500

Enacts that in all cases in which a sentence of death has been passed on any person by the Courts of the State, the party shall be executed in the State penitentiary at Nashville. The only witnesses entitled to be present shall be the warden of the State Penitentiary, the sheriff of the county in which the crime is committed, the priest or minister of the gospel who has been preparing the condemned person for death, the prison physician, such attendants selected by the warden of the penitentiary as may be necessary to properly carry out the execution of the death sentence, and members of the family of the condemned person.
CHAPTER 449

Authorizes the funding board of the State, if it should become necessary to meet other current obligations of the State, to use and apply any or all of the funds accruing under the Sinking Fund Act, to the payment of the current obligations of the State, effective from the date of passage of this Act to March 19th, 1911.

CHAPTER 548

Makes it unlawful for any merchant or manufacturer or other person to sell within this State any package or quantity of any commodity, marked to contain or represented to contain a certain number of pounds or ounces, or fractions thereof, when, as a matter of fact, it contains a less quantity.

CHAPTER 467

Proposes an amendment to the constitution so as to make the Secretary of State elective by a popular vote.

Special Legislation.

The bonds authorized by the Legislature to be issued by counties and municipalities in Tennessee amount to more than eleven million dollars. Of course all the bonds authorized will never be issued, but it is safe to conclude that fifty per cent of the total will be issued. Most of the bills are based conditionally upon the vote of the people in the cities or counties. Others put the power of issuing bonds in the legislative bodies of the towns, while some are almost direct in their application. Of this great amount, $4,395,000 will be applied to the building of public roads, turnpikes and bridges. These issues are conditional and many will vote against the good roads bond issue, but it has been observed that the calling of a good roads meeting by Governor Patterson is particularly appropriate at this time, and will have a good effect in creating sentiment in favor of road bond issue.

The next highest total in the itemized list is street and sewer bonds. The amount is $2,210,000. Memphis has
to its credit $1,000,000 of this, while Nashville has $500,-
000; Chattanooga has $275,000; Knoxville has $50,000 and
the remainder is scattered among towns in sums ranging
from ten to forty thousand.

The third item in point of magnitude may be included
under head of "Miscellany."

The following list is from a copy prepared by Secre-
tary of State, Hallum W. Goodloe, and includes every bond
issue bill passed by the last legislature:

**ROAD PURPOSES.**

<table>
<thead>
<tr>
<th>County</th>
<th>Tax Levy</th>
</tr>
</thead>
<tbody>
<tr>
<td>Coffee County</td>
<td></td>
</tr>
<tr>
<td>Warren County</td>
<td>$30,000</td>
</tr>
<tr>
<td>Cocke County</td>
<td>100,000</td>
</tr>
<tr>
<td>Cocke County</td>
<td>200,000</td>
</tr>
<tr>
<td>White County</td>
<td>50,000</td>
</tr>
<tr>
<td>Davidson County (Bridge)</td>
<td>250,000</td>
</tr>
<tr>
<td>Monroe County</td>
<td>100,000</td>
</tr>
<tr>
<td>Putnam County</td>
<td>150,000</td>
</tr>
<tr>
<td>Dyer County</td>
<td>150,000</td>
</tr>
<tr>
<td>Sullivan County</td>
<td>300,000</td>
</tr>
<tr>
<td>Jefferson County</td>
<td>175,000</td>
</tr>
<tr>
<td>Blount County</td>
<td>300,000</td>
</tr>
<tr>
<td>Anderson County</td>
<td>100,000</td>
</tr>
<tr>
<td>Cocke County</td>
<td>100,000</td>
</tr>
<tr>
<td>Jackson County</td>
<td>100,000</td>
</tr>
<tr>
<td>Overton County</td>
<td>100,000</td>
</tr>
<tr>
<td>McMinn County</td>
<td>250,000</td>
</tr>
<tr>
<td>Macon County</td>
<td>150,000</td>
</tr>
<tr>
<td>Humphreys County</td>
<td>100,000</td>
</tr>
<tr>
<td>Campbell County</td>
<td>150,000</td>
</tr>
<tr>
<td>Cannon County</td>
<td>75,000</td>
</tr>
<tr>
<td>Hamilton County (Bridges)</td>
<td>100,000</td>
</tr>
<tr>
<td>Hamilton County (Road)</td>
<td>65,000</td>
</tr>
<tr>
<td>Hamilton County (Bridge)</td>
<td>300,000</td>
</tr>
<tr>
<td>Hamilton County (Road)</td>
<td>50,000</td>
</tr>
<tr>
<td>Franklin County</td>
<td>200,000</td>
</tr>
<tr>
<td>Hamblen County</td>
<td>200,000</td>
</tr>
</tbody>
</table>
### BAR ASSOCIATION OF TENNESSEE

<table>
<thead>
<tr>
<th>County</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Carter County</td>
<td>150,000</td>
</tr>
<tr>
<td>Hickman County</td>
<td>100,000</td>
</tr>
<tr>
<td>Clay County</td>
<td>100,000</td>
</tr>
<tr>
<td>Hamilton County (Bridge)</td>
<td>250,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$4,395,000</strong></td>
</tr>
</tbody>
</table>

### STREET BONDS.

<table>
<thead>
<tr>
<th>City</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Huntington</td>
<td>$10,000</td>
</tr>
<tr>
<td>Murfreesboro (Sewer)</td>
<td>75,000</td>
</tr>
<tr>
<td>McKenzie</td>
<td>25,000</td>
</tr>
<tr>
<td>Jackson (Sewer)</td>
<td>7,500</td>
</tr>
<tr>
<td>Martin</td>
<td>30,000</td>
</tr>
<tr>
<td>Lonsdale</td>
<td>30,000</td>
</tr>
<tr>
<td>Clarksville</td>
<td>25,000</td>
</tr>
<tr>
<td>Chattanooga (Sewer)</td>
<td>275,000</td>
</tr>
<tr>
<td>Knoxville</td>
<td>50,000</td>
</tr>
<tr>
<td>Park City</td>
<td>20,000</td>
</tr>
<tr>
<td>Erwin</td>
<td>20,000</td>
</tr>
<tr>
<td>Elizabethton (Sewer)</td>
<td>15,000</td>
</tr>
<tr>
<td>Lebanon (Sewer)</td>
<td>30,000</td>
</tr>
<tr>
<td>Gleason (Street)</td>
<td>8,000</td>
</tr>
<tr>
<td>Humboldt (Street)</td>
<td>30,000</td>
</tr>
<tr>
<td>Tiptonville (Street)</td>
<td>5,000</td>
</tr>
<tr>
<td>Morristown (Sewer)</td>
<td>40,000</td>
</tr>
<tr>
<td>Elizabethton</td>
<td>15,000</td>
</tr>
<tr>
<td>Memphis</td>
<td>1,000,000</td>
</tr>
<tr>
<td>Nashville (Sewer)</td>
<td>500,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$2,210,500</strong></td>
</tr>
</tbody>
</table>

### MISCELLANEOUS.

<table>
<thead>
<tr>
<th>City</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Johnson City (Refunding Bonds)</td>
<td>$60,000</td>
</tr>
<tr>
<td>Knoxville (Refunding Bonds)</td>
<td>75,000</td>
</tr>
<tr>
<td>Sweetwater College (Refunding Bonds)</td>
<td>15,000</td>
</tr>
<tr>
<td>Lawrenceburg (Refunding Bonds)</td>
<td>60,000</td>
</tr>
<tr>
<td>Memphis (Parks)</td>
<td>1,000,000</td>
</tr>
<tr>
<td>Chattanooga (Refunding Bonds)</td>
<td>125,000</td>
</tr>
<tr>
<td>Lake County (Refunding Bonds)</td>
<td>100,000</td>
</tr>
<tr>
<td>Lebanon (Refunding Bonds)</td>
<td>20,000</td>
</tr>
</tbody>
</table>
Lincoln County (Railroad) ........................................ 200,000
Mountain City (Refunding Bonds) ................................ 3,000
Bristol (Refunding Bonds) ........................................ 100,000
Shelby County (Refunding Bonds) ................................ 100,000
Henderson County (Refunding Bonds) ............................. 54,000
Elizabethton (Levees) ............................................. 3,500

Total ........................................................................... $1,915,500

SCHOOL PURPOSES.
Ripley (High School) ............................................... $ 18,000
Knoxville (High School) .......................................... 150,000
Sparta .................................................................... 15,000
Athens ................................................................... 15,000
Dyersburg ................................................................. 15,000
Lenox .................................................................... 50,000
Hamilton County ...................................................... 150,000
Henning .................................................................. 15,000
Monroe County .......................................................... 15,000
Medina ................................................................... 6,000
Covington ................................................................. 15,000
Gainsboro ................................................................ 6,000
Memphis ................................................................. 500,000
Athens .................................................................. 15,000
Halls ...................................................................... 20,000
Franklin County ....................................................... 25,000
Lincoln County ........................................................ 50,000
Covington ................................................................. 25,000
Maryville ................................................................. 40,000
Gates .................................................................... 5,000
James County ........................................................... 10,000
Winchester ............................................................... 15,000

Total ........................................................................... $1,175,000

WATERWORKS AND LIGHT.
Clarksville ................................................................. $ 31,500
Paris ..................................................................... 40,000
Morristown ............................................................... 25,000
Cleveland .................................................................. 60,000
Johnson City .................................................. 500,000
Jackson .................................................. 25,000
Franklin .................................................. 35,000
Mount Pleasant ........................................ 65,000
Jellico .................................................. 90,000
Sevierville ............................................ 25,000
Obion .................................................. 35,000

Total .................................................. $931,500

PUBLIC BUILDINGS.
Giles County (Court House) ............................ $100,000
Hickman County (Jail and Bridge) .................... 50,000
Jackson (City Hall) .................................... 25,000
Sequachie County (Court House) ...................... 15,000
Memphis (Police Station) .............................. 260,000

Total .................................................. $450,000

THE LIFE, CHARACTER, AND PUBLIC SERVICES
OF COL. A. S. COLYAR.

By Floyd Estill, of Winchester, Tenn.

Mr. President and Gentlemen of the Bar Association:

ARThUR ST. CLAIRE COLYAR was born June 23rd, 1818, seven miles west of Jonesboro, Washington County, Tennessee. The cabin in which he was born was situated upon the banks of the Nolachucky River, and was built by his grandfather, William Colyar, in the first days of the Jonesboro settlement. It was the birthplace of his father, Alexander Colyar, and of the grandmother of Governor Albert S. Marks.

Alexander Colyar was a river man, employed in steering boats on the Nolachucky from Jonesboro to Ditto’s Landing. During his employment as steersman he fell in love with the daughter of a brother of “Bonny Kate” Sherrill, the wife of John Sevier. The father of the young woman moved from East Tennessee to what was then Franklin County, now Coffee County, in Middle Tennessee. Undaunted by the great distance that separated them, Alex-
ander continued his suit, and a few years later proceeded by river to Franklin County where he was married to the mother of Colonel Colyar.

That was before the days of the steamboat, and while it was an easy task to descend the rivers, it was quite another matter to go up. Appreciating the difficulties before him and his bride, the sturdy frontiersman mounted a horse and with his new-made wife behind him proceeded with her across the mountains to his home on the banks of the Nolachucky River. Here, by the historic Nolachucky, Alexander Colyar and his wife Kate lived until Colonel Colyar was nine years of age. During that time young Colyar was put under the tutorship of the paternal grandfather of Frank Slemmons, a prominent member of the Nashville bar, but the rudimentary studies under Mr. Slemmons were cut short by the destruction of the family home by fire. Alexander Colyar took what household goods survived the fire on a flat-boat, with a wagon and two horses, and made the descent of the river to the mouth of Battle Creek. Leaving the boat at Battle Creek they took to the wagon, and after many days of hardship arrived at their destination, Hillsboro, in Franklin County.

Settling in Franklin County, the elder Colyar rented a farm and set to work, making crops. Two crops were made upon the land upon which the family first settled, and in the making of them young Colyar got his first experience as a tiller of the soil. His application to the task of plowing won remark and signalized the beginning of the useful citizens rise from the ranks. In this, as in all things undertaken by him throughout his long and eventful career, he went to the task with his whole self.

After two crops were made, young Colyar's father rented the old "Stone Fort" property, near what was later made the site of Manchester, for Manchester was not only not founded, but Coffee County had not been organized. The educational facilities of this section were at that time limited to "Hedge Schools" for the most part, but young Colyar, through the interest of his mother, who had spent
her girlhood in the family of Governor Sevier, was given all
the chance possible, and while living near Hillsboro was
sent to school to William Jennngs, and after the removal of
the family to the "Stone Fort" property, to Daniel McLean.

The school periods were limited to two or three months
of the fall of each year, and the little education he had be-
fore he began the study of law was obtained under the
prevailing conditions.

In a sketch of his life, contained in a letter to one of
his daughters, a little more than a year previous to his
death, the only references made to his residence in Coffee
County are, that he walked four miles when he was nine
years of age to join the Sons of Temperance, and that he
made some reputation there plowing corn.

The father was a man of very limited means and the
family was quite a large one, there being ten girls and
three boys.

After young Colyar was grown, he taught school,
and at the age of twenty-two he began the study of law in
the office of Micha Taul, at that time the leader of the
Bar at Winchester. Col. Taul was a Kentuckian, and had
served several terms in congress prior to his removal to
Franklin County, and had been defeated for re-election on
account of his vote to raise the salaries of congressmen from
fifteen to twenty-five hundred dollars.

After his admission to the Bar, Mr. Colyar soon be-
came prominent as a lawyer and a Whig leader, and early
in his professional career he acquired a large and lucrative
practice. His first association in the practice of law was
with W. P. Hickerson, at Manchester. Mr. Hickerson was
himself a lawyer of great ability, and after the Civil War
served a long time as Judge of his Circuit, and until his
voluntary retirement from the Bench. Mr. Colyar lived at
Manchester for a few years, and then returned to Frank-
lin County and continued the practice of law at Winchester
and in the adjoining counties. His practice extended into
the counties of Lincoln, Bedford, Coffee, Grundy and War-
ren, and in these counties he attended the Courts regularly,
and in cases of exceptional importance he was frequently called to still other and more remote counties.

Colonel Colyar was eighty-nine years of age at the time of his death in 1907. He was about forty-two years of age when the war between the states came on. The war times divided the period of his life activities into halves. Before the war he devoted his entire time and great energy exclusively to the study and practice of law, and his success was very remarkable.

When the war period came on he was in the prime of life, had all the practice he could attend to, was the owner of a thousand acres of fertile land, upon which was situated a handsome and commodious residence; he was the owner of thirty slaves who lived upon and cultivated these lands under the direction of an overseer. This tract of land is in sight of the main line of the Nashville, Chattanooga & St. Louis Railway, within a few hundred yards of the railway station at Decherd.

In 1858 or 1859 Col. Colyar opened a law office at Nashville, but he did not change his residence until 1866. Shortly after opening his branch office in Nashville, war talk broke loose, and he went forth to do what he could to save the Union from destruction. He was an “Old Line Whig,” and as such, in 1860, was sent to the Whig convention at Baltimore as one of the twelve delegates from Tennessee, under instructions to vote for the nomination of John Bell.

The great question in his mind at this crisis was the preservation of the Union. He has been called the “Second Andrew Jackson,” and it was his rule to hew directly with the policies of this illustrious leader. The words of Jackson, that “the Union must be preserved” were always before his mind’s eye, and during the days in which secession seemed inevitable, he held to this view of Old Hickory’s with Jacksonian tenacity.

In this convention Texas proposed Sam Houston for the nomination, in the hope of averting a disruption, and Colonel Colyar remembering that Houston had been with
Jackson through the dark days of the Creek War, broke his instructions by casting his vote as a delegate for Houston instead of Bell. Bell's cause was championed upon the floor of the convention by Gustavus A. Henry, one of the foremost orators of the South. The eleven other members of the delegation stood to Bell, and he was nominated. Colonel Colyar never regretted his action and maintained until the last that it was justified. He held that if the others had voted as he did Houston would have been elected and the war probably averted.

Returning to Tennessee, Colonel Colyar began an active canvass of the State in the interest of the campaign against secession and was a great factor in the result. His speeches were strong, and he was unsparing in his denunciation of the war party, which he declared would have the destruction of the great Union to answer for.

A Confederate soldier once told me that he heard the speech delivered by him in this campaign at Old Salem, situated within two or three miles of where the elder Colyar finally settled and reared his family of ten girls and three boys, and that in this speech Colonel Colyar predicted the conditions that would obtain in the South at the close of the war as though endowed with prophetic vision. My informant said that when this speech was being delivered he did not believe a word of these prophesies; that at that time he felt that the South would whip the Yankees in sixty days; but, that after four years of hard fighting and privations of every description, as he was returning on foot from Virginia to his old home in the lower end of Franklin County, he thought a thousand times on the journey of Colonel Colyar's prophetic utterances in the Salem speech.

Notwithstanding his antagonism to secession in the formation of the Confederate Congress, he was nominated and elected from the Chattanooga District, without his having solicited the honor. He served during the entire war as a Congressman from the Chattanooga District.

Prior to the war Colonel Colyar had earned a splendid
reputation as a painstaking, industrious, accurate and successful lawyer. He was a great lawyer until his powers began to wane on account of age. But after the war, and after he had become interested in industrial enterprises and newspaper work, it was difficult to interest him in a case, unless it involved a very large sum of money or some public question of vital importance. Before the war he was not only successful as a practitioner of the law, but he was a financial success as well.

In about 1852 some New York capitalists obtained a charter for the purpose of mining coal in Marion, Grundy and Franklin Counties. It was then considered a large outlay of capital which was invested in this enterprise. Soon after the organization of the company a railroad leading to the coal fields was commenced and was constructed from Cowan, in Franklin County, up the Cumberland Mountain. At that time this was regarded as one of the greatest feats of engineering ever attempted, and this road has the unique distinction of being the only line of railway ever constructed in the State, prior to 1870, without State aid. This railroad was afterwards extended to Tracy City, and the first car load of coal was shipped on the 8th day of November, 1858. This road was built at an expenditure of over a million and a half of dollars.

Just prior to the war, however, the company became involved in litigation which resulted disastrously for the enterprise. Two creditor’s suits were instituted, one in the State, the other in the Federal Court, and in this way the property passed out of the hands of the projectors and builders. Colonel Colyar represented some of the creditors in this litigation. In 1866 he went to New York and effected a compromise, whereby the New York creditors were given a mortgage on the property of two hundred and twenty thousand dollars, and the Tennessee creditors took the stock of the new company in payment of their debts. He was elected president of the new company. The property then consisted of about thirty thousand acres of land, the title to which was defective, and the so-called “railroad”
was in fact one with about half the rails gone. As head of the new company, he immediately went to work to rehabilitate the property, and succeeded in interesting many prominent citizens in the enterprise.

In 1871 a contract was made with the State by which convicts were to work in the coal mines. This was the first time in history that convicts of a State ever worked in mines, and it was continued in Tennessee until 1896.

The name of the original corporation that constructed this railroad and acquired these lands was the Sewanee Mining Company. The name of the company was changed to the Tennessee Coal & Railroad Company. In 1880 the charter was again changed—this time to the Tennessee Coal, Iron & Railroad Company, and an iron furnace was constructed.

At this time the majority of the stock was acquired by New York capitalists, and John H. Inman, of New York, secured control. The company began to make great extensions and entered Alabama in 1886. The capital stock was increased to ten million dollars and large absorptions were made. In 1888 Ex-Governor John C. Brown became president of this company, and was soon succeeded by Senator T. C. Platt of New York. The capital stock was increased to twenty million dollars in 1891, and Nathaniel Baxter was chosen president. In 1900 D. H. Bacon assumed the management of the company.

The work of Colonel Colyar in the interest of this company was probably one of his greatest achievements. Starting in 1866 with a bonded indebtedness of $220,000.00 and stock amounting to $400,000.00, which sold from ten to twenty cents on the dollar, he saw this great enterprise grow and increase until it was stocked at fifty millions, producing nearly five million tons of coal annually, besides over five hundred thousand tons of pig iron, and two hundred and fifty thousand tons of steel. It was largely through his efforts that the rehabilitation of this company was brought about, and in doing this Colonel Colyar not only accomplished a great work for Tennessee, but for the entire South.
At the time that Inman and his associates obtained control of this corporation, Colonel Colyar sold his holdings in the company. With a part of the money derived from this sale he bought a controlling interest in the "American" in 1881, and with the aid of a positive pen he forged a place for himself in the history of journalism in Tennessee. A tribute paid him at a banquet given in his honor by the Nashville Press Club, by Mr. G. H. Baskette, editor of the "Banner," expresses fitly the estimate of the man against whom he was pitted. Mr. Baskette said: "I found him a very virile and sturdy foe; aggressive, provocative, courageous, persistent—one who never gave up. If he ever got the worst of it, as I in my assurances, might have thought he did sometimes, he had an obstinate way of insisting that he had won the victory. I can vouch for the sharpness of his thrusts, the skill of his parry and the persistence of his purpose."

He was editor of the American until 1884, at which time he again took up the practice of law. He was identified with some of the most famous cases of his day. He was often in the Supreme Court of the United States and was a well known figure in Washington. As a testimonial of appreciation of the value of his services in a certain case, fought through the Supreme Court, his client tendered him two thousand dollars in addition to the fee contracted for.

Colonel Colyar was a firm believer in the old English idea that for every wrong there is a remedy. His belief in this great principle was forcibly illustrated in his attack upon what is known as the "Alden Ring," in the City of Nashville. Shortly after the war Nashville was being ruled by this "ring." The "ring" over-rode the rights of the people and appropriated the taxes. The Judges on the Bench were Union men, but they were neither time-servers or corruptionists. To these officers he appealed in behalf of the rights of the citizens of Nashville and asked for the appointment of a receiver to take charge of its affairs, and for an injunction. An injunction was
granted and a receiver was appointed to take charge of the assets and property of the City of Nashville, and for two years, as such receiver, Mr. John M. Bass had control of the affairs of the capitol city, including the police and fire departments. This was the first time in the history of either England or the United States that the affairs of an incorporated city had ever been placed in the hands of a receiver.

An exhaustive argument was made before the Chancellor, in which it was maintained that the heads of an incorporated city had no more right to abuse its powers than any other corporation. When the receiver was discharged the citizens of Nashville had, in the meantime, been enfranchised, and they came into possession of their own.

His own account of his connection with this litigation, in which the receiver was appointed for the City of Nashville, was given in a speech before the Nashville Press Club, in which he said:

"Shortly after the war most of our citizens were considered by the Alden Ring, then in charge of the city affairs, as being unfit to take any part in the city government—and we were simply lookers on. While under a pretense of taxes, they were appropriating our property to their own private use. There seemed not to be the slightest hope of removing these city cormorants. But we had some Judges on the Bench who were faithful public officers, without regard to differences on the then-recent war. I drew a bill in the names of some citizens with a view of going into the Chancery Court, and on the principle of the old English writ of replevin—a mode of getting your rights at the beginning—we asked the Court to give us possession, and try the lawsuit later. The first application was at Chambers, asking a Judge of a new Court to recognize our proceeding, to give us an injunction temporarily, which he did. Later we went to the Chancery Court and the Chancellor gave us possession and appointed a receiver for the city. From start to finish this proceeding was in effect a declaration of war, with all the attending conditions be-
fore the actual fighting commences. The receiver was John M. Bass, father of our esteemed citizen of the same name. Mr. Bass was a man of mind and clean in every respect. He appointed his agents and closely looked after the city affairs for two years, and gave us all an opportunity of seeing city matters conducted on business principles, without politics or partisan favorites to be rewarded. Neither in England nor the United States had a receiver ever been appointed to take charge of an incorporated city. The argument before the Chancellor was exhaustive, and the defense was pronounced and fierce. But the question at last was—has a chartered city any such connection with the State as to make it, except in form, different from other corporations in the case of a gross abuse of the trust. So in the Courts we got relief, when otherwise we might have had a mob, which is sometimes resorted to in such troubles. This, with other scenes in life, has made me a believer in the old English idea that in the law there is a remedy for every abuse of our rights as citizens. And along this line let us maintain unshaken confidence in our judiciary—always remembering that to go on the Bench—chosen to adjust the peoples’ rights, and then to become a partisan, would be degradation that we can’t afford to imagine.”

In a letter to his daughter, shortly before his death, in which he gave a brief sketch of his life, Col. Colyar made substantially the same reference to this celebrated case, as in the speech before the Press Club, and paid the same tribute to the Judges who granted the fiat and appointed the receiver, and then paid this glowing tribute to the members of his profession:

“My experience with and observation of our Judges on the Bench has fixed in my mind a high estimate of the profession. The trust reposed in the lawyer at the Bar is little less sacred than that reposed in the Judge on the Bench. It has been the education and training of our lawyers, and the lines of thought which they pursue, that have made for this country, as well as for England, whose service in both countries is the crowning feature of public
life, and this from the faithful discharge of public trusts. The young man thinking of the law should arrest himself and inquire: 'Can I take the responsibility of this trust and perform every obligation with fidelity?'

The suit of the citizens of Nashville against the "Alden Ring" was the character of litigation that most interested Colonel Colyar, and was about the only kind that did interest him after he became a captain of industry. He was not the accurate, industrious, painstaking and diligent lawyer after he became interested in this coal and iron property that he was before. He appeared as counsel in a great many important cases from time to time after he removed to Nashville, and at one time did a large practice there; but he never, at any time after the war, was the successful general practitioner that he had been before. It required a case that involved a very large amount of money, or one in which there was some question of great public concern to excite his lively interest at this period of his life. When he did become interested in a case he devoted all of his mind and energy to the solution of its problems until he had mastered the case in all of its details.

Some thirty years ago I asked a gentleman, whom I regarded as the leader of the Tennessee Bar at that time, who he regarded as the strongest lawyer in Tennessee. His reply was—that he would rather meet any of them than A. S. Colyar, when Colyar got to carrying the file under his arm.

Colonel Colyar was an all-round lawyer. As a trial lawyer he was unexcelled. He was master of the science of pleading. His briefs were exhaustive, his propositions being stated in the simplest language and the argument couched in the purest English. He was an expert in cross examination, and a terror to the lying or dodging witness. In the argument of a cause, either before a Court or jury, he was interesting, forceful, logical and effective. His fund of anecdotes was inexhaustible, and he employed them with rare tact and effect in impressing his points or ridiculing his adversary. In a good cause he was invincible, and in
making the worst appear the better reason he was a dangerous antagonist.

Colonel Colyar was a born orator, but not of the conventional type. On the stump and in the Court room he was at his best, because he did not like to trammel himself with a prepared oration. His thoughts flowed freely and he was fluent in expression.

It was Colonel Colyar who first advocated scaling the State debt, which was crushing the life out of the State which had not profited by it, and when the pendulum bade fair to swing too far, it was Colonel Colyar who threw himself into the breach, and he was a powerful influence in saving the State from the curse of repudiation.

While he was editor of the American, and in fact during his entire public career, he advocated the doctrine of a protective tariff. He was frequently charged by political adversaries with inconsistency. This charge was lodged against him on account of his vote for Sam Houston in the National Convention of 1860. Colonel Colyar's reply to this charge was that in the emergency he chose between the choice of his constituents of a presidential candidate and what he regarded as a vote for the preservation of the Union.

Is was also said that he was inconsistent in fighting the wave of repudiation that spread rapidly over Tennessee, after he had made the suggestion that the debt should be scaled. To this criticism his reply was—that there were equities in favor of the people, and that the debt should be reduced, but that the rights of the bondholders should have due and fair consideration.

Colonel Colyar's democracy was often impeached on account of his advocacy of a protective tariff. To this his reply was—that he was as good a democrat as could be made out of an Old Line Whig. The Whig party has stood for a protective tariff and his views on this subject underwent no change when he decided after the war to affiliate with the democratic party.

He opposed secession with all the ability and energy
he could command. When war was declared he did not surrender his views on this subject, but stood loyally by the people of his native State, and his constituents showed their faith in the man by sending him to represent them in the Confederate Congress. But whatever may be said of his consistency in other things, there was never any criticism at any time of his record upon the subject of temperance and prohibition.

He was the first prohibitionist I ever knew. He made the first temperance speech I ever heard. He fought the liquor traffic and intemperance with all the zeal of his nature and powers of intellect from the time he walked four miles to join the Sons of Temperance, when nine years of age, until his death on December 13th, 1907, in the Capitol City of his native State. It has been said that he was the author of the now celebrated Four Mile law. This is true in a sense.

The passage of the Four Mile law came about in this way: In 1877 Hon. H. R. Moore, a friend and contemporary of Colonel Colyar, represented Franklin County in the Lower House of the General Assembly of Tennessee. Major G. R. Fairbanks, a representative of the University of the South, situated at Sewanee, in Franklin County, approached Mr. Moore and requested that he introduce and secure the passage of a bill to prohibit the sale of intoxicating liquors within four miles of the University, stating that the officers and professors of the University were constantly annoyed by the sale of wildcat whiskey to the students of the institution. Mr. Moore, who had been educated for a lawyer, but who had never actively practiced the profession, expressed to Major Fairbanks grave doubts as to the constitutionality of the proposed measure, and suggested that they confer with Col. Colyar on the subject. Col. Colyar agreed with Mr. Moore that such a bill would be unconstitutional. He suggested, however, that a constitutional bill could be framed and enacted, prohibiting the sale of intoxicating liquors within four miles of ALL incorporated institutions of learning, and this was done.
The liquor men did not realize the importance of this measure and made no effort to defeat its passage; but they soon woke up to the fact that this bill had cut out the sale of their goods, wares and merchandise in a large part of the territory of Tennessee. The bill was afterwards amended so as to prohibit the sale of intoxicants within four miles of where a school of ANY SORT was conducted, and this measure stopped the sale of liquor in all the territory of the State except in incorporated towns. It has since been amended from time to time until the Four Mile law now applies to the entire state.

On this subject of temperance and prohibition he practiced what he preached; he never drank a drop of liquor in his life.

He was a man of great physical as well as moral courage. His moral courage was demonstrated in many emergencies throughout his long and eventful career, with the history of which many of you are familiar.

I will relate two incidents illustrating his physical courage. In the early seventies there was an effort made to remove the county site of Grundy from Altamont to Tracy City. It required, as you are aware, three-fourths of the qualified voters to vote in the affirmative in order to do this. Colonel Colyar had large interests in Grundy County, and he at once began to write and speak advocating this change. He was violently opposed in this effort, and the opposition was led by a lawyer named Boulden, who lived at Altamont. Colonel Colyar and Boulden had made numerous speeches over the county, advocating their respective views on the subject of the removal of the county site. Col. Colyar made an appointment to speak at Altamont; the citizens of that place and of the immediate surrounding districts were much opposed to the removal of the county site; Col. Colyar was notified that he would not be allowed to deliver a speech on that subject at Altamont. This antagonistic movement was supposed to have been started by Mr. Boulden. When the day arrived for the speaking at Altamont, it was a cold, snowy day in January. Col.
Colyar, with his son Wallace, and one or two of his friends went from Tracy City in the morning, arriving at Altamont at 11 o'clock, and found the court house filled with Boulden's friends and those opposed to the removal of the county site. Colonel Colyar promptly pushed his way through the crowd in the court house, walked up into the Judge's stand, without pausing to remove his gloves. Turning around and facing the audience he began his speech by saying:

"When I have to skin a dog I usually take off my gloves"—at the same time suiting the action to the word and slowly drawing off his gloves. Boulden had taken a front seat almost immediately under the speaker. Pointing his long bony finger at Boulden, he continued:

"If there is a man in this county who will swear out a warrant against this man Boulden for perjury, and I don't put him in the penitentiary, I will promise never to try another lawsuit."

He spoke for an hour, castigating Boulden, notwithstanding the fact that there were over two hundred men there who had declared that he should not speak. The fall of a pin could have been heard anywhere in the court room while he was speaking; not a word was uttered by anyone at any time.

Having finished his speech, he walked out of the court house, got in his buggy, and drove back to Tracy City unmolested.

Another similar instance was during the campaign in which Senter was elected Governor of Tennessee, when James Mullins was running for Congress and making speeches in Bedford, Franklin, Lincoln and Coffee Couties. In his speeches Mullins said something derogatory about Colonel Colyar. As soon as he heard of it he wrote Mullins and asked for a division of time for one of his appointments, at Salem, Tennessee, this being near the old Colyar home. Mullins refused to divide time with him, saying that it was his own appointment, and declining to permit Colonel Colyar to speak on that occasion. Colonel Colyar than no-
tified Mullins that he intended to speak in Salem on that day—the day of Mullins' appointment. When the day arrived he left Tracy City at daylight with two or three friends; he reached Salem about eleven o'clock that morning. When Mullins walked up to the platform to commence his speech, Col. Colyar closely followed him and stopped in front of him and said to the audience:

"I have asked this man to divide time with me here today, and he has refused. I now notify him that he can speak one hour, and at the expiration of that time I am going to speak from this platform," he then took a seat directly behind Mullins.

Mullins was so embarrassed and confused that he could not consume his allotted time, and after speaking thirty minutes in a wandering and disconnected manner, without referring to Colonel Colyar or calling his name, took his seat.

Colonel Colyar then walked to the front of the platform and looking around him, discovered that he was almost surrounded by two hundred of Brownlow's militia, every man with a gun in his hand, sent there for the protection of Mullins. He began by saying that if Mr. Mullins thought he would intimidate him by surrounding himself with a bodyguard of two hundred of Brownlow's barefooted thieves, he was very much mistaken. He then spoke for more than an hour, devoting his time equally to abuse of Brownlow's militia and Mr. Mullins. Not a word was said—not a hand moved, while he was speaking.

Numerous instances in his life could be cited which clearly demonstrate that he had no conception of the meaning of the word "fear," so far as personal courage was concerned.

While he was the successful promoter of many enterprises, notably the great coal and iron industry, to which reference has been made, he was not a good business man; he was too careless and indifferent as to details to make and keep money for himself. While at several times in his life he was possessed of a large fortune, he died a poor
man. While he was in affluent circumstances at several periods of his life, his sympathies and feelings were always in the interest of the masses. He was distinctly a friend and an advocate of the poor man. He probably gave more legal services to clients who were unable to pay than any lawyer who ever lived in Tennessee.

He made the race for the democratic nomination for governor in 1878, while the scaling of the state debt was the issue of state politics, and while a large majority of the democratic party supported him in his aspirations, he failed of the nomination on account of the two-thirds rule that then obtained in democratic conventions. Albert S. Marks, a cousin of Colonel Colyar's, who had been Chancellor of his division, was nominated as a compromise candidate. Gov. Marks had been Colonel Colyar's law partner at Winchester before the war, and after his term as Governor had expired, they again formed a partnership and practiced law together for many years at Nashville.

Colonel Colyar lived far ahead of his day and time. Instead of waiting for public sentiment to create a demand for his opinion and his views, he was the first to announce his convictions on every public question. This fact always tended to keep him out of line with the politicians and made him unpopular from a political standpoint. He did not wait for public opinion to form his convictions on any subject.

He was influential in locating two of the most famous of southern educational institutions. It was largely through his influence that the University of the South was located at Sewanee, Tennessee, and he secured the location of the renowned Mary Sharp College at Winchester. For nearly a quarter of a century Mary Sharp College was the best known female educational institution in the south, being the first female college in the United States to confer the degree of A. B. upon women, with both Latin and Greek as a sine qua non to the attainment of this degree.

One of the most notable achievements in Colonel Colyar's later life was the writing of the Life and Times of General Jackson. This great work was published in the
eighty-fifth year of his life, and is one of the most remarkable biographies in existence. He was an ardent admirer of General Jackson, and no man, perhaps, in the whole nation was so well equipped to write this biography. This great task was accomplished after he was past the age of eighty.

Among other things in the preamble to the resolutions adopted by the Nashville Bar, after his death, were these words:

"One of the most pronounced characteristics of Colonel Colyar was his public spirit. He was in deep sympathy with everything involving the material prosperity of the country, and the intellectual, moral and religious culture of society. He was found among the most active promoters of schools, colleges and churches, and among the most ardent friends of manufactures, railroads, mines and commercial and financial enterprises. He was the uncompromising friend of law and order, of sobriety and of purity in the administration of government. He was a consistent friend of temperance, by example as well as by precept, and a total abstainer from alcoholic liquors; he was the author of the Four Mile law, the most unique piece of prohibition legislation which the country has ever produced. No man in the state was ever more oblivious of his personal popularity when a worthy cause needed a champion. His courage was almost without limit. Like all positive characters, he made his mistakes and incurred criticism even when he was in the right. As might be expected he sacrificed himself, so far as public office was concerned, and died a poor man. At the remarkable age of ninety years he rounded out a life full to the end of extraordinary intellectual and physical vigor, and full of a fruitful activity which endears his memory to the great body of his surviving fellow citizens.

Colonel Colyar had devoted perhaps more than half of his life to politics, newspaper work and to the promotion and development of industrial enterprises, yet he ranked with the best in the south in his profession. After his death
the Memphis News-Scimitar commenting editorially on his great career as lawyer, statesman, journalist and man of affairs, concluded with these words:

“At the time of his death he was far and beyond Tennessee’s foremost citizen. The good he has done will live after him. His life’s walk would prove a worthy pattern for those of succeeding generations. His name and fame are secure in Tennessee’s pantheon.”

BANKRUPTCY LAW, ITS HISTORY AND PURPOSE.

By H. H. Shelton, Bristol, Tennessee.

Mr. President, Ladies and Gentlemen:

I am aware of the fact that my subject is an unpopular one. It is neither a cheerful nor a pleasing theme, because it deals with financial disaster, and we dislike the gloom attending ruin. Bankruptcy law, however, is a distinct and an important branch of our system of jurisprudence. In its administration it is far-reaching, and I hope, therefore, that a consideration of certain phases of it may neither be wholly without interest nor altogether unprofitable. Unless one’s attention be challenged to the scope and effect of the present system, he scarcely realizes its magnitude. Statutes dealing with the subject of bankruptcy, when they have been enacted at all in the United States, have always followed periods of financial depression. Existing conditions, just prior to the passage of the Act of 1898, demanded the enactment of such a law. Countless debtors throughout our country were laboring under the burden of debt, and the debt-laden man has little ambition to accumulate, or to succeed as the world views success. His energies do not play freely, his family suffers, and he is not in position to render either the State or society efficient service. As someone has said: "We cast off the care of all future thrift, because we are already bankrupted." The period preceding the passage of this law was a strenuous one. Those were the days of general creditor's bills, attachments, assignments, receiverships. The reminiscences of some of my
older friends now before me would be highly entertaining. They can recall how their clients have rushed into their offices demanding immediate action; how they have, perhaps, worked all night preparing general creditors’ bills and attachments or assignments, and how when morning came they have found that the other fellow was ahead of them by only a few moments. At that time, let insolvency be suggested, intimated, or hinted at, and the client became alarmed and the lawyer began to quote: “Vigilantibus, non dormientibus, leges subveniunt;” or, perhaps, for lack of time, “Lex vigilantibus favet,” and other learned and high-sounding phrases. “First come, first served,” was the idea and to the victor belonged the spoils was the result. Equality, in that race of diligence, was no longer equity, and the divine law of justice ceased to be the rule of decision.

Such was the status of affairs when the National Congress passed what is known as the Bankruptcy Act of 1898. The effect of this law was to impose upon every state and territory in the Union a uniform method of dealing with insolvency and to annul all State insolvency laws. Now, if one remembers that the practice of commercial law deals principally with transactions in which some of the parties have become insolvent, then he can readily understand the effect of this law upon commercial life. It is a matter to be considered in every transaction of importance, and one to be reckoned with in not a few.

The general subject of bankruptcy law is too comprehensive, of course, for a single paper. I shall attempt to discuss only two phases of it, namely: Its history and purpose. The system is purely statutory in its origin and development. As civilization has advanced, these statutes have been modified, repealed, and re-enacted. The purpose has changed with the development of the law, with the growth of commercialism and with the progress of the world. The two branches of the subject selected are, therefore, closely allied, and may be appropriately considered together.

To fully treat the subject from a historical viewpoint
would require more time than I have at my disposal, and references to the older statutes must be brief. Some writers go back to the dawn of biblical history, and see in the Jewish Sabbathical Year of Release something analogous to the law of bankruptcy. Viewed solely from the standpoint of a release, it might be said to bear some remote resemblance to bankruptcy law, yet the Mosaic law contains none of the elements of a true bankruptcy statute. A release, or discharge, is a mere incident, not the purpose of bankruptcy law. It is an element or feature added in comparatively recent years, and figures but slightly in the history of this branch of jurisprudence.

Bearing a closer resemblance to the subject are the old Roman laws relating to insolvent debtors. But there the criminal idea predominated, and the cruelty of Republican Rome towards such unfortunates is a matter of history. In the time of Julius Caesar the law known as "Cessio Bonorum" grafted on to the jurisprudence of the empire the principle that an insolvent was not subject to capital punishment, imprisonment or slavery where he had honestly turned over all of his assets for the benefit of his creditors. This was not, however, a discharge. This spirit of the early Latins still survives in the present bankruptcy systems of Continental Europe. In France, for instance, the bankrupt must in reality pay his debts. In that country, there are three classes of bankrupts: (1) He whose condition is due to misfortune is not liable to imprisonment; (2) If guilty of misconduct, he may be imprisoned for a short time, and (3) If his bankruptcy is fraudulent, he may be sentenced to actual penal servitude for a long term of years. The idea still prevails that inability to pay a debt is a crime.

The true origin of our bankruptcy system is found in the Bankruptcy Acts of England. The original English Act was not, strictly speaking, a criminal statute, yet it was quasi criminal. The bankrupt was an "offender," the act an "offense," and the proceedings had reference to a "fraudulent" transaction. The odium cast upon the term
over three hundred and fifty years ago clings to it to this day.

If we recall our history, we remember that England's commerce was growing rapidly during the century prior to the enactment of her first bankruptcy law. The Lombards from Italy, her first bankers and brokers, had come to London, inaugurated a system of exchange, and had thus given life to her commerce. The common law, crystallized in form, cumbersome in its application and a restricted equity procedure had hitherto been sufficient for England's needs. But with this commercial advancement, the growth of general trading and the extending of credit, the old remedies were found to be inadequate, and the exigencies of the case brought about the enactment of England's first bankruptcy statute in the year 1542, in the reign of Henry VIII. The mother country has not been without a bankruptcy law since that date. That old statute is interesting to the student of this branch of law, but only one feature will be referred to here, viz: that it dealt solely with fraudulent debtors. Note the preamble:

"Whereas, divers and sundry persons craftily obtaining unto their hands great substance of other men's goods, do suddenly flee to parts unknown, or keep their houses, not minding to pay or restore to any of their creditors, their debts and duties, but at their own wills and pleasures consume the substance obtained by credit of other men, for their own pleasure and delicate living, against all reason, equity, and good conscience."

As will be seen from the foregoing quotation, the purpose of the Act was to prevent frauds, yet, it was a true bankruptcy law, because, if there is a fixed, permanent and fundamental principle underlying such laws, it is that where a person's property is insufficient to pay all of his creditors in full, it shall be ratably divided among them, and this original law recognizes that principle, providing that the assets must be distributed "to every of the said creditors a portion, rate and rate alike, according to the
quantity of their debts.” Such is the real purpose of our law today.

The first statute, however, was not sufficient and adequate, and the preamble to the second, passed in 1570, in the reign of Elizabeth, is a lamentation.

“Forasmuch as notwithstanding the statute made against bankrupts in the thirty-fourth year of the reign of our late sovereign, lord King Henry the Eighth, those kind of persons have and do still increase into great excessive numbers and are like more to do if some better provision be not made for the repression of them and for a plain declaration to be made and set forth who is and ought to be taken and deemed for a bankrupt.”

This statute of Elizabeth, it may be said, in general, simply amplified and enlarged the law of Henry VIII, having in view always the prevention of an increase of such persons as craftily obtained “into their hands great substance of other men’s goods.” It contained many of the features of modern bankruptcy statutes. Under it, proceedings were involuntary and its operation was confined to merchants, brokers, and traders, and, in fact, the operation of all succeeding bankruptcy laws, both in England and in the United States, was limited to such persons until about the middle of the 19th century, the distinction having been abolished in this country in 1841, and in England in 1861.

Noting now only the principal changes in the development of the English system, we find the law amended in the reign of Anne, when, to some extent, the criminal feature of the former statutes was removed; that in the reign of George IV, voluntary bankruptcy was introduced as was the feature of composition, or settlement, between debtor and creditor; that in the reign of William IV a court of bankruptcy was established, consisting of commissioners, judges, and official assignees. The procedure was modified in 1849 and by the Act of 1861 persons other than traders were brought within the provisions of the law. In 1869 the official assignees and commissioners were abolished and
provision made for the appointment of trustees who should be creditors. The Court was also stripped of its criminal jurisdiction, the criminal clauses being placed in another act known as the Debtor's Act. In 1883 the bankruptcy laws were amended and consolidated and again amended in 1890.

Such is a brief resume of the English bankruptcy statutes. As shown, the development of the system was accomplished by parliamentary legislation rather than by judicial decision. Bearing these statutes in mind, and looking back for a moment, we find that at the time of the American Revolution the English system of bankruptcy was a system having in view the protection of creditors from the fraudulent devices and practices of dishonest debtors; a system to which voluntary bankruptcy was unknown; a system applicable only to merchants, brokers and traders and one that took no cognizance of preferences. When our forefathers severed the tie that bound them to the mother country and began to make laws for themselves, the then existing English laws, of course, were used as models, and the first American bankruptcy law bore a striking resemblance to the then existing bankruptcy system of England. The framers of the Constitution appreciated the importance of a uniform system of dealing with insolvency, and gave to Congress exclusive jurisdiction over the subject, but leaving the exercise of that jurisdiction optional with it.

When we begin an examination of the various bankruptcy statutes of the United States, we find a total lack of uniformity and harmony. Congress has chosen to exercise its power infrequently, with long intervals of time separating the statutes, which have been, for political reasons, generally repealed soon after enactment. The purpose, as shown by the statutes themselves, has changed from time to time and decisions of the highest courts under one act are, in the main, worthless as precedents under a subsequent statute. Different persons have been affected by the different acts; the procedure has been different; different acts of debtors have been regarded as acts of bankruptcy;
the rights of creditors have been changed materially, and the status of the bankrupt under the various acts has not been the same. The changes have not always indicated the same legislative purpose, nor had in view the accomplishment of the same end.

The first American bankruptcy statute was enacted in the year 1800, when John Adams was president. It provided for involuntary petitions only, and applied to merchants, traders, and brokers. The English idea prevailed, the object of the law being essentially to prevent fraudulent and unfair practices among those classes of persons falling within its purview. In terms, the duration of the act was limited to five years.

At this stage of our political history, the several states were jealous of their individual rights and resented, to some extent at least, the power exercised by the Federal Government in enacting this law. Besides, transportation facilities were poor, the United States Courts were distantly removed from a large majority of the people, and litigation in these courts was expensive and inconvenient. The country was not yet ready for such a law, and it was repealed in the administration of Jefferson, in 1803.

Congress did not again elect to exercise its constitutional privilege for nearly forty years. With the Whigs in power and in 1841 the second statute was enacted, becoming effective in February, 1842. This was a period of depression following the panic of 1837. It was also a period of unrest. The States' Rights controversy was at fever heat, and like its predecessor, this law was short-lived, politics prompting its repeal in 1843. It was, however, a good law. It dealt with the subject broadly and intelligently, and, to my mind, was superior to either the preceding statute or the one next following. It provided for voluntary bankruptcy and applied to others than merchants, traders, and brokers. It, in a proper case, provided for a discharge, as did its predecessors. The procedure was ample to insure fairness, and prevent fraud. But the Courts were still far removed from litigants, and witnesses.
The stage-coach was a slow method of locomotion and the roads were rough, the people jealous of Federal authority, and the end soon came.

A quarter of a century passed, and, as our country was emerging from the shadows of the Civil War, and at a period of great depresssion, when our own Southland was strewn with financial wrecks and laid bare by the ravages of civil strife, Congress, in the administration of Johnson and in the year 1867, enacted our third national bankruptcy law. This law was repeatedly amended, revised, and finally re-enacted in 1874, when Grant was President, and repealed in the Hayes administration in 1878, having been in force about eleven years.

This law was the subject of just criticism. The idea was then that any man was insolvent who could not, in due course of business, meet his obligations. It was an easy matter, at a time when money was scarce and business confidence at a low ebb, to invoke the provisions of the law against a debtor, because, however much property he might own, it was a very difficult matter to realize upon it, and great injustice was often done. Again, it contained so many provisions against a discharge, that it was hard, indeed, for an honest debtor, who had surrendered his all, to get relief, and he was still hounded by the unrelenting money-changer. The courts were still far distant from the people. Extravagance in administering estates was permissible and a pernicious and vicious fee system was in vogue. Is it strange that the law was condemned? Do we wonder that it was unpopular? When we take a retrospective view, and look at its evils, unbiased by sectional feeling and with the clear perspective of right reasoning, we conclude that the criticism of the law of 1867 was just, and that it merited the condemnation it received.

Congress was aware of the defects of the law of 1867, and twenty years after its repeal, in the year 1898, in the administration of McKinley, was enacted the present law and it was drafted with a view to avoiding the evils referred to. It provides for the location of referees convenient to
the people and the principal part of the litigation is conducted where the parties reside. These officers are, after a reference of a case, practically the bankruptcy court, their decisions being subject to review by the District Judge. The Act, as has been said, "breathes economy." Compensation of officers is small and is fixed by the Act itself and cannot be increased "under any form or guise whatsoever." Expensive receiverships (a former evil) are in terms prohibited, the appointment of receivers being proper only when absolutely necessary for the preservation of the estate. Exhorbitant attorneys' fees are not allowed. The fee payable out of the estate must be for strictly legal services actually rendered. The cost of winding up an estate in bankruptcy is less than it is under our practice of a general creditors' proceeding in Chancery; besides, it can be done, under the present law, with much more dispatch. In fact, there is no reason why estates cannot be promptly converted into cash, and the proceeds distributed, thus doing away with the law's delay, one of the serious questions that now confront us. The procedure under the existing Act is clearly defined in the statute itself, and in the General Orders of, and the Official Forms prescribed by the United States Supreme Court, and while in a sense technical, not more so than is necessary for an orderly administration of justice. The average practitioner, however, strange as it may seem, in view of the importance of this law and the length of time it has been in force, has apparently paid but little attention to it, and in consequence, is not familiar with its provisions.

Such is the brief history of the bankruptcy laws of our country. Looking now to the present Act in the light of the decisions of the various courts and bearing in mind the condition of things existing at the time of its passage, we find that it has one well-defined purpose, namely, to rationally distribute the bankrupt's property among his creditors. That purpose has been variously defined by as many different courts. The effect of the law is that an insolvent debtor may on his own petition be adjudged a bankrupt, or
he may be so adjudged on the petition of his creditors, the adjudication being made by a court of competent jurisdiction. The court immediately takes possession of the bankrupt’s estate; prevents and avoids the efforts of one creditor to secure an advantage over the others; prevents the enforcement of liens obtained within four months and at a time when the bankrupt was insolvent; converts the assets into money, and ratably distributes the money among the creditors. Certain priorities are recognized, it is true, including taxes, wages due workmen, clerks and servants and debts owing persons who by the law of the States have priority, statutory liens, in most instances, being recognized. Such priorities, if carefully considered, will be found to be debts that should, in equity and good conscience, be paid in full.

The spirit of the Act of 1898 is commendable. Equality is its motive, and “equality is equity.” To do as nearly as possible exact justice is the object of the law, and incidentally it tempers that justice with mercy and grants an honest bankrupt a discharge, an idea incorporated into the affairs of human life by Christianity, nurtured and developed by civilization; the same idea that prompts us to forgive our debtor and to throw the mantle of charity over his unfortunate past, and bid him again take up life’s burden, freed from the shackles of debt. Contrast this sentiment with that expressed in a recorded opinion of Mr. Justice Hyde in 1663. He says:

“If a man is taken in execution, and lies in prison for debt, neither the plaintiff, at whose suit he is arrested, nor the sheriff who took him, is bound to find him meat, drink, or clothes. He must live on his own, or on the charity of others; and if no man will relieve him, let him die, in the name of God, says the law, and so say I.”

The English Act of 21 James I, (C19) was severe in punishing “offenders,” providing that the debtor who could not render some just reason why he became bankrupt, should stand upon the public pillory, have one of his ears
nailed thereto, and then cut off. If his failure to pay his debts was due to fraudulent practices, he might be put to death.

It must be admitted that the rigor of the old, and to some extent, the present English laws has instilled into the British mind a profound respect for law. Yet, cruelty and barbaric practices like those above referred to, strike us as abhorrent and repulsive.

Still, we are entirely too prone to regard the discharge feature as the primal element of the law. A popular conception of the statute is that it is a legalized scheme for releasing dishonest debtors from the payment of honest debts. This is not a correct view. That the discharge feature has been, and is, much abused, I admit. Yet, that abuse is due, largely, to lack of diligence on the part of creditors. Upon the receipt of a bankruptcy notice, the average creditor throws up his hands and lifts up his voice, and thereafter pays no attention to the proceeding, making no effort to assist the Court in arriving at the facts. This is unfair to himself, to the Court, and to the law. The Act of 1898, as amended by the Act of 1903, throws sufficient safeguards around the granting of a discharge to prevent frauds. That debtor who has not honestly complied with the law by surrendering to his creditors all of his unexempt property, or who has withheld from them anything they have a right to know; who has not, in fact, dealt in absolute fairness with his creditors and the Court, is not entitled to, and should not be granted, a discharge. It is the duty of the creditors and the Court to carefully examine his affairs, to see that he has complied with the letter and the spirit of the Act, and prevent an abuse of the leniency which it accords the honest insolvent.

Such is the brief history of the law of bankruptcy and such is the purpose of our existing statute. The study of the subject is a matter of statutory construction. The system is not perfect; no human law is. We must take the statute as we find it enacted and apply and enforce it as it is, not as it should be, nor as our individual ideas of right
may seem to indicate as proper, striving as we should ever strive, in its application and enforcement, to attain a higher and better justice in the administration of our affairs.

H. H. SHELTON.

RANDOM OBSERVATIONS ON THE POLICE POWER.

By D. L. Lansden, Cookeville, Tennessee.

I have chosen the Police Power for my subject in the hope that, under this disguise, I may find an opportunity to speak a word for the Constitution.

For many years, public men, caught out at nights with the Constitution, have been classified either as quixotic windmill chasers or tools of the octopus, depending upon whether the criticism was tempered by friendship or actuated by a desire to destroy. Unfortunately for the popularity of that instrument, from the time succeeding the great Civil War, it was interposed as a shield for the protection of an exhausted and prostrate minority from the aggression and spoilation of a victorious majority, running riot in an excess of passion and naturally impatient of all restraint.

A very great majority came to look upon it as a thing apart from, and hostile to, the people, because it was urged as an insuperable barrier between the oppressor and the oppressed, that it stayed the hand of the majority, raised in passion and caprice, and no matter how rich and juicy the prospective fleshpots may have seemed to be, the Constitution was supposed to say that there are some things which government cannot do at all, and other things which it may do can be done only in a certain manner, and upon certain conditions. Those leading the wishful majority would tell them that the Constitution was not a thing to govern or restrain the great American people, but to aid them; that its main purpose was to ordain legislatures and governors who were servants of the people, and through them to give the people what they most wanted. These things have been solemnly said on the hustings, in the Con-
gress and everywhere that people have gathered to consider questions affecting their government. The Courts have been somewhat more hesitant in leading the public wish, but within the generalities laid down by them in discussing the Police Power can be brought and authorized any form of legislation of which it may be said that it serves the public safety, the public welfare, the public health, and public morals, or the public convenience. This necessarily assumes the superiority of social over individual interests, and the question can only arise when some individuals are being restrained in their pursuit of happiness in the interest of the public. Everyone concedes to the government the right to legislate for the preservation of the public safety, the public health and the public morals, and many are ready to concede its right to restrain the activities of the individual to conserve the public convenience.

It is not my purpose to take issue with any of the many able and exhaustive opinions of our highest courts in which the scope of the Police Power is stated so broadly, nor, indeed, can I review them in a paper of this length. But I desire to affirm and discuss briefly the following propositions:

1st. The continued adherence to the existing judicial view of the Police Power will convert this government into a government of men and not of laws, in the sense that the status and meaning of our Constitution, in all matters affecting the rights of individuals on the one hand and the public interest on the other, is lodged solely in the judgment and moral sense of the judges.

2nd. As the Courts have nothing to do with the policy of legislative enactment, but deal solely with its validity and construction, the majority will find ready expression of its purposes in the statutes, and the ever changing public notion of what best serves the public interests will work ever changing but ever growing restraints in the liberty of the individual; and under the present course of judicial opinion, the majority may have what it wants in respect to such matters, subject only to the qualification that the
courts may not decide that it is arbitrary and capricious, and, hence, in respect of all such cases, our Constitution does not differ in any material respect from that of England.

It should be borne in mind that the Police Power is a power that rests in sovereignty outside, above and independent of the Constitution. It is said that the guaranties contained in the Bill of Rights and the Constitution, insuring to the individual the enjoyment of life, liberty and property, the pursuit of happiness and all of the immunities of citizenship were given with the implied understanding that the state, acting through its legislature, could place such restrictions upon their use and enjoyment as it might from time to time see proper. That life, liberty and property were given to the individual, not absolutely and unqualifiedly, but upon condition that he must so use and enjoy them as not to interfere with the corresponding rights of his neighbors or the safety, comfort, peace, morals, good order, good manners, prosperity and convenience of the public.

The Supreme Court of the United States, in defining the Police Power, has used, among others, the following expressions:

"The Police Power is as broad and plenary as the taxing power, and property within the State is subject to the operation of the former so long as it is within the regulating restrictions of the latter." Again:

"All rights are subject to the Police Power of a State; and if public safety or morals require the discontinuance of any manufacture or traffic, the legislature may provide for its discontinuance, notwithstanding an individual or corporation may suffer inconvenience." Again:

"The settled rule of this Court is that the mere fact of pecuniary injury does not warrant the overthrow of legislation of a police character." Again:

"It is impossible and dangerous to lay down an irrefutable, inflexible definition of the Police Power. It is elastic, changing with time and need. How far the Police
Power goes must be left for decision in each case as it arises.” Again:

“Police Power in its broadest acceptance means the general power of a government to preserve and promote public welfare, even at the expense of private right.” Again:

“Police Power is universally conceded to include everything essential to public safety, health and morals, and to justify destruction or abatement by summary proceedings of whatever may be regarded as public nuisances.” Again:

“It is the inherent plenary power of a state which enables it to prohibit all things hurtful to the comfort and welfare of society.” Again:

“Whatever affects the peace, good order, morals and health of a community comes within its scope, and everyone must use his property subject to the restrictions which such legislation imposes.”

The Encyclopaedia of Law gives it this definition:

“The Police Power is an attribute of sovereignty, and exists without any reservation in the Constitution, being founded upon the duty of the State to protect its citizens and provide for the safety and good order of society. It corresponds to the right of self-preservation in the individual, and is an essential element in all orderly governments because necessary to the proper maintenance of the government and the general welfare of the community.”

The Supreme Court of Tennessee has given it this definition:

“The Police Power is an important and comprehensive one, and its application must be expected to expand and take in new subjects from time to time, as trade and business advance and new conditions arise. The scope of its exercise within the bounds already mentioned is limited only by the requirement that it shall not arbitrarily and unreasonably affect the citizen, his life, liberty and property. But it covers everything relating to the public interests, and, in its exercise, a large discretion is necessarily vested in the legislature, which, in the first instance is
presumed to know not only what the welfare of the public requires, but also what measures are necessary for its advancement."

So far as I have observed, most all that is assumed for the Police Power in the foregoing definitions is conceded by all the cases; at least, all legislation affecting the public safety, good order and morals is conceded, but that sphere in the exercise of the power which seeks to control the proper protection and distribution of wealth, and which enters upon the domain of speculative morality, thus finding its justification in reasons of convenience rather than necessity, is indeed debatable. And, there is still another sphere which until lately has been treated as exempt, and is at least now only in its experimental stage, and that is legislation which has for its purpose the control of the moral, intellectual and political movements of the citizen. It is to the last two spheres of legislative activity that I desire to confine my discussion, for it is manifest that as long as the power is not conceded, the subjects of its exercise are debatable.

Much of the validity of the legislation in question is entrusted to the discretion of the Court. It is often that these spheres will overlap, and the reconciliation of this is exclusively within the province of the Court. The meaning of the power is defined and easily understood as long as it is confined to the public safety, good order and morals, and it is only when we enter the field of metaphysical speculation to determine whether or not a given piece of legislation is for the public welfare, public prosperity or public convenience that we enter upon debatable ground. It is apparent that many things may be believed to be for the public prosperity or the public convenience, and it is equally manifest that the public notion of what is the best public policy will constantly change, and the validity of legislative enactment in the exercise of the supposed Police Power to promote public prosperity and the public welfare will constantly be brought under the reviewing judgment of the Courts.
Much of this is conceded, and has never been questioned. The right of a state to be a state, to exist as a political entity necessarily assumes its power to preserve the public safety, the public health and the public morals, and the incidental destruction of life, liberty and property is no obstruction to the exercise of the power. It originates, as stated by the great weight of judicial opinion, in the imperious law of necessity—the right of self-defense.

In all cases where the sovereignty acts outside of the Constitution to preserve its existence as a political entity, being actuated by the ever present and all-pervading law of self preservation, it can properly disregard any and all of the rights of the individual guaranteed by the Constitution, however sacred they may be. There can be no difference of opinion as to its right to so act, and it would seem there would be but little room for debate over the subjects of legislation arising out of great necessity; and in this view the Police Power can be given a definite meaning, and its scope can be circumscribed to fixed and definite bounds. But from the foregoing definitions given to this power by the last and final authority in the land, it will be seen that one of the most salient characteristics ascribed to it is its lack of definiteness, its elasticity, its power to expand or contract as occasion may require. It is said in many of the cases that its exercise upon any given subject does not exhaust it; that after such exercise, and after the individuals affected by the exercise have adjusted themselves to the new conditions made necessary by the exercise of it, that the State is not bound by its first action, and may afterwards again exercise it, contracting or expanding the power as may be deemed best for the public interests. Time after time the Supreme Court has refused to lay down more than merely a suggestive definition of it, expressly reserving to itself the right to say in each particular case whether there has been a valid exercise of the power. In declining to do this, the Court declines to define Constitutional guaranties, and reserves to itself to say in each case wherein constitutional guaranties have been infringed, and
necessarily withholds to itself, and within itself, the meaning and status of the Supreme law of the State to be applied by it according to its judgment in each given case.

The framers of our Constitution congratulated themselves upon the supposed fact that they had given to the American people an organic law in writing, which had forever placed their liberties beyond the change of any of the agencies of government, and had secured to them a guarantee of the continued enjoyment of their inalienable rights, as fixed, definite immunities from governmental action, resting not in the will or judgment of men, however wise, or however good, but written in the fundamental law, secure from the fluctuations of judicial decision and the excitement and passion of the popular voice. But, how can this be true, if there resides in the State an ever-changing, but never ceasing power, back of, above and beyond the Constitution, implied to exist always as a condition precedent to the right to life, to liberty and property, and therefore brooding over all men, all property, and all rights, expanding and contracting as conditions may require, called into operation, not only to preserve public safety, peace and morals; but to promote public welfare, public prosperity, public comfort and public convenience?

The authorities all agree that this power is unwritten. They say it resides in sovereignty. That it was presupposed and necessarily implied when the Constitution was written. And, of course, little was written and much was implied; and the little that was written was underlain with an implication that, if conditions changed and the public so desired, it would either be given a different meaning or else given no meaning at all. The Police Power, as at present understood, can have no other or less significance. If its exercise were held down to the scope given it by the earlier cases, and if it were confined to matters of necessity, only such as affect the public safety, order and morals, this would not be so. But when it is given a meaning so broad that "t covers everything relating to the public interests," as expressed by our Supreme Court, and an almost un-
limited discretion as to its exercise is vested in the legislature, and superadded to that is its power of expansion and contraction, and the qualities of omnipresence and inexhaustibleness, it can mean nothing more nor less than the assumption by the judges of an unlimited discretion to say when it has and when it has not been validly exercised.

It was the Courts that discovered the power; it is the Courts that have given it such meaning as it has, and more to my point, it is the Courts that have refused to lay down any limits to it, reserving the right to say more, but never less, if and when they deem it proper. I think I may safely assert that the history of the world proves that power once improperly assumed is never voluntarily laid down, and from this I argue, not that the Police Power will be enlarged, for that is impossible; but that the spheres of its application will gradually increase as the complications of an already complicated civilization increase, and with it will come a consequent restriction of individual liberty, and an elimination, by easy gradations, of the insalienable rights of man.

Socialism is yet in its infancy, but even now it is discussed more as a question of policy and prosperity rather than of one of constitutional law. Society is constantly assuming to itself new rights and new privileges, and many people are impatient to do directly through legislation what experience teaches either that it requires generations to accomplish, or else cannot be accomplished by legislation at all. This is slowly but surely imbuing the legal procession and the people with the belief that whatever public opinion ordains is right, and should be done. Already public opinion has written qualifications and conditions into the ownership of certain classes of property that have not yet found their way into the books; as witness some of the recent great strikes where thousands of men were involved and the supply of an article of general use was curtailed. In all those cases public opinion has said to the owners of such property: "We know nothing of the merits of the controversy between you and your men, and we care less, but we
demand that you resume operations and supply the public with what it needs."

You will remember the conference of Governors held recently at the White House, under the auspices of President Roosevelt, for the purpose of considering the conservation of our natural resources. It was, perhaps, the most distinguished assembly of men brought together in many years. All agreed that there was great waste of our national resources, and especially minerals, timber and soils. The conference was committed, either by direct expression or by silence, to the thought that government should take immediate action to stay the hand of waste. No definite plan was agreed upon, but the idea of governmental action was accepted. This opens up a new sphere for the application of the Police Power. Soils are wasted by improper and insufficient fertilization. There is no greater waste in the whole system of economics than that occasioned by soil waste. In the first place, it is inexcusable because the farmer would make more money under proper methods that conserve the resources of his soil than he does under the loose methods that make for waste. In the second place, soil waste not only impoverishes the farmer by reducing the value of his land and the net profits derived from his crops, but it increases the cost of the necessaries to the consumer by decreasing the supply and quality, and reduces the opportunity for happiness and prosperity of the succeeding generation. The only way government can correct or prevent soil waste is by directing the methods of tillage and compelling the farmers to follow them, or by taking over the land and conducting cultivation under direct governmental supervision.

In speaking to this point, President Roosevelt said that the present methods of farming were like the farmer and his family having a feast on the carcass of the milch cow; that they could do that for a short time, but famine would surely follow. And he expressed the opinion that the continued greatness and prosperity, and, indeed, the very life of this nation, depended upon the conservation of the soil.
If the legislature should ordain a scientific rotation of crops, together with the most enlightened methods of fertilization of the soil, and compel the owner of the land to follow them, could it not be said that this was for the public welfare? If a majority of the people should decree it, I venture to assert that the learned Judge to whom that record would fall would stoutly maintain that he was inventing no new doctrine, but merely applying the established holding of the Courts, beginning with Alger's case, 7 Cushing, 53-84. And yet, this is socialism pure and simple. The first opinions of our Constitution were as hostile to socialism as they were to monarchy. It was thought that the rights of the individual, and consequently the competitive system were thoroughly guaranteed by it. Listen to Section 8 of our Declaration of Rights: "That no man should be taken or imprisoned, or dissized of his freehold, liberties or privileges, or outlawed or exiled, or in any manner destroyed or deprived of life, liberty or property, but by the judgment of his peers, or the law of the land." It is manifest to my mind that this was meant as a guaranty to the man, the individual as contradistinguished from society or the public or the government. If given its natural and obvious meaning the competitive system of doing business is made secure. But when we remember that it was written and adopted with the implied understanding that there was left in the State an unwritten but superior power, by which it could take life, liberty and property, either directly or by restraining, and qualifying their use and enjoyment in all matters affecting public interests; and when we remember further that, as population increases, the consuming class increases at a correspondingly increased ratio, thereby making their food and raiment and shelter a direct and ever increasing charge on the producing class, we are not so certain but what the police power may not expand as this new need arises, and when Reuben is clearly and safely in a hopeless minority, his methods of tillage and drainage and fertilization will affect the public interest so vitally, the public conscience will become quickened, and
the shamefulness of his waste will cry out against him, and he will receive due and timely regulation.

The late Senator Hanna is said to have observed in the Fall of 1896, that the next great conflict in this country would be between socialism and the competitive system or individualism. That the socialistic idea is being entertained by many is certain, and that, too, perhaps, by many who would not confess it. I doubt if it comes in the form of a conflict, but rather more like an insidious disease, slowly and surely infecting the system until the people prepare and adjust themselves to it by natural and easy steps; and the struggle will be, if it comes, to throw it off, and not to keep it back.

What I have said has been historical, rather than critical, although it is my opinion that it would be better to suffer some of the ills we have rather than to fly to those we know not of. A strict adherence to the earlier cases which confined the exercise of the Police Power to spheres of necessity may have resulted at times in hard judgments, but it would be better to have some suffer hardships until redress could be had along constitutional lines, than to commit so much power to the judgment of Courts, thereby taking away from the Constitution so much of its certainty and its consequent safety.

JUDGE JOHN BAXTER AND JUDGE D. M. KEY.

By Lewis Shepherd, Chattanooga, Tenn.

Mr. President:—Ordinarily one subject is all that is required in a paper written for an occasion like this, but the gentlemen who arranged the programme for this meeting have seen proper to assign to me for my one paper two very large subjects. I fear I will not be able to meet your expectations and that I will not succeed in doing justice to the memory of the great men about whom I am to write.

Of course, it was not contemplated that I should write an extended or elaborate biography of these distinguished men, but I think it was expected of me to relate some of my
recollections of both of them, so as to set forth their characteristics—their peculiarities—which will show them in contrast. They were cast in different moulds. Their orders of intellect and methods of thought were essentially unlike, their ambitions and aspirations were quite different, and yet they were both very great men and were especially eminent and distinguished in the judicial office. Tennessee, in all her history, has produced and developed very few if any men who surpassed these in the elements which go to make up a truly great judge.

John Baxter was a native of Western North Carolina. In his early manhood he practiced law in that picturesque skyland of America, in a circuit embracing several mountain counties. He also took some part in North Carolina politics, having been a member of the legislature and at one time was speaker of the lower house. He was a bold and aggressive young man and was frequently involved in personal difficulties with men who opposed him. He once fought a pistol duel with a man named Erwin, in which he received a slight wound. Several years before the beginning of the Civil War, he left North Carolina and took up his residence at Knoxville, Tennessee. He was a Whig in politics and was an ardent supporter of the Union cause when the question of secession became rampant. Baxter's strong intellect and aggressive activity forced for him immediate recognition at the bar of Knoxville, and he at once entered upon an active and lucrative practice, which he prosecuted with energy and vigor. He was not a man who would avoid a case because he feared it might get him into trouble. In fact, he rather liked a scrap. He was fond of the excitement of a trial in which there was a warm controversy. He was a man of action, and there was always something doing in his cases. During the first part of the Civil War, the Confederates held East Tennessee; but the Union men were very active as bushwhackers and bridge-burners. The bridge-burners claimed that they had been enlisted or engaged by a secret order of General Thomas, to burn the
railroad bridges in East Tennessee, in order to retard the sending of men and supplies to the army in Virginia. A great many of these bush-whackers and bridge-burners were apprehended and were tried in Knoxville by court martial. It was not altogether safe or comfortable for a lawyer to appear for them before the military tribunals which tried them. Baxter was one of the few Unionist lawyers who had the boldness and courage to espouse their causes. He took their cases, attended their trials and put up the best defenses he could for them. He was permitted to be present to cross-examine the witnesses and examine witnesses for the accused, if he had any, but was not, as a rule, permitted to argue their cases. There was a man named Harmon, who lived in Greene County, who was arrested for burning the East Tennessee and Virginia Railroad bridge across Lick Creek. He employed Baxter to defend him, and gave his note secured by deed of trust on his farm. Baxter tried very hard to make a successful defense for this man. The court martial had become impatient at his efforts to defend this man, who they claimed had been taken flagrante delicto, and they refused to hear his plea. The man was convicted and executed. Some years after Baxter obtained a decree to foreclose the deed of trust, and Harmon's land was about to be sold. At this juncture, Hon. A. H. Pettibone, attorney for Mrs. Harmon, went to Washington, and through the influence of Hon. Wm. G. Brownlow, then a Senator in the United States Congress, procured an emergency and an almost instantaneous appropriation in Mrs. Harmon's favor, of a sum of money sufficient to enable her to pay the decree and save her land. There is not another case in the annals of Congress like this.

At the close of the Civil War there was in East Tennessee a very bitter state of feeling on the part of the Unionists towards the late rebels. There grew out of this state of affairs a species of litigation which was peculiar to East Tennessee, known as "war damage" suits. Some lawyers announced the proposition that the war was a huge
conspiracy to break up the government, and that Union men who lost property or were imprisoned or molested by the rebels could recover damages. Some went so far as to insist that all the conspirators were liable for what the others had done, whether they were present and took part in the performance of the wrongful act complained of or not. In every county of East Tennessee the dockets of the courts were crowded with these war damage cases. Baxter threw himself into the breach and defended the late rebels and their sympathizers from liability. He aroused the intense enmity of the Union men throughout East Tennessee by his able and vigorous defense of these suits. Governor Brownlow had himself brought a suit seeking to recover a princely sum of money for the damages which had been inflicted upon him by his arrest and expatriation. Baxter used to go around to the circuit courts where he had cases pending, and at the noon recess on the first day of the court he would make a speech denouncing these suits, and also denouncing Brownlow and his administration of the affairs of our State.

His able and aggressive way of conducting his lawsuits got him into serious personal difficulties and also got him involved in libel suits, several of which he brought against prominent newspapers of the State. These suits are a part of the judicial history of this State, with which every well informed lawyer is familiar, and I need not make any further reference to them here.

He was a member of the Constitutional Convention of 1870 and was one of the most influential members of that body of constitution builders, which was presided over by Gen. John C. Brown, and which had enrolled among its members such illustrious names as A. O. P. Nicholson, James D. Porter, D. M. Key, Henry R. Gibson, James Fentress, etc. From the time of the adoption of the Constitution of 1870 until his appointment as judge of the United States Circuit Court for the Sixth Circuit, Colonel Baxter enjoyed a very large and lucrative law practice. He was a man of
large affairs and was on one side or the other of every important legal controversy in the zone of his practice.

He was remarkably quick to see and comprehend the points involved, and reached his opinion with astounding rapidity. Sometimes the opinions of these rapid fire and quick action lawyers are not to be relied on, but with Baxter it was different. He was a man of such powerful and comprehensive intellect, of such clear and incisive insight, that his mind jumped, so to speak, to the correct conclusion on the first impulse. His client never had to tell him his case but once. He saw clear through it, sometimes, before his client was half through his statement. I will illustrate Baxter's quick, thorough and accurate perception of a case by the following anecdote told me by Capt. Jacques. Capt. Jacques was Vice-President and General Manager of the East Tennessee, Virginia & Georgia Railroad. The owners of the road lived in New York, where the executive committee of the board of directors had its office. This committee directed Capt. Jacques to take the opinions of the Knoxville counsellors on a very important matter. The company then had two counsellors at Knoxville, Hon. T. A. R. Nelson and Col. Baxter, and Jacques invited them to his office. He explained the facts of the case, and stated the matter on which the opinion of the counsellors was desired. That was before stenographers and typewriters had come into vogue. When Jacques had finished his statement, Baxter immediately wrote his opinion, which covered a page of ordinary sized letter paper. Judge Nelson said he wanted to look into the question and consult the authorities on the point, and asked a few days for that purpose. At the end of a few days he delivered to Capt. Jacques an elaborate opinion, covering about a quire of legal cap, which, when boiled down, meant just the same thing as Baxter's one-page opinion.

His chancery bills and declarations in law cases were always drawn very tersely. He generally followed the form of declaration found in the Code.

Amongst all of Colonel Baxter's strong points, I think
he had one weakness, and that was his inordinate love of everything and everybody that had come out of North Carolina. In his search for authorities to support his case, if he came across a case in point which had been decided by the supreme court of North Carolina, he stopped right there and wanted nothing better. A lawyer practicing before him always gained his case if he was able to cite a case in point decided by Ruffin or Chief Justice Pearson.

When I came to the bar, wherever the lawyers of the state were under discussion, I would hear it said that John Baxter was the big lawyer of Knoxville, D. M. Key was the big lawyer of Chattanooga, and Ed. Baxter was the big lawyer of Nashville. I have heard them all in causes celebreae and I concur that they were the big lawyers of their respective cities, and add that they were the big lawyers of the State.

The death of Judge Emmons in 1877 made a vacancy in the office of United States Circuit Judge of this circuit, which Mr. President Hayes filled by the appointment of Colonel Baxter. The names of many prominent lawyers of Michigan, Ohio, Kentucky and Tennessee, the states composing the sixth circuit, were pressed on the President for this appointment, but he selected Colonel Baxter after careful investigation and deliberation. It was said at the time that the President hesitated between Colonel Ed. Baxter and John Baxter, but his choice finally fell on the latter. It is proper to say, parenthetically, that these gentlemen were not related to each other.

Judge Baxter carried with him to the bench the same characteristics which he had displayed at the bar, profound learning, superb legal ability, remarkable energy, quickness of perception, incisiveness of intellect, and a great many people thought that his quickness of action detracted from him as a judge. They thought he was too impatient to give a case deliberate and judicial consideration. I never thought he was an impatient judge. If a lawyer was up on his case and if there was any merit in his case, he never had any difficulty in getting a full hearing before Judge Baxter; but
if the lawyer was a slouch and a sluggard and did not understand his case, the judge would find out for himself in a quick and rapid-fire way what there was in it, and then decide it, and his decision was almost always right. Baxter was not half as bad as some of our present judges, who frequently limit me in the argument of a case to five minutes, and everybody knows that I cannot say anything in so short a time as five minutes.

The lawyers of Nashville had this estimate of him: "Gifted by nature with an intellect of extraordinary vigor and comprehension, of untiring energy and diligence, he arose from the humblest and most adverse conditions to commanding power and influence as an advocate. When he came on the federal bench the massive proportions of his mind, the force and sweep of his faculties, developed and strengthened like the trunk of a giant oak, through the struggle of many years and the buffeting of many a storm, enabled him to grapple with just confidence, with the many new and difficult questions which confronted him. Lawyers soon found throughout the circuit that they had before them one who was the equal, if not the superior in many respects of them all, and one who was determined to dispose of the cases in court with as much dispatch as possible. He elevated the tone of the bar; he put new life and energy into those who appeared before him; he infused into them something of his own spirit, and the courts in his circuit became moving and active in the performance of the functions belonging to them as organs of the government. Business was disposed of, the rights of litigants settled promptly and with able discrimination."

Judge George Hoadley, afterwards Governor of Ohio, shortly after Judge Baxter assumed his duties on the bench, related this story: At the first term of the Circuit Court held by Judge Baxter in Cincinnati, there was pending what the parties and their lawyers thought was a very important case, involving an infringement on a patent granted by the commissioner of patents for some contrivance connected with the machinery of a steam engine—I believe it was some
sort of automatic valve. The plaintiff was represented by Mr. Stanley Matthews, one of the recognized leaders of the Cincinnati bar, who had as his assistant an expert patent lawyer of note. The defendant was represented by Mr. Hoadley, who also had sitting by him an expert patent attorney. Mr. Matthews started to read a voluminous bill, describing the plaintiff's invention and setting out how it had been infringed. Judge Baxter said, "Mr. Matthews, tell the court what this case is about." When Mr. Matthews told him that it was for the infringement of a patent, he asked to see the drawing of the contrivance that was supposed to be protected by the letters patent. The patent attorney exhibited the drawing and explained its workings. The judge, turning to Mr. Matthews, said, "Sir, this thing was not patentable, and letters patent should never have issued for it. There is nothing new about this device. I used to make a thing like this with my pocket knife when I was a lad in North Carolina. Let the bill be dismissed."

This case was taken to the supreme court of the United States and there affirmed, after a full hearing, on the ground that there was no novelty in the device, as stated by Judge Baxter. At the time the case was decided by the supreme court, Mr. Matthews was one of the associate justices of the court, but of course, took no part in the decision.

Judge Baxter died in the year 1886, at the age of about 68 years, and was succeeded by Judge Howell E. Jackson, who was promoted afterwards to a seat on the Supreme Bench. Our present very able Circuit Judge, Hon. Horace H. Lurton, succeeded Judge Jackson on the Circuit Bench.

David McKendre Key was a native of Greene County, Tennessee. His father was an itinerant Methodist preacher, and moved to Monroe County, where he raised and educated his children. Mr. Key graduated from Hiawassee College, in Monroe County, and read law in the office of Henry Stephens, Esq., in Madisonville. Mr. Stephens was candidate for presidential elector on the Pierce ticket, in 1852. General Scott was the Whig candidate for President, and the campaign which ensued was very warm and interesting.
Mr. Stephens appointed young Mr. Key as his assistant, and had him to canvass the district, and in this canvass he made a splendid reputation as an eloquent orator and vigorous debater, and soon afterwards was induced by my father and other influential Democrats to locate as a lawyer in Chattanooga. He and Albert G. Welcker were partners until Mr. Welcker was chosen Chancellor, in 1861. Mr. Key was presidential elector on the Buchanan ticket in 1856, and again on the Breckenridge ticket in 1860, and in each of these contests he made a spirited presentation of the Democratic side. He was on the staff of Governor Isham G. Harris, as his assistant inspector general, and aided him in organizing the provisional army of Tennessee. When that organization was turned over to the Confederate States, he was chosen Lieutenant Colonel of the 43rd Tennessee Regiment, which command he held till the close of the war.

Colonel Key was wounded in a sharp engagement on Baker's Creek, during the siege of Vicksburg, but he was such an extremely modest man that he never referred to it himself and always tried to make the matter a light one when it was mentioned in his presence by others. During the war his family refugeeed to North Carolina and at the close of the war he brought them back to East Tennessee in a Jersey wagon. He and Judge Welcker reformed their partnership and began life anew. Colonel Key came home broken down in health and until 1873 he was a constant sufferer from a chronic disease which he contracted during the siege of Vicksburg, where he and his regiment, with the balance of Pemberton's army, were penned up. He saw the bankrupt condition of the people, whose property had been destroyed and who were oppressed by ante-war debts and by damage suits which sprang up out of the occurrences of war times. He was very despondent and the outlook, to him, was gloomy. He had been a leading and influential adviser of the Southern people when they had decided to go to war; he had assisted materially in organizing and mobilizing the armies; he had been an officer in the actual campaigns of the war, and he felt that he was in some measure
responsible for the deplorable conditions which he found on his return home. He wanted to forget the war and put behind him all the bitternesses and animosities engendered by it. He thoroughly and profoundly appreciated the conciliatory attitude of General Grant towards General Lee when he refused the surrender of Lee's sword and allowed his men to return to their homes and take their private property with them after the army had surrendered. He tried every way he could to get our people to accept the situation in good faith and to conciliate the men who had been on the other side. He defended every rebel who asked him, against the war damage suits, and never charged one of them for his services. He defended many of them in the federal court at Knoxville, where they were charged with treason. He refused steadfastly and firmly to prosecute any suit against a former rebel for anything growing out of the war, although he was repeatedly sought as a lawyer by plaintiffs in such cases. He himself was the defendant in several of such suits, and was attorney for the defendants in nearly all of them pending in Hamilton and adjoining counties. He pursued the policy of delaying the trials until the times got better for us, and in this way most of us got out of our troubles.

We had to resort to all sorts of schemes and devices to defend these suits.

I knew a young man once, "(Whether in the body, I cannot tell; or whether out of the body, I cannot tell, the Lord knoweth), who was sued for a large sum on the allegation that he had arrested the plaintiff and had captured from him three horses with which he was trying to escape to the Yankees. This young man compromised the case by giving the plaintiff his note for $600.00, which provided on its face that it was given in settlement of the case of the State vs. so and so, for stealing three horses.

Colonel Key was the most amiable man, the mildest mannered man, I ever knew; he had a smile and a good word for everybody. He was a man of great power and influence in his arguments of questions of law before the
court, and was invincible on questions of fact before the jury. The juries knew him and believed in him, and it was a very rare thing for him to meet with defeat before a jury. He aided, as a member of the convention, in making the Constitution of 1870; and after its adoption he was chosen Chancellor of this division. The division had a considerable republican majority, and the republicans put out their best man for the place. The democrats were divided between Colonel Key and Jesse H. Gaut, of Cleveland; and Colonel Key easily beat both the republican and Mr. Gaut. He was supported by the best people of the division, without regard to politics.

I think that Judge Key was the greatest Chancellor who ever sat on the woolsack in Tennessee. I have known a great many many men who had more extensive reading, more technical learning in the law than he had; but for judicial temperament, good sound sense and disposition to be equitable and just, he did not have a superior. If a technical rule of law interposed in the way of arriving at a just and honest conclusion, he found some way to bridge the chasm, and decide the case in accordance with the right and justice of it. He had a great faculty of getting at the facts, no matter how much they were involved in the voluminous documents and in much swearing by the witnesses. His oral opinions delivered from the bench were masterpieces of forceful logic, tersely stated.

In 1872, that fatal year for the democrats of Tennessee, when Greeley was their candidate for President, and when Ex-President Johnson smashed the machine by running independent against General Cheatham for Congressman-at-large, and was defeated by Horace Maynard, Judge Key committed the mistake of allowing himself to be drawn into the race for Congress. He was defeated by Hon. William Crutchfield, and as things turned out, that was perhaps the most fortunate thing for him that could have happened. In 1873 he spent the summer on Walden's Ridge, at Mabbitt's Springs, and fully recovered from the effects of the chronic disease that had been with him ever since
the siege of Vicksburg, and thereafter, up to a few months before he died, he was a man of vigorous health and robust constitution.

In 1875 Ex-President Andrew Johnson, then a Senator in Congress, died, while on a visit to Carter County, East Tennessee, and arrangements were made for his burial at Greeneville, his home town. Judge Key received a telegram from an old friend of his at Nashville, Michael Burns, informing him that Governor James D. Porter and he would pass through Chattanooga at a given hour, on their way to the funeral of the dead ex-president, and advising Judge Key to join them at Chattanooga and go with them to Greeneville, and he consented to do so. He sent for me and asked me to go with him, which I agreed to do. We met the Governor’s party and went along to Greeneville with them, I going somewhat in the capacity of valet to the Chancellor. We arrived at Greeneville and were entertained while there by some of Judge Key’s relatives, named Armitage. The next day we witnessed a scene which will never be witnessed again in the village of Greeneville, or elsewhere, for that matter. From every county of Upper East Tennessee, from the North Carolina line on the east, to the Virginia line on the north, the people came flocking into Greeneville, some in carriages, some in hacks, some in farm wagons, some in buggies, some in carts, some riding horses and some riding mules, and large numbers walking, men and women, old and young, and children of all ages, white people and negroes, to pay their last tribute of respect to the Great Commoner who had been their idol in peace and war. That day, in the midst of that concourse of plain people, on a high hill overlooking the town of Greeneville, the little old wooden tailor shop where he had wrought aforetime, and the old brick house where he had lived in his better days, the Grand Commander of the Knights Templar of Tennessee, surrounded by Sir Knights in uniform and plumed hats, buried the body of Andrew Johnson.

When we got back to Chattanooga, we found that Gov-
before he could get a train to Nashville. We got a carriage and went for a drive around the city. Among other places we went across the river to Stringer's Spring, where mint grows in abundance; but, unfortunately, we did not have the other ingredients which go to make up a delicious julep. While we were sitting on the grass, under the shade of a splendid white oak, with wide extended boughs, the Governor said: "Colonel Key, as soon as I get to Nashville, I am going to send you a commission as United States Senator, to sit until the meeting of the next legislature."

That was the first time the subject had been mentioned from the time we first met the Governor, and while, of course, Judge Key was very proud to get the appointment, he had not mentioned it or hinted it to the Governor, and so far as he knew nobody else had mentioned it.

When the Governor got to his office the first thing he did was to sign the commission and send it to Judge Key, and then he proceeded to open and consign to the waste basket the numerous letters asking for the appointment for others which had arrived in his absence.

Judge Key's career in the Senate was a short one. After the presidential election of 1876, there arose a question in the Senate on a resolution to investigate the vote of Mississippi and other Southern states, in the Hayes-Tilden election. The republicans charged that the election in these states had been carried by fraud, intimidation of negroes, etc., and the democrats denied this charge; and it was proposed to investigate the charges before the time came to count the votes.

I heard a very interesting argument by a gentleman whom I esteem as the greatest lawyer in Tennessee, in the Turney-Evans contested election case, before the legislature, in which he, with great force and much plausibility contended that when the members of the legislature, trying a purely political question, as the question whether Evans or Turney had received more votes for Governor was, came to vote on a debatable matter, their vote was not to be
determined by the evidence, or the weight of the evidence; but by their political bias and prejudice; that in determining a judicial question or controversy, the court would try to decide it by the evidence, but in a political, debatable question, the carrying out of the will of the majority of the electorate was of more concern than it was to ascertain judicially what the real facts were. The private right of the candidate was not to be considered so much as the general welfare of the electorate or dominant party.

Judge Key voted as he thought the weight of the evidence showed to be right, and made a speech defending his vote. His argument, in substance, was that; *prima facie*, the republicans had made out a case against the democrats. The democrats denied the *prima facie* case, and when Senator Key voted for an investigation, which would give them the right to overturn the *prima facie* case by the evidence, he offended them so greatly that he could never hope to be elected again. Right here he made a fatal political mistake. Judge Key's friends made an heroic effort to elect him in the legislature of 1877, but they failed, at the end of a season of balloting extending through many days.

After his defeat before the legislature, Judge Key returned to Chattanooga to take up again the practice of law, but it was not many days before he received an invitation from President-elect Hayes to enter his cabinet, as Postmaster-General.

Mr. Hayes and his cabinet once made a tour of the South, stopping a day at Chattanooga, where they were properly entertained by our enterprising and generous people. Much of the warmth of their reception and generosity of their entertainment was due to the popularity of Judge Key and the love of our people for him. One of our wealthiest citizens at that time, who had been a driver for a liveryman in his early days, insisted on wanting to drive the carriage in which Judge Key was to ride. Judge Key remonstrated with him, telling him that his present station in life forbade his doing that sort of work. He replied that when he was poor he was proud to drive him, and
now that he was rich and prosperous he would take as much pleasure and pride in driving him as he ever had done before.

In 1880, on the death of Judge Connally F. Trigg, Mr. Hayes appointed Judge Key to be Judge of the District Court of the United States for the Eastern and Middle Districts of Tennessee, which position he held until January 26, 1894, when he retired on account of his advancing years. He had reached the age and had served long enough on the bench to entitle him to retire on full salary. He spent the remainder of his days quietly with his family and friends in this city.

The official directory of Congress has this brief epitome of his public services and death:

"David McKendre Key, was born in Greene County, Tennessee, January 27, 1824; raised on a farm in Monroe County; attended common schools; graduated from Hiawasse College in 1850; studied law; admitted to the bar and began practice at Chattanooga in 1853; presidential elector on the democratic ticket in 1856, and on the Breckenridge and Lane ticket in 1860; served in the Confederate army as lieutenant colonel in the Civil war; member of the State Constitutional Convention in 1870; Chancellor of the Third Chancery Division 1870 to 1875; defeated as the democratic candidate to the 43rd Congress; appointed a United States Senator from Tennessee as a democrat (Vice Andrew Johnson, deceased) serving from December 6, 1875 to January 29, 1877; defeated for re-election; Postmaster General, March 12, 1877 to 1880; resigned to accept United States judgeship of the Eastern District of Tennessee; retired January 26, 1894; died at Chattanooga, Tennessee, February 3, 1900."

No man ever enjoyed in a fuller measure the love, esteem and respect of his neighbors than he did. When he was carried to his last resting place, the whole community, the rich as well as the poor, turned out to witness the solemn march to the grave, and to drop tears of genuine sorrow over his grave.
I have, in a very imperfect way; tried to show you a picture of John Baxter, an impetuous, austere, aggressive and pugnacious man, who became a great and illustrious judge; and, in contrast, that of David M. Key, the quiet, unassuming, modest, retiring, calm and peaceful man, who also became illustrious as a judge. These men in their characteristics, their tastes and methods of thought and action, were antipodes, and yet each left behind him a name and fame on the bench, in the councils of the nation and in private life, of which his sons and daughters can feel a just pride.

I realize that I have performed the task assigned to me very imperfectly, yet, I cannot refrain from giving expression of the gratitude I feel to the gentlemen who assigned me this task, because it has given me an opportunity of doing a labor of love, and paying a tribute to the memory of two of my best friends.

I am an optimist of the extremest type; I believe the world is growing rapidly better, and that our men and lawyers are advancing and improving apace with all other things in this wonderful age in which we are living; but I believe it will be a long time before we produce and develop two greater judges, two more eminent, upright and just judges than John Baxter and David M. Key.

THE RIGHT OF TRIAL BY JURY.

By R. C. O'Bear, Frankfort, Kentucky.

Mr. President and Gentlemen:

A state whose Bar has contributed so much to American jurisprudence as has that of Tennessee, a successful commonwealth of self-governing people, exercised in self-restraint by just laws of their own making and execution, is an attractive theater for the lawyer in love with his profession, and concerned for its reputation. He would expect to find here in a meeting of the Bar Association of the State, men not only learned in the law, but holding to her traditions by the ties of the priest to his faith. If I
knowledge in the profession, it will be as a votary of a re-
ligion tells his beads, "lest we forget."

No system of Government omits the function, which
we call "administration of justice." None would be ade-
quate that gave that function secondary consideration. All
political rights look to that end. While for many centuries
mankind strove for political freedom, it was because there-
by they hoped to have the best assurance of individual
rights. The growth of liberty has never been in advance
of the demand for "a square deal" between man and man.
Classes, by a combination of the interests of many, by the
multiplication of the power of their units by their number,
tend inevitably to overbear the rights of the individual who
may be out of that class. In other words, they tend to
centralization of power. These truths were not unknown
to or unappreciated by the founders of the American Com-
monwealths. Hence it was that they endeavored to make
the unit of ultimate power the individual citizen. It was
their theory that the function of political government, and
the function of justice should be lodged in the hands of the
people ultimately. They regard that the average intelli-
gence and patriotism as well as the average sense of right,
were best calculated to preserve liberty in all, and insure
individual rights to each. It made it more difficult for
classes to control either function, while it inspired more
universal confidence in the masses in both—insuring their
loyal support of those prime institutions. A century and
a third of national experience and observation confirm the
correctness of that theory. We are now to look into a fea-
ture of that subject, called the administration of justice.

Instances many in number may be cited where under
the existing system, either the wrong has prevailed as the
result of trials in court, or the trials have been attended
by such vexatious delays and enormous expense as to be
practically a denial of justice. These instances, so far as
the public are concerned, are those spectacular trials by
jury, where the cases attracted wide notice, because of the
persons involved, or because of the particular subject of the controversy. From them, and based almost entirely upon them, deductions are drawn by the public, or certain members of the public who affect to be leaders of thought, derogatory to the value of trial by jury. It is pointed out that the great delay in obtaining a qualified jury, and the consequent expense to the litigants and the public, not to mention the congestion of the court calendars and the retardation of those affairs of the public which must be settled in the courts, condemn the system, which is but confirmed, they argue, by the often surprising nature of the verdict, or by the jury's failure to agree. They forget, or do not notice the vast number of cases, so constant and common as to furnish throughout the country a daily experience in every populous community, where the jury system is applied with dispatch and satisfaction. They overlook the truth that those cases which excite such great interest are in reality exceptions to the prevailing experience. They are in error as logicians and publicists when they would attempt a reform of a system based upon its exceptions. The truth is, as every lawyer will confirm, that trial by jury is more expeditious and less expensive, and I venture to assert as satisfactory in results to litigants, as trials in chancery. Jarndice vs. Jarndice may be cited, and compared with J. Doe ex. d. vs. R. Roe. The practical value of any system is to be gauged solely by its general utility. But I am not here to discuss the demerits of the chancery branch. Nor does it seem more than passingly pertinent to institute a comparison between the branches. There was once thought to be a serious conflict between them. It was long ago learned that they are but separate, sometimes dependent or allied members of the same body. One the right hand, the other the left, of the law. There is no longer a quarrel between them, nor is there any general demand in the profession of the law that they be merged. While this is true, a serious discussion, doubtless due to a supposed popular disquiet on the subject, has been waged in certain law periodicals during the
last several years whether trial by jury should be abandoned in favor of trial by judges alone. It is argued that trained judges, whose study and experience peculiarly qualify them to weigh evidence, to judge of its probative effect and to apply it according to fixed and just rules as found in a long experience, are better qualified than laymen, gathered from every walk in life and possessing no particular learning or qualification, to weigh such delicate matters and to correctly apply the evidence in a case according to rules of law.

This discussion, though not at all new, is being waged so earnestly and so persistently as to have attracted wide attention in the ranks of the profession of the law and elsewhere. Legislatures and Congress are made up in a large part of lawyers. It is fair to presume that, in matters touching procedure in court, by a kind of common consent great deference is paid to the judgment of those members who are lawyers by profession, in formulating amendments to the law.

The part of our profession in any effort toward an amendment of our system of trials in court, is, to say the least of it, to acquaint the legislatures, and the public, with the true nature of the system, and to expose those fallacies of the so-called reformer who predicates a revolution in the practice upon isolated and curable exceptions. It is also to submit the alternative, as well as the experiences of the past, to the legislators whose action is to be invoked. It is, therefore, that an outline of the jury system, dealing with features so familiar to the profession that it may seem idle to restate them to this assembly, has been undertaken.

It is not my purpose to trace the antiquity of the jury system. Many others, with more time and learning, have attempted it in vain. We sometimes imagine that the jury is an institution peculiar to the English speaking race. As a matter of fact it existed in civilized governments while the Britains were yet barbarians. It existed with the Greeks and the Romans, and was quite general among the earlier governments of Northern Europe. Some think they can
trace the origin of our present system to the ancient methods of trial in use in England before the invasion of either the Saxons or the Normans. For my own part, I believe that it was introduced into England probably by the Romans. At any rate it was in existence during the time of the Conqueror. And it is a significant fact that the system of trial by jury in some form is older in history as far as we are able to trace it than any other form of trial now used by English speaking people. Juries were in existence as triers of both law and fact before judges were known. Juries had performed this great function of government centuries before parliament was convened. And while the English speaking people have altered their form of government in many particulars, in many instances radically, the jury system as it was in existence as early as the time of Henry VI, has not been materially changed to the present day.

The English had originally three modes of trial: One, a trial by jury; another, a trial by battel, and a third, a trial by ordeal.

The trial by battel is supposed to have been instituted under the martial Normans, to whom the institution was peculiarly adapted. The trial by ordeal doubtless lay in the natural superstition of an ignorant people, by which they sought to appeal entirely to some manifestation by deity, hoping to find in the supernatural a vindication of the right and an escape from their own consciousness of their inability to determine it. Thus one accused of certain crimes was put to the ordeal. There may have been others, but there were two forms in constant use. The fire ordeal was performed either by taking up in the hand unhurt a piece of red hot iron, of one, two or three pounds in weight, or else by walking barefoot and blindfolded over nine red hot plow shares laid lengthwise at equal distances, and if the party escaped being hurt he was adjudged innocent, but if it happened otherwise he was condemned as guilty.

The water ordeal was performed either by plunging the bare arm up to the elbow in boiling water and escaping
into a river or pond of cold water and if he floated thereon without any action of swimming, it was evidence of his guilt, and he was hanged; but if he sank and was drowned he was found not guilty.

It is to the credit of the sense of justice and growing intelligence of our ancestors that trial by battle as well as by ordeal were early discarded in favor of trial by jury. The right of trial by jury owes its existence to the spirit of independence. It owes its growth to intelligence. It owes its usefulness to man's enlightened instinct of justice. It will owe its perpetuity to an abiding faith by the people in their own sense of right and a wise determination to preserve in the surest form their own liberties.

While the general principle of the trial by jury may be found to exist in many legal systems, it has been remarked that it is found in its full vigor and efficiency only where there is a free popular system of government with an active state of intelligence, united with a regard for the individual as well as public security. It cannot exist in its full vigor under despotism. That it has not grown to the same proportions, and is not relied upon with the same confidence in other countries is due more to a difference in the character of the people than in any inherent defect or inapplicability of the system. As an oak may grow to gigantic dimensions in a favorable clime and soil, so the same tree would become a mere dwarfed shrub under less favorable conditions. Where the jury system has been tried and not developed and adhered to, it will be discovered by a study of the people that it found no adequate support or development in their own character.

In every government power must be lodged somewhere. It should, in a popular government, be dispersed rather than centralized, as a guard against oppression, and as tending to make it more difficult to corrupt or entirely subvert it to base ends.

In administering governments courts are a necessary part of the machinery. In some body of magistrates there
must be lodged the right to try and to decide, the power to pass final and irrevocable judgment in matters of dispute, whereby crime may be prevented, peace preserved, and each insured his own. In an advanced civilization of a considerable number of men it is impracticable that all should participate directly or at all times in administering their government. In such a civilization rules of conduct which are deemed to be right are formulated and made as permanent and public as in the nature of the thing can be. These rules or laws are enacted by the people's representatives, the legislature, and made to conserve the rights of each individual, whether it be of his person or property. Likewise courts, composed of men learned and trained in the law, selected with reference to their learning and uprightness, are established, by which the law is expounded and administered. Such judgments become precedent, which in addition to the statutes of the legislatures embody the law of the land. In this way judgments may not be capricious, and the law is administered under a system best calculated to bring about justice in each trial. But the judges become technical by reason of their training in the very technical rules which the science of their profession has evolved and demands. They frequently become more concerned with the philosophy of the law, with its principles, than with their particular application. Judgments of a court may deprive a citizen of property and give it to another; may deprive him of his liberty; may forfeit his life. There is no other power in government, next to war, (which indeed involves these very things, but upon a larger scale) so important, and which is so close to each person in society as the result of trial and judgment in court. It is believed that nine-tenths of the law is devoted to this subject. In some countries this right is lodged in magistrates alone, selected by the crown or some central government and answerable to it. But with the English-speaking people this is not so, and ought not to be so. As a part of our system we have the trial by jury. The jury is a part of the machinery of the government, is a part of the court. It and it alone
possesses the power to pass upon matters of fact involving infamous punishment, such as the infliction of death, or the loss of liberty; and in most matters of property it is also the possessor of ultimate power. This body of government officials, the jurors, have but brief authority. This is also as it should be. Nobody should have so much power as they have and have it for long. Its brevity is the best security against its abuse. Jurors are selected at frequent intervals for short terms of service from the whole body of people. Every male citizen who is a housekeeper over twenty-one years of age, who is sober, sensible and discreet, is eligible to the service, and ought to deem it a duty to discharge it when called upon. It should be and is intended to be so arranged that the same persons may not serve constantly as jurors or repeatedly, or except at reasonably long intervals. Thus is uncertainty as to who is to constitute the jury insured, which in turn insures as far as may be, an impartial, unbiased set of men for each venire.

I have spoken of the power of the jury. Let it be illustrated by comparison. The president, the congress, the governor, the legislature, nor any of the great departments of government, such as that of the State, war, navy, treasury, interior, or commerce, neither singly nor all combined, have under the American system, nor have their counterparts under the English system, the power to take one man's property and dispose of it to another although the latter may be entitled to it, or in time of peace to deprive a citizen of his liberty or of his life; and as to the two latter, and in most instances as to the former, the judges of the courts are equally impotent. On the other hand the jury may by legal verdict deprive any of them of their property and may give it to another who in truth may or may not be entitled to it, and it is possible for the jury in a court having jurisdiction of the charge to try anyone of the functionaries named and deprive him of his liberty or of his life in spite of his office.

Is it any wonder that such a power should have been
kept by the people as close to themselves as possible. It may be regulated, but may not be destroyed or denied. It should be regulated. Every safeguard conducive to its careful, orderly and legal exercise should be provided. Hence the power of the judges to set aside verdicts, to grant new trials, to reverse for erroneous trials. But no court, nor other power, can direct in a disputed matter, properly cognizable by a jury, that its verdict should be of a particular kind.

We have seen that power must be lodged somewhere. This great power of trial the people have lodged at home. Of the first importance in government I would place the elective franchise. Let it be made as universal as possible, as free as possible, as pure as possible, and liberty will be safe so long as the people are virtuous. The mere form of government is not so important so long as it meets the requirements of society and admits of the highest development of individual endeavor and the fullest enjoyment of its fruits. For if the people may select their public servants, may turn them out if they fail the public trust, and reward them if they advance the public welfare, the matter of public government is safe.

But next to the elective franchise, and so close to it as to admit of no other to intervene, is the right of trial by jury. No future constitution of a popular government can safely be drawn that does not include that right as one inalienable, and beyond every other power to abrogate.

It is thought that the English were trained not only in their independence, but in their conceptions of right and wrong by the fact of their participation in that feature of government represented by trials in courts. As anciently the whole county, or the whole hundred, participated in such trials, the people were constantly exercised in the application of principles of right and wrong, in the exaction of such a standard of morality, and of the observance of the rights of the public and of individuals, as developed in themselves growing ideals of these same qualities.

It will be noticed that in every government where jury
individual conception by the people of the rights of the public and of the rights of individuals. It is natural for men to regard with suspicion, if not with unfriendliness, a power over them and their property which they neither exercise nor control. But when the people themselves execute their laws the precedent set today in the case of one man may come to be applied tomorrow in the case of those who had set it. It amounts to a practical application from motives of self-interest if no higher, of the precept “do unto others as ye would have them do unto you.”

Courts are held with great frequency. So much so that they may be said to be in continuous session. Jurors are constantly called in attendance upon them. They hear the law discussed and expounded. They see it applied practically to the affairs of their neighbors. They judge of its efficacy and perceive its wisdom. They acknowledge the justness of its application, and admit its power. From every brief service they acquire knowledge of the laws of their land, statutory and otherwise, which they carry back to their homes. It is discussed with their neighbors and families. This process is repeated time after time until the whole community is permeated with a sufficient knowledge of the law to familiarize the body of people with it, and aid them in conforming their conduct to it. They learn what their own rights are. They get a sense of their duty to themselves and the public toward enforcing them. They learn to look with confidence to the power of the law, and to willingly apply to it instead of their own power for redress of their wrongs. It educates, tempers and ennobles the people. If the laws be wise and just; and their application prompt and impartial, the jury system as an educator of the people is of immense value.

The system of trial by jury prevailing among an enlightened and virtuous people is, too, a complete barrier between them and despotism. It is likewise a sufficient barrier between them and corruption. Such was the experience of the English even during the despotic reigns of the
Tudors and Stuarts when the "Star Chamber" flourished, when judges were the willing tools of tyrannical princes, and jurors too frequently but the pliant instruments in their hands. Instances were not then lacking when the inherent virtuous spirit of the Englishman rose above the dangers and corruption of the period and proved that the greatest and safest power in that realm was the right of trial by jury. True, they were fined, imprisoned, and otherwise maltreated for their independence, but their heroism and sturdy spirit displayed as jurors have formed themes for the strongest and most eloquent chapters in the history of this remarkable people. It was not only a triumph of the people over oppression, but of virtue over vice in a judicial proceeding. They vindicated not only their personal independence, but the pre-eminent power of the prerogative of a jury trial, the inheritance and shield of every Englishman, and from that time called the palladium of English liberty.

Englishmen suppose, and not a few others share the belief that trial by jury is expressly vouchsafed by the Great Charter. As a matter of fact, there is no direct allusion in that memorable document to this important right. It is taught, however, by Blackstone, and I believe is now commonly accepted by the British courts, that chapter 29 of the Charter does recognize this right. It reads:

"No freeman shall be taken or imprisoned, or be disseized of his freehold, or liberties, or free customs, or be outlawed or exiled, or any otherwise destroyed; nor will we pass upon him, nor condemn him, but by lawful judgment of his peers, or by the law of the land. We will sell to no man, we will not deny or defer to any man, either justice or right."

Among the many rights for which Englishmen were contending at that time, and the security of which they were by the royal charter placing beyond further dispute, was the ancient right of trial by jury. In each of the expressions "judgment of his peers" and "law of the land" it is conclusively construed, was included the right of trial by jury.
ment as established by the Plymouth Colony in Massachusetts, exhibits curiously enough but a single regulation now extant. It reads:

"And all criminal facts and also all manner of trespasses between man and man shall be tried by the verdict of twelve honest men, to be impaneled by authority in form of a jury."

The Constitution adopted by the United States contained no provision for trial by jury in civil actions. It did provide by Article III for such trial in criminal cases. The reason of the omission has been accounted for by the suggestion that the diversity of practice and form of jury trials in the several colonies made it difficult to adopt a measure that would command general acquiescence. The Federalist advanced the opinion that the best judges of the matter would be the least anxious for a constitutional establishment of the trial by jury in civil cases, and would most readily admit that the changes which were continuously happening in the affairs of society would render a different mode of determining questions of property preferable in many cases in which that mode of trial then prevailed. But the lawyers in that body, however well meaning they and their colleagues in the Convention may have been, mistook the spirit of the people on this subject. Much public discontent and disapprobation followed upon the omission, which was increased by the language in the original articles giving to the Supreme Court appellate jurisdiction both as to law and fact. The fear was entertained that it was the intention to abolish the jury in civil cases. The Supreme Court in Parsons vs. Bedford, 3 Peters, 446, which was an appeal in a civil case, observed that "one of the strongest objections originally taken to the Constitution was the want of an express provision securing the right of trial by jury in civil cases."

The Court added:

"The trial by jury is justly dear to the American
people. It has always been an object of deep interest and solicitude, and every encroachment upon it has been watched with great jealousy."

The dissatisfaction and anxiety of the people in reference to this omission was exhibited in many ways, in conventions and in resolutions, and the agitation was continued until all fears and doubts were finally put at rest by the 7th Amendment to the Constitution, which provides:

"In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules at the common law."

The State constitutions have gone further in emphasizing the importance to the people of this right. In the most solemn language the right is secured and guaranteed in the fundamental law of all the States. The people were unwilling to trust it to established usage or to the immemorial custom sanctioned by the courts, as was the case in England. The value of the right is too great, and the danger from its neglect too portentous, to leave that matter in doubt, or to place it in anybody else’s hands.

As might have been expected from the character of people who settled Tennessee, bringing the traditions of law from her mother English Colony, strict regard has always been paid here to the value of the right of trial by jury. By the 6th section of the Bill of Rights contained in the Constitution, it is declared "that the right of trial by jury shall remain inviolate," which is construed (4 Bax. 180; 5 Sneed, 561) to be the right of every citizen to have the facts involved in any litigation which he may have tried and determined by twelve good and lawful men; but only in such cases as were cognizable before a jury at common law when the Constitution was adopted (9 Hum. 50; 6 Cold. 385; 4 Bax. 180.) And by the 8th section of the Bill in the Constitution, it is declared that no man shall be taken or imprisoned, or disseized of his freehold or priv-
by the judgment of his peers, or the law of the land. The two last expressions are held to be one and the same, (9 Bax. 207; 6 Cold. 228, 244,) and were doubtless intended to bring forward the same idea as conveyed in the Great Charter.

There has always existed some jealousy of the jury by the bench, and some distrust of the jury's capacity by the bar. But while these have never reflected the general sentiment of the profession, they have furnished a source of adverse criticism of the jury, amplified and exaggerated by certain idealists who were mainly seeking perfection in an institution made up of imperfect men. In the beginning the judges took away from the jury and took upon themselves the finding of the law. Experience has demonstrated the wisdom of that separation of the powers of trial. Legislation now confirms it. In time the judges took away considerable parts of the jury's prerogative of finding the facts in certain kinds of cases. These also have been allowed upon the ground of expediency. All this occurred in the formative state of the practice. But since then there has been little or no change in the scope of the powers of the jury and those of the judge. True, some of the latter have ill concealed their distrust of or contempt for, the jury as an institution, while others have assumed, under the guise of giving the law, to state the effect of the proof toward establishing the facts. The latter practice has resulted in frequent abuse, resulting in the usurpation by the judge of the jury's functions. To prevent that evil some of the States have by legislation, prescribed the duties of the judge in jury trials to giving the law without comment on the proof. Such is the rule in Kentucky—while in Tennessee, by section 9 of article 6 of the Constitution it is provided the "Judges shall not charge juries with respect to matters of fact, but may state the testimony and declare the law." This was construed by your Supreme Court in 4 Hum. 155, to have been levelled at "summing up" as practiced in Great Britain, and was held to prohibit the
judges from stating to the jury what facts had been proved in the case.

In 1881 there was a kind of fusion of the law courts and chancery courts in Great Britain. But whatever the public purpose may have been, the result was mainly in bringing the sittings of those courts into closer relation, doing away with much of formal procedure, but it left the main distinctions as they were before. The Solicitors' Journal, commenting upon the fact at that time, predicted that it would have little effect upon the jury system, and added:

"We cannot help thinking that trial by jury, and the essential characteristics of the common-law way of looking at things, are more essentially connected than perhaps at first sight might appear."

In 1882 the Law Times had this to say upon the subject:

"A contemporary notices the fact that the voice of the bar has not been heard respecting the pending rules which threaten, among other things, practically to abolish trial by jury in civil cases. It is re. arked that the bar has no organization to protect its interests. We should have thought it was recognized t. y this time the bar has no interests worth protecting; and, if it had, no organization could have any effect when a revolutionary Parliament is backed up by a unanimous judiciary."

But changes are slow in Great Britain. The end of a quarter of a century since then finds the institution of the jury still a forceful factor in common law trials over there.

Judge Deady, of the Oregon District Court, in an article in the American Law Review seems to have regarded the jury as a kind of convenient help to the court in trials. But that misconceives the spirit of the Constitutions preserving jury trals. It misses the philosophy of the reason, and underestimates the popular purpose in so carefully safeguarding the right.

As to the popular estimate of the value of trial by jury it ought to be sufficient that of all the forms of government which we have adopted from or formulated upon the expe-
rience of the nations that have inhabited the earth, the only feature which we have brought forward intact and have embodied in the most sacred part of every Constitution written, is that of trial by jury.

We hear much of incompetent juries, of biased verdicts, of verdicts induced by prejudice or passion. It seems to be thought that we have discovered recently a defect in the system; that until put to use in the stress of the complicated affairs of modern civilization this defect was a hidden one. But such is not the fact.

Miscarriage of justice by jury trial is a complaint as old as the history of the system. When juries were made up of the witnesses and were the triers of both law and fact, it was a matter of frequent occurrence that their verdicts were biased and unjust, if not actually corrupt, and led to the enactment of severe penalties inflicted upon the jurors for their erroneous verdicts. They were fined, imprisoned, attained and otherwise punished. This seems to have been justified in a large measure upon the idea that they were also witnesses, and that their verdict against truth was equivalent to the crime of perjury. There has never been a time, probably, when the same complaint now urged against the efficacy of jury trials was not heard. Yet in the most prevalent era of the evil the people were not willing to substitute a trial by judges for a trial by jury. Instances of abuse have not only arisen, but will arise, but an abuse of power argues little for its negation. These inness of the system, but only prove the weakness of humanity, for no system can be practically better than the people who execute it.

The most insistent note of complaint against the system at this time, is the character of men who alone are qualified under the law for service in cases where great interest is excited. As everybody reads newspapers, and as the means of communication between individuals as well as among communities have been so enormously increased and extended that now nearly everybody knows of any important event by having read it or heard it in more or
less detail within a few hours after it has transpired, it is hard to find a man who has not formed an opinion concerning the matter. If juries must be made up of those who have not through such avenues of information become familiar with the affair, and have formed and doubtless expressed an opinion based on his information, it would follow that a very ignorant or a very indolent class must alone be qualified for jury service in such cases. The supreme concern of the law has been to get impartial and unbiased men as triers of the fact. But it is almost if not equally as important that intelligent men—at least men of average intelligence—be selected. When the courts and legislatures will recognize, as generally they now do, that a layman is no more disqualified because of having read a newspaper account of a homicide, to try the case against the man accused with the crime, than is the judge who has read the same account, and that it should be bias, and not reading, that is to be the test of disqualification, the principal complaint will be found to be unsustained. It is better to have a sensible man with an opinion, try your case, than an ignoramus without an opinion.

But this is a digression into detail more than was anticipated.

This system performs still another great function in government. It is a check upon all others. Governors or other executives may set prosecutions on foot. Petit juries cannot. Courts may determine whether the form of procedure is legal, and whether a statute or other law is probably valid. Juries have no voice in such proceedings. Parties may implead each other as to property rights. Juries cannot instigate any action at law. The legislature, congress, may enact or repeal laws concerning crimes and property rights. Juries have no prerogative of legislation. Having such great power as they have, they ought not to have and do not have the power of initiative. The jury is a check upon all the other branches of government, a powerful check. One that stands at the door of the citizen between him and every department of government, athwart
his rights. While its power is great it is safe because lack-
ing the right of initiative, and being of short duration and
uncertain as to what persons may be called together to ex-
ercise it, it can never become oppressive. The legislature
and the courts must first become corrupt before corrupt
juries could corruptly exercise their vast power through
any considerable length of time. On the other hand, though
the legislature and courts be corrupt, unless the people are
in the main also corrupt, the jury system will save us from
great oppression.

The jury system is in fact the most democratical fea-
ture of the American government. In it the people par-
ticipate more extensively and more constantly, and in a
matter of more vital importance than any other pertaining
to their government, save that of elections.

Trial by jury is spoken of by the Constitutions as a
matter of right. It is not universal nor is it deemed neces-
sary that it should apply to all disputed matters. It is
conceded that the legislature might extend it to other mat-
ters; and in matters anciently not triable by jury, it is
not necessary that they should now be so tried. From this
we may gather that the institution of the jury was in-
tended as something other than a mere regulation of pro-
cedure in the courts, by which personal and property rights
may be determined. It is conceded that in many matters
not only is a jury not necessary to a just determination,
but would be an impractical means. So it is the right of
trial by jury as anciently exercised, that is preserved. The
evident purpose is to keep the government close to the peo-
ple. While the right is personal to litigants whose cases
come within the ancient practice, it is also a public right.
It is political. It concerns the public, although the particu-
lar controversy is purely private. For the administration
of justice is a public concern, as much as it is private. Every
man is concerned in the manner of administering justice,
whether or not he is concerned in particular matter adju-di-
cated.
The principal complaint that can come against the system of trial by jury is as to the manner of selecting the jury. Without going into details on the subject, I submit that the jury should be independent, and uncertain as to who might constitute its members. Let it be supposed that a judge was either tyrannical or corrupt. If he may select his jurors he may with almost unerring precision have his purpose effectuated, by choosing only such persons as jurors as he knows or has reasons for believing will incorporate his views in an unrighteous verdict. The judge should, therefore, be powerless to select the jury, but he should have the power of purgation. I merely submit this suggestion: Jury commissioners should be chosen by the people for terms, and should be chosen at different times, and in such manner as would give the best guaranty against partisan bias in the lists of jurymen. No list should be selected, or box of names filled, (unless unavoidable) just before a trial attended by great popular excitement. Sheriffs, elisors, or jury commissioners, in executing the venire facias are not always free from popular or political pressure on such occasions, and scandalous results sometimes flow from such proceedings. The popular indignation is then apt to be levelled at the whole institution of jury trial, whereas it ought justly be applied only to the abuse of it.

Yet in spite of its abuses, some of which cannot be altogether avoided owing to certain infirmities of human nature, I do believe that no other way has yet been devised in the wisdom of man, or evolved out of his experience, so apt to reach a reasonable and right conclusion, fair to the disputants, and safe to the public, in most cases, as is a trial by jury. It is less apt to be corrupted, less apt to be tyrannical, and accords more nearly with the average sense of right, which is the ultimate practical test of all trials, than any other means invented. Let the people be educated in their great responsibility, advised of their independence as jurors, made to appreciate the value of the prerogative of the jury, and so long as jury boxes are not
to produce particular result, the good sense and conscience of the people will be found adequate to the administration of justice in those matters which for time immemorial it has been their province to decide.

Justice has miscarried often, too often, because jurors were incompetent. But I doubt not it has as often miscarried because the judge was not what he should have been. Whether it be that a tyrant upon the bench or a fool in the box, is the cause of the miscarriage, it is all one to the loser. But to the people it is not. The fool in the box is the more tolerable, for in his ignorance he may not be all bad, and though he gropes in darkness and error, he gropes for the light and the right.

There is one other feature of the system that I will call to your attention, which is the number composing the jury. The juries of the Athenians were very cumbersome; those of the Romans more complex, but approaching nearer to the modern model. But generally the number has been twelve. As early as the reigns of Edgar and Ethelred, (about the 9th and 10th centuries,) mention is made of sworn juries composed of twelve thanes, or freeholders. And Alfred, the greatest of the law-givers, sometimes called the English Justinian, once hanged a judge because he condemned a man to death without the consent of all twelve of the jurors.

Lord Coke referring to the custom of selecting twelve, so general, says:

"So far, in this case, usage and ancient course maketh law. And it seemeth to me that the law in this case delighteth herself in the number 12, for there must be not only twelve jurors for the trial of matter of fact, but twelve judges of the ancient time for the trial of matters of law in the Exchequer Chamber. Also for matters of State there were in ancient times, 12 counselors of State. He that wageth his law must have 11 others with him which think he says true. And that number of
twelve is much respected in Holy Writ, as twelve apostles, twelve stones, twelve tribes, etc."
(3 Coke, 155 A.)

Bouvier gives the meaning of the word "jurata" in old English law as "a jury of twelve men; a common law jury." Spelman (Gloss. tit. "Jurata") says that "twelve is not only the common number throughout Europe, but was the favorite number in every branch of the polity and jurisprudence of the Gothic nations."

One of the ancient kings of Wales, Morgan of Gla-Morgan, to whom is accredited the adoption of the trial by jury in A. D., 725, calls it the Apostolic Law. A similarity was found by him between the functions of a jury and the king, and of Christ and the twelve apostles.

Cooley in his "Constitutional Limitations" lays it down that a petit, or traverse, or common law jury was composed of twelve men. He says:

"Any less than this number of twelve would not be a common law jury, and not such as the constitution guarantees to accused parties, when a less number is not allowed in express terms; and the necessity of a full panel could not be waived—at least in case of felony—even by consent."

The Scandinavian nations had trial by jury for a period beyond the memory of man. With them the number was 12 (as in Sweden and Denmark) and "three times twelve" in Norway.

This singular coincidence in number, existing for a time when there was but little interchange of manners and customs among the nations of the world, and shown to have existed even before a history of the nations was written, or full records kept, is no less striking than that it has been adhered to with equally singular pertinacity by nearly every people where the jury system prevailed.

Those who rail at the system of trials by jury as being unscientific and inefficient, view the subject, I think from the single standpoint of the result in the particular trial. They fail to consider the educational feature of the matter
consider its value as a check upon other departments of government. They forget that our government, in its machinery, and its functions, is but a great system of checks. We have been so long unacquainted with despotism that some doubt the possibility of its becoming a fact among us. Hence preventives are not as seriously considered as they were by those who had felt its oppressions. They forget, too, that our nation is in its youth; scarcely beyond an experimental stage, as lives of nations are reckoned. All history warns us against the people's letting their government get into a few hands. And those functions of government that most affect the people are always safest in their own hands. Again, the critics of the jury system fail to suggest a substitute, safer, or better. Judges are not. When it is argued that the jury may be composed of ignorant men, they fail to remember that these same men elect the judges. Or, if one step further is taken by the critics of the system, and they urge an appointive judiciary, obviously the appointing power would have centralized in it the control, directly or indirectly, of the administration of justice. If that central power were always wise and patriotic, the result might not be so bad. But, there is the rub. Their whole argument is necessarily based upon the idea of the people's incompetency for self-government—an idea that has never lacked able and specious adherents. The Tories are not all dead. In advocating that trials should be by judges alone, the advocates must needs assume several very important premises: One, that the judges would be freer from personal bias than juries. Second, that they would have a truer conception of the right. Third, that they would be actuated by a higher devotion to country. In the first place, it is not true that human nature differs in men according to their profession or calling. Those idiosyncrasies, called prejudice, passion or bias, are apt to be temperamental as otherwise. Jeffries was a most learned judge, and a really able one. Chief Justice Bromley, from the bench, fought the independence of the jury,
sentenced a jury to prison because they found a verdict of not guilty when the crown greatly desired a conviction of an innocent man. Lord Mansfield so far invaded the jury’s province in the trial of criminal libels as to bring about the enactment of the stringent amendment of the laws enlarging the jury’s province in those cases whereby the liberty of the press was committed wholly to the jury. No system has yet been devised whereby only honest, unbiased judges have been selected. Nor do I believe it is true that judges have a truer conception of right than have laymen. There is no patent upon righteousness. And conscience is a quality given as unsparingly and impartially to man as any other with which his creator has endowed him. A good man wants to do right, and he loves the truth. Nor does he have to be a lawyer or a judge to have the love of right. While I freely grant that lawyers as a class are patriotic men, who love justice and unselfishly devote their talents to its cause, a fact in which we all take pardonable pride, yet it cannot be truthfully said that they are more devoted to their country’s welfare than the average of mankind. Nor do I by this comparison mean to disparage the justly high esteem accorded to the judiciary as a class, and as an arm of the government. In our government particularly they have justified every reasonable expectation. No: the whole of the argument against the jury system is based upon a distrust of the people, of their intelligence, of their honesty. The men who have won the battles for liberty in time of war, and have achieved a nation’s greatness in time of peace, should not be subjected to such sweeping distrust. It is they who have made the wealth of the country; they who have established its schools and maintaining them, who are the patrons of its literature, and the worshippers at the altars of its churches. They bear the burden of Christ’s commission, and their common effort and average intelligence is always the existing standard of man’s advancement and worth. Their average sense of the right is the right in the contemplation of law. Their average sense of right becomes in reality the law.
The jury as a co-ordinate branch of the trial court, is of equal independence, of equal power, and of equal dignity—when dignity is construed aright with the judge. Each is indispensable. Each is more efficient for the co-operation of the other. These ancient allies against error, who have so long waged a common warfare for the right, according to the conscience of man and in accord with his well-being, deserve each his familiar place in a system seasoned in the experience of many generations and sufficient in the dealing out of justice to a people most celebrated for justice. The judge's fame may be established and preserved in the judgments and opinions printed in the books, bound in enduring form. The juror's, less ostentatious, but no less secure, is found in the unswerving confidence of the centuries, justified by a fidelity and sense of right which the courts unhesitatingly admit and constantly proclaim. And which the great mass of people do not doubt.

Report of Committee on Obituaries and Memorials.

Hon. Foster V. Brown, President:

Your committee on obituaries and memorials in presenting the following, desires to make grateful acknowledgment to Hon. Edward T. Sanford for the preparation of the memorial on Joshua W. Caldwell; to Hon. C. C. Collins for the memorial on John W. Tipton; to Professor H. A. Morgan for the memorial on James Walter Young; and to Norris Headrick for the memorial on E. Bruce Forshee.

Your committee reports the following:

JOSHUA W. CALDWELL.

Joshua W. Caldwell was born at Athens, Tennessee, on February 3rd, 1856, and died at Knoxville, Tennessee, January 18th, 1909. He was the son of Alfred Caldwell, a prominent member of the bar of East Tennessee. At an
early age he moved with his father's family to Knoxville, where he afterwards resided.

He graduated from the East Tennessee University in 1875 and was admitted to practice in 1877. He soon won high rank as a member of the Tennessee bar, attaining a position of the greatest distinction in the regard and esteem of his associates and the people of the State.

He was married at Huntsville, Alabama, to Miss Katherine Moore Barnard, on November 20th, 1883, and leaves surviving him his widow and three children.

In addition to his varied and successful private practice, in which his learning and professional attainments caused him to be entrusted with the conduct of an exceptionally large number of the heaviest and most important cases in the courts of this community, including many of great public interest. He rendered most efficient service in the administration of justice and in the enforcement of the law in various official capacities. He was for eight years the City Attorney of Knoxville, during which time he prepared an admirable compilation of the city charter and ordinances; for two years Judge Advocate-General of Tennessee, on the staff of Governor Turney; and for many years a lecturer in the University of Tennessee, on Tennessee Law and Constitutional History of Tennessee.

On the passage of the Bankruptcy Act of 1898, he was appointed Referee in Bankruptcy for the Northern Division of the Eastern District of Tennessee, and held that position continuously until the day of his death, presiding in the court of bankruptcy with rare courtesy, wisdom and efficiency. He was frequently appointed a special master of the United States Circuit Court, in complicated and important litigation, and discharged his duties in that capacity with the same fidelity, integrity and ability.

In addition to his professional labors, his life was filled and enriched with countless activities and manifold services to the community and to the state, through which he gave, unsparingly and with unceasing devotion, of his time, his learning, his intellectual strength and spiritual
the higher life of the community. He was ever a zealous and untiring worker in behalf of the University of Tennessee, and President of its Alumni Association for eighteen years; for thirteen years a Trustee of the University of Tennessee, and for many years Chairman of its Agricultural Experiment Station Committee; a trustee of the Lawson-McGhee Library from its organization, and at one time its President; for several years a Trustee of the Tennessee Deaf and Dumb School, in which position he succeeded his father; the founder and the only President of the Irving Club, of Knoxville; for many years Senior Warden of the Vestry of St. John’s Episcopal Church of Knoxville; a member of the Bar Association of Tennessee; and a member and president of the Sons of the Revolution; an honorary member of the Tennessee Historical Society; and a corresponding member of the Minnesota Historical Society. He was at the time of his death engaged in preparing a revision of the charter of the City of Knoxville, as Chairman of a General Committee appointed for that purpose. He received the degree of Master of Arts from the University of Tennessee in 1895 and was twice the Alumni orator at its commencement exercises.

He was richly endowed with a love of learning, and of all that is best in literature; he attained unto a scholarship unusual in its breadth and excellence; his historical research was untiring and constantly inspired by patriotism. He enriched the historical literature of Tennessee with two works of great and permanent value, “Sketches of the Bench and Bar of Tennessee” and “Studies in the Constitutional History of Tennessee,” the latter of which has recently appeared in a second edition. He delivered public addresses on many notable occasions, and contributed numerous articles of enduring value to the annals of the Bar Association of Tennessee, and of various historical societies and to other publications, all of which were characterized by the same breadth of learning, loftiness of thought and charm of style.
BAR ASSOCIATION OF TENNESSEE

As an orator he stood in the first rank, having a power of speech unusual in the beauty and purity of its diction, that gave clear and forceful expression to lofty thought and noble sentiment, irradiated by a rare and delightful humor, and made winning through his attractive personality.

It is not often the good fortune of any man whose life is brought to so early a close, to have lived a life so filled with high attainment, of manifold intellectual activity and of spiritual and moral uplift to those about him, and to have left such an enduring and permanent record of distinguished and honorable achievement.

As a lawyer his life illustrates in its every act and deed the highest professional ideals; in the strength of his intellect, the breadth of his learning and the eloquence through which they found expression; in an unfailing courtesy to his associates at the bar, which attached them to him in the closest bonds of personal friendship; and in a scrupulous integrity and honorable dealing alike with his fellow-lawyers and with the courts, which leaves the memory of his name as the synonym of that which is true, honorable and of good report in professional life.

To the end, therefore, that a permanent memorial may be made of his virtues and of our grief,

Be It Resolved, That we deeply deplore his loss as that of a friend whom we loved; a man of kindliest nature and widest sympathies; a scholar of the broadest culture; a historian who made valuable contributions to the annals of his profession and of the state; an orator of exceeding charm; a citizen whose life was one of noblest service to the public and ministered to its highest moral and spiritual life; a learned and skilled lawyer, in whose honorable distinction we rejoice, and in whose life’s work we take just and solemn pride.

JOHN WRIGHT TIPTON.

On the 4th day of November, 1908, at his home in Elizabethtown, Tennessee, Col. John Wright Tipton, departed this life, aged 60 years.
part of the ancestral estate of the Tipton family. He was a great-great grandson of Col. John Tipton, of colonial and revolutionary fame, who is one of the great historical characters of this commonwealth, dating back to a period of a considerable length of time before the founding of the state. He was a member of the House of Burgess, and served as sheriff under the king in 1772, in the Colony of Virginia, before emigrating to the Watauga Settlement, or what is now Carter County, Tennessee. His family emigrated to this country from Tipton, England. The original John Tipton as duly authorized officer of the government of North Carolina led a most conspicuous part in the struggle which resulted from the attempt to establish the State of Franklin just after the revolutionary war, and has been unjustly criticised by some writers for the course pursued while he was acting as the sworn officer of the state.

Samuel Tipton, the great grandfather of the subject of this sketch, and a son of Col. John Tipton, founded the town of Elizabethton, Tennessee, the county seat of Carter County, and generously named the town in honor of the wife of another distinguished citizen of the earlier settlement, Col. Landon Carter, whose name was Elizabeth.

Samuel Tipton was prominent in political life. He was sheriff and state senator, and in his day one of the largest land-owners in the Watauga Valley.

He is remembered by a few of the oldest citizens in the community, and was proverbial for his straightforward integrity, his strength of convictions and his public spirit.

The grandfather of the deceased was the Rev. James I. Tipton, who was prominent as a minister of the Church of the Disciples, in the earlier days of that now very influential Christian denomination.

The father of deceased, Albert J. Tipton, was at one time Sheriff of Carter County, also a member of the House of Representatives of the Tennessee Legislature, and was elected State Superintendent of Public Instructions of the state at the time DeWitt C. Center was elected governor.
He was also a licensed lawyer, and a prominent local preacher in the Methodist Church.

John Wright Tipton was born May 14th, 1848. He was married December, 1870, to Miss Mary G. Hubble, of Marion, Virginia, and there was born of the union, three children: Hon. A. H. Tipton, recently Assistant Com. of Agriculture; John H. Tipton, a prominent lawyer, and at present member of the law firm of Collins & Tipton, and Mrs. Flora Miller, wife of Lee F. Miller, Esquire, a prominent lawyer and business man.

Mr. Tipton was educated at Tusculum College and graduated from that institution with high honors, after which he studied law in the law department of McKendree College, Lebanon, Illinois, where he graduated, and was admitted to the bar of his native town in 1870. He was successful from the beginning, and soon arose to a position of influence, and continued in active practice to the date of his death. He was for a number of years senior member of the law firm of Tipton & Miller, which continued up to the time of his death.

In his practice and intercourse with his professional brethren, he was uniformly kind and considerate, and no man at the bar was held in higher esteem than he.

He was unobtrusive in his habits of life, very quiet in his manner, never, in any way, displaying the least ostentation. A man of liberal education, he despised anything like pedantry. He was a great reader and deep thinker, but never sought public honor. He contented himself with devoting all his talents and energy to his chosen profession, which he loved, honored and magnified as the one calling of his life. He practiced upon an elevated plane, and held at all times the dignity and the integrity of the profession far above any mere monetary consideration. In his friendship he was faithful and true, but never at any time, attempted to utilize such relations to material advantage, holding them unselfish and sacred.

He did not subscribe to any form of dogmatic religion, but his faith in God was firm, and his belief in the funda-
He contributed liberally to the Church which was not confined to any one denomination. He was a member of the Masonic Fraternity and at one time Worshipful Master of Dashiel Lodge, No. 238, at Elizabethton.

At the last term of the court which he attended, while he appeared feeble of body, it was remarked by the members of the Bar, that he was perfectly preserved mentally, and was careful and painstaking and brought to bear his usual ripe ability in attending to the large business which he had in hand during the term, and only a few days thereafter, with no warning of the final end, he was stricken with heart failure, and his soul was carried to the great beyond, mourned by his family, his relation and the entire community in which he had spent his life.

JAMES WALTER YOUNG.

James Walter Young was born July 21, 1868, at Eagle Bend, near Clinton, Tennessee. He died September 20, 1908, at the place of his birth. The son of one of the state's best known jurists, Judge D. K. Young, he enjoyed all of the advantages of favored youth. With his vocation as lawyer, the father combined the business of farming. In his beautiful home, on his fertile farm, of large acreage, on the Clinch River, he surrounded his children with the best associations and influences.

In time Mr. Young became a student at the University of Tennessee. There he impressed his personality upon the student body and the teaching staff as one of gifted mind. His talents as a writer were made manifest in the pages of the monthly literary magazine, of which he was one of the editors. He became a graduate of the Law department in 1891 and later, in broadening his studies of the law, he took a course at Harvard University. His literary tastes and accomplishments led him to become connected with the press, and for a time he did work on the New York Sun.

Returning to his Tennessee home, he entered upon the practice of law, associated with his venerable father. Un-
to write for magazines and newspapers. He read widely, thought deeply, wielded a graceful pen, was clear and cogent in the expression of his ideas, and had a critical faculty which was incisive and illuminating.

He was a delightful after-dinner speaker, and was an orator of extraordinary ability. On several occasions he was the principal speaker in the graduation exercises at the University of Tennessee.

Perferring the peaceful and delightful pursuits of agriculture to the strife of the practice of law, Mr. Young soon abandoned active practice and became engaged in farming near his boyhood's home. At no time, however, did he abandon his love for legal learning and to the end he retained an active interest in all of the transactions of the State Bar Association of Tennessee.

To his friends and acquaintances, and to the stranger whom he chanced to meet, whether rich or poor, he displayed a courtesy of manner and tenderness of heart which proved him one of nature's noblemen. In sadly considering the great loss sustained by his death, we are made even more sorrowful by the glimpses given us of the possibility of latent powers evinced.

W. M. BRANDON.

W. M. Brandon was born March 6th, 1865, in Dover, Stewart County, Tennessee. He was reared on a farm near that place and received a common school education in the schools of Stewart County.

Later he attended Burrett College in East Tennessee, where he made a splendid record as a student, and acquitted himself with honors. For some years after he completed his college course, he was engaged in agricultural pursuits and dealing in stock, in which business he made a splendid success.

In 1894, he sold his farm and began the practice of law at Dover, Tennessee. He continued the practice of law up
up in other business.

He was for a number of years interested in banking, and was at the time of his death President of the Dover Bank and Trust Company. He always took great interest in politics and the public welfare. He was elected to the Legislature in 1895 and honored by a re-election in 1897. His career in the legislative halls won him distinction and honor and he was appointed Adjutant General of the state and served in that capacity during the administration of Governor Benton McMillin.

During his incumbency, the affairs of the office were conducted with entire satisfaction and with credit and honor to himself and to the administration. He was for many years a member of the Democratic Executive Committee of the State of Tennessee and at all times took great interest in the welfare of his party. He was for a number of years one of his party's leaders and took active part in all the campaigns in the state.

In his death, which occurred in the early part of 1909, the state lost one of her distinguished sons, who has honored the Bar of Tennessee by his labors as a lawyer, officer and upright citizen.

E. BRUCE FORSHEE.

E. Bruce Forshee was born at Thourld, Canada, November 15th, 1877, and died at his residence, No. 305 West Sixth Street, in Chattanooga, at 6:30 o'clock Saturday evening, February 29th, 1909, of appendicitis. When two years of age he moved with his parents to Cleveland, Ohio, and came to Chattanooga, Tennessee, in 1885, and has resided since that date continuously here. He attended the public schools of the city, and one of the business colleges, until 1897, in which year he entered the law offices of Elder & Milligan, and under this firm began the study of the law, and, in 1898, upon the opening by the U. S. Grant University (now University of Chattanooga) of its Department of Law, Mr. Forshee enrolled as a law student of that Uni-
versity and pursued his studies there, graduating in May, 1899, and was in that year admitted to the Chattanooga Bar as a practicing attorney at law. Before, however, assaying the active practice of the law, he was for several years after his admission to the bar, in the law offices of Brown & Spurlock, widening his experience and familiarizing himself with the office duties and practical details of the profession. He began actively to practice his profession in 1903, taking rank at once as one of the foremost of the younger members of the bar, and for the past two years of his life he has been associated with A. F. Frazier in the practice.

Mr. Forshee was never married; his family consisting of a mother, Mrs. Sarah M. Forshee, and two aunts, Misses Amelia and Frances Gould.

As a lawyer, Bruce Forshee was a deep student; was thorough and earnest in the practice; faithful, and at all times loyal to his clients’ interests, he was the soul of honor. Entertaining the loftiest ideals for his profession, he exemplified by his conduct the highest ethical standard.

As a citizen, he was public-spirited; taking an active interest in all things looking to the good of the community.

In temperament, Bruce Forshee was an idealist; his love of art, literature and all that appeals to the artistic temperament being foremost in his nature; he was above all, a lover of the beautiful and good in everything; he was, therefore, generous in his estimates of his fellow man, loving to his friends; to all he brought a soul devoid of guile; to his friends he held an open, generous, loyal heart; he was an optimist, believing the world a good place in which to live, his associates and his fellow men good people to live with. He was not quick to make friends, but attachments once formed were lasting. He was a thinker, a student, and lived chiefly in his books, in his thoughts. He was an ardent lover of nature, and held sane ideas of the Creator, living in constant thankfulness for the ever-present goodness of God as evidenced in the creation, realizing
a universe and so loving a son.
Taken away when the sun of his life had but fairly arisen; when it had but begun to give forth the light of its usefulness; at a time when those most dear to him looked with expectancy and a promising realization of his assured success as an eminent lawyer and future moulder of the destinies of his country,—his taking off seems a tragedy. When but a few days ago he walked among us a picture of health, a model of mental fitness and moral probity, we all the more feel:

“There is no death; the stars go down
To rise upon some fairer shore,
And bright in Heaven’s jewelled crown
They shine forever more.
* * * * * * * * * *
“And, ever near us, though unseen,
The dear, immortal spirits tread;
For all the boundless universe
Is life; there is no dead.”

HOWARD CORNICK, Chairman.

LIFE AND CHARACTER OF JUDGE WILLIAM FRIERSON COOPER.

By John B. Keeble, Nashville, Tennessee.

The happiness and strength of any people depend, largely, upon their laws,—laws that are adapted to their nature and occupation, the moving principle of their government, and the decree of liberty guaranteed by their constitution. Each people must, to a great extent, build up their own system; for on account of the great difference in the characteristics mentioned above, it has been well said that “it should be a great chance if those of one nation suit another.”

Whatever the commonality of man may think of our profession, we know that lawyers,—advocates and judges,—constitute a great array, the inspiring purpose of whom is to fashion a system of laws, civil and political, under
which a free people may live in peace and content. The judges, considering the parties that sue and the state above them,—the rights of the individual litigants and the broader rights of a whole people, sit, to quote from Lord Bacon, "jus dicero, and not jus dare, to interpret law, and not to make law, or give law." They ought to be, he says, "more learned than witty, more reverent than plausible, and more advised than confident; above all things, integrity is their portion and proper virtue."

The advocates perform an equally important part in the great problem. By their research and logic, their invention and eloquence, they quicken the sense of justice in the breast of the judge, stimulate his reason and arouse him to mental and moral activity that would have been impossible without such aids. Without the vigor and genius of the advocate the common law would have been impossible, and the interpretation of our constitution would have been narrowed and made less capable of meeting the needs of our national life.

The advocate, struggling in great cause or small, and the judge in dealing with questions of broadest political import, or arbitrating the smallest differences between the humblest citizens, have been and still are, the moulders of law, the maintainers of justice, and the pillars of sound government. Together they make "more and more effort to promulgate, mark, God's verdict in determinable words," seeking ever to weld into law the finer, "nobler public sentiment" that

"Hangs aloft, a cloud, as palpable
To the finer sense as the word the Legist welds."

Realizing the truth in the words of the poet who said,

"Justinian's Pandects only make precise
What simply sparkled in men's eyes before,
Twitched in their brow or quivered on their lips,
Waited the speech they called but could not come."

It is my honor, on this occasion, to discuss the life and character of a Tennessean, who embodied to an eminent degree the qualities of judge and advocate, and who since the
After a long, long life, many years of which were spent in arduous devotion to our profession, William Frierson Cooper died in the City of New York on Friday, May 7th, 1909.

Few men in this state achieved as great success at the bar and on the bench as he achieved. In fact, when viewed as an advocate and as judge, it seems that it might well be said that he was primus inter pares.

We are fortunate to live in a country where success and fame are confined to no class, and where ancestry and early environment constitute no insuperable barrier separating us from achievement and recognition. Nevertheless, in the vast majority of cases, we can find such in both that largely influences men's careers. In view of this fact, we naturally turn the pages of the history of individual lives, confidently expecting to find something in origin and education that gave promise of the development in maturer days. The subject of this paper was not an exception to the general rule. He was born of parents of unusual character, force and culture. Matthew Delamer Cooper, his father, was a man who combined the finest business judgment and method with a broad culture and wide information. In his early life he received the best available instruction. After serving with Jackson in the War of 1812, he resumed his studies and graduated at Cumberland College, now the University of Nashville. He was not only widely read in the literature of our language, but also read with ease the original of many classics in Latin and Greek literature. He himself had intended to study law, but having an opportunity to enter business life, he gave up his hope of a professional career. His business career was successful and broad.

The mother of William F. Cooper was Mary Agnes Frierson, of Maury County. She was a worthy member of a family, representatives of which have for generations been ornaments of the society of a county that has been noted
Of these parents, on March 11, 1820, William Frierson Cooper was born, in Williamson County, Tenn. From the day of his birth until he reached the age of fourteen years, little or nothing of moment is known. We can safely say, however, both from the knowledge we have of his parents and the fact that in that year he entered Yale University, that his early years were spent in a most profitable manner. The next four years of his life were spent at Yale. While there he was tutored by Hon. Alphonso Taft, who was the father of the president of the United States. It would be of interest to every lawyer to know something very definite in regard to his career as a student at this great university. Was he remarkable for his application? Did he excel in this or that branch of his collegiate work? What impress did he make upon his professors? What honors were awarded him by his alma mater? These are all questions the answer to which would be read eagerly by the student of law as well as the experienced practitioner. But they will doubtless never be satisfactorily and fully answered. These things, however, we do know: While there he formed a respect and a tender affection for his tutor, Hon. Alphonso Taft, to whom he dedicated a volume of his Reports. In the dedicatory paragraph he bears testimony not only of his personal regard for his distinguished instructor, but says that at a critical period of his life the influence of Mr. Taft had been greatly beneficial in the moulding of his life’s purposes and in aiding him in his life’s labors. It is also of interest to note that he himself wrote of his college life at Yale: “I went to college too young to take a high stand or even to appreciate the importance of a thorough education. I was noted at college only for a passionate fondness for indiscriminate reading. I trace much of my success in life to the training, social as well as educational, of my alma mater.”

Later in life, when he had risen to distinction in his profession, and had received recognition not only among
his own people, but throughout the profession of America, his alma mater recognized him officially by conferring upon him the degree of Doctor of Laws.

Leaving here, he matriculated in the Jefferson Medical College, of Philadelphia, and later received from that institution the diploma of graduation.

Whether or not the story is true, that seeing the death of his first patient, a negro woman in child-birth, he gave up this profession, we do know that he soon abandoned the idea of practising this profession. After abandoning medicine as a profession, he determined to study law, and studied at Columbia, Tennessee, under Hon. Samuel D. Frierson, himself a lawyer of distinction, and one time Chancellor at Nashville.

Whatever vacillation he evinced up to this time in the selection of a life work, from this time forth this quality disappeared entirely from his character. If he had been wavering in the choice of a profession, when the law was once chosen as his mistress, she was chosen for better or for worse, for richer or for poorer, for an association in sickness and in health; and forsaking all others he served her assiduously throughout the remaining years of his active career.

But it was not at Columbia that he was to achieve professional success. A man of quiet mien, and rather retiring in disposition, he nevertheless had a commendable ambition, a just confidence in his own capacity and sufficient courage to seek a broader arena and more renowned antagonists with whom to measure skill. The years that he passed at Columbia gave evidence of his capacity, and his professional skill. They were chiefly important, however, in being the years in which he manifested his marvelous acquisitiveness of professional knowledge. When he removed to Nashville about 1846, he came with rare amount of learning for one of his years, and already having won the good opinion of some of the most eminent lawyers of that day. He came to a bar that then had as its members some of the greatest lawyers this state has ever produced.
to his most ardent and devoted admirers. He soon became noted, first as a man of unusual learning, and then as an advocate of remarkable force. He contended for position with such men as Francis B. Fogg, Edwin H. Ewing, Andrew Ewing, Return J. Meigs, and Robert L. Caruthers.

When the war came on in 1861, when he was only forty-one years of age, he was recognized as one of the leaders of the Nashville bar. As years passed, and he increased in learning and ability, and time left him to contend only with those of his own generation, it is safe to say that as counselor and advocate, he had no equal among his associates.

After the war, when great litigation arose in Tennessee, involving railroad bonds, the debt of the state, the bonds of the City of Nashville, and the other intricate questions, he was easily the leading lawyer in such important litigation, and this too, notwithstanding the fact that frequently this character of litigation brought into court able and distinguished counsel from other states. Lawyers who practiced with him testify to his powers of luminous and argumentative statement; of incisive analysis; of convincing reasoning, and an incomparable use of authorities. I remember to have heard the late Col. Thomas H. Malone relate an instance in reference to the impression Judge Cooper made as an advocate. The time was after the war. A great case was pending in the Federal Court at Nashville. Distinguished counsel from at home and abroad were in the case. Judge Emmons was present and presiding. After an argument covering a day, Judge Emmons went to dinner with Col. Malone. After dinner, as the two sat smoking together, Judge Emmons, meditatively emitting clouds of smoke, said between the puffs: "Brother Malone, Brother Cooper is a wonderful lawyer." "Yes," said the Colonel. More and more clouds of smoke, and then Judge Emmons: "Brother Malone, for the average lawyer to stand before Brother Cooper is like the slaughter of the innocents."
accepted standards, his career was exceptionally and singularly brilliant. Whether tested by the number and importance of his cases, by the emoluments of his professional labors, by the results of his efforts, or by what is best of all the esteem and respect of his associates at the bar, his career was rich in return and beautiful in its symmetrical success.

After a brilliant career at the bar, in October, 1872, he was made Chancellor of the Seventh Chancery Division at Nashville, Tennessee, being appointed by Gov. John C. Brown, and this selection was ratified by the people at the next general election.

If Judge Cooper was better equipped in one branch of his profession than another, it was in equity jurisprudence, including rules and principles governing the pleading and practice in Courts of Chancery. In the position of Chancellor, he had the best opportunity to manifest the highest traits of his professional genius, and he made the best of his opportunity. Those who practiced before him when he was Chancellor unanimously testify to his magnificent administration of this trust. He is said to have combined every element desirable in a just, able and efficient judge. At the very beginning of his term of office, he displayed his gift for methodical work, by prescribing rules of procedure looking to the more orderly and expeditious dispatch of business. He was always patient and uniformly courteous to the bar, ever ready to listen and enter into the minutest detail of argument. He is said to have been an embodiment of that judicial quality, not to “first find that which he might have heard in due time from the bar, or to show quickness of conceit in cutting off evidence or counsel too short, or to prevent information by questions though pertinent.”

With all his dignity and high idea of judicial decorum he was not without humor. His keen appreciation of the situation, and kindly, satirical expression, in holding that press of business was no excuse for a young lawyer's failure
to file an answer in time, is excellently expressed in Cook vs. Dows. He said: "His excuse, while not one which the law can recognize in the general language in which he has couched it, namely 'press of other business,' is one in which we can all sympathize with him, although it may be to him at the same time a subject of congratulation, especially if he be one of our younger confreres."

Judge Robert Ewing is authority for the following incident: One day a case long upon the docket was called in his court. The Chancellor asked, who was connected with the case at present. The late Morton D. Howell arose and said, "I am a party to this suit; but I am merely a naked trustee, standing between husband and wife." "Let him be removed at once," was the immediate reply of the Chancellor.

His opinions, not only evince profound learning, and a brilliant judicial style, but at times evince an appreciation and power of application of literature in its broader sense.

I venture to say that there are few opinions of any English speaking judge more charming in style and literary allusion, than the opinion delivered in the case of Cornnon vs. Williams. This as you will recall was the first case in which a Tennessee court is reported to have passed upon the question as to the rights of a beneficiary under a will, to whom the testator had bequeathed the proceeds of a policy of life insurance payable to testator's executors, administrators and assigns, as against the widow and children to whom this insurance enured under the statute. The Chancellor cited as a precedent for his decision the case of Hales vs. Petit in Plowen's reports, a case that involved the forfeiture of an estate to the Crown on account of the suicide by drowning of Sir James Hales. After copious quotations from the arguments and opinions of the ancients, he concludes: "It is an authority directly in point on the question before us, and binding as a precedent, whatever may be said of the peculiar form in which its logic is presented." He concluded his opinion with the following brilliant comment: "The Elizabethan drama is full of legal
brought home to the people in those days even more than in our era. What wonder, then, that the great dramatist, in his marvelous range of vision, should see this specimen of legal acumen, and serve it up for the amusement of the groundlings and as a foil for the tragic end of the gentle Ophelia.

"In Sir James Hale's case, the Coroner sat on him and found it a felony. In Ophelia's case the Crowner sat on her and found it Christian burial. In the first case, the learned counsel says that the act consists of three parts: the imagination, the resolution and the perfection. 'If I drown myself willingly,' says the clown 'it argues an act; and an act hath three branches; it is to act, to do and to perform.' The learned Court discusses its case upon the supposition that the man went to the water. The clown concedes that "if the man go to the water and drown himself, it is will he nill he, he goes. But,' he adds, 'if the water come to him, he drowns not himself. Ergo, he that is not guilty of his own death, shortens not his own life.' 'But is this law?' queries his fellow clown,—'Aye, marry, it's crowner's quest law?''

What a revelation it is to find a poetic imagination in him, who mastered the intricate rules and principles of equity pleadings, who found pleasure in the refinements of reasoning, in questions of trusts, the marshalling of assets; and the illusive distinctions of remainders and powers! It is worthy of remark that we find in one mind at the same time the ability to thread the labored logic of Sergeants and Judges in the case of Sir James Hales, and at the same time a manifest pleasure in the weird tragedy of Hamlet, the sad death of Ophelia and the amusing satire of the clowns!

If I were called upon to name the one great service that Judge Cooper performed as Chancellor, I would say it was that he strengthened the foundations of our jurisprudence, and adorned our judicial literature, by masterly exposition of the underlying principles of law, sustaining his positions
by a splendid analysis of a great mass of authorities that
carried the strength and glory of the jurisprudence of
England. A distinguished member of the Nashville bar
says of him that there was no great need of a great lawyer
in a case tried before Chancellor Cooper, for the ability of
the Counsel counted for less in his court than in any court
he had ever seen. Give Judge Cooper the facts, and he
himself would unravel the legal questions.

After serving as Chancellor until 1878, he was elected
a member of the Supreme Court of the State. He served
as a member of that Court for one term, retiring in 1886.
While he was a member of that Court he contributed largely
to the prestige of the court and displayed a high order
of judicial ability.

It is said of him in the memorial prepared by Judge
Robert Ewing, and adopted at a meeting of the bar in
Nashville recently:

"It is no disparagement of the other honored members
of the Court, men of ability and diligence and conscientious
in the discharge of duty, to say that the confidence of the
bar in Judge Cooper's knowledge of the law and in his
integrity of character was so great that many cases of
great moment were by agreement of Counsel submitted
to him at Chambers, the Court afterwards consulting and
confirming his opinions. This extra work was not allowed
to interfere with a performance of his full share of the
general labors of the Court."

As Judge Cooper's professional labors as lawyer and
as judge before entering upon his duties as a member of
the Supreme Court were largely in matters of equitable cog-
nizance, it might have been properly supposed that in mat-
ters involving purely common law questions, and matters
involving questions of criminal law, he would have been at
some disadvantage. Those best fitted to judge, say how-
ever that this was not the case. Recently an able and ac-
complished practitioner and former jurist, who is recog-
nized as splendidly equipped in the principles of the criminal
law, said that Judge Cooper's opinions on questions of crim-
inal law were among the ablest and most learned in our reports.

His labors upon this bench won for him the confidence and support of a large majority of the bar of the State; and when in the visciditutes of political fortune he retired from the court, it was with the sincerest regret of the bar.

In a short time after this, Judge Cooper left Tennessee, and for many years made his home in New York City, where he delighted in the opportunities of study and investigation that were afforded by the libraries of that great city. Here he spent the remainder of his life, not, however, unmindful of his native state and the associations of his youth and maturer years. He lived in Tennessee almost the allotted three score and ten years. The time he spent away was then borrowed time.

Few men have lived as much in the same number of years as he lived in the years he gave to his professional labors in Tennessee. Few men have done so much for the enrichment of our judicial literature, for the development of laws, and for the establishment of sound principles of law, which after all are the surest guaranties of justice. Always pressed with the ordinary burdens of his professional life, be found time to do much other professional work. He edited the first annotated edition of the reports of this state. With others he compiled and published a Code of Tennessee. At the instance of Little, Brown & Co., he edited an edition of Daniel's Chancery Practice and he published three volumes of the decisions rendered by him while he was Chancellor. Anyone of these services would have entitled him to the gratitude of our profession, to have performed all four makes our obligations to him fourfold.

This is a faulty and feeble appreciation of a great law-year—a great judge—and a noble man.

A proper exposition of his life and character could only be given by one who met him at the bar, practiced before him when he was on the bench and came in touch with the fascination of his personal traits—traits none the less at-
tractive and beautiful by reason of the fact that he did not keep these rare wares on constant display.

That he was, however, a man of deep sympathies, strong attachments, fervent patriotism, splendid social qualities, broad charities, and kind heart, all both young and old who came in close association with him, have delighted to bear witness. He combined a memory of wonderful tenacity, with reasoning powers of superb proportions, a combination so rarely found in the human makeup. His breadth of mental vision and grasp was hardly equalled by any man of his time. The range of his reading included travel, history, science, economics, fiction, poetry and philosophy, as well as every branch of the literature of his chosen profession. He had something of the imagination of an explorer, and of the sentiment of a poet, a touch of the appreciation of nature of a novelist, and at the same time the method of a man of great commercial affairs, the comprehensive grasp of a philosopher, the analytical power of a great lawyer and much of the breadth of a statesman.

It is difficult to understand that a man of mind so susceptible of romance, could yet find a genuine pleasure in the reasoning of the subtlest questions of law and equity.

I recall years ago to have read the lament of Chancellor Kent over the destruction by statute in New York of the rule in Shelly's case. What a wonderful mind, the great Chancellor must have had, to write and feel the following eloquent paragraph:

"The judicial scholar, on whom his great Master, Coke, has bestowed some portion of the 'gladsome light of jurisprudence,' will scarcely be able to withhold an involuntary sigh as he casts a retrospective glance over the piles of learning devoted to destruction by an edict as sweeping and unrelenting as the torch of Ozar. He now must bid adieu forever to the renowned discussions in Shelly's case, which were so vehement and so protracted as to arouse the sceptre of the hearty Elizabeth. He may equally take leave of the multiplied specimens of profound logic, skillful criticisms
law and equity from those of Shelly and Archer down to the direct collision between the courts of law and equity in the time of Lord Hardwicke. He will have no more concern with the powerful and animated discussion in Perrin vs. Blake, which awoke all that was noble and illustrious in talent and endowment through every precinct of Westminster Hall. He will have occasion no longer in pursuit of the learning of that case to tread the clear and bright paths illuminated by Sir William Blackstone's illustrations, or to study and admire the spirited and ingenious discretion of Hargrave, the profound disquisition of Fearne, the acute and analytical essay of Preston, the neat and orderly abridgement of Cruise, and the severe and piercing criticism of Reeve. What I have, therefore, written on this subject may be considered, so far as my native state is concerned, as an humble monument to the memory of departed learning."

I am convinced that the subject of this sketch, by nature and by training, was one of the few men who ever adorned our profession in this country, who could genuinely enter into the real spirit of this beautiful and eloquent panygeric over questions so abtruse and difficult as the principles involved in this great case.

He was entitled to fellowship with Kent, and the great masters of learning who adorned our profession in the mother country. He delighted in mastering the greatest questions, and enjoyed treading the labyrinth of reason and refinements that have been the despair of minds of less heroic mold.

As a judge perhaps he failed to impress upon the mass of people his sympathies with them, nevertheless, although giving his judgment as the law commanded, he never lacked a proper sympathy for his people in all their real grievances, and ever kept in view the best good of the whole people by seeking to build up a proper system of law—a system that preserved the rights of all citizens—even if at times he failed to nod in obedience to the clamor of a few, or to
yield to a demand for the straining of a rule of law to meet
the exigencies of a single case.

If Mr. Bryce had known the career of his distinguished
Tennessean, when he wrote his American Commonwealth,
he would assuredly have included our own State with the
few that he says have produced judges worthy of any
nation, and who would have been ornaments to any judi-

ciary.

If the great lawyer and the just judge serves the State
as truly as the statesman and the soldier, the scientist and
the philanthropist, then William Frierson Cooper was one
of the greatest benefactors that have blessed Tennessee
with their lives. He was perhaps the last of an old and
noble order. The bells of the years ring out the old and
ring in the new. The times change, and we change with
them. Perhaps, we cannot hope to copy such a career.
Nevertheless, there is much of inspiration in such a life, and
as we meet the problems of today, we can receive higher
ideals of professional labor and nobler conceptions of judi-
cial greatness and dignity by a proper study of this life.

Report of Committee on Canons of
Professional Ethics.

To the Bar Association of Tennessee:

The special committee on amendments to the Can-
os of Ethics have carefully compared those adopted last
year by this Association with the Canons adopted by the
American Bar Association, and find changes in Sections 1,
5, 7, 10, 13, 15, 21, 22, 28, 30, 31, and in Part III of the
Oath of Admission. Nearly all these changes are verbal
only. Those which are material are improvements in form
and substance, and your committee recommends, for the
sake of conformity to general standards and uniformity in
the professional code, that this Association adopt the Can-
the Tennessee Code of Legal Ethics.
Respectfully submitted,
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I. PREAMBLE.

In America, where the stability of Courts and of all departments of government rests upon the approval of the people, it is peculiarly essential that the system for establishing and dispensing Justice be developed to a high point of efficiency and so maintained that the public shall have absolute confidence in the integrity and impartiality of its administration. The future of the Republic, to a great extent, depends upon our maintenance of Justice pure and unsullied. It cannot be so maintained unless the conduct and the motives of the members of our profession are such as to merit the approval of all just men.

II. THE CANONS OF ETHICS.

No code or set of rules can be framed, which will particularize all the duties of the lawyer in the varying phases of litigation or in all the relations of professional life. The following canons of ethics are adopted by the American Bar Association as a general guide, yet the enumeration of particular duties should not be construed as a denial of the existence of others equally imperative, though not specifically mentioned:

1. The Duty of the Lawyer to the Courts. It is the duty of the lawyer to maintain towards the Courts a respectful attitude, not for the sake of the temporary incumbent of the judicial office, but for the maintenance of its supreme importance. Judges, not being wholly free to defend themselves, are peculiarly entitled to receive the support of the Bar against unjust criticism and clamor. Whenever there is proper ground for serious complaint of a judicial officer, it is the right and duty of the lawyer to submit
his grievances to the proper authorities. In such cases, but not otherwise, such charges should be encouraged and the person making them should be protected.

2. The Selection of Judges. It is the duty of the Bar to endeavor to prevent political consideration from outweighing judicial fitness in the selection of Judges. It should protest earnestly and actively against the appointment or election of those who are unsuitable for the Bench; and it should strive to have elevated thereto only those willing to forego other employment, whether of a business, political, or other character, which may embarrass their free and fair consideration of questions before them for decision. The aspiration of lawyers for judicial position should be governed by an impartial estimate of their ability to add honor to the office and not by a desire for the distinction the position may bring to themselves.

3. Attempts to Exert Personal Influence on the Court. Marked attention and unusual hospitality on the part of a lawyer to a Judge, uncalled for by the personal relations of the parties, subject both the Judge and the lawyer to misconstructions of motive and should be avoided. A lawyer should not communicate or argue privately with the Judge as to the merits of a pending cause, and he deserves rebuke and denunciation for any device or attempt to gain from a Judge special personal consideration or favor. A self-respecting independence in the discharge of professional duty, without denial or diminution of the courtesy and respect due the Judge’s station, is the only proper foundation for cordial personal and official relations between Bench and Bar.

4. When Counsel for an Indigent Prisoner. A lawyer assigned as counsel for an indigent prisoner ought not to ask to be excused for any trivial reason, and should always exert his best efforts in his behalf.

5. The Defense or Prosecution of Those Accused of Crime. It is the right of the lawyer to undertake the defense of a person accused of crime, regardless of his per-
sonal opinion as to the guilt of the accused; otherwise in-
ocent persons, victims only of suspicious circumstances,
might be denied proper defense. Having undertaken such
defense, the lawyer is bound by all fair and honorable
means, to present every defense that the law of the land
permits, to the end that no person may be deprived of life
or liberty, but by due process of law.

The primary duty of a lawyer engaged in public prose-
cution is not to convict, but to see that justice is done. The
suppression of facts or the secreting of witnssesese capable
of establishing the innocence of the accused is highly rep-
rehensible.

6. *Adverse Influences and Conflicting Interests.* It
is the duty of a lawyer at the time of retainer to disclose
to the client all the circumstances of his relations to the
parties, and any interest in or connection with the contro-
versy, which might influence the client in the selection of
counsel.

It is unprofessional to represent conflicting interests,
except by express consent of all concerned given after a
ful disclosure of the facts. Within the meaning of this
canon, a lawyer represents conflicting interests when, in
behalf of one client, it is his duty to contend for that which
duty to another client requires him to oppose.

The obligation to represent the client with undivided
fidelity and not to divulge his secrets or confidences forbids
also the subsequent acceptance of retainers or employment
from others in matters adversely affecting any interest of
the client with respect to which confidence has been reposed.

A client's proffer of assistance of additional counsel should
not be regarded as evidence of want of confidence, but the
matter should be left to the determination of the client.
A lawyer should decline association as colleague if it is
objectionable to the original counsel, but if the lawyer first
retained is relieved, another may come into the case.

When lawyers jointly associated in a cause cannot agree
as to any matter vital to the interest of the client, the conflict of opinion should be frankly stated to him for his final determination. His decision should be accepted unless the nature of the difference makes it impracticable for the lawyer whose judgment has been overruled to co-operate effectively. In this event it is his duty to ask the client to relieve him.

Efforts, direct or indirect, in any way to encroach upon the business of another lawyer, are unworthy of those who should be brethren at the Bar; but, nevertheless, it is the right of any lawyer, without fear or favor, to give proper advice to those seeking relief against unfaithful or neglectful counsel, generally after communication with the lawyer of whom the complaint is made.

8. **Advising Upon the Merits of a Client's Cause.** A lawyer should endeavor to obtain full knowledge of his client's cause before advising thereon, and he is bound to give a candid opinion of the merits and probable result of pending or contemplated litigation. The miscarriages to which justice is subject, by reason of surprises and disappointments in evidence and witnesses, and through mistakes of juries and errors of Courts, even though only occasional, admonish lawyers to beware of bold and confident assurances to clients, especially where the employment may depend upon such assurance. Whenever the controversy will admit of fair adjustment, the client should be advised to avoid or to end the litigation.

9. **Negotiating With Opposite Party.** A lawyer should not in any way communicate upon the subject of controversy with a party represented by counsel; much less should he undertake to negotiate or compromise the matter with him, but should deal only with his counsel. It is incumbent upon the lawyer most particularly to avoid everything that may tend to mislead a party not represented by counsel, and he should not undertake to advise him as to the law.

10. **Acquiring Interest in Litigation.** The lawyer
11. Dealing With Trust Property. Money of the client or other trust property coming into the possession of the lawyer should be reported promptly, and except with the client's knowledge and consent should not be commingled with his private property or be used by him.

12. Fixing the Amount of the Fee. In fixing fees, lawyers should avoid charges which overestimate their advice and services, as well as those which undervalue them. A client's ability to pay cannot justify a charge in excess of the value of the service, though his poverty may require a less charge, or even none at all. The reasonable requests of brother lawyers, and of their widows and orphans without ample means, should receive special and kindly consideration.

In determining the amount of the fee, it is proper to consider: (1) the time and labor required, the novelty and difficulty of the questions involved and the skill requisite properly to conduct the cause; (2) whether the acceptance of employment in the particular case will preclude the lawyer's appearance for others in cases likely to arise out of the transaction, and in which there is a reasonable expectation that otherwise he would be employed, or will involve the loss of other business while employed in this particular case or antagonisms with other clients; (3) the customary charges of the Bar for similar services; (4) the amount involved in the controversy and the benefits resulting to the client from the services; (5) the contingency or the certainty of the compensation; and (6) the character of the employment, whether casual or for an established and constant client. No one of these considerations in itself is controlling. They are mere guides in ascertaining the real value of the service.

In fixing fees it should never be forgotten that the profession is a branch of the administration of justice and not a mere money-getting trade.
13. *Contingent Fees.* Contingent fees, where sanctioned by law, should be under the supervision of the Court, in order that clients may be protected from unjust charges.

14. *Suing a Client for a Fee.* Controversies with clients concerning compensation are to be avoided by the lawyer so far as shall be compatible with his self-respect and with his right to receive reasonable recompense for his services; and lawsuits with clients should be resorted to only to prevent injustice, imposition or fraud.

15. *How Far a Lawyer May Go in Supporting a Client’s Cause.* Nothing operates more certainly to create or to foster popular prejudice against lawyers as a class, and to deprive the profession of that full measure of public esteem and confidence which belongs to the proper discharge of its duties than does the false claim, often set up by the unscrupulous in defense of questionable transactions, that it is the duty of the lawyer to do whatever may enable him to succeed in winning his client’s cause.

It is improper for a lawyer to assert in argument his personal belief in his client’s innocence or in the justice of his cause.

The lawyer owes ‘entire devotion to the interest of the client, warm zeal in the maintenance and defense of his rights and the exertion of his utmost learning and ability,’” to the end that nothing be taken or be withheld from him, save by the rules of law, legally applied. No fear of judicial disfavor or public unpopularity should restrain him from the full discharge of his duty. In the judicial forum the client is entitled to the benefit of any and every remedy and defense that is authorized by the law of the land, and he may expect his lawyer to assert every such remedy or defense. But it is steadfastly to be borne in mind that the great trust of the lawyer is to be performed within and not without the bounds of the law. The office of attorney does not permit, much less does it demand of him for any client, violation of law or any manner of fraud or chicane. He must obey his own conscience and not that of his client.
17. Ill Feeling and Personalities Between Advocates. Clients, not lawyers, are the litigants. Whatever may be the ill-feeling existing between clients, it should not be allowed to influence counsel in their conduct and demeanor toward each other or toward suitors in the case. All personalities between counsel should be scrupulously avoided. In the trial of a cause it is indecent to allude to the personal history or the personal peculiarities and idiosyncrasies of counsel on the other side. Personal colloquies between counsel which cause delay and promote unseemly wrangling should also be carefully avoided.

18. Treatment of Witnesses and Litigants. A lawyer should always treat adverse witnesses and suitors with fairness and due consideration, and he should never minister to the malevolence or prejudices of a client in the trial or conduct of a cause. The client cannot be made the keeper of the lawyer's conscience in professional matters. He has no right to demand that his counsel shall abuse the opposite party or indulge in offensive personalities. Improper speech is not excusable on the ground that it is what the client would say if speaking in his own behalf.

19. Appearance of Lawyer as Witness for His Client. When a lawyer is a witness for his client, except as to merely formal matters, such as the attestation or custody of an instrument and the like, he should leave the trial of the case to other counsel. Except when essential to the ends of justice, a lawyer should avoid testifying in Court in behalf of his client.
20. *Newspaper Discussion of Pending Litigation.* Newspaper publications by a lawyer as to pending or anticipated litigation may interfere with a fair trial in the Courts and otherwise prejudice the due administration of justice. Generally they are to be condemned. If the extreme circumstances of a particular case justify a statement to the public, it is unprofessional to make it anonymously. As *ex parte* reference to the facts should not go beyond quotation from the records and papers on file in the Court; but even in extreme cases it is better to avoid any *ex parte* statement.

21. *Punctuality and Expedition.* It is the duty of the lawyer not only to his client, but also to the Courts and to the public to be punctual in attendance, and to be concise and direct in the trial and disposition of causes.

22. *Candor and Fairness.* The conduct of the lawyer before the Court and with other lawyers should be characterized by candor and fairness.

It is not candid or fair for the lawyer knowingly to misquote the contents of a paper, the testimony of a witness, the language or the argument of opposing counsel, or the language of a decision or a text-book; or with knowledge of its invalidity, to cite as authority a decision that has been overruled, or a statute that has been repealed; or in argument to assert as a fact that which has not been proved, or in those jurisdictions where a side has the opening and closing arguments to mislead his opponent by concealing or withholding positions in his opening argument upon which his side then intends to rely.

It is unprofessional and dishonorable to deal other than candidly with the facts in taking the statements of witnesses, in drawing affidavits and other documents, and in the presentation of causes.

A lawyer should not offer evidence, which he knows the Court should reject, in order to get the same before the jury by argument for its admissibility, nor should he address to the Judge arguments upon any point not properly
introduce into an argument, addressed to the Court, remarks or statements intended to influence the jury or bystanders.

These and all kindred practices are unprofessional and unworthy of an officer of the law charged, as is the lawyer, with the duty of aiding in the administration of justice.

23. **Attitude Toward Jury.** All attempts to curry favor with juries by fawning, flattery or pretended solicitude for their personal comfort are unprofessional. Suggestions of counsel, looking to the comfort or convenience of jurors, and propositions to dispense with argument, should be made to the Court, out of the jury's hearing. A lawyer must never converse privately with jurors about the case; and both before and during the trial he should avoid communicating with them, even as to matters foreign to the cause.

24. **Right of Lawyer to Control the Incidents of the Trial.** As to incidental matters pending the trial, not affecting the merits of the cause, or working substantial prejudice to the rights of the client, such as forcing the opposite lawyer to trial when he is under affliction or bereavement; forcing the trial on a particular day to the injury of the opposite lawyer when no harm will result from a trial at a different time; agreeing to an extension of time for signing a bill of exceptions, cross interrogatories and the like, the lawyer must be allowed to judge. In such matters no client has a right to demand that his counsel shall be illiberal, or that he do anything therein repugnant to his own sense of honor and propriety.

25. **Taking Technical Advantage of Opposite Counsel; Agreements With Him.** A lawyer should not ignore known customs or practice of the Bar or of a particular Court, even when the law permits, without giving timely notice to the opposing counsel. As far as possible, important agreements, affecting the rights of clients, should be reduced to writing; but it is dishonorable to avoid performance of an agreement fairly made because it is not reduced to writing, as required by rules of Court.
26. *Professional Advocacy Other Than Before Courts.* A lawyer openly, and in his true character may render professional services before legislative or other bodies, regarding proposed legislation and in advocacy of claims before departments of government, upon the same principles of ethics which justify his appearance before the Courts; but it is unprofessional for a lawyer so engaged to conceal his attorneyship, or to employ secret personal solicitations, or to use means other than those addressed to the reason and understanding to influence action.

27. *Advertising, Direct or Indirect.* The most worthy and effective advertisement possible, even for a young lawyer, and especially with his brother lawyers, is the establishment of a well-merited reputation for professional capacity and fidelity to trust. This cannot be forced, but must be the outcome of character and conduct. The publication or circulation of ordinary simple business cards, being a matter of personal taste or local custom, and sometimes of convenience, is not *per se* improper. But solicitation of business by circulars or advertisements, or by personal communication or interviews, not warranted by personal relations, is unprofessional. It is equally unprofessional to procure business by indirection through toutors of any kind, whether allied real estate firms or trust companies advertising to secure the drawing of deeds or wills or offering retainers in exchange for executorships or trusteeships to be influenced by the lawyer. Indirect advertisement for business by furnishing or inspiring newspaper comments concerning causes in which the lawyer has been or is engaged, or concerning the manner of their conduct, the magnitude of the interests involved, the importance of the lawyer’s positions, and all other like self-laudation, defy the traditions and lower the tone of our high calling, and are intolerable.

28. *Stirring up Litigation, Directly or Through Agents.* It is unprofessional for a lawyer to volunteer advice to bring a lawsuit, except in rare cases where ties of
ring up strife and litigation is not only unprofessional, but it is indictable at common law. It is disreputable to hunt up defects in titles or other causes of action and inform thereof in order to be employed to bring suit, or to breed litigation by seeking out those with claims for personal injuries or those having any other grounds of action in order to secure them as clients, or to employ agents or runners for like purposes, or to pay or reward, directly or indirectly, those who bring or influence the bringing of such cases to his office, or to remunerate policemen, court or prison officials, physicians, hospital attaches or others who may succeed, under the guise of giving disinterested friendly advice, in influencing the criminal, the sick and the injured, the ignorant or others, to seek his professional services. A duty to the public and to the profession devolves upon every member of the Bar, having knowledge of such practices upon the part of any practitioner, immediately to inform thereof to the end that the offender may be disbarred.

29. Upholding the Honor of the Profession. Lawyers should expose without fear or favor before the proper tribunals corrupt or dishonest conduct in the profession, and should accept without hesitation employment against a member of the Bar who has wronged his client. The counsel upon the trial of a cause in which perjury has been committed owe it to the profession and to the public to bring the matter to the knowledge of the prosecuting authorities. The lawyer should aid in guarding the Bar against the admission to the profession of candidates unfit or unqualified because deficient in either moral character or education. He should strive at all times to uphold the honor and to maintain the dignity of the profession and to improve not only the law but the administration of justice.

30. Justifiable and Unjustifiable Litigations. The lawyer must decline to conduct a civil cause or to make a defense when convinced that it is intended merely to harass or to injure the opposite party or to work oppression or
retainer, it becomes his duty to insist upon the judgment of the Court as to the legal merits of his client's claim. His appearance in Court should be deemed equivalent to an assertion on his honor that in his opinion his client's case is one proper for judicial determination.

31. Responsibility of Litigation. No lawyer is obliged to act either as adviser or advocate for every person who may wish to become his client. He has the right to decline employment. Every lawyer upon his own responsibility must decide what business he will accept as counsel, what causes he will bring into Court for plaintiffs, what cases he will contest in Court for defendants. The responsibility for advising questionable transactions for bringing questionable suits, for urging questionable defenses, is the lawyer's responsibility. He cannot escape it by urging as an excuse that he is only following his client's instructions.

32. The Lawyer's Duty in Its Last Analysis. No client, corporate or individual, however powerful, nor any cause, civil or political, however important, is entitled to receive, nor should any lawyer render, any service or advice involving disloyalty to the law whose ministers we are, or disrespect of the judicial office, which we are bound to uphold, or corruption of any person or persons exercising a public office or private trust, or deception or betrayal of the public. When rendering any such improper service or advice, the lawyer invites and merits stern and just condemnation. Correspondingly, he advances the honor of his profession and the best interests of his client when he renders service or gives advice tending to impress upon the client and his undertaking exact compliance with the strictest principles of moral law. He must also observe and advise his client to observe the statute law, though until a statute shall have been construed and interpreted by competent adjudication, he is free and is entitled to advise as to its validity and as to what he conscientiously believes to be its just meaning and extent. But above all a lawyer will find his highest
and to public duty, as an honest man and as a patriotic and loyal citizen.

III. OATH OF ADMISSION.

The general principles which should ever control the lawyer in the practice of his profession are clearly set forth in the following Oath of Admission to the Bar, formulated upon that in use in the State of Washington, and which conforms in its main outlines to the "duties" of lawyers as defined by statutory enactments in that and many other States of the Union—duties which they are sworn on admission to obey and for the wilful violation of which disbarment is provided:

I DO SOLEMNLY SWEAR:

I will support the Constitution of the United States and the Constitution of the State of ......................................................;

I will maintain the respect due to Courts of Justice and judicial officers;

I will not counsel or maintain any suit or proceeding which shall appear to me to be unjust, nor any defense except such as I believe to be honestly debatable under the law of the land;

I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and will never seek to mislead the Judge or jury by any artifice or false statement of fact or law;

I will maintain the confidence and preserve inviolate the secrets of my client, and will accept no compensation in connection with his business except from him or with his knowledge and approval;

I will abstain from all offensive personality, and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged;
RECENT PRIMARY ELECTION LAW OF TENNESSEE.

John A. Pitts, Nashville, Tennessee.

Among the many reforms in government which have been suggested and experimented with in modern times, not the least important are those which have sought after better methods for the nomination of candidates. Bossism in politics, to use a current phrase, has become odious to a large and rapidly growing number of the electorate, and especially to those of the substantial middle classes who do not make politics a business or profession, and who ask of government no special favors; and many experiments have been made in recent years by nearly all the American states, and by other countries, with various means and measures designed to rid the body politic of this retarding and demoralizing incubus.

Next in importance to the reforms which have dealt directly with elections and had for their object the freedom, fairness and honesty of the voting and the counting of ballots when the officers and agents of the people who are to make and administer the laws are actually chosen, are those which deal with the selection of the persons to be voted for. The former are designed to preserve the integrity of the elective system; the latter to improve the character and efficiency of the public service by the selection of candidates who, when elected, will recognize their allegiance to the body of the people as a whole, rather than to a political boss or machine.

That the end sought to be attained by each of these sets or classes of reforms is praiseworthy, and indeed essential to the preservation of the liberties of the people, will be admitted by all, except the professional politicians and a comparatively small number of persons who, on account of their wealth or their connections or employments, either
tained, or imagine themselves wiser and better than their fellow men, distrust the masses, and, whether they call themselves democrats, republicans or independents, are simply, and nothing more nor less than aristocrats.

This struggle of the masses for a more direct and enlarged voice in their government, enormously emphasized in recent years throughout the civilized world, is but a manifestation and continuation of the old, never ending conflict, existing from the very inception of man-administered government, between prerogative and privilege on the one hand, and the rights of the masses on the other, and this conflict will never cease so long as the element of selfishness shall dominate any considerable portion of the human race.

Nothing brings this hoary conflict into more glaring light than the efforts which are now being made and which have been made for some years past in this country, to place party nominations for office within the direct control of the popular voice, fairly expressed under the restraints and penalties of positive law. These efforts have assumed various forms and phases in the different American commonwealths, and some of the means adopted have been both novel and ingenious. It would be interesting to review and compare them, if time permitted, but the briefest outline and explanation of the recent effort of Tennessee in this direction will suffice to occupy all the time permissible on this occasion.

It is not possible now to notice other recent and cognate reforms in this State, such as those relating to the registration of voters, uniform secret ballots, payment of poll-taxes, and appointment of election officers, although these must be considered in the forming of any just judgment upon the merits of the Primary Election Law, the immediate subject in hand. Nor is it deemed fitting, on this occasion, to refer to the immediate political conditions, locally, which perhaps produced the Primary Election Law at this time, as this is a question of some delicacy and is probably
the attitude of the great American humorist when asked by a lady friend for his opinion on heaven and hades, and who excused himself on the ground that he had friends in both places.

The title of the Act, which was finally passed and became a law on February 19, 1909, is “An Act to Establish a Compulsory System of Legalized Primary Law for Political Nominations, to Create the Agencies for its Operation, and Penalize its Violation.” It is quite elaborate in its provisions, embracing much detail, in its forty-nine sections covering more than thirty printed pages. On account of its length and great detail, it appears, especially to the layman, to be much involved, and difficult of comprehension. But this is not really so, if one will take time to read and study it carefully in all its parts. Opportunity to do this has not yet been afforded the people generally, by the printing and distribution of the laws of the session; and consequently there is much misinformation and misunderstanding among even the most intelligent classes concerning not only its details but also its general object and purpose. Covering, as it does, not only the nomination of all candidates for political State, District and County offices, but also the election of the executive committeemen of the two leading political parties, who are to conduct the primaries and constitute the political machinery of the parties, and defining their duties with respect to the primaries which are the foundation of the whole scheme, the Act is necessarily of great length, and necessarily carries a multitude of details; otherwise it would not furnish, as it was designed to do, a practical working guide.

The general purpose of the Act, manifest throughout all its provisions, is two fold: first, to place and keep the party machinery and party management of the two leading political parties of the State in the hands and control of the voters of these parties respectively; and, secondly, to require all nominations for political offices to be made by the voters of the party in one legalized bi-ennial primary
tions and penalties which apply to general elections.

This is the manifest purpose of the Act, speaking generally, and, accepting its definition of what are political offices, there is only one permissible exception to this general plan, and that is, that with reference to County officers and members of the General Assembly elected by a single County, the County Executive Committee may provide for their nomination by some other lawful method, if done not less than forty days prior to the date fixed by the Act for the general primary.

The scheme provided by the Act for carrying out this general purpose is quite elaborate, and, it would seem, almost ideal in its adaptation to that end—certainly so, if amended in a few not very important particulars, curing slight defects and omissions which were apparently the result of oversight. It may be outlined as follows:

1. In each County, the governing political body is to consist of a County Executive Committee composed of two committeemen from each civil district or ward, elected by the voters of the party therein at the general primary election held under the Act on the first Saturday in April, 1910, and every two years thereafter. These committeemen are required to take formal oaths of qualification and are placed under heavy penalties for violations of their duties. They are required to organize by the election of a chairman and secretary, and the duties of the committee, when organized, are:

(a) To appoint all primary election officers holding the General Primary Election in the County, from lists furnished by the members residing in the districts and wards respectively.

(b) To distribute ballots and election blanks furnished by the State Board, to the Primary Election officers at the voting precincts.

(c) To meet on a day designated by the Act, after the Primary, and canvass the returns, count and tabulate the votes and declare the result as to County officers, direct
County Executive Committee members; also to count and tabulate the vote for floterial, senatorial and congressional candidates, and file the same with the County Court Clerk, but it does not declare the result as to these offices—that being the duty of the proper District Executive Committees.

(d) To order run-offs or second primaries for county officers and direct representatives, when necessary under the provisions of the Act, and canvass the returns and declare the results thereof.

(e) To decide ties between candidates for executive committeemen and delegates to the State convention, fill vacancies in its own membership and in nominations in certain cases, hear and determine charges against candidates, and make nominations for County officers and direct representatives when there is only one candidate.

(f) To elect from its members, two to serve as members of the Congressional District Committee, two to serve as members of the Senatorial District Committee, and two to serve as members of the Floterial District Committee, if there be one.

(g) It may assess candidates for county offices and direct representatives for expenses of primary, not exceeding $10 each; and may extend the hour of closing polls of primary to 7 o'clock, when necessary on account of occupation of voters.

These are in substance the duties of the County Executive Committees, and are here stated with perhaps more than necessary detail for the reason that these county committees constitute, with the primaries themselves, the real foundation of the whole structure upon which rest and depend all its other parts.

2. In each Floterial, Senatorial and Congressional District, the governing political body is a District Executive Committee, composed of two members from each county comprising the District, chosen by the County Executive Committees from their own members. They are required to take oaths of qualification and are placed under like pen-
District Committee; they are also required to organize in like manner as the County Committees, and to meet on a stated day after the primary and compare and verify the returns filed with the County Court Clerks, and declare the result as to the candidates voted for in their respective Districts. They have like powers as to filling vacancies, making nominations, assessing candidates, hearing charges, and ordering run-offs or second primaries as to the offices elective by their Districts, as the County Committees have as to County offices and those of direct representatives.

3. The delegates to the State Convention are elected at the general primary in the several counties, in the ratio of one delegate for each 100 votes, or fraction thereof of 50 or more, cast by the party in the next preceding presidential election. These delegates cannot increase their number, nor act by proxy unless they have been in actual attendance upon the convention and are unable to longer attend, and are forbidden to use passes or other forms of free transportation.

4. The State or Central Executive Committee is chosen by the State Convention composed of delegates elected at the primaries, as before stated, and consist of two members from each Congressional District. Neither the State Convention nor the committee itself can increase the membership of the committee, but the committee may appoint campaign committees in conformity with the wishes of the party nominees. It may fill vacancies in nominations for United States Senator and State officers in certain contingencies, and declare nominations for such offices where only one candidate qualifies; and it is its duty to call the State Convention within a certain period after the primary election.

5. A State Primary Election Board for each of the two leading parties is created, consisting of three members, chosen by the joint vote of the General Assembly for terms of six years—the members of the first Boards being elected for two, four and six years respectively, and thereafter one
sion. Full provision is made for filling vacancies in these Boards. The members of these Boards are required to take oaths of qualification, and are likewise placed under very heavy penalties for violations of their duties. They are each required to elect one of their members as Chairman and another as Secretary, and to keep their offices at the Capital.

The duties of the State Boards are:

(a) To prepare and distribute to the counties blank forms for poll-books, tally-sheets and oaths, and uniform ballots, for use in all primary elections.

(b) To canvass the returns (which are sent directly to them by the officers holding the primaries in the several counties), count, tabulate and certify to the State Convention, the vote for United States Senator, Governor, and other State officers.

(c) To order run-offs or second primaries as to these officers when necessary under the provisions of the Act, and to canvass returns and count and certify the vote thereof, in like manner as in the case of the general or first primaries.

(d) To hear and determine charges against candidates for these offices for violations of the primary law.

(e) To assess candidates for expenses of primaries.

(f) And, where there are two or more bodies in a county each claiming to be the Executive Committee of a party, to order and hold a special primary election to elect such a committee—the State Boards, in such cases, appointing the officers to hold the election, as equally as may be from the members of both or all contending factions of the party, and receiving and canvassing the returns, counting the vote and declaring the result.

Except in the case of a special primary in a county to determine a conflict as to who constitute the Executive Committee of a party in such County, the State Primary Boards appoint no officers whatever, and exercise no voice or control over the county primaries. Their duties and powers with respect to the county primaries are limited to
printing and furnishing the ballots and election blanks; and
to canvassing and certifying the vote for United States
Senator and State officers.

This is a fair general outline of the political machinery
provided by the Act—all of it, except the State Boards,
resting and depending upon the local County primaries, con-
ducted by officers residing in the local wards and districts
who are selected and appointed by the local County Execu-
tive Committees of the respective parties, the members of
which are themselves, when the Act is once in full opera-
tion, required to be elected by the voters of their party in
the primaries. So, it is thus seen, while there is a complete
set and system of political machinery, it is the machinery
of the voters, created and completely controlled at all points
by them, and there is no place in it for the political "boss"
or "autocrat."

As to the primary itself, there is much to be said. It
may be said in the first place, generally, that it is hedged
about by all the legal restrictions, penalties, and safeguards
against fraud and illegal voting, bribery, etc., which are
thrown round regular elections. Registration is required
in counties and places where the registration of voters is
required by the general election laws. Where the Aus-
tralian ballot law obtains in regard to the place of voting, it
applies to the primary. Payment of poll taxes is required
everywhere, as in the general elections. In short, all re-
quirements of the election laws, whether relating to the
qualifications of the voters, the manner and place of voting,
or the conduct of voters, election officers, or candidates,
apply equally to the primaries; and the Act imposes numer-
ous and severe specific penalties, both of fine and imprison-
ment, for specific offenses in respect to the primaries, on
the part of voters, officers, candidates and other persons—
all designed to secure the utmost freedom of the voting, fair-
ness in the conduct of the election, and honesty in the
returns and counting of the ballots. No officer is permitted
to act in or with respect to the primary without first taking
In addition to the ordinary qualifications of a voter under the general laws, the voter in the primary is required to be a recognized member of the party in the primary of which he offers to vote, or, if challenged, to establish that he is a member of such party, or declare upon oath before the judges that he desires and intends thereafter to affiliate with such party. He is not required to declare that he will support the nominees of the primary.

There is one feature of the primary which is entirely new in this state, and that is the requirement that a majority of all the votes cast in the primary for a particular office shall be necessary to a nomination. This does not apply to candidates for County Executive Committeemen and delegates to the State Convention. As to these, a plurality nominates, and ties between such candidates are decided by the County Executive Committee which canvasses the returns. If no candidate for a particular office, other than committeeman and delegate, receives a majority of all the votes cast for such office, a run-off or second primary is ordered and held on the fourth Saturday following the first primary, in which only the two candidates receiving the highest vote, or if the two standing second be tied, then the three are to be voted for. The run-off is held by the same officers, and the returns made and canvassed and the vote counted and result declared, in the same way as in the first primary; and in the run-off a plurality elects, and if there be a tie, it is decided by the Committee having authority to declare the result in the run-off. Run-offs are ordered, in all cases, by the Committee or body having authority to count and declare or certify the whole vote cast for the particular office involved, that is, by the County committee as to candidates for county officers and direct representatives, by the Floterial Committee as to candidates for Floater, by the Senatorial Committee as to candidates for Senator, and so on—the State Primary Board ordering run-offs as to candidates for United States Senator, Gov-
While the rule that primary nominations should be effected only by majorities seems obviously just and proper, it may be that such rule carried out in the manner provided by the Act, will prove irksome in practice, since it may frequently happen, where there are several candidates for the same office, that no one will receive a majority of the total vote, and numerous run-offs or second primaries will be necessary. If this shall turn out to be the case, it is possible to avoid the inconvenience of run-offs or second primaries by the adoption of a system of “second choice” ballot markings in cases where there are more than two candidates in the primary for the same office. Such device has been resorted to in other states with marked success. It is quite ingenious and very simple. It may be thus illustrated:

Say there are four candidates, A, B, C, and D, for the same office, and the total vote cast for that office is 500. Each voter marks both his first and his second choice. Assume, then, that the vote, as cast, is as follows:

<table>
<thead>
<tr>
<th>First Choice Votes</th>
<th>Second Choice Votes</th>
</tr>
</thead>
<tbody>
<tr>
<td>For A..............200</td>
<td>50      75        75</td>
</tr>
<tr>
<td>For B..............125</td>
<td>25      60        40</td>
</tr>
<tr>
<td>For C..............125</td>
<td>20      100       —       5</td>
</tr>
<tr>
<td>For D.............. 50</td>
<td>5       40        5       —</td>
</tr>
</tbody>
</table>

No one has received a majority, and under the Tennessee law there must be a run-off between A, B and C, in which a mere plurality will nominate.

Now according to the “second choice plan,” the hindmost candidate, D, is dropped, and the second choice votes of the voters voting for him as their first choice, are credited to A, B and C, with the following result:

A first choice, 200 plus second choice, 5, equals 205
B first choice, 125 plus second choice, 40, equals 165
C first choice, 125 plus second choice, 5, equals 130

Still no one has a majority. Now dropping C, and cred-
iting to A and B the second choice votes cast for them by the voters who voted for him as their first choice, we have: A, 205, plus 20, equals 225 B, 165, plus 100, equals 265

B is therefore nominated by receiving, in this way, a majority of all the votes cast.

The whole device is based upon the assumption that the voter, if he cannot get his first choice, prefers and would in a run-off or second primary vote for his second choice man, if in the race; and the effect is, to give precisely the same result as would be reached by a run-off or second primary between the candidates receiving the larger vote in the first bout.

Another most obvious effect of adopting such a plan would be to put all the candidates for such offices on their best behavior in the campaign; for all would be looking out for and cultivating "second choice votes," and therefore each would avoid giving personal offense to the others or their friends. Instead of the personal crimination and recrimination and "mud-slinging" between candidates, now too common in political campaigns, each would then be filled with honeyed words for his opponent, overflowing with courtesy and general bon hommee, and all a veritable set of dancing masters in their exuberant excess of bowing, scraping and affectionate hand-shaking and flattery. The serious drawback would be, that the whole field of candidates would at once become Majors, Colonels, Generals, Judges, Governors, and eminent gentlemen of like high-sounding titles—at least till the campaign was over.

The manner in which the returns of the primary election are required to be made by the officers holding the primary and the vote canvassed, also deserves special notice. These returns must be made under oath, and are to be made up in two complete sets, one of which, with all the ballots, securely sealed up, must be immediately addressed and delivered or sent by mail or express to the Clerk of the County Court; and the other set (but without the ballots) to the State Board of Primary Election Commissioners at
Nashville. Each set of returns consists of a complete list of the names of all voters voting in the primary, made up by the clerks as the voting progresses and the ballots are cast, and a tally-sheet containing an accurate tally of the entire vote cast for each candidate. They must be verified by the certificate, under oath, of all the primary election officers of the precinct.

On the Wednesday next following the primary on Saturday, the County Executive Committee meets at the Court House and canvasses these returns and counts and tabulates the vote for all county officers and direct representatives in the Legislature to be elected by the County, and also for County Committeemen and delegates to the State Convention—declaring the result as to all these offices and issuing certificates of nomination or of election to the successful candidates. The County Committee, at the same time, canvasses the returns and counts and tabulates the vote of the County for candidates for Floater, State Senator and Member of Congress, making a separate statement and certificate thereof and filing the same with the County Court Clerk, which the Clerk is required to send or deliver to the Floterial, Senatorial and Congressional Committees, when they meet on the second Wednesday after the primary, for their use in counting and tabulating the entire vote in their respective districts.

This ends the duties of the County Committee as to the returns. It has nothing to do with canvassing the returns or counting or tabulating the vote for United States Senator, Governor, or other State officers. This is done by the State Primary Board, from returns made directly to it, as before stated, by the Primary Election officers holding the primary in the several wards and districts throughout the State. The primary officers are of course required to be bona fide members of the party in the primary of which they serve.

All ballots used in the primary are to be uniform in size and color, that is, all ballots of each party must be of the same color or tint; and must be "official ballots" pre-
pared and printed by the State Primary Boards—none other can be used. They must contain the names of all candidates for office to be voted for, printed under proper headings designating the office, and in the order of the filing of the applications of the candidates, except where they are filed at the same time, and in that case, alphabetically—the voter making a cross mark opposite the name of his choice, either to the right or left. This does not apply to candidates for County Committeemen and delegates to the State Convention; their names are to be written, stamped or pasted in black spaces left on the ballot for the purpose. Ample provision is made for distributing the ballots and having them at the voting places at the opening of the polls.

Candidates for nomination to an office get their names on the official ballot by filing a brief application to enter the primary, on a prescribed form, either with the State Primary Board of their party, or with the Chairman of a County Executive Committee whose duty it is made, in that case, to forward the application immediately to the State Board. All applications must be filed with the State Board at least thirty days before the date of the primary, this being necessary in order to give the Board time to print the ballots. Candidates for committeemen and delegates are not required to make application to enter the primary at all—their names not being printed on the ballots.

The amounts for which candidates may be assessed for expenses are limited to the following sums:

For a County office or direct representative........$10.00
For Senator or Floater........................................20.00
For Congressman ........................................50.00
For a State office........................................250.00
For United States Senator...............................500.00

The expenses for printing and distributing all ballots and election blanks and for their distribution, and for transmitting returns to the State Boards, are paid by the State.

Only one more aspect of the law need be specially noticed, namely, that which restricts its application to political offices.
By its terms, it applies to all party nominations for State offices, Governor, Secretary of State, Treasurer, Comptroller and Railroad Commissioners; for Congressional offices—United States Senator and Congressmen; for members of the Legislature—Senators and Representatives; for County officers—Sheriff, Trustee, Tax Assessor, Register, Clerks of the County, Circuit and Criminal Courts, and County Judges; for delegates to the State Conventions; and for County Executive Committeemen.

It does not apply to candidates for Judge of any of the courts, except County Judges; for Attorney General; for any office required to be filled by the County Court, or by the Legislature (except United States Senator, Secretary of State, Comptroller and Treasurer), or required to be appointed by the Governor, or by any Judge or Chancellor, or by the Supreme Court; for Justice of the Peace, Constable, School Commissioner, or any office elected by a civil district or ward, or by any municipal corporation; nor does it apply to candidates who desire to run independently, or without a party nomination; nor to the candidates of any party which did not, at the next preceding general November election, cast more than ten per cent. of the entire vote of the State.

It also expressly provides that it shall not apply to candidates of a party in any county for County Officers and direct representatives in the Legislature, where the County Executive Committee of such county shall have provided for their nomination in some other lawful way, not less than forty days before the date of the primary.

There are many other details contained in the primary law which it is not deemed necessary to dwell upon or even mention on this occasion. Enough has been said to convey a very fair idea of its scope and methods of operation; and to make manifest the commendable purpose or intent which inspires it throughout. If honestly lived up to by the voters and by those charged with its administration, it can but greatly improve political methods in this State. When rightly understood, it will, we venture to predict, meet the approval of the popular voice; and it ought assuredly to
have at least one desired effect, namely, to induce a larger participation by substantial business men in the selection of those who are to make and execute the laws.

THE HIGH ART OF CROSS-EXAMINATION.

W. A. Henderson, Knoxville, Tenn.

Mr. President, Lawyers of Tennessee, Your Wives, Your Children and Your Sweethearts:

I now understand why this particular subject was given to me and my place assigned on your mental menu—(Laughter,) because, according to the regulation of all well ordered feasts, they always save some thin, sweet thing at the last to soothe the overcharged stomachs of the well-fed guests. Now, it may be that a drop or two of tobasco will be in this preparation this evening; for I am like the Texan who said that the drink he preferred was the one that would telegraph back when it got there. (Laughter.)

It is a delight to all of us to meet in council together anywhere inside of Tennessee, and especially so has it been always when we have met in Chattanooga. It is our Chattanooga—that is, the town now belongs to the Bar Association of Tennessee. We feel like the keys of the city have been given to us. No good thing has been withheld from us. We have good things to eat—and other things—(Laughter)—everything except coca-cola and Chattanooga Cardui. We have roses to smell, we have listened to music, and you have kindly shown us your ladies, who now grace this occasion—not many of them, but the handsomest you had, I know, and the feast will be concluded after you shall have tasted this sillibub that I now offer you.

A good many newspapers have called upon me for a copy of my manuscript—but they didn’t get it. As I wrote to one of them, you might as well call upon a sap-sucker to write the score of his song. (Laughter and applause.) I assure you that this address will be as new to me as it is to you, and I hope we shall all enjoy it together. (Laughter.)
I have been a member of this Association for a long time. I am proud that I have at one time been its President. I have talked many times before this Association. I am now talking to many with whom I have crossed swords—I have parried their thrusts and I have felt their steel. I am now talking to the boys, the sons of the lawyers whom I have known well and struggled with in my professional life. I have been a lawyer in Tennessee for forty-seven years—nominally. Not all of that time have I spent in actual practice of law—because three years of it were consumed in a difficulty I got into with an uncle of mine. His name was Samuel. (Laughter and applause.) And still I lived through it. He and I made it up at Appomattox and, so far as I know, we have waged war no more, except that for a good while—nearly two years—he wouldn’t let me practice in his courts, because, he said, a man indicted as a felon had no right to be a lawyer. But, with that exception, I have throughout that time, tried many lawsuits in Tennessee—many, many, many of them—and in other states.

I want to talk to you today, not long, (although I do not see many people sleeping around here,) on as important a subject as ever a young lawyer listened to. There is not much hope in trying to save an old man. It is the young man that is converted, as a general thing. I am going to say some things to you that I wish some older lawyer had said to me when I was a young lawyer, because there is so much information needful to a lawyer that is not found in any book nor taught in any college. He must absorb it. He absorbs it where I have lived for forty years and more—in the court house. Nobody has ever printed it, and it is good for any young man to listen to what I would say. It would be worth a new code, if he would take it and digest it. (Laughter.)

As I said before, I want to talk to the young lawyer.

Let me describe that young lawyer to you. In the first place, this ideal lawyer ought to have a strong physical body. Lawyers do not look enough to that. If he is ever
successful in this world, his best chance is from his own physical body. Ole Bull never could have made a great reputation unless he had a good fiddle.

I am going to describe this lawyer to you:

He is the son of a poor man—generally. He is not born and reared in a great city—except Chattanooga. It so happens, my brethren, that the men who rule in our profession, and in all other departments of life, are, as a general thing, the sons of poor men. It so happens that the son of the shoemaker, or the son of the carpenter, throws down the son of the millionaire and takes his things away from him; and you can't prevent it. Occasionally I have had the great pleasure of finding the sons of rich men striving like giants in our profession, or in finance, or in government; but, as I said, the rulers come from the country—the sons of the farmer, the artisan, the mechanic. Occasionally I have met an exception; and when I do, my brethren, I feel like taking off my hat to him, because it is a rarity indeed. There are so many dangers that beset the son of the rich man that it is almost as impossible as to get through the eye of a needle for him to get into either the legal profession or into heaven—very, very much the same. (Laughter.)

In the next place, he should be physically and mentally brave. The thing that clients prefer most in their counsel, pay higher prices for, the thing they need, is courage. You never knew a man in your life who would bet on the dog that went into a fight with his tail between his legs. You want a brave man who will stand up square and fight; who will take hold and hold on until it thunders. You can tickle a client that way better than with a regular collegiate education. But I want my boy, of whom I am speaking, to be an educated boy. I want him to have gone through the schools. The best avenue, in my opinion, of education is the regular school and college. Many an uneducated man has attained eminence, but it is so hard for him to do it. And I never knew one in my life but that he wanted his son to avoid these hard and stony paths. The greatest friend
of education in the world is the uneducated man who has risen by his own efforts.

The best education for this young lawyer, I think, is something that I did not have; and that is to go through a regular law school. I think it is the best way. Many good lawyers have never done this—one of whom I am. But armed in that way, or in some such way, he is best equipped for the battle of life.

Now remember there is another side: If you go too far, there is such a thing as over-educating a young man. I have seen young men, members of the bar, who had gone through college, through the law schools, and had their desks filled with diplomas, and yet who had not sense enough to call up a doodlebug. Such men are absolutely in the way. Generally they are without influence in their calling. They are so learned that they are of no account. Often you hear them spoken of in this way: “Mr. So-and-So,” (Mr. Benton McMillin, for instance,) “knows a great deal of law, but he can’t tell it.” That is to say, here is a man with the finest set of tools in Chattanooga; he has an armful of them, but he cannot make a bedstead. He is so weighted down with armament that he cannot fight, and a man with a sling or a bow and arrows would defeat him.

Now to the young man who comes into our profession, I am, in some degree, qualified to tell some of the things that he will not find in any books. One of the greatest navigators that ever lived was Commodore Maury, and one of the ablest teachers. I think in some respects he was the leader of them all; but I wouldn’t go on a boat he was piloting from here to “The Suck” unless I had a life saver on. I would rather risk myself with some codger that knew things; that knew the swirls and the sucks; that could look at the heavens and tell when they portended rain, and could tell where the wind was coming from, and could handle his craft and bring it back to Chattanooga alright. You never knew a steamboat pilot that could read Latin.

Now, I have taken boats up the rivers of litigation
in this end of the state, to their sources, for a great many years. I have been hung on many a sand-bank—and bar—(Great applause)—and I know where it is safe to go and where it isn't, from experience, because I have been there.

Imprimis, I want to say to the young lawyers: (There may be some here now young enough to take advantage of this.) Never go into a lawsuit until you thoroughly understand it, until you have got the plan, until you know what to do. No architect has the folly to haul a single plank to the building site until he knows what sort of a house he is going to build. God Almighty has hidden in every fragment of marble a more beautiful Appolo than Praxiteles ever chiseled. All you have to do is to chip away the stone, and the Appolo is there. Now then, plan your lawsuit, get an idea of your plan, and know what you are trying to do. The best way to develop litigation, in my opinion, ordinarily, is to develop it in the order of time. Commence at the beginning and go down in the order of time, interval succeeding interval—as I have done many a time. My plan has always been, in some sort of way, as well as I could, to formulate my argument after the manner of a house. It so often happens that a lawyer leaves things out, forgets them, or gets them tangled and twisted. If he puts them in the order of a house, he will not do that. Here is the front door, there the parlor, the bed room, the sitting room, the up-stairs, the cupalo—(I came very near saying cupolow, as they do up in East Tennessee)—so you won't forget anything. Another habit of mine, (which I give merely as a personal matter,) is never to take down any notes as the witness is testifying. I just say that I, Henderson, never take notes. I have known good lawyers, for instance, good old Judge Tom Nelson, who would write down every word in long hand. Such an one delays the court. That was his invariable custom. I have tried many a lawsuit with him; his method scatters the attention and weakens the plan. It is like a builder tearing up every plank as he puts it down. In my opinion, it weakens the memory. Now that is merely for your consideration; it has always been my habit.
After you shall have gotten into the trial of a case, in my opinion, the highest test of a lawyer is the presentation of the case to the court and to the jury. There are a great many things that I think I know. There is one thing that I know I know; I know a lawyer when I see him in action. I know a lawyer like a Kentuckian knows a horse. He looks into the horse's mouth, lifts his foot, walks him around, and says: "Trot him up the road, boys, and let me see him in action." There is no greater test of ability as a lawyer in any court than in the presentation of the case to the court and jury—in equity or nisi prius.

My little daughter, (who is no longer little, and who lives over in Nashville,) while playing with her building blocks at home, when she was a little tad, once interested her mother very much by announcing that she could take the blocks on the floor and manipulate them so as to spell "G-o-d," and could take the very same blocks and make them spell "d-o-g." And it is the same way with a lawsuit—it depends upon the order in which you present your facts to the court and jury.

Another thing, my young man—(I am talking to just one man—the one I have described, and the balance of you may listen;) your main capital is confidence. If you ever succeed, it will be because the people have confidence in you. That is a plant of slow growth. The last man on earth you ought to deceive, or try to deceive, is the judge of the court. You cannot do it without being found out, and when you are found out, your stock goes down to fifty cents on the dollar, although he may not tell you so. The judge will find out a lawyer sooner than any other man in the court house.

Neither ought a lawyer to deceive, or try to deceive, the jury. His whole effort ought to be to develop the truth, just as analysis would prove whether these eye glasses are rimmed with gold or brass. It would tell the truth. I have heard a lawyer boast that a certain case had been presented to a lawyer and he turned it down; that the man then brought the case to him; that he put it into court, gained
it for him, and got some money. That is a mighty dangerous thing to do. It is a mighty lucky thing if the first lawyer don't tell on you, if you gained that verdict by a little twistification. The man for whom you gained the lawsuit has lost confidence in your integrity, and the more it is talked about, the wider the zone in which it will be discussed against you. No lawyer ought to boast of such practice, for there is always a suspicion that he has gained a case that he ought not to have gained. He may succeed, but he has a brand upon him that he will carry all his life. And yet I have heard young lawyers boast about this.

Either in equity or, more markedly, in nisi prius cases, in the examination of witnesses, I wish to tell you my conclusion, that, in my opinion, there is not so much perjury in the court house as people generally suppose there is. I mean straight-out perjury; though it sometimes happens. The great majority of witnesses try to tell the truth—many of them to the best advantage. Nearly all witnesses are partisans. There is a widespread opinion, (how it got started, I do not know, but it certainly exists,) that a witness is supposed to be on the side of the fellow who summoned him, and that it is his duty not to tell a fact within his knowledge to the detriment of his side; and it is answered by the excuse that he was not asked that question. And so witnesses generally are the partisans of the party who has summoned them.

A mighty good thing for a lawyer, when trying a case, is to get in the jury box; that is to say, get in mental and moral touch with the jury. I don't mean that he ought to go and sit with them; but, as nearly as possible, occupy the position of the juryman who is trying to ascertain the truth of the case, and throughout your examination show to him and to the court that you are trying to develop the truth. Unless you do that, they are always entertaining a suspicion of you; and sooner or later you will be known as a trickster, and a man that it will do to watch. Many lawyers are proud of that distinction; and they live and die in
the low grounds of sorrow, and never get up on the high hills.

Do not introduce your witnesses alphabetically. (Laughter.) Don't call on your client to know who the next witness is, as is often done. But you, as the architect of your house, should know what upright you want there and what cross-piece here, or whatever other material is needed at the time, and call for it. You must know the witness who has the evidence you want at the time, and produce him.

Now we come to the examination. Remembering what I have already told you, bear this in mind, young man: that it is not sense that moves the world. Bear in mind what I tell you; that men have more sense than women—(I must beg the pardon of the ladies! I will ask them just to wait a moment.) The lever that actuates the world in all great movements is not sense; it is sentiment, devotion, love, faith; and in all these things, generally, woman surpasses man. Now I am alright with the girls! (Laughter.)

There was no sense in the world in Sam Davis standing up here under the gallows and being hung. There was no sense in Joan of Arc being burned at the stake. There is no sense in a great war movement—a crusade, for instance. Think of the crusade organized of children sixteen, seventeen and eighteen years of age equipped as an army to go and capture the Holy Land. There was no sense in that. Go along the street and find your brother engaged in a fight; do you wait for sense? That is not what moves you to action. I never heard of a soldier joining the rebel army on account of sense; it was because he had sentiment. He was defending his home, his mother, his sister, his wife and his sweetheart. The foreigner was coming to dispossess him, and sense or no sense, he would fight, and he did fight, till Bob Lee said stop! (Applause.)

Not very long ago I was making a talk before a monster meeting in the State of Alabama on the question of those war days. I praised Grant to the skies; and he ought to be praised. He was one of the greatest generals that ever lived. The topmost praise that I gave him before that great
crowd was to say that I didn’t think another man on earth could have taken two hundred thousand men and, in two years, whip Bob Lee with fifty thousand. (Laughter and applause.)

Wherever a lawyer can get hold of a sentimentality or a devotion that comes his way, he ought to grab at it like a drowning man would at a corncob, and hold on. In the excavation of Pompeii, the most wonderful thing discovered was the body of a Roman soldier, clad in armor, a spear in his hands at a “charge,” as he stood there defying that thunder and fire and brimstone and ashes until he died—on guard for Rome! That is the sort of man who wins. When there springs up any question of sentimentality in a lawsuit, and it comes in a thousand ways, it is worth more to you than the multiplication table is to the school teacher.

Now, in the examination of witnesses, let me warn you, young man, that the most ignorant person of all is the young lawyer. (Laughter and applause.) I know what I am talking about, for I have been there myself. You can hardly prevent a young lawyer from thinking up a fine question. He racks his brain for something brilliant; he thinks up a searching question. He really is not for gaining his lawsuit as much as he ought; he wants to exhibit himself as a great man—and he is not. Such is the trouble with most young lawyers. Did you ever observe that a bantam rooster will out-strut a Dorking? He is obliged to do it, because he knows he is little. (Laughter.)

Another thing that no book has told you: The most dangerous thing that ever confronted a lawyer in his trial of a lawsuit is what is called a “swift witness.” That is a quicksand that will sink with you and you will be engulfed. When you find a witness pulling like a cart horse, if you will keep prodding him, he will pull more and more until he will out-pull himself.

I remember a great many years ago I was trying a lawsuit up in Fentress county, in the big city of “Jimtown.” A Mrs. Phillips was a witness. They had prodded her and prodded her, and every time they hit her she would make
a fresh jerk and tell something more; then they would hit her again, and she would make another effort. Finally the lawyer got tired and turned her over to our side. I said: "Mrs. Phillips, there is just one question: Mrs. Phillips, before you went on the stand as a witness, didn't you swear that, in this case, you would tell the truth, the whole truth, and nothing but the truth?"

"Yes sir," she snapped at me.

"Well, do you think you have kept the contract?"

"Yes sir," was the answer, 'and a leetle the rise.'"

How many beautiful questions a young lawyer could think up to ask that witness—astonishing questions, as thick as blackberries. My question was: "Stand aside." We didn't hear anything more from Mrs. Phillips, nor from her evidence.

I recall also an incident which my friend Judge Ingersoll has described in his memoirs (so well written and well presented) of John Netherland, the greatest advocate I ever knew in Tennessee. Though there was a great deal of law that he did not know, yet he never admitted it. There was a case on trial where the advocate represented a case against the defendant, who introduced as a witness 'Squire Melton, —as honorable, high toned and high standing a man as there was in Grainger county, but whose testimony injured his case very materially. As I have said, this incident is given in the memoirs of Col. Netherland by Judge Ingersoll, now present, which paper was read to this Association several years ago. Probably many of you have read it. I happened to be present at that trial. The witness was turned over to Col. Netherland for cross-examination, and he did it in this style:

"Squire Melton, you are a brother-in-law of the defendant?"

"Yes."

"This evidence of yours—did he get it up; or was it a scheme of your own?"

"It was a scheme of my own, sir."

Colonel Netherland was wise enough to say only:
"Stand aside!"

Many a good question could have been thought up by a young lawyer to ask that witness—many a one. And every time he asked one, it would kick harder than it would shoot.

As a rule, develop in the shortest way the information and the prejudice the witness has, especially if he is against your side. It is easily done—just like squeezing the tail of a grasshopper to make it spit tobacco juice. Do it as easy as you can, and as soon as you have done it, let him alone just as quickly as you can.

Sometimes you will find a witness committing straight-out, wilful perjury—sometimes, not often. When you find that, unsheath your sword and go for him, hip and thigh! You will have the sympathy of the court, and you will soon catch the sympathy of the jury. That man must be slaughtered. That does not happen so often as people outside of the court house imagine; yet it does happen. I remember once a bill was filed in the Chancery Court at Knoxville against several people there, sureties on the bond of an insurance agent; several prominent citizens, one of whom is the present Mayor of the City of Knoxville. In that bill a certain theory was set up. Then the complainant brought another suit, and got service of process in Memphis, where the plaintiff resided, in the Circuit Court of Shelby county, and it was on an entirely different theory from the case pending at Knoxville. He was sharp enough to dismiss his case at Knoxville, in chancery, and pursue it at nisi prius at Memphis. So we traveled down there and prepared to fight it out before Judge Heiskell, who, by the way, is an East Tennessee man. I knew him well. I was accustomed to the mountain way of practicing law. I didn’t know the rules that Judge Sanford spoke of this morning. They had a habit there of asking for instructions—number one, number two, and so on. They raised the objection on me that I had asked for no instructions. I replied: "I am not familiar with this sort of practice; but I will ask your Honor to instruct the jury that it is their duty to inquire into and report which party ought to gain
this lawsuit—the plaintiff or the defendant. His Honor said he thought that ought to cover it. (Laughter.)

Well, the man was put on the stand to testify in the nisi prius case, and his testimony was in direct conflict with his bill in chancery at Knoxville. In a few mild questions, I clinched the nails on that evidence, so that he could not back out of it. Fortunately I had brought with me the bill that he had dismissed at Knoxville, and after I had clinched that so that he couldn't get away from it, I walked around in front of him. He was one of the most prominent men in Memphis. Showing him the bill, I asked:

"Is that your signature to this bill?"
"Yes," he replied, looking at me.
"Did you swear to it before a Notary Public?"
"Yes, I did," was the answer.
"Well, then, Major Smith," (for that was not his name,) "kindly tell this jury where it was that you swore to a lie—Was it at Knoxville, or was it here before this jury, or was it both places?"

As I started back to my seat, I heard a disturbance behind me; as I turned hurriedly to see what was the cause, the sheriff had caught the witness as he was falling to the floor in a faint.

There were no other questions asked. The court adjourned pretty soon, and they came in and dismissed the case.

What a heap of good questions might have been asked along there, if one enjoys paddling in the water. It looks pretty and is great sport to make the water pop and fly, as many a young lawyer would have done.

So, when a witness is turned over to you for cross-examination, the most valuable advice I can give you—and my conviction grows stronger is I grow older—is to DON'T, just as much as possible.

Some two years ago I was in New York City, overlooking the taking of some depositions in the case of a lady who had instituted a damage suit against the Railway Company by which I was employed. She lived in Tennes-
see, and was traveling through Virginia. There had been a heavy rain that had washed a lot of sand down upon the track. The locomotive ran up on this sand and quietly and sweetly turned over. Nobody was hurt, so far as we could tell, except this lady. For many years theretofore she had been under treatment for some ailment to one of her limbs. She was on the way to her specialist in New York then for further treatment of this limb. It was the deposition of this specialist that we were taking. Our counsel in charge of the case was conducting the cross-examination. The learned doctor told all about her present condition; how she was permanently injured, etc., etc. He made it as horrible as a damage doctor can—and they are getting as expert these days as the damage lawyer along those lines. Finally they turned this physician over to us for cross-examination. Our counsel went on and developed her condition before as being very similar to that in which she was at present, and the fact that she had been on her way to her doctor for treatment at the time of the accident complained of. The witness testified alright as to what the condition of this good lady was, and all that. Our counsel turned to me and said in a low voice:

"The other side didn't ask him whether or not her present condition is due to the turning over of that car, or whether it was due to the old ailment. Shall I ask him?"

"No, don't you do it."

"Yes," he said, "I think I had better; I think I shall. I believe that will end the lawsuit."

"So do I," I replied.

"Well," said he, "he is obliged to say it—he is obliged to say it."

"Remember he is her doctor; he has been getting her money. I believe it is a fine question to ask, Smith" (for that is not his name,) "but I would sooner ask it of the jury. The jury can't explain it like that doctor can." But still he insisted:

"Well, I will take the responsibility," he added.
"Very well, you are in charge. Ask it—and then will come the deluge!" I told him.

So he asked the question, and the doctor said:

"Yes, she had that ailment, but I thought she was completely cured of it. She was so severely shaken up in this accident that it has turned the whole thing loose worse than ever." (Laughter.)

That was a fine question; a very learned question! It was a costly question, for I came back home and paid her ten thousand dollars damages.

Wherever there is developed in the case crookedness, or incompatibility, or discrepancy, or something contradictory, my young lawyer, you let it alone right there. The best person in the world to get out of it or to explain it away is the witness who got into it. Don't give him a chance to do it. Ask that question of the jury when you come to try the case. But it is so hard to get the young lawyer to forego that opportunity.

By all means, and paramount to anything that I have said, when in action keep your temper. Let no man unhorse your temper, unless you want to quit trying your lawsuit and go to fighting; and then you ought to tell your client he needs a ditch digger instead of a lawyer. There is no man on earth that so needs to keep his wits in leash as the lawyer in action.

Write these words on your phylactery.

Therefore I say to you, young man, the best advice ever given to a cross-examiner is, again and again, DON'T!

To my mind, the beauty, the brain, the raising, the air, the water, the women and the religion that we have in Tennessee are not exceeded in the United States. You have got the opportunity of making the best lawyers in the United States; and I am largely acquainted with the lawyers over the country.

If I could just get you out of the habit of undermining each other, and to work in harness together better, the lawyers of Tennessee would forge to the front. And there is another question that I have been thinking a good deal
about, and want, some time or other, to lecture the young lawyers of Tennessee on—and that is the question of fees. The Tennessee lawyer don’t know the science of charging fees. They do more work by far than they ever get pay for, and they don’t know it.

Let me impress this idea upon you, and then I shall quit. Let me tell you the hope and the struggle of my life: It is to encourage Tennessee young men. (Applause.) Sustain the young men who become lawyers, stand to them and spur them on. Everybody else is having his rights. And as between a man from Maine, or a man from Louisiana, and a Tennessee boy, you stick to the tribe of Judah. (Applause.) If you will give him the chance, he will forge to the front, and you will be proud of the development of the Tennessee lawyer. (Prolonged applause.)
CONSTITUTION

ARTICLE I.
Objects.
The objects of the Association are to foster legal science, maintain
the honor and dignity of the profession of law, to cultivate professional
ethics and social intercourse among its members, and to promote im-
provements in the law and the modes of its administration.

ARTICLE II.
Election of Members.
All nominations for membership shall be made by the Local Coun-
cil of a county or Bar Association when such Local Council or Bar
Association exists; when there is no such Local Council or Bar Asso-
ciation in any county, nominations for such county shall be made by
the Central Council. All nominations thus made or approved shall be
reported by the council to the Association, and all whose names are
reported thereupon become members of the Association; provided,
that if any member demands a vote upon any name thus reported, the
Association shall thereupon vote thereon by ballot. Five negative votes
shall be sufficient to defeat any election for membership. But interim,
the Central Council, upon recommendation of any Local Council, shall
have the power to elect applicants to membership.

ARTICLE III.
Membership.
Any person shall be eligible to membership in this Association
who shall be a member of the Bar of this State, in good standing,
and who shall also be nominated as herein provided.

ARTICLE IV.
Officers.
The officers of this Association shall consist of one President,
three Vice-Presidents, a Secretary and Treasurer, a Central Council,
who shall be the Board of Directors, under the charter, to be chosen
by the Association. One of the members of the Central Council shall
be its chairman. Each of these officers shall be elected at each an-
nual meeting for the next ensuing year, but the same person shall not
be elected President for two years in succession. All such elections
shall be by ballot. The officers elected shall hold office until their successors are elected and qualified according to the Constitution and By-Laws.

ARTICLE V.

Central Council.

The Central Council shall consist of five members, and shall be, at all times, an advisory board of consultation and conference, when called on for that purpose by the President, or any Vice-President who may, for the time being, be acting as President.

ARTICLE VI.

Local Council.

The President, by and with the advice and consent of the Central Council, may establish a Local Council in any county in the State by issuing a warrant to that effect, naming therein the persons composing such Local Council. Each Local Council shall consist of not less than three nor more than seven members. No person shall be eligible to appointment as a member of any Local Council who is not at the time a member of this Association.

ARTICLE VII.

Election of Members.

All members of this convention signing the charter, and all members elected as herein provided shall become members of the Association upon the payment of the admission fee as herein provided for. But after the adjournment of this convention all nominations for membership shall be made as herein provided.

ARTICLE VIII.

Annual Dues.

Each member shall pay three dollars to the Treasurer as annual dues, and no person shall be qualified to exercise any privilege of membership who is in default. Such dues shall be payable, and the payment thereof enforced, as may be provided by the By-Laws. Members shall be entitled to receive all publications of the Association free of charge. The admission fee shall be three dollars, to be paid as the member is elected. The admission fee shall be in lieu of all dues for the first year.

ARTICLE IX.

Adoption of Amendments of By-Laws.

By-Laws may be adopted or amended at any annual meeting of the Association by a majority of the members present.
ARTICLE X.

Committees.

The following committees shall be annually appointed by the President for the year ensuing, and shall consist of five members each:
2. On Judicial Administration and Remedial Procedure.
3. On Legal Education and Admission to the Bar.
5. On Grievances.
6. On Obituaries and Memorials.

A majority of those members of any committee, or of the Central Council, who may be present at any meeting of such committee or council, shall constitute a quorum for the purpose of such meeting. Vacancies in any office provided for by the constitution shall be filled by appointment by the President, and the appointees shall hold office until the next meeting of the Association.

ARTICLE XI.

Central Council.

The Central Council shall perform such duties as may be assigned to them by the President, or as may be defined by the By-Laws, except as herein otherwise directed.

ARTICLE XII.

Meeting of the Association.

This Association shall meet annually at such time and place as the Central Council may select, and those present at such meeting shall constitute a quorum. The Secretary shall give sixty days' notice of time and place of such meeting, either by publication in a public newspaper or by personal communication.

ARTICLE XIII.

Duties of the President.

The President shall open each annual meeting of the Association with an address, in which he shall communicate the most noteworthy changes in the statute law, on points of general interest, made in the State and by the Congress during the preceding year.

ARTICLE XIV.

Alterations or Amendments of the Constitution.

This Constitution may be altered or amended by a vote of three-fourths of the members present at any annual meeting, but no such change shall be made at any meeting at which less than twenty members are present.
ARTICLE XV.

Duties of the Local Council.

Each Local Council shall perform such duties as it may be called upon to perform by the President, or as may be defined by the By-Laws.

ARTICLE XVI.

Suspension of Members.

Any member of the Association may be suspended or expelled for misconduct in his relations to this Association, or in his profession, on conviction thereof, in such manner as may be prescribed by the By-Laws.
BY-LAWS

I.—PRESIDENT.

The President shall preside at all meetings of the Association, and in case of absence, one of the Vice-Presidents shall preside.

II.—SECRETARY.

The Secretary shall keep a record of all meetings of the Association, and of all other matters of which record shall be deemed advisable by the Association, and shall conduct the correspondence of the Association, with the concurrence of the President. He shall notify the officers and members of their election, and shall keep a roll of the members, and shall issue notices of all meetings.

III.—SECRETARY AND TREASURER.

The Secretary and Treasurer shall collect, and, under the direction of the Central Council, disburse all funds of the Association; he shall report annually, and oftener, if required; he shall keep regular accounts, which shall be at all times open to inspection of the members of the Association. His accounts shall be audited by the Central Council. Before discharging any of the duties of this office the incumbent shall execute a bond, with good and sufficient surety, to be approved by the President, payable to the President and his successors in office, in the sum of one thousand dollars, for the use of the Association, and conditioned that he will well and faithfully perform the duties of his office so long as he discharges any of the duties thereof.

IV.—CENTRAL COUNCIL.

The Central Council shall meet at least once every three months, and oftener if called together by the President. They shall have power to make such regulations, not inconsistent with the Constitution and By-Laws, as shall be necessary for the protection of the property of the Association, and for the preservation of good order in the conduct of its affairs. They shall keep a record of the proceedings, which shall be read at the ensuing meeting of the Association; and it shall be their duty to present business for the Association. They shall have no power to make the Association liable for any debts amounting to more than one-half the amount in the Treasurer's hands in cash, and not subject to prior liabilities. They shall perform such other duties as are required of them by the Constitution, or as may be assigned to them by the President.
V.—ORDER OF BUSINESS.

At each annual, stated, or adjourned meeting of the Association the order of business shall be as follows:

1. Reading minutes of preceding meeting.
2. Address of the President.
5. Election, if any, to membership.
8. Miscellaneous Committees.

The order of business may be changed by a vote of the majority of the members present.

No person in discussion shall occupy more than ten minutes at a time, nor be heard more than twice on the same subject.

The parliamentary rules and orders contained in Cushing’s Manual, except as otherwise herein provided, shall govern all meetings of the Association.

VI.—MEMBERS ELECT.

If any person elected does not, within one month after notice of his election, signify his acceptance of membership by a letter to the Secretary to that effect, and by payment of his admission fee, he shall be deemed to have declined to become a member.

VII.—COMMITTEES.

In pursuance of Article X of the Constitution, there shall be the following standing committees:

1. A Committee of Jurisprudence and Law Reform, who shall be charged with the duty of attention to all proposed changes in the law and of recommending such as, in their opinion, may be entitled to favorable consideration of the Association.

2. A Committee on Judicial Administration and Remedial Procedure, who shall be charged with the duty of the observation of the working of our judicial system, the collection of information, the entertaining and examination of projects for a change or reform in the system, and of recommending from time to time to the Association such action as they may deem expedient.

3. A Committee on Legal Education and Admission to the Bar, who shall be charged with the duty of examining and reporting what change it is expected to propose in the system and mode of legal education, and of admission to the practice of the profession in the State of Tennessee.
4. A Committee on Publication, who shall be charged with the duty of examining and reporting upon all matters proposed to be published by authority of the Association, and pertaining to any of the subjects for the advancement of which the Association is created.

5. A Committee on Grievances, who shall be charged with the hearing of all complaints which may be made in matters affecting the interest of the legal profession and the practice of law, and the administration of justice, and to report the same to this Association, with such recommendations as they may deem advisable; and said committee shall, in behalf of the Association, institute and carry on such proceedings against offenders, and to such extent as the Association may order, the cost of such proceedings to be paid by the Treasurer, on the warrant of the Central Council, out of moneys subject to be appropriated by them.

VIII.—APPOINTMENT.

Each of the standing committees shall consist of five members, and shall be appointed annually by the President of the Association, and shall continue in office until the annual meeting of the Association next after their appointment, and until their successors are appointed, with power to adopt rules for their own government, not inconsistent with the Constitution or these By-Laws. Any standing committee of the Association may, by rule, provide that three successive absences from the meetings of the committee, unexcused, shall be deemed a resignation by the member so absent from his place upon the committee. Any standing committee of the Association may, by rule, impose upon its members a fine for non-attendance, and may provide for the disposition of the fines collected under such rule.

IX.—CHARGES AGAINST MEMBERS.

Whenever any complaint shall be preferred against a member of the Association for misconduct in his relation to this Association, or in his profession, the member or members preferring such complaint shall present it to the Committee on Grievances, in writing, and subscribed by him or them, plainly stating the matter complained of, with particulars of time, place and circumstances.

The committee shall thereupon examine the complaint, and if they are of the opinion that the matter therein alleged is of sufficient importance, shall cause a copy of the complaint, together with a notice of not less than five days, of the time and place when the committee will meet for the consideration thereof, to be served on the member complained of, either personally or by leaving the same at his place of business during office hours, properly addressed to him. If, after hearing his explanations, the committee shall deem it proper that there shall be a trial of the charge, they shall cause a similar notice
of five days of the time and place of trial to be served on the party complained of.

The committee shall be furnished with a list of witnesses, their names and place of residence, who it is proposed shall be examined to sustain the charge, which shall accompany the complaint when made to the committee; and when the day is set for trial the member complained of, upon his demand therefor, shall be entitled to a copy of said list of witnesses. At the time and place appointed for the trial, or at such other time as may be granted by the committee, the member complained of shall file a written answer or defense. Should he fail to do so, the committee may proceed thereupon to the consideration of the complaint.

The committee shall thereupon, and at such other times and places as they may adjourn to, proceed to hear the evidence adduced and try the complaint, and shall determine all questions of evidence.

The complainant, and the member complained of, shall each be allowed to appear personally and by counsel, who must be members of the Association; and the complainant, and the member complained of, shall each be competent witnesses. The witnesses shall vouch for the truth of their statements on their word of honor. The committee shall have power to summon witnesses; if any such witnesses are members of the Association, a neglect or refusal to appear may be reported to the Association by the committee, and treated as a misconduct.

The committee, of whom at least four must be present at the trial, except that a less number may adjourn from time to time, shall hear and decide the allegations submitted to them; and if they find the complaint or any material part of it, to be true, they shall so report to the Association, with their recommendation as to the action to be taken thereon.

The decision of the committee shall be served on the member complained of, and if the decision be that the complaint, or any material part thereof, is true, and in that case only, the committee shall also serve a copy of the complaint, answer, if there be an answer and decision on the President of the Association; and if requested, either by the member or members complaining, or the member complained of, shall annex thereto a copy of the evidence taken, which said document shall be regarded as a report of the committee to the Association.

Every such report shall be acted on only by the Association at an annual, stated or adjourned meeting of the Association, and of which the member complained of shall have due notice, to be served upon him by direction of the Committee. The Committee shall thereupon proceed to take such action on said report as they may see fit,
provided only that no member shall be expelled unless by the vote of two-thirds of the members present and voting.

Whenever any trial shall be determined on, the member complained of may object, for cause, to any of the members of said committee, which said causes he shall state in writing and present to the committee. Thereupon the committee shall report the facts to the President, and inclose to him a copy of the objections for cause; and the President shall forthwith summon the Central Council to meet with him and determine what weight, if any, the objections for cause are justly entitled to have; and if the President and a majority of the Central Committee present and voting shall determine that the objections for cause are not well taken, and the same are overruled, the President shall so inform the Committee on Grievances; but if the President and a majority of the Central Council, as aforesaid shall determine that any of said objections for cause, to any member of the Committee on Grievances is well taken, then the President shall so inform said committee, and forthwith appoint another member or members to supply the temporary vacancy caused thereby; and the method herein provided shall be resorted to until a committee is obtained against whom the member complained of urges no just objection for cause.

If any member of the Bar of the State of Tennessee shall collect money in his professional capacity for a client, and wrongfully fail or refuse to account for the same, it shall be the duty of the President, or any Vice-President of the Bar Association of Tennessee, on complaint being made to him by any person, to appoint a suitable committee from among the members of this Association to investigate the case, and report the facts to the officer appointing this committee; and if, in the judgment of that officer, a case can be made out against the offender, said appointing officer shall order same or another committee to prosecute the offender in the courts for disbarment.

If any member of the Bar of Tennessee shall be guilty of any unprofessional conduct, for which he could, under the then existing laws of the land, be disbarred, it shall be the duty of the President and Vice-President of the Bar Association of Tennessee to proceed to have him disbarred, as indicated in the by-law just preceding this.

All the foregoing proceedings shall be kept secret, except as their publication is hereinbefore provided for, unless otherwise provided for by this Association.

X.—NOMINATIONS AND ELECTIONS.

Nominations of candidates to fill the respective offices may be made at the time of election by any member, and as many candidates may be nominated for each office as members may wish to
name, but all elections, whether to office or membership, must be by ballot. A majority of the votes cast shall be sufficient to elect to office, but five negative votes shall be sufficient to defeat an election to membership.

XI.—SUPPLYING VACANCIES.

All vacancies in any office or committee of this Association shall be filled by appointment of the President, and the person thus appointed shall hold for the unexpired term of his predecessor; but if a vacancy occur in the office of President, it shall be filled by the Association at its first stated meeting occurring more than ten days after the happening of such vacancy, and the person elected shall hold for the unexpired term of his predecessor.

XII.—ANNUAL DUES.

All annual dues of this Association shall be paid on or before the first day of March in each year, and any member failing to pay his annual dues by that time shall be in default, and, upon the order of the President, the Secretary shall strike the name of such member from the rolls of membership, unless for good cause shown the President shall excuse such default, in which last event the name of such member shall, upon the order of the President be restored by the Secretary to the roll of membership.

XIII.—AMENDMENT OF BY-LAWS.

These By-Laws may be amended at any stated, adjourned or annual meeting of the Association by a majority of those present.

XIV.—RESIGNATION OF OFFICERS AND MEMBERS.

Any officer may resign at any time upon settling his accounts with the Association. A member may resign at any time upon the payment of all dues to the Association; and from the date of the receipt by the Secretary of a notice of resignation, with an endorsement thereon by the Treasurer that all dues have been paid as provided, the person giving such notice shall cease to be a member of the Association.

XV.—SALARY OF SECRETARY AND TREASURER.

The annual salary of the Secretary and Treasurer shall be two hundred dollars, one-half of which shall be due on the first day of May, and the other half on the first day of November in each year, but may be paid earlier, or at other times, if the Central Council shall, in writing, so direct; but this shall be in full of all compensation to him. No other officer of the Association shall receive any salary or compensation.

XVI.—SPECIAL MEETING.

If the President and Central Council shall determine that it is
necessary for the Association to hold any other meetings during the
year than the regular annual meeting, the same shall be held at such
time and place as the President and Central Council may fix, upon
twenty days' notice of such time and place, to be given by the Sec-
retary by publication in a newspaper; and the Secretary shall give
this notice upon the order of the President.

XVII.—NUMBER OF PAPERS.

Not more than six papers, in addition to the regular order of
business shall be read at each annual meeting and not more than one at
each of the sessions of the Association.

XVIII.—LENGTH OF PAPERS.

No paper read before the Association shall occupy more than
thirty (30) minutes.

XIX.—CENTRAL COUNCIL TO FURNISH SUMMARY OF REPORT.

It shall be the duty of the Chairman of each standing committee
of the Association to send to the Secretary of the Association at least
thirty (30) days before each annual meeting the report and recom-
mendations which his committee intends to present to the meeting.
The Secretary shall, as soon as practicable after the receipt of the
same, print and distribute to the members of the Association a brief
summary of the recommendations contained in said reports.

XX.—HONORARY MEMBERS.

All Chancellors and Judges of the Superior Courts of this State,
and resident Judges of the Federal Courts, are honorary members of
this Association, and they are relieved from the payment of admission
fees and dues.
**LIST OF MEMBERS**

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<tr>
<th></th>
<th>Name</th>
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<tr>
<td>1</td>
<td>Acklen, Jos. H.</td>
<td>Nashville</td>
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<td>2</td>
<td>Adcock, B. G.</td>
<td>Cookeville</td>
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<td>3</td>
<td>Akers, Albert W.</td>
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<td>Albright, Edward</td>
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<td>Anderson, Harry</td>
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<td>Anderson, J. M.</td>
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<td>Anderson, J. H.</td>
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<td>Anderson, Milton J.</td>
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<td>Andrews, Garnett S.</td>
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<td>Atchley, J. Arthur</td>
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<td>Aust, Jno. R.</td>
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<td>Austin, R. W.</td>
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<td>Armstrong, C. A.</td>
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<td>Armstrong, W. C.</td>
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<td>Bachman, E. K.</td>
<td>Bristol</td>
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<td>Baker, Lewis M. G.</td>
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<td>Banks, Geo. E., Sr.</td>
<td>Winchester</td>
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<td>Baaks, Lem.</td>
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<td>Baxter, Ed.</td>
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<td>Belew, W. W.</td>
<td>Johnson City</td>
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<td>Bell, John Arnold</td>
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3. Barton, Judge R. M., Jr.........................................Chattanooga
4. Beard, Judge W. D..................................................Memphis
5. Bearden, W. S., Chancellor...................................Shelbyville
6. Bell, Judge B. D......................................................Gallatin
7. Bond, Judge John R..............................................Brownsville
8. Bright, Judge John M..............................................Fayetteville
9. Burke, Judge George L...........................................Kingston
10. Cartwright, Judge J. A...........................................Nashville
11. Cooper, John S., Chancellor................................Trenton
12. Eldridge, Judge Thos. E.........................................Memphis
13. Everett, Judge S. J................................................Jackson
15. Galloway, Judge J. S...............................................Memphis
16. Haynes, Hal. H., Chancellor................................Bristol
17. Heiskell, F. H., Chancellor....................................Memphis
18. Heiskell, Gen. J. B................................................Memphis
   Henderson, Judge G. Mc.........................................Rutledge
19. Higgins, Judge Joe C.............................................Fayetteville
20. Holding, Judge Samuel..........................................Columbia
21. Houston, Judge W. C............................................Woodbury
22. Hull, Judge Cordell............................................Gainesboro
23. Kyle, H. G., Chancellor.......................................Rogersville
24. Lamb, Judge A. B................................................Paris
25. Lansden, D. L., Chancellor...................................Cookeville
26. Laughlin, Judge H. W............................................Memphis
27. Littleton, Martin W................................................New York
28. Lurton, Judge H. H................................................Nashville
29. Maiden, Judge R. F...............................................Dresden
30. Malone, Judge Walter...........................................Memphis
31. Malone, Judge Thos. H............................................Nashville
32. McAllister, Judge W. K.........................................Nashville
33. McCall, Judge John E.............................................Memphis
34. McClung, Hu L., Chancellor................................Knoxville
35. McConnell, T. M., Chancellor................................Chattanooga
36. Moss, Judge John T................................................Memphis
37. Neil, Judge M. M....................................................Trenton
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38 Nelson, Judge T. A. R. .................................................. Knoxville
39 O'Rear, E. C. ............................................................. Frankfort, Ky.
40 Palmer, Judge Horace E. ............................................. Murfreesboro
41 Pittman, Judge A. B. ..................................................... Memphis
42 Richardson, Judge John E. .......................................... Murfreesboro
43 Sanford, Judge E. T. ................................................... Knoxville
44 Shields, Judge John K. ................................................ Knoxville
45 Sneed, Judge Jos. W. ................................................... Knoxville
46 Spencer, Judge Sedon P. .............................................. St. Louis, Mo.
47 Stout, J. W. Chancellor .............................................. Cumberland City
48 Taft, Judge Wm. H. ...................................................... Washington, D. C.
49 Taylor, Judge John M. ................................................ Lexington
50 Tyer, Judge A. J. ........................................................ Bristol
51 Wilson, Judge S. F. ...................................................... Gallatin
52 Woods, Judge Levi S. .................................................. Lexington
53 Young, Judge J. P. ..................................................... Memphis
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Annual Meeting
of the
BAR ASSOCIATION
of
TENNESSEE

Held at Chattanooga, Tenn.
August 29, 1910
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BAR ASSOCIATION OF TENNESSEE

PRESIDENTS SINCE ORGANIZATION

1881-2.
W. F. COOPER..............................................Nashville

1882-3.
B. M. ESTES..............................................Memphis

1883-4.
ANDREW ALLISON......................................Nashville

1884-5.
XENOPHON WHEELER.................................Chattanooga

1885-6.
W. C. FOLKES.........................................Memphis

1886-7.
J. W. JUDD............................................Springfield

1887-8.
H. H. INGERSOLL......................................Knoxville

1888-9.
L. B. McFARLAND......................................Memphis

1889-90.
J. M. DICKINSON......................................Nashville

1890-1.
G. W. PICKLE..........................................Dandridge

1891-2.
M. M. NEIL..............................................Trenton

1892-3.
ED. BAXTER............................................Nashville

1893-4.
W. A. HENDERSON.................................Knoxville

1894-5.
JAMES H. MALONE......................................Memphis

1895-1896.
ALBERT D. MARKS.................................Nashville
PROCEEDINGS OF THE

1896-1897.
W. B. SWANEY ........................................... Chattanooga

1897-1898.
C. W. METCALF .......................................... Memphis

1898-1899.
J. W. BONNER ........................................... Nashville

1899-1900.
W. L. WELCKER .......................................... Knoxville

1900-1901.
GEORGE GILLHAM ........................................ Memphis

1901-1902.
J. H. ACKLEN ........................................... Nashville

1902-1903.
R. E. L. MOUNTCASTLE ................................ Morristown

1903-1904.
JNO. E. WELLS .......................................... Union City
EDWARD T. SANFORD .................................. Knoxville

1904-1905.
JOHN H. HENDERSON .................................... Franklin

1905-1906.
EDWARD T. SANFORD .................................. Knoxville

1906-1907.
F. H. HEISKELL .......................................... Memphis

1907-1908.
M. T. BRYAN ........................................... Nashville

1908-1909.
FOSTER V. BROWN ..................................... Chattanooga

1909-1910.
HARRY B. ANDERSON ................................... Memphis

1910-1911.
PERCY D. MADDOX ...................................... Nashville
LIST OF SECRETARIES AND TREASURERS.

1881-1884.
JAS. C. BRADFORD........................................Nashville

1884-1889.
J. W. BONNER...........................................Nashville

1890-1892.
ALBERT D. MARKS........................................Nashville

1892-1895.
CLAUDE WALLER..........................................Nashville

1895-1900.
CHAS. N. BURCH.........................................Nashville

1900-1902.
R. LEE BARTELS........................................Memphis

1902-1906.
ROBERT LUSK............................................Nashville

1906-1908.
R. H. SANSON...........................................Knoxville

1908-
CHAS. H. SMITH..........................................Knoxville
OFFICERS FOR 1910-1911.

PRESIDENT.
PERCY D. MADDIN.................................................. Nashville

VICE-PRESIDENT.
L. D. SMITH.......................................................... Knoxville
JULIAN C. WILSON................................................... Memphis
ED. T. SEAY........................................................... Gallatin

SECRETARY AND TREASURER.
CHAS. H. SMITH...................................................... Knoxville

CENTRAL COUNCIL.
LUKE LEA, Chairman .............................................. Nashville
JOHN BELL KEEBLE ................................................ Nashville
J. M. ANDERSON ..................................................... Nashville
H. H. SHELTON ...................................................... Bristol
HARRY B. ANDERSON ............................................... Memphis
STANDING COMMITTEES, 1910-1911.

JURISPRUDENCE AND LAW REFORM.
T. M. STEGER, Chairman...........................................Nashville
W. H. WILLIAMSON.............................................Nashville
R. E. L. MOUNTCASTLE........................................Knoxville
A. B. LAMB......................................................Paris
R. T. SMITH.....................................................Nashville

JUDICIAL ADMINISTRATION AND REMEDIAL PROCEDURE.
A. W. BIGGS, Chairman..........................................Memphis
W. B. SWANEOY................................................Chattanooga
T. A. WRIGHT....................................................Knoxville
T. E. HARWOOD................................................Trenton
HILL McALISTER................................................Nashville

LEGAL EDUCATION AND ADMISSION TO THE BAR.
J. B. KEEBLE, Chairman........................................Nashville
H. H. INGERSOLL...............................................Knoxville
W. L. FRIERSON.................................................Chattanooga
C. C. TRABUE....................................................Nashville
LEE BROCK.......................................................Nashville

PUBLICATION.
JNO. M. THORNBURG, Chairman..................................Knoxville
LEWIS M. COLEMAN..............................................Chattanooga
J. E. BIDDLE.....................................................Greeneville
THOS. H. MALONE...............................................Nashville
W. R. MANIER, Jr...............................................Nashville
OBITUARIES AND MEMORIALS.

M. T. BRYAN, Chairman ........................................ Nashville
F. H. HEISKELL .................................................... Memphis
J. J. LYNCH ........................................................ Chattanooga
W. B. LAMB ......................................................... Fayetteville
L. D. SMITH .......................................................... Knoxville

GRIEVANCES.

C. J. ST. JOHN, Chairman ........................................ Buil
A. W. CHAMBLISS ................................................ Chattanooga
W. A. PERCY ........................................................ Memphis
HORACE VAN DEVENTER ........................................ Knoxville
K. D. McKELLAR .................................................... Memphis

SPECIAL COMMITTEE TO SECURE ENACTMENT INTO STATUTE
THE OATH RECOMMENDED FOR ADMISSION TO THE BAR.

C. J. ST. JOHN, Chairman ......................................... Bristol
HILL McALISTER ................................................ Nashville
O. C. CONASTER .................................................... Monterey
IKE W. CRABTREE ................................................ Winchester
PAUL CAMPBELL ................................................... Chattanooga
PROCEDINGS
OF THE
Twenty-ninth Annual Meeting of the Bar Association of Tennessee
HELD AT
Chattanooga, Tennessee, August 29, 1910

The twenty-ninth annual meeting of the Bar Association of Tennessee was called to order in the Aldermanic Chamber of Municipal Building at Chattanooga, Tenn., at 10:30 o'clock a.m., August 29, 1910, by President Harry B. Anderson of Memphis. The President introduced Mr. Thomas H. Cooke of the Chattanooga Bar, who delivered the address of welcome.

Response to the address of welcome was made by President Anderson.

The President introduced Hon. W. W. Smithers of Philadelphia, Pennsylvania, representing the Comparative Law Bureau of the American Bar Association. After setting out the scope of the work of this Bureau, he extended an invitation to the Bar Association of Tennessee to join the Comparative Law Bureau, Class B, composed of State Bar Associations. Mr. Smithers introduced Col. Eugene C. Massey of Richmond, Virginia, Treasurer of the Comparative Law Bureau, and he too urged the Association to become a member of the Bureau.

Hon. Percy D. Maddin, of Nashville, moved that the Bar Association of Tennessee join Class B of the Comparative Law Bureau and that it subscribe to all of the Bureau's publications. The motion was seconded by Hon. L. D. Smith, of Knoxville. Judge H. H. Ingersoll, of Knoxville, spoke in opposition to the motion. Hon. Foster V. Brown, of Chattanooga, spoke in favor of the motion. Hon. W. B. Swaney, of Chattanooga, offered an amendment to the original motion, which amendment provided that the Association join the Comparative Law Bureau and pay the $15.00 fee for which it should receive ten copies of the
reports of the Bureau. Judge II. H. Ingersoll, of Knoxville, seconded the motion. Hon. Foster V. Brown moved to lay the motion on the table. Hon. T. H. Cooke, of Chattanooga, seconded the motion. Upon vote this motion was carried, and Mr. Swaney's amendment was laid on the table. Thereupon Hon. Foster V. Brown moved the adoption of the original motion of Mr. Maddin. Hon. Thomas H. Cooke seconded this motion. Judge H. H. Ingersoll, of Knoxville, raised the point of order that the whole matter, including the original motion and the amendment thereto, had been laid on the table. The Chair ruled to the contrary and the motion was placed before the house. Upon vote the motion was carried, and the Chair declared that the Bar Association of Tennessee had voted to become a member of the Comparative Law Bureau, for which membership it should pay the fee of $15.00 and receive ten copies of the Reports of the Bureau.

President Anderson appointed as delegates from the Bar Association of Tennessee to the annual meeting of the Comparative Law Bureau to be held at 2:30 P. M., August 29th, the following: Judge H. H. Ingersoll, of Knoxville; Hon. Foster V. Brown, of Chattanooga; and Hon. W. B. Swaney, of Chattanooga.

The President called for the reading of the minutes of the last meeting, but upon motion duly carried the reading of the minutes of the last meeting was dispensed with.

The President called for the report of the Secretary and Treasurer, and thereupon Chas. II. Smith, Secretary and Treasurer, presented his report, which was in the words and figures following, to-wit:

REPORT OF THE SECRETARY AND TREASURER.
TO THE PRESIDENT AND MEMBERS OF THE BAR ASSOCIATION OF TENNESSEE.

As Secretary and Treasurer of the Association, I submit the following report for the period ending August 27, 1910:

MEMBERSHIP.

Active members ........................................... 440
Honorary members ........................................ 52

Total ...................................................... 492
BAR ASSOCIATION OF TENNESSEE.

RECEIPTS AND DISBURSEMENTS.

DEBITS.
Cash balance from last year ....................... $678.50
Collections from admission fees and annual dues to date ... 1011.00
Total ............................................. $1689.50

CREDITS.
Disbursements as per vouchers exhibited .......... $888.54
Balance on hand .................................. 800.96

Respectfully submitted,
CHAS. H. SMITH,
Secretary and Treasurer.

Audited and approved,
JOHN W. FARLEY,
Chairman Central Council.

Upon motion of Robt. T. Cameron, seconded by W. B. Swaney, the report of the Secretary and Treasurer was adopted and ordered spread of record, which was accordingly done.

Mr. Jno. W. Farley, of Memphis, as chairman of the Central Council, presented the report of the Central Council, recommending the following for election to membership in the Association, and upon vote those recommended were elected to membership in the Association as follows:–

PROPOSED FOR MEMBERSHIP.

L. D. McPHERSON ......................................Knoxville
FOREST W. ANDREWS ................................Knoxville
HUGH G. MORRISON ..................................Johnson City
WALTER H. ROBERTSON .................................Johnson City
N. C. HARRIS .........................................Johnson City
DAVID M. GUINN ......................................Johnson City
STANLEY BARLOW ......................................Johnson City
JAS. J. McLAUGHLIN ..................................Johnson City
S. E. HODGES ........................................Knoxville
WALTER H. COHN .....................................Chattanooga
B. E. TATUM ..........................................Chattanooga
CHAS. R. EVANS ......................................Chattanooga
W. M. COX ...........................................Knoxville
H. K. TRAMEL .........................................Jellico
J. R. SIMMONDS ......................................Johnson City
A. L. OSBORNE ........................................Bristol
JOHN W. APPERSON ..................................Memphis
WILLIAM J. BACON ..................................Memphis
H. H. BARKER ......................................................... Memphis
J. BARTON McKinney ............................................. Memphis
W. H. BIGGS .......................................................... Jackson
W. P. BIGGS .......................................................... Memphis
C. G. BOND ............................................................ Jackson
G. A. CANALE .......................................................... Memphis
FRED M. CARTER ..................................................... Jackson
C. S. DASHIELL ........................................................ Memphis
MARION G. EVANS .................................................... Memphis
W. H. FISHER .......................................................... Jackson
L. L. FONVILLE ...................................................... Jackson
RAYMOND E. MANOGUE ............................................. Memphis
JOHN D. MARTIN ....................................................... Memphis
J. E. McCADDEN .................................................... Memphis
CLAIRE B. NEWMAN ................................................ Jackson
R. W. RAMSEY, Jr. .................................................. Memphis
ALBERT G. RILEY ................................................... Memphis
C. V. RUNYON ........................................................ Memphis
R. R. SNEED .......................................................... Jackson
W. W. SWIFT ........................................................ Memphis
F. D. WADDELL ...................................................... Memphis
HUNTER WILSON ...................................................... Jackson

The next order of the business was the report of the Committee on Jurisprudence and Law Reform, which report was presented by the Chairman, Judge Julian C. Wilson, of Memphis, Tenn., which report was in the words and figures following, to-wit:

REPORT OF THE COMMITTEE ON JURISPRUDENCE AND LAW
REFORM OF THE TENNESSEE STATE BAR ASSOCIATION.
TO THE PRESIDENT AND MEMBERS OF THE BAR ASSOCIATION
OF TENNESSEE:

Your Committee on Jurisprudence and Law Reform had referred to it from the last meeting the report of the former Committee which recommended an examination and opinion on the advisability of a general law which should operate as a uniform charter for the municipal government in the State. This Committee heartily endorses the report of the former Committee and believes that the nearest to solution that can be found for the evils of municipal government will be in what is known as a Commission Form of Government, recommended by the last Committee. This Committee did not understand that it was expected to prepare such uniform charter nor would it regard this time as the appropriate one in which to bring before the Legislature a grave question of this character. If the
Bar Association believes that it should recommend the adoption of the Commission Form of Government, it is respectfully suggested that at an opportune time it select a legislative committee to prepare and present a uniform charter which would carry into effect in detail the proposals of the Committee which reported last year.

The Committee also had referred to it a uniform corporation law for the organization and government of private corporations, which was prepared by Mr. W. W. Belew of Johnson City, Tennessee. The Committee is of opinion that a law of this character is desirable and an examination of this law has discovered no objections to the bill prepared by Mr. Belew, which evinced great care and study. The Bill is recommended by the Committee.

The Committee on the subject of the General Jurisprudence of the State makes the following recommendations, without elaboration of the need for the changes suggested:

The disabilities of married women should be removed by a general statute giving them the same rights to contract as men. The disabilities of married women are evaded by the intelligent business men of the country and they stand as mere barriers erected in the past to the expeditious and proper handling of business transactions. They afford the married women no real protection except when such protection is neither needed nor is consistent with justice. Dower and courtesy should be abolished. In lieu of dower and courtesy, the husband and wife should be given at least a child's share in the estate of the deceased party to the marriage. In addition to this, the survivor of them should have, as now, the right to occupy the family homestead, but without the limitation in account of $1000.00, so far as the heirs are concerned.

The amount of homestead exemption has failed to keep pace with increased cost of such homestead. It should be raised to about $2000.00. The homestead, however, should be more definitely fixed than it is by the present law. At this time it is impossible for the conveyancer to be certain in all cases whether or not the property conveyed is or is not a homestead. No actual occupancy is necessary to create the homestead exemption. It is thought that the homestead should be confined to the place of residence actually occupied by the head of the family, or to a place, even if not occupied by him, selected and the selection placed of record. This could be done by requiring any place not actually occupied as a residence by an exemptionist to be such place as has been designated by him as his homestead in a written selection which has been filed for record, and which shall not exceed in value the suggested sum of $2000.00. A time of say twelve months should be given after the enactment of the law in which selection should be made and recorded.

The settlement of estates may be too long delayed under the law of Tennessee, as there is no method fixed for the settlement and establishment of claims against the estate of a decedent within
two years. An executor may therefore, take this length of time and is not required to distribute the proceeds of an estate of a decedent until he or a Court can be assured that there are no outstanding debts. This could be remedied by providing that the personal representative of a decedent should give notice in a newspaper that all claims against the estate of the decedent should be proved in the Court where the estate is administered within a period of six months, and that after that time all claims not so proven are barred. After the time had expired for the probate and registration of such claims, the executor, without liability to creditors, should distribute the estate so far as any balance over the debts registered is concerned.

The common law as to lateral support is in force in this State. It gives a right of lateral support as to the lands but not as to any buildings erected thereon. No reason is perceived for this distinction and it is out of keeping with the spirit of progress and development. The common law is also in force as to the liability of a lessee of lands for rent on buildings destroyed by fire or cyclone or by casualty during the life of the lease. In other words, if the building is destroyed by fire, for illustration, and the landlord collects his insurance, the lessee is still liable for the rent during the remainder of the term of the lease. Provision is, of course, made against this liability in leases made to those who are highly intelligent and those skilled in the law. It is neither known nor provided against by the unskilled or the ignorant and a change of the common law on this subject is recommended.

It appears that it is still unlawful to make a conveyance of lands which are in the adverse possession of another. It is recommended that this rule be abolished.

It seems to this Committee that the time has come in Tennessee to pass what is known as a master's liability law and abolish what is known in the law of torts as the fellow-servant doctrine. It is recommended that this be done by a simple act which shall provide that all employers shall be liable for any injury suffered by an employee as the result of the carelessness of any other servant of such employer as if such carelessness were the carelessness of the master.

There should be a statute requiring telegraph carriers to promptly deliver all messages to the full limits of any incorporated city, town or village without extra charge therefor and to enforce such duty there should be provided a statutory penalty of say, $100.00, recoverable by the party injured. The charge for telegraphic service is based upon prompt delivery of the message and the carrier has no right to object to an enforcement of this contract. A failure to deliver many messages is not subject to practical redress because either the face of the message has failed to disclose the damage which
may ensue or the damages are not of a character redressable at law. In such case a substantial penalty might reimburse the injured party and be more certain and efficient as a remedy. The principle purpose of such law, however, would be to force greater care on the part of the carrier rather than to redress the wrong. The penalty suggested in some cases would be inadequate but it is preferred the law should not be harsh in its results. While a statute of this character would not be extra-territorial in its effects, and therefore, not applied wholly to interstate messages it could be so framed as to be applicable where either the failure to send or the failure to deliver occurs in this state. As an adjunct to a law of this character, the Railroad Commission should have full power to regulate rates upon intra-state messages to prevent the raising of rates in this state.

These suggestions are made from the observation of the members of the Committee rather than from any analytic study of the entrie law of the commonwealth, but it is hoped that they will make a beginning in the improvement of the substantive law. Nothing short of a revision and a codification of the statutes of the State seems to the Committee to meet the necessities of improvement in the laws required by the spirit of the age and the progress of the times.

Respectfully submitted,

JULIAN C. WILSON, Chairman.

Mr. Young of the Committee dissents from the recommendations favoring:
The removal of disabilities of married women.
The abolition of dower.
The limitation suggested as to time for probating claims.
The abolition of champerty in conveyances.
The proposed masters' liability law.

After this report was read to the Association, Hon. Foster V. Brown moved that the several subjects considered in the report be taken up and acted upon separately and in the order in which they were treated in the report. The motion was seconded by Hon. Percy D. Maddin, of Nashville, and upon vote was unanimously carried.

Hon. Foster V. Brown spoke in opposition to that part of the report which stated that this is not an opportune time to agitate the commission form of government for municipalities. Mr. Brown insisted that the next Legislature should be called upon to act upon this question. He moved that this Association disapprove that part of the report so far as it stated that this is not an opportune time to agitate the commission form of
government for municipalities. The motion was seconded by Geo. W. Chamlee, of Chattanooga, who spoke in favor of the motion. Judge Julian C. Wilson, of Memphis, addressed the Association upholding the report of his Committee, and stating that he and the Committee were in favor of a commission form of government for municipalities, but that they were of the opinion that this was not an opportune time to agitate the question for the reason that political matters were in an upheavel at this time. The motion of Mr. Brown was placed before the house and unanimously carried.

Hon. Foster V. Brown then moved the adoption of that part of the report favoring the commission form of government for municipalities as outlined in the report of this same Committee at the last meeting of the Bar Association of Tennessee. This motion was duly seconded and unanimously carried.

W. W. Belew, of Johnson City, moved the appointment of a committee of five to draft a bill to be presented to the next Legislature as approved by this body and to urge its passage for a commission form of government for municipalities. Judge H. H. Ingersoll, of Knoxville, seconded the motion. This motion was opposed by W. B. Swaney, of Chattanooga; Hubert Fisher, of Memphis, and Foster V. Brown, of Chattanooga. It was favored by Judge H. H. Ingersoll, of Knoxville. Upon vote the motion was lost.

Hon. W. B. Swaney, of Chattanooga, moved that that part of the report recommending the passage of a bill providing a uniform corporation law for organization and government of private corporations be referred to the Commissioners of Tennessee on the Committee of Uniform Laws of the American Bar Association. The motion was duly seconded and unanimously carried.

Hon. W. G. M. Thomas, of Chattanooga, moved the adoption of that part of the report recommending that the disabilities of married women should be removed by general statute for that purpose. Judge H. H. Ingersoll, of Knoxville, spoke in opposition to the motion after it had been duly seconded. Upon vote the motion carried by a majority of four.

W. B. Swaney moved to non-concur to that part of the report recommending that dower and curtesy should be abolished.
Major Chas. R. Evans seconded the motion and upon vote it was carried.

R. T. Cameron, of Chattanooga, moved the adoption of that part of the report recommending that the amount of the homestead exemption should be increased to $2,000.00. The motion was seconded and vigorously discussed. Upon vote the motion was lost by one vote.

J. H. Anderson, of Chattanooga, moved the adoption of that part of the report providing that the homestead should be more definitely fixed than it is by the present law. The motion was duly seconded. W. B. Swaney and L. D. Smith spoke in opposition to this motion. H. H. Shelton, of Bristol, addressed the Association expressing his opinion that there were too few present to act on such grave matters as were being considered, and that several items of this report were being concurred or non-concurred in too hastily for the good of the Association and the public generally.

At the close of these remarks L. D. Smith, of Knoxville, moved that the remainder of the report, including that embraced in Mr. Anderson's motion, be re-referred to the Committee on Jurisprudence and Law Reform to be appointed by the incoming President, which Committee shall report next year on the subjects embraced in the report of this Committee now before the Association. Foster V. Brown seconded the motion and upon vote it was unanimously carried, and the remainder of the report was so referred.

The Secretary read the following invitation from the Golf and Country Club of Chattanooga:

"The courtesies of the Chattanooga Golf and Country Club are cordially extended to the visiting members of the Tennessee State Bar Association during their stay in Chattanooga. August 26, 1910.

"C. Augustus Raht, President."

This invitation was received by the members present with much pleasure.

The President called for the report of the Committee on Judicial Administration and Remedial Procedure. The Secretary announced that Hon. T. Asbury Wright, of Knoxville, was the Chairman of this Committee and that he was unable to
PROCEEDINGS OF THE

prepare the report and attend the meeting of the Association on account of the serious illness of his four children.

The next order of business was the report of the Committee on Legal Education and Admission to the Bar which was presented and read by Major Chas. R. Evans. Upon motion of W. B. Swaney, the report was adopted and ordered spread of record, which is accordingly done as follows:

REPORT OF THE COMMITTEE ON LEGAL EDUCATION AND ADMISSION TO THE BAR.

TO THE TENNESSEE BAR ASSOCIATION:

Your committee on Legal Education and Admission to the Bar has with some care reviewed the laws of the fifty-three different jurisdictions under the national government upon this subject. The table, marked Exhibit A, is the result of our investigation. This table shows at a glance the requirements of the states, territories and colonies as to citizenship, residency, age, time limits of legal study, academic requirements, comity admissions, law school diploma admissions and the manner of examinations, whether by State Boards, Courts or Committees. Much conflict exists upon all these points. A general agreement appears to exist upon one requisite only and that is that the applicant for admission must show by proper proof that he is of good moral character. One state, New Jersey provides that the applicant must receive the recommendation of the Governor.

All the states require that the applicant shall have reached his majority, except Georgia where minority is no bar and Alabama where it is left to the discretion of the court to admit minors.

As to the time that the applicant shall have devoted to the study of law great variance prevails. The constitution of Indiana provides that any voter of good moral character may be admitted to practice. That the applicant shall know anything about law appears to be a matter of no consequence whatever in that state so far as obtaining a license is concerned. Most of the states set a minimum time limit of actual legal study varying from 18 months as in Alabama to three years as in Connecticut and Illinois. New York makes a distinction between applicants who hold academic degrees and those who do not. The former are admitted upon two year's legal study others must show three. A few of the states such as Massachusetts and Tennessee prescribe no set length of time of study, the test being how much law does the applicant know, not how long he has been in acquiring such knowledge.

As to the subject of preliminary education required before entering upon professional study much confusion exists. Nineteen states prescribe that the applicant must pass an academic examination equivalent to that for entrance to the State University, before he is
eligible for legal examination. Thirty-four jurisdictions, Tennessee among them require no academic examination, the bar examination being confined to legal questions only.

The old farcial court examinations by a special committee of partial friends are rapidly passing away and now twenty-seven states have regular boards of examiners similar to that established in this state by the act of the General Assembly of March 30th, 1903. In nine states the Supreme Court constitute the board of examiners, while the others retain the old system of examinations by the nisi-prius courts.

Twenty-two states admit attorneys from other jurisdictions by comity without examination, and the others do likewise if the applicant can show a certain term of actual practice in the state from which he hails, varying from one to five years.

Sixteen states admit graduates of their own State Universities and Law Schools to the bar of such states without examination. The remaining thirty-seven including Tennessee do not recognize diploma admissions.

The Act of 1903 establishing the State Board of Law Examiners is a great advance over our former law and much good has been accomplished in raising the standard of admission and in preventing admission of unqualified applicants.

While your committee recognize that there are several particulars in which our present state laws governing these matters are susceptible of improvement, yet as this whole matter has been under consideration for several years by the American Bar Association, and at the Annual Meeting of such Association which is to meet in this city tomorrow the matter is to be reported on and considered, your committee is of opinion that for the present it is wise for this Association merely to maintain the position taken by it at the last annual meeting after thorough discussion and repeat its memorial to the Supreme Court for a rule requiring two years of legal study and preliminary education equivalent to that given in a standard high school in this state.

To that end your committee submits the following resolution:

Be it resolved by the Bar Association of Tennessee: That the incoming President and two other members to be named by him be constituted a committee of this Association to memorialize the Supreme Court for the promulgation by it of the Rule for Bar Examination favored by the Association at its last Annual meeting and published on pages 18-19 of its Proceedings of 1909.

All of which is respectfully submitted.

C. R. EVANS, Chairman
HENRY H. INGERSOLL
W. L. FRIERSON
<table>
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<tr>
<th>STATE</th>
<th>Residency of State</th>
<th>Age</th>
<th>Time Years</th>
<th>Academic Examination</th>
<th>State Board</th>
<th>Admission by County</th>
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The President called for reports from the Committee on Grievances and the Committee on Obituaries and Memorials, but no report was presented by either of said Committees.

The President called for the report of the Committee appointed to memorialize the Supreme Court for the purpose of raising the standard for admission to the Bar, and the report of this Committee was read by the Secretary. Upon motion duly seconded and carried the report was accepted and ordered spread of record, which is accordingly done as follows:

TO THE TENNESSEE BAR ASSOCIATION:

Your special Committee to memorialize the Supreme Court for the adoption and promulgation of a rule requiring applicants for Bar Examination to have a high school education or its equivalent, and to have occupied two years in legal study respectfully report:

That in October last at Knoxville Mr. John W. Green of the Committee presented to the Court in banc the memorial of the Association signed by all the members of the Committee praying for the adoption of such a rule for the elevation of professional standards.

Your Committee is not advised that any response has been made to the memorial, and suggests that the object may be furthered by repetition of the memorial.

Respectfully submitted,
HENRY H. INGERSOLL,
for the Committee.

The report of the Committee to draft an oath to be administered to those admitted to practice law in the State of Tennessee was read by Paul Campbell, of Chattanooga. Hon. Foster V. Brown moved that this report be adopted and spread of record. The motion was seconded and carried, and the report is, therefore, spread of record as follows:

TO THE BAR ASSOCIATION:

Your Committee, appointed at the last meeting of the Bar Association, held at Chattanooga, to draft an oath to be administered to those seeking admission to practice law in the State of Tennessee, beg to report the following act, which we recommend that the Legislature be asked to enact into a statute:

Section 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE, That, before any person hereafter licensed to practice law in this state, shall practice as an attorney or counsellor, in any of the Courts of this state, he shall take, and subscribe to, in open Court, the following oath:
I do solemnly swear that I will support the Constitution of the United States, and the Constitution of the State of Tennessee, and that I will truly and honestly demean myself in the practice of my profession to the best of my skill and ability;

I will maintain the respect due to Courts of Justice and judicial officers;

I will not appear as counsel or maintain any suit or proceeding which shall appear to me to be unjust, nor any defense except such as I believe to be honestly debatable under the law of the land;

I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and will never seek to mislead the Judge or jury by any artifice or false statement of fact or law;

I will maintain the confidence and preserve inviolate the secrets of my client, and will accept no compensation in connection with his business except from him, or with his knowledge and approval;

I will abstain from all offensive personality, and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged;

I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay any man's cause for lucre or malice. SO HELP ME GOD.

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Section 2. BE IT FURTHER ENACTED, That this act take effect from and after its passage, the public welfare requiring it.

Respectfully submitted,

C. J. ST. JOHN
HILL McALISTER
O. C. CONATSER
IKE W. CRABTREE
PAUL CAMPBELL

The President called for the report of the Committee on Publication and this report was presented by W. J. Donaldson, of Knoxville. Upon motion of Foster V. Brown, seconded by L. D. Smith, the recommendations of the report were concurred in, and the report was adopted and ordered spread of record which is accordingly done as follows:

REPORT OF COMMITTEE ON PUBLICATION.

To the President and Members of the Bar Association of Tennessee:

Your Committee on Publication respectfully submits the following report for the year ending August, 1910:

This Committee is charged by the by-laws with the duty of examining and reporting upon all matters proposed to be published by authority of the Association, and pertaining to any of the subjects for the advancement of which the Association is created.
The Secretary prepared and submitted the proceedings of the annual meeting of the Association held in Chattanooga, Tennessee on June, 23, 24 and 25, 1909, which were examined and approved for publication in the form in which they have been printed, bound and distributed. No other matters were proposed for publication during the past year.

Your Committee would call attention to the fact that many of the State Bar Associations publish their annual proceedings in cloth or buckram bindings, whereas, this Association has always published its proceedings in pamphlet form with flimsy paper binding. Our inferior year book has been due to the lack of funds in the treasury. Your Committee is informed by the treasurer, however, that there will be ample funds this year to warrant a cloth binding of the proceedings, and it recommends that this be done, not only this year, but in all future years to the extent of putting so many as may be needed for exchange, etc., not to exceed 100 volumes in cloth binding.

The Secretary is frequently requested to exchange copies of the proceedings of this Association with other State Associations and also to send copies to libraries and educational institutions, and it ought to be a source of regret, if not of humiliation, to the members, that such a pamphlet as we publish must be distributed.

Besides this, the Tennessee Association is a band of lawyers organized for the purposes, not only of social pleasure, but of taking such actions as will heighten and strengthen the standards and ideals of the great profession to which we belong.

We have dedicated our lives to this lofty profession and the records of our deeds should be preserved in more enduring form both for our own personal pride and pleasure and for the benefit of those who come after us.

Respectfully submitted,

W. J. DONALDSON,
Chairman

H. H. SHELTON,
Committee

The Association next proceeded to the election of officers for the ensuing year. Hon. Foster V. Brown placed in nomination for president Hon. Percy D. Maddin, of Nashville. The nomination was duly seconded and upon vote Mr. Maddin was unanimously elected president. Mr. Maddin was escorted to the Chair and after accepting the gavel from the retiring President thanked the members of the Association in well chosen words for the honor conferred upon him.

The election of Vice-president being next in order H. H. Ingersoll nominated L. D. Smith, of Knoxville, for Vice-presi-
dent from East Tennessee; Foster V. Brown nominated Julian C. Wilson for Vice-president from West Tennessee, and W. B. Swaney nominated Ed T. Seay for Vice-president from Middle Tennessee. Upon motion the nominations were closed and upon vote the gentlemen named were elected Vice-president from their respective divisions of the State.

The election of Secretary and Treasurer being next in order H. H. Ingersoll nominated Chas. H. Smith to succeed himself as Secretary and Treasurer. The motion was seconded by Julian C. Wilson of Memphis, and upon vote Chas. H. Smith was unanimously elected Secretary and Treasurer of the Association for the ensuing year.

The following gentlemen were chose by unanimous vote to constitute the Central Council, their names being recommended by the President: John Bell Keeble, Nashville; Luke Lea, Chairman, Nashville; J. M. Anderson, Nashville; H. H. Shelton, Bristol; Harry B. Anderson, Memphis.

Upon motion of W. B. Swaney, duly seconded and passed, the President appointed W. B. Swaney from Chattanooga, James A. Fowler of Knoxville, and Judge E. T. Sanford of Knoxville, a committee of three to co-operate with the American Bar Association Committee on Federal Procedure.

Upon motion unanimously passed the following were named as delegates to the meeting of the American Bar Association to be held in Chattanooga on August 30th-31st and September 1st: W. G. M. Thomas, of Chattanooga; P. D. Maddin, of Nashville, and Julian C. Wilson, of Memphis.

W. J. Donaldson, of Knoxville, moved that the Secretary be instructed to thank the Golf and Country Club of Chattanooga for its kindness in extending countesies to the visiting members of the Association, and that a vote of thanks be tendered the Chattanooga Bar for its countesies to the members of the Association. The motion was duly seconded and unanimously passed.

Upon motion of Jno. M. Thornburg, duly seconded and passed the meeting adjourned sine die.
APPENDIX

At the annual meeting of the American Bar Association held at Chattanooga, Tenn., on August 30, 1910, the Bar Association of Tennessee was represented on the program by Col. W. A. Henderson, of Knoxville, Tenn., who read the following paper which the Secretary is pleased to incorporate in this publication:

THE DEVELOPMENT OF THE HONORARIUM.

A Dissertation on the Work and Wages of the Lawyer.

By W. A. Henderson.

I am essaying a delicate and desperate thing. He who suggests an item for the menu at a feast of this Association, where every appetite is trained in high living, ought to be a chef from Cologne, and not a cook from the mountains! It is a subject which every member of this body may well admit that he understands better than the speaker does. On the speaker's part, it is like an offer to teach a Methodist preacher about passing around the hat, or a hustling hen how to scratch out a worm. Yet an old lawyer may tell a young one some things he ought to know, or knowing, ought to remember. I wish some old lawyer had told me the things I am about to say to you.

Of all the professions the cloth stands first and most important, though its influence and control stand not in such precedence as of yore. The day of the dogma is waning, and in civilization none "fights with beasts at Ephesus" nor is chained to the stake. Originally the priest stood alone, and did the duties of all the other vocations. There was no law but ecclesiastical, "called out of the church," and the law and the prophets had the same leadership. In some lessening localities this leadership still obtains.

The medical man holds his rank more steadily than any other. He does it by being a man of mystery. You never heard of a doctor who could speak or write the word "salt." With him it is always "chloride of sodium." He is a walking, talking hieroglyph. He holds sway as a veiled prophet of Khorassan. No profession is so simple and none so sensible. None has made such advance—especially in late years. You will recall from Xenophon's Anabasis that when a Greek soldier needed to have a leg amputated, he was placed under a descending knife, after the manner of the more modern guillotine, and the stump was afterwards plunged into hot pitch. This may be the reason why you have never heard of a one-legged Greek veteran—they all died.
In early days, the profession of the prophet, the apostle, the priest and the medicine man, was itinerant. Much of the treatment was done by that old cult now lately discovered by Mrs. Eddy.

The vocation of the law always existed, and must exist while people live together. The lawyer is not such a big man, comparatively, as he has been in past ages. That is the lawyer's own fault! There are so many of you that you are continually undermining each other. There are too many pigs for the size of the trough; so they befoul and waste the feed.

There is not a business man in the world but would be helpless without a lawyer; and there can be no success without him. No monarch nor leader can reign without a remembrancer; no soldier can fight without a diplomat before the battle, and an adjuster after the storm. This is as plain as day; but it is often undervalued by the profession, to its detriment.

No government can continue without a counselor. The King must judge the future by the past. Show one the half of an apple and he can describe the other half, though he may never have seen it. The King must know how the same question has been handled heretofore. Precedents must be followed. The Court may overrule a precedent, but it would disturb a kingdom were a King to do it. The great trouble with the law is to adjust and follow precedents. It is like the Irish fence builder, who said that anybody could set two posts in a straight row, but sometimes it took the devil himself to get three of them to muster.

But to go back to the origin of history:

The commission of man, after God had given him his wife—and boss, (I speak as a married man), was in these words:

"Behold, I have given you every herb-bearing seed, which is upon the face of the earth, and every tree in which is the fruit of a tree yielding seed; and to you it shall be meat.

"And to every beast of the earth, and to every fowl of the air, and to everything that creepeth upon the earth, wherein there is life, I have given every green herb for meat: and it was so.

"You shall have dominion over them.

"And God saw everything that he had made, and behold it was very good."

The highest joy a man can have is dominion—lordship over things. What a glorious dominion was given to man! I say to you gentlemen in the front row: What a magnificent building this is, and you all bow your heads in unison. But if one of you happen to be its owner, how his heart throbs and his eyes brighten. It is so everywhere, for everything. It is dominion. If one could say "that is my sunset," "yon is my star," what multiplied glories would enwreathe his heart!

Many a 'fool hath said in his heart: "There is no God," but no man, wise or fool, has ever said: "There is no devil!" He is
always at our elbow, and is a better lawyer than any in America—
saving this presence!

An old author has recorded a curious legend of Arabia—near the
Garden—that the Evil One added an infernal amendment to the divine
commission, which the sons of Adam accepted and have followed to
this good day. In these fateful words said the Devil:

“And your children shall have dominion one over another.”

And since that time, the sons of men have waged internecine
war. Every sin and sorrow, every hope and fear, every success and
failure, every possession and loss, every victory and defeat; all
escaped from this Box of Pandora. To-day we see the world in con-
lict, nation against nation, community against community, man
against man—often brother against brother—which the Prince of Peace
has never been able to allay. What is the goal towards which they
all run, until they die in the curriculum? It is that they may win
dominion one over another! The ranking vocation and passion in
these piping times of peace, (not everywhere), is the accumulation
of wealth. Cui bono? For rest and ease as one totters down the
hill? Not so! To give our children sound bodies and sane minds
and a start on the up-hill journey? Not so! Abnormal accumula-
tion is a galling burden and vanity of vanities. Here is where the
work and necessity of the lawyer arise. Here is where the devil and
the lawyer come together into the conflict, (theoretically, face to face
in war; but often hand in hand in peace). This conflict must be
waged according to law. God Himself cannot govern without law.

The dust-encrusted athlete does not know what the law of his
conflict is, and can never learn. There must be law. It may be the
Rules of the Marquis of Queensbury, yet there must be an expert
who knows, or every fight would be a slaughter. It may be the one
sentence: “Ye shall not strike below the belt!” Or it may be the
ten tables nailed high on the columns of the forum, which even
Cæsar did not understand. We are fast forgetting that Cæsar was
once a great lawyer. But like a good Methodist, he fell from grace,
and is now known to the world as a mere soldier. Or it may be, as
in the present day, when the rules governing civil and criminal
conduct are shelved in uncounted thousands of volumes, which no
man has ever read, and no man ever will. The lawyer is as much
a necessity as the pilot in a dangerous sea; and sometimes, like
the pilot, he must steer in the dark, without star or compass. Some
seem to steer better in that condition. I presume the Standard Oil
Company would pay any expert a million dollars for information as
to how it may continue its accumulation, so as to extend its dominion
over men according to law. The Supreme Court of the United States
does not know—though I have no doubt there are many wise in-
dividual opinions that could be bought cheap.

I wish to teach a lesson. “You may forget the singer, but
should ne’er forget the song.” The world must have a commodity
which you alone have. You fix your own price by fighting one another,
and the successful ones ought to prescribe for the ailment. There is no need for the folly of a strike in your business. There are those who get custom by underbidding. From extended observation, I believe they deal in inferior goods, and are willing to sell at any price, to get rid of cheap stuff. This idea was illustrated many years ago by a lawyer friend of mine who had a case stated to him by a proposed client, and when asked what his fee would be, said one hundred dollars; to which the client replied that he could get Mr. Smith for fifty dollars. The lawyer rejoined that he, too, would take the case for fifty dollars; but added: "Of course, you could not expect me to put my whole ability into the case." He got the case at one hundred dollars, gained it—and was never paid a penny.

The ability to know how to charge a fee is a high art which many lawyers never learn.

Let us take a hurried glance at past ages, and see how we may govern the future. The power of prophecy is not such a mystery as is commonly believed. When the fig tree putteth forth her leaf, we know that summer is nigh. When the wind is from the west, we say: "We shall have rain." This proverb is for Palestine, and not for Chattanooga: it is always wet throughout her borders—from Beer to Dansheba. When you contemplate the past you know that the United States shall have better lawyers, and better paid lawyers, than we have to-day. This prophecy, as to its fulfillment, depends entirely upon you. Your clients, that is, those you protect, will agree with you, but will never help you to raise the rates. It is the old, the eternal rule—"When the buyer cometh, he saith it is nothing, it is nothing; and then he goeth his way and boasteth."

Note the footprints of the profession as it has marched down through the ages to us. We get little light from the Euphrates or the Nile, except that every ruler had his counselor, who didn't draw the wagon, but handled the lines. These nations went down, as every nation will go down without an able bar. The counselor was necessary to decide upon the casus belli, or to make one. After the war, he must gather up the fragments and heal the wounds of battle with the sweet oil of peace. A soldier cannot reconstruct; he tries to heal with the sword. That counselor was a Cabinet officer—it may be, the whole Cabinet. His pay was that of a general. It was the gift of a province, a city, a high office, or a monopoly—some fragment of royalty. A gold chain about his neck and a proclamation was a big fee. Afterwards, the Kings of Spain, Portugal and France divided up the New World among their favorites and lawyers. In 1683, Charles II. gave the lot upon which this building now stands to five such men, the initials of whose several names spell and give its present meaning to our own word Cabal. The limits extended from the Atlantic Ocean to the South Seas—a larger fee than any American lawyer ever received. There is a wide belief that England won and holds her precedence by her soldiers and her ships; but she got her place, and still holds it, by her bar. The bar made the ships,
the commerce, the learning, and more than all, they made the govern-
ment as it now is. For many centuries she has had the best law in
the world, and her law and her language govern most of the world.

The first cradle of the profession, as we now know it, though a
very rude one, was Athens. There the Advocate was born. It came
about in this way: It was a Democracy, and trials were public. Every
felony was death, and banishment was on the vote of the people, who
acted both as jury and king; that is to say, they could convict or
acquit, or pardon, according to their own unrestrained will or caprice.
There never was such a forum for eloquence, especially of that sort
which would move the populace. All Athenian eloquence was stump
speeches of the highest order. The people were divided into leaders and
followers, or clansmen and henchmen. They were called patrons and
clients, whether there was any law suit or not. Their duties were
well known and reciprocal. The duty of the lawyer was to protect
any of his men for everything and against anything. The client was
to serve his lord, on call for service, especially to follow him in-arms,
to help bear the expense, to guard his person, to help endow his
daughters, to give ransom for his lord and family and to protect
his good name. When arrested, with a few necessary exceptions,
every man must present his own defense, or, on the other hand, his
own accusation. This condition begot and nurtured the first forensic
elocution, cultivated to such perfection that the world still stands
to admire. A few men arose who cultivated the art of advocacy, by
writing speeches and orations, to be used by themselves or others.

Some of the best orations, just as in our day, were never reduced
to writing, and were lost. Some of the best were never delivered
at all, although written; and sometimes the same man wrote speeches
for both sides. Such men live in Washington to-day—but they flourish
not. From such culture grew Demosthenes, Aeschines, Antiphon, and
scores of others.

Along the line, in further development, comes Rome, with Cicero,
Licinius, Gracchus, and their compatriots and followers. A large class
of men simply gave advice on questions of law, without orations.
The courts were radically different from ours, but the lawyers were
our professional forefathers.

For all this labor, no fees were charged. It was held to be a
professional disgrace so to do; yet the orators grew rich. It was a
disgrace to demand, but sweet as honey of Hymetus to receive. It
was a honorarium which was incidental. Success was the open door
to political and civic honors, immense wealth and spolia optima. A
great speech was a triumph, and a bad one might mean banishment.
Cicero wanted to be a general, and was a very poor one. Caesar
wanted to be a general, and was one of the greatest that ever led a
legion. From the zenith of those heavens could an honorable advocate
be heard dickering for a fee, like a mercenary Jew clamoring for
shekels? Among the great advocates, such a thing was never heard
of in Greece or Rome. There is no doubt but that the successful
advocate expected compensation, in addition to loyalty from his client, and, differing in degree, like a porter hopes for a tip, but it is not to be talked about nor sued for. There was no agreement, but the ratiocination, if any, was this: "Your liberty, your life and your property, to the last sesterceum, trembled on the cast of a die, and I have saved everything and given all back to you. What you think would be right, you may quietly place in my hand, which you will find open and itching behind me." The result was that the successful advocate accumulated great wealth. We may criticise the system, but do we surpass the result in filthy lucre? That folly may have been best for those times and those places, but it never matured on this side of the ocean.

The bar, following the sun, next took root in Gaul, or France, and then in Albion, or England. The latter, as you know, is the birthplace of our common law. Let us take a cursory glance at the magnificent bar of England, as to how they did their work and how they got their pay. No better bench, no abler bar, ever graced the courts of the world. They have always bravely demanded that the lawyer is an officer of the court, and as such entitled to his place and function as the judge on the bench. While the judge has the right and the duty to fine the lawyer for contempt of court, yet there has been a long-felt want that a power be rested somewhere to fine the judge for contempt of bar.

I remember many years ago a country judge assessed a fine on my old friend, General William Cullom, (an uncle of Senator Cullom, of Illinois), for contempt of court. The old Chesterfield of Tennessee promptly arose in his place, and said: "May it please Your Honor, you are certainly mistaken in thinking that, in word or deed, I have expressed any contempt for this Honorable Court. On the contrary, my real sentiments on this subject I have always carefully concealed!"

On this ample apology, the fine was promptly remitted, and the judge himself apologized.

In England, the profession has for a long time been crystallized and classed into grades. At common law, without going further, we may say, into barristers and attorneys. The attorney has all the clients. He takes the case, draws the pleadings, prepares the evidence, writes the brief, collects the fee, and employs the barrister to present the case before the proper tribunal. For all this work he may charge and collect a fee, but the barrister gets nothing except what may be handed him by the client of the attorney. That is his honorarium. We have here the two subjects side by side—familiar to every English lawyer. In our practice, with partnerships, the work is often divided, so that the junior member prepares the case, and the senior acts as the barrister.

My own individual opinion is that the part done by the attorney, in most cases, is more important than that done by the senior, after the manner of a barrister.

It is safer for the experienced lawyer to consult with his client,
learn his whole case, and the case of the enemy, give instructions
to the junior as to how the case ought to be prepared, and then, on
the trial, to examine and cross-examine the witnesses. This is harder
work, but it is well worth the labor.

Such practice obtains in England. As to its excellence, lawyers
sometimes differ. But, as a general rule, the law of England, as to
what is best for England, is wiser than any of us.

Many attempts have been made through the courts of England
to change this ruling, but without avail. In Mooney against Lloyd,
5 Sergeant and Rawle 411, (1819), Chief Justice Tighman says:

"The connection between client and counsel, in contemplation
of law, is honorable indeed. The counselor renders his best service
and trusts to the gratitude of his client for reward, and." (quoting
from Blackstone), "'a counsel can maintain no action for fees, which
are quiddam honorarium, not as a salary for hire, but as a mere
gratuity, which the counselor cannot demand without doing wrong
to his reputation.'"

In Thornhill against Evans, 2 Adkins 332, Lord Hardwick de-
claims that "the Court would not suffer a gentleman of the bar to
maintain an action for fees." And this high priest of the law ex-
claims in holy horror, from the bench:

"Can it be thought that this Court will suffer a gentleman of
the bar to maintain an action for fees, which is quiddam honorarium?"

The last case that has come to my attention is the learned opinion
handed down by Chief Justice Erle—the whole court concurring—in
Kennedy against Broun and Wife, Hillary Term, 1863, English Com-
mon Law Reports 106, page 617. A short digest of this case may be
interesting, especially to Southern and Western lawyers:

The case was originally tried before Chief Justice Cockburn, at
the Spring Assizes, 1862, at which the plaintiff, Kennedy, was awarded
a verdict for twenty thousand pounds.

In 1855, Mrs. Broun, (then Mrs. Swinfen), was in possession of
an estate valued at sixty thousand pounds, under the will of the
father of her late husband, Swinfen, holding the same against the
regular heir at law. The will was attached on the issue of devisavit
vel non, for alleged irregularities and undue influence. When it
came on for trial, a compromise was decreed by consent of counsel,
by which the (then) widow was to receive an annuity of one thousand
pounds for life, in lieu of the devise.

On the trial Barrister Kennedy succeeded in establishing the
will, and the widow was left in charge of the estate. It was con-
ceded without question that the result was attributable to the
ability and industry of Kennedy. Before a settlement of the honorari-
num was had, the now healthy widow contracted a marriage with
Broun, as her second husband, and the newly married couple refused
to pay Kennedy one penny, whereupon suit was instituted for com-
pensation. The plaintiff barrister alleged and testified that on four
distinct occasions it was agreed that his compensation was to be
twenty thousand pounds, and that it was finally agreed that he should have reversion of the estate, which was subsequently carried out by deed. This reversion was estimated to be worth fifteen or sixteen thousand pounds. Plaintiff alleged that by abandoning his practice in Birmingham, which he had done, he had lost ten thousand pounds, and that there had been paid to him in the course of the proceedings, about seven hundred pounds. The case was tried before Lord Chief Justice Cockburn, who allowed it to go to the jury on the question of fact as to whether or not there had been a contract as alleged by the plaintiff, with the promise of a rule. The jury sustained the claim of the barrister in a verdict for twenty thousand pounds, and the rule having been denied, the case went up on appeal.

The Appellate Court delivered a long, elaborate and able opinion, fully sustained by English authorities, that Barrister Kennedy had no cause of action—notwithstanding the verdict of the lower court as to the existence of a contract—possibly pactum, but certainly nudum. Thus it sustained the honor of the profession against the stain of litigation for a fee—and Kennedy wept.

As the English bar understands this condition of law, I have no doubt it is highly honorable to the profession. But to us, who are not familiar with it, it is highly curious; because the lawyer receives compensation on both sides of the sea, which, when fairly obtained, cannot be taken away from him.

This holding and conclusion of the law never obtained in the Colonies nor in the States, except for a short time in Pennsylvania and Delaware; and the question arises: How did we elide this pride of the bar of the mother country? That doctrine did not follow the flag. Why and now?

Usually, when one nation overcomes another, much old law is fused into the new; but we got no law from the Aborigines. There is no Indian law recognized in any of the courts.

The pioneers who landed on our shores came from all nations, civilized and uncivilized. But the learned professions, with a few exceptions, did not come with them. Even younger sons did not flourish. In that motley gathering were the hunter, the soldier of fortune, the Indian fighter, the small farmer, the buccaneer, the traitor, the land menger, the politician; speaking every known tongue. Differing from all other nations, these elements were absorbed into our society.

The irrepressible lawyer came later, and he came to stay. It was not necessary that he should be learned in the law, or in anything else. He was a home-made product for emergent use. There was much prejudice against him, because a turbulent population is opposed to law, unless they themselves make it on the spur of the moment, and then abandon it when a new caprice may arise.

In Colonial days, and in the early times of the states, the civilization of our present country was a mere fringe bordering on the Atlantic Ocean, gradually spreading into the Western wilds. The
business of the country consisted in agriculture, transportation by
water, Indian wars, and freebooting on land and on water. There
was no native coin. Of course, there was the coin of other countries;
but it was a commodity rather than a currency. The merchants had
their foreign bills of exchange, and every trader was a money changer
in the temple. The principle currency used by man with man, how-
ever, was a barter of the natural products of the country. Such
barter, was legalized into currency and receivable for taxes. The
nature of this currency would vary according to locality—as one
went north or south. Take the Carolinas and Virginia as examples:
Their currency was tobacco, whiskey and brandy, skins, furs, indigo,
asasfras, hickory-nut oil, and many other commodities of various
values. In South Carolina, a "negro" was currency. In this signifi-
cation a negro was a male adult, and his value was about four hundred
dollars. A half-negro was a boy up to fourteen years of age, and his
value was about two hundred dollars; while a quarter negro was a
man over sixty years old, and his value was about one hundred dol-
liers. You will note that fractional currency is no new device. Of
course, females were valuable also, but they did not pass as currency.
Of late years they are bought and sold in the market places, but
there is no fixed price. The matrimonial brokers attend to this vile
detail. Since those days, the value of the negro has vacillated—
especially in South Carolina.

Excepting the ministers of the Church of England and of the
Roman Catholic Church, there were not many men of education.
You remember the criticism upon our Revolutionary Army, that all
our generals were "surveyors, inn-keepers and wagon masters." A
romance founded on fact.

In this society lawyers and judges developed. It could not be
expected that they should be very learned in law or familiar with
precedents, and there seems to have been a popular prejudice against
them. At one time they were not allowed to become members of
the law-making bodies, now called the State Legislature. Not more
than one, or sometimes two, were allowed to appear for a party in
litigation. They had to be sworn as they are to-day, but often they
had to be sworn every year, and sometimes at every trial, just as
the jury is now sworn. The terms of the oath were peculiar. In
addition to the obligation to do justice, they were sworn not to de-
cline employment unless excused by the judge; nor to make long
speeches, nor to brawl, nor to appear for both sides, nor to betray the
secrets of a client. If they should find a guilty client, they must re-
veal the fact to the judges, or to one of them. A peculiar criticism
of the bar of that period appears by the lawyer obligating himself
not to delay a case in court through malice or causa iuris. In all my
experience I have never heard of this charge being brought against
the bar. Nor was the lawyer to make indecent gestures before the
court!

As is well known, if a man in litigation is unable to employ a
lawyer, the court will assign some member of the bar to take his case. In all such cases, theoretically, the counsel is expected to exert himself to the utmost in behalf of his client, to demonstrate to a suspicious public that a lawyer does not work for money; and that even the honorarium is not necessary.

I recall an incident of this sort in my experience, where an excellent young lawyer was assigned by the court to defend a criminal case, of murder. The sheriff was directed to take the prisoner and his counsel into a room, for conference, where the counsel might investigate the case. The sheriff remained outside the door. After a few minutes' conversation, the client said to his counsel:

"Do you want to do the best thing you can for me?"

"Yes, I do," was the reply.

"Then," continued the criminal, "you just shuck off your clothes, and let me put them on, while you put on mine. I will pass the sheriff in that disguise, and by the time they find it out, I will be clearing myself out of this town!"

The young lawyer asked to be excused for a minute, returned to the court room, and announced to the judge that he was compelled to decline the case; whereupon another counsel was substituted. The first counsel did not disclose his reasons for declining the case until after the man had been clearly convicted and properly hung.

In one colony it was provided that when his honor upon the bench became distressed over some knot of the law, he was authorized to call into consultation one or two members of the bar to assist in untangling the difficulty, and their fees were taxed as a part of the costs of the case. Many of you have probably needed such a statutory provision of the law. The fees were usually provided by statute; sometimes in money, but more often in the products of the country—for instance, limited to so many pounds of tobacco.

Curious cases of counterfeiting arose; such as watering the legal tender whiskey, or attaching the valued ringed tail of the 'coon to the cheaper pelt of the 'possum. That was the same as raising a bill in this day and time, or of clipping the coin in England.

The lawyer was further obligated not to take any part of the recovery for his fee; not to mislead the judge by any false quotation or false claim of law, and to be respectful to the opposite party and counsel. You may recall the quotation from the written speech of an ancient orator, who, speaking to the opposing party, exclaimed:

"Look not upon me, thou black spider of hell!"

Notwithstanding all these obligations, the lives of our early lawyers were strenuous ones. Difficulties and personal encounters were not at all unusual. Occasionally, a duel would evolve from very trivial circumstances. General Andrew Jackson and Colonel Avery, both of North Carolina, fought a duel at Jonesboro, Tenn., the cause for which grew out of a very innocent practical joke in the courthouse. Jackson was one of that dangerous class of lawyers who used but a single book. His book was "Bacon's Abridgement," which
he continually referred to and read in support of his position. On one occasion a dispute arose between Jackson and Avery in court, whereupon Jackson asked the indulgence of the court until he could go and bring his "Bacon," as he always termed his book. Avery had abstracted the volume from its usual place, and replaced it with a piece of actual smoked bacon, neatly wrapped in the same paper that had enveloped the book. Jackson brought his saddle bags into the court room, and confidently unrolled the piece of meat, amid the vociferous laughter of the court.

I have seen the original challenge which, it is said, Jackson wrote then and there, and which was accepted. The duel was fought without blood, and Jackson and Avery ate their bacon together.

Having now worked the equation far enough to evolve the unknown value of the honorarium, there remains only the question of fees. That is to say, the work and wages of the bar.

For more than a century the profession of the law has been compelled to maintain and advance its position like the old Jewish soldiers rebuilt the City of Peace after its destruction—with a spade in one hand and a spear in the other. Everybody has been against the lawyer, and everybody has been compelled to have him; so that now his is an assured and well-founded position in the front rank of the professions, better than ever before assured of rapid advance in riches, honors and influence. Of course, no profession can claim precedence over that of arms, on land or on sea—especially since universal peace and the Hague arbitrament have become the fad of the day. But from the very nature of things, the profession of arms cannot make a steady advance. It must go by spurts and leaps and gets its reward, not from reason or desert, but from sentimentality and hero-worship. There is no foretelling when a battle may change a map; or when a New Orleans, or a San Juan Hill, or the sinking of a ship in a channel, or the capture of a helpless fleet, or the killing of a lion, may hatch or make a monarch, which no sense nor reason can impede. This has always happened, and ever will happen. The nations that are now pleading for universal peace are begging all others to beat their swords into plow shares and their spears into pruning hooks, while they themselves remain clad in coats of mail. Everybody is praying for peace, and everybody is standing guard, armed cap-a-ple.

Through all this turmoil may be seen the "fine Italian hand" of the lawyer. In peace or in war, the world is helpless without him. In the realms of peace the advance of the wages of the lawyer have been less successful in the South than in the North and West. Few lawyers attain wealth from the legitimate earnings of the profession. They are most advanced in the large cities, where commerce and trade flourish; or in the regions where great financial transactions are to be urged and accomplished. This condition is as natural as that the fisherman who pursues his calling on a large river, or upon the Grand Banks, takes more pounds of fish than he who works the
mountain streamlet,—although the latter may be the better fisherman. Occasionally we find an effort being made to establish a code of fees. Nothing could be more unjust or unsuccessful. The slow sailor and the small shallow would always desire that the whole fleet should be cabled together, so that the laggards might be towed along.

The custom obtains in large cities of keeping and rendering an itemized account of services, to the minutest detail. This custom has never been followed in the South. A charge is made for every conference, rated by its length; for every paper prepared, for every letter written, for each particular step in the courts, with all the expenses appertaining thereto. The village lawyer knows nothing of such procedure. He charges a lump sum for each case, and gets it when and how he can. Sometimes, like the Rebel Government, he takes a tax in kind. A long time ago, a client of mine—honest old Jere Dotson—having an action of ejectment, involving his home, awakened me at my residence about 4 o'clock one morning, where he had come to make a partial payment on my honorarium. On my appearance at the door, he handed me a bundle securely tied up in a bandana handkerchief. It contained one pound of Rio coffee. There was a vile defamation started that I spurned the coffee, but the slander was never proved, and finally died away.

The legitimate bases for charging fees have been for thousands of years divided into four heads and will always remain substantially the same, to-wit:

1. The Greatness of the Case: In this division the case grades itself, because no two cases can be alike in their conditions and ramifications. It involves also the financial ability of the client. The case of a rich man is greater than that of a poor man, even though it be of the same nature. As railroaders say: The traffic will stand a higher rate. It is perfectly fair, legal and right that a millionaire should pay a higher fee for defending his case of assault and battery than a truckman should pay for stealing a ham. All other professions do the same. The minister charges higher for showing the rich man the road to salvation; the physician charges him more for a case of fever; the surgeon charges more for making or healing a wound. And it takes him much longer to do the service than to perform the same operation upon a stoker—just as a good milker should never be allowed to go dry.

Captains of trade and industry cannot make these discriminations. I know a doctor in New York, (and there are many such the world over), who charges one rate for a patient in an ordinary hotel, and another rate, more than double, for a patient in some palatial hostelry. A legitimate practice is fast growing into favor, of grading a charge for professional services on a per centum basis of the amount involved. One great captain of industry may have a disagreement with another. When the lawyer intervenes, he knows where the deep waters lie, and where the ice is thin. He makes an adjustment that is satisfactory to both sides, and demands a fee of a million dollars,
which is willingly paid. I know better lawyers who work more time for less money in other matters.

2. The pains of the sergeant in and about the services rendered: This is a field without limitation. The pains of the lawyer in the service of the case are like those of any other patient—objective and subjective. The subjective grounds for the charges of a lawyer are largely such as he claims them to be. Never has a case had so much labor, anxiety and danger as that which the lawyer is explaining to his client, and that claim he mints into money. And this, short of so-called fraud and oppression, is quite legitimate.

3. His worth, his learning, his eloquence, his gift, and the result of the case: When these are used the client ought to pay for them all. What a wide and fertile field this is in which the lawyer may cultivate his charge! And in this particular he is a lion in his own cause. Who knows so well his own worth, who knows so well his own learning, who knows too well his own eloquence as the lawyer himself! And every man generally makes and compels the world's estimation of himself. Sometimes, with a shallow fool, this descends into egotism; but with the wise man, it is self-appreciation and self-assertion. And, finally on this head, it is worth more to a client to gain a case than to lose one, and he ought to pay accordingly.

4. The custom of the courts: As to this item, I need only say that it is worth four times as much to do professional work in New York as it is to do the same service in Chattanooga. The clients know this, and have to pay for it. Chattanooga needs an uplift.

The world is always willing to pay a fair market price for service which it is compelled to have, and the grading of that price is with you.

It has been my fortune to have had a long professional career. Half a century have I lived in the court house, and I am happy to tell you that I am still there—whether with undimmed eye and natural forces unabated, is not for me to say. Much of the journey has been stony and wearisome; much more of it has been the way of pleasantness and along the paths of peace.

Along this journey I have become acquainted with many leading lawyers throughout every state, and in the dominion. In my opinion, we have to-day in America as efficient a bar as ever graced the world.

As an old campaigner, pausing a moment on the wayside, watching the young soldiers of Themis as they march on to the firing line, my heart throbs with that hope which approaches foreknowledge, that advances are continually being made in industry, in ability, in honor, in trustworthyness, in eloquence, such as the world has never known. I believe that many or all of you have listened to arguments abler and more learned and orations more eloquent than were every heard on the Nile, on the Euphrates, on the Hellespont, or on the golden Tiber.

The American Bar has only one shortcoming. We all know eminent counsel and illustrious judges who receive less compensation
than the baseball player, the athlete of the prize ring, the bull fighter, or the horse jockey. But we must not criticise these latter. The world wants their wares, and is willing to pay the price which they themselves set. It is advisable that the law schools and the law offices would pay more attention to the art and ethics of fixing fees. Each young lawyer is condemned to trim his sails for a port of competency, over an uncharted sea.

To borrow a thought from Horace: While I, myself, may not be able to cut, yet, like a sandstone from the mountains, I may be able to sharpen a new Damascus sword that will.

W. A. HENDERSON.
OFFICERS OF THE AMERICAN BAR ASSOCIATION.

1910-1911.

PRESIDENT,

SECRETARY,
George Whitelock, Baltimore, Md.

ASSISTANT SECRETARY,
W. Thomas Kemp, Baltimore, Md.

TREASURER,
Frederick E. Wadhams, Albany, N. Y.

VICE-PRESIDENT FOR TENNESSEE,
Henry H. Ingersoll, Knoxville.

MEMBER OF GENERAL COUNCIL FOR TENNESSEE,
Albert W. Biggs, Memphis.

LOCAL COUNCIL,
C. J. St. John, Bristol,
A. W. Gaines, Chattanooga,
Lemuel R. Campbell, Nashville,
Charles N. Burch, Memphis.
CONSTITUTION.

ARTICLE I.

Objects.

The objects of the Association are to foster legal science, maintain the honor and dignity of the profession of law, to cultivate professional ethics and social intercourse among its members, and to promote improvements in the law and the modes of its administration.

ARTICLE II.

Election of Members.

All nominations for membership shall be made by the Local Council of a county or Bar Association when such Local Council or Bar Association exists; when there is no such Local Council or Bar Association in any county, nominations for such county shall be made by the Central Council. All nominations thus made or approved shall be reported by the council to the Association, and all whose names are reported thereupon become members of the Association; provided, that if any member demands a vote upon any name thus reported, the Association shall thereupon vote thereon by ballot. Five negative votes shall be sufficient to defeat any election for membership. But interim, the Central Council, upon recommendation of any Local Council, shall have the power to elect applicants to membership.

ARTICLE III.

Membership.

Any person shall be eligible to membership in this Association who shall be a member of the bar of this state, in good standing, and who shall also be nominated as herein provided.

ARTICLE IV.

Officers.

The officers of this Association shall consist of one President, three Vice-Presidents, a Secretary and Treasurer, a Central Council, who shall be the Board of Directors, under the charter, to be chosen by the Association. One of the members of the Central Council shall be its chairman. Each of these officers shall be elected at each annual meeting for the next ensuing year, but the same person shall not be elected President for two years in succession. All such elections shall be by ballot. The officers elected shall hold office until their successors are elected and qualified according to the Constitution and By-Laws.
BAR ASSOCIATION OF TENNESSEE.

ARTICLE V.
Central Council.

The Central Council shall consist of five members, and shall be, at all times, an advisory board of consultation and conference, when called on for that purpose by the President, or any Vice-President who may, for the time being, be acting as President.

ARTICLE VI.
Local Council.

The President, by and with the advice and consent of the Central Council, may establish a Local Council in any county in the state by issuing a warrant to that effect, naming therein the persons composing such Local Council. Each Local Council shall consist of not less than three nor more than seven members. No person shall be eligible to appointment as a member of any Local Council who is not at the time a member of this Association.

ARTICLE VII.
Election of Members.

All members of this convention signing the charter, and all members elected as herein provided shall become members of the Association upon the payment of the admission fee as herein provided for. But after the adjournment of this convention all nominations for membership shall be made as herein provided.

ARTICLE VIII.
Annual Dues.

Each member shall pay three dollars to the Treasurer as annual dues, and no person shall be qualified to exercise any privilege of membership who is in default. Such dues shall be payable, and the payment thereof enforced, as may be provided by the By-Laws. Members shall be entitled to receive all publications of the Association free of charge. The admission fee shall be three dollars, to be paid as the member is elected. The admission fee shall be in lieu of all dues for the first year.

ARTICLE IX.
Adoption of Amendments of By-Laws.

By-Laws may be adopted or amended at any annual meeting of the Association by a majority of the members present.

ARTICLE X.
Committees.

The following committees shall be annually appointed by the President for the year ensuing, and shall consist of five members each:
2. On Judicial Administration and Remedial Procedure.
3. On Legal Education and Admission to the Bar.
5. On Grievances.
6. On Obituaries and Memorials.

A majority of those members of any committee, or of the Central Council, who may be present at any meeting of such committee or council, shall constitute a quorum for the purpose of such meeting. Vacancies in any office provided for by the constitution shall be filled by appointment by the President, and the appointees shall hold office until the next meeting of the Association.

ARTICLE XI.

Central Council.

The Central Council shall perform such duties as may be assigned to them by the President, or as may be defined by the By-Laws, except as herein otherwise directed.

ARTICLE XII.

Meeting of the Association.

The Association shall meet annually at such time and place as the Central Council may select, and those present at such meeting shall constitute a quorum. The Secretary shall give sixty days' notice of time and place of such meeting, either by publication in a public newspaper or by personal communication.

ARTICLE XIII.

Duties of the President.

The President shall open each annual meeting of the Association with an address, in which he shall communicate the most noteworthy changes in the statute law, on points of general interest, made in the state and by the Congress during the preceding year.

ARTICLE XIV.

Alterations or Amendments of the Constitution.

The Constitution may be altered or amended by a vote of three-fourths of the members present at any annual meeting, but no such change shall be made at any meeting at which less than twenty members are present.

ARTICLE XV.

Duties of the Local Council.

Each Local Council shall perform such duties as it may be called upon to perform by the President, or as may be defined by the By-Laws.

ARTICLE XVI.

Suspension of Members.

Any member of the Association may be suspended or expelled for misconduct in his relations to this Association, or in his profession, on conviction thereof, in such manner as may be prescribed by the By-Laws.
BAR ASSOCIATION OF TENNESSEE.

BY-LAWS.

I.—PRESIDENT.

The President shall preside at all meetings of the Association, and in case of absence, one of the Vice-Presidents shall preside.

II.—SECRETARY.

The Secretary shall keep a record of all meetings of the Association, and of all other matters of which record shall be deemed advisable by the Association, and shall conduct the correspondence of the Association, with the concurrence of the President. He shall notify the officers and members of their election, and shall keep a roll of the members, and shall issue notices of all meetings.

III.—SECRETARY AND TREASURER.

The Secretary and Treasurer shall collect, and, under the direction of the Central Council, disburse all funds of the Association; he shall report annually, and oftener, if required; he shall keep regular accounts, which shall be at all times open to inspection of the members of the Association. His accounts shall be audited by the Central Council. Before discharging any of the duties of this office the incumbent shall execute a bond, with good and sufficient surety, to be approved by the President, payable to the President and his successors in office, in the sum of one thousand dollars, for the use of the Association, and conditioned that he will well and faithfully perform the duties of his office so long as he discharges any of the duties thereof.

IV.—CENTRAL COUNCIL.

The Central Council shall meet at least once every three months, and oftener if called together by the President. They shall have power to make such regulations, not inconsistent with the Constitution and By-Laws, as shall be necessary for the protection of the property of the Association, and for the preservation of good order in the conduct of its affairs. They shall keep a record of the proceedings, which shall be read at the ensuing meeting of the Association; and it shall be their duty to present business for the Association. They shall have no power to make the Association liable for any debts amounting to more than one-half the amount in the Treasurer's hands in cash, and not subject to prior liabilities. They shall perform such other duties as are required of them by the Constitution, or as may be assigned to them by the President.
V.—ORDER OF BUSINESS.

At each annual, stated, or adjourned meeting of the Association the order of business shall be as follows:
1. Reading minutes of preceding meeting.
2. Address of the President.
5. Election, if any, to membership.
8. Miscellaneous Committees.

The order of business may be changed by a vote of the majority of the members present.

No person in discussion shall occupy more than ten minutes at a time, nor be heard more than twice on the same subject.

The parliamentary rules and orders contained in Cushing's Manual, except as otherwise herein provided, shall govern all meetings of the Association.

VI.—MEMBERS ELECT.

If any person elected does not, within one month after notice of his election, signify his acceptance of membership by a letter to the Secretary to that effect, and by payment of his admission fee, he shall be deemed to have declined to become a member.

VII.—COMMITTEES.

In pursuance of Article X of the Constitution, there shall be the following standing committees:

1. A Committee of Jurisprudence and Law Reform, who shall be charged with the duty of attention to all proposed changes in the law and of recommending such as, in their opinion, may be entitled to favorable consideration of the Association.

2. A Committee on Judicial Administration and Remedial Procedure, who shall be charged with the duty of the observation of the working of our judicial system, the collection of information, the entertaining and examination of projects for a change or reform in the system, and of recommending from time to time to the Association such action as they may deem expedient.

3. A Committee on Legal Education and Admission to the Bar, who shall be charged with the duty of examining and reporting what change it is expected to propose in the system and mode of legal education, and of admission to the practice of the profession in the State of Tennessee.

4. A Committee on Publication, who shall be charged with the duty of examining and reporting upon all matters proposed to be published by authority of the Association, and pertaining to any of
the subjects for the advancement of which the Association is created.

5. A Committee on Grievances, who shall be charged with the hearing of all complaints which may be made in matters affecting the interest of the legal profession and the practice of law, and the administration of justice, and to report the same to this Association, with such recommendations as they may deem advisable; and said committee shall, in behalf of the Association, institute and carry on such proceedings against offenders, and to such extent as the Association may order, the cost of such proceedings to be paid by the Treasurer, on the warrant of the Central Council, out of moneys subject to be appropriated by them.

VIII.—APPOINTMENT.

Each of the standing committees shall consist of five members, and shall be appointed annually by the President of the Association, and shall continue in office until the annual meeting of the Association next after their appointment, and until their successors are appointed, with power to adopt rules for their own government, not inconsistent with the Constitution or these By-Laws. Any standing committee of the Association may, by rule, provide that three successive absences from the meetings of the committee, unexcused, shall be deemed a resignation by the member so absent from his place upon the committee. Any standing committee of the Association may, by rule, impose upon its members a fine for non-attendance, and may provide for the disposition of the fines collected under such rule.

IX.—CHARGES AGAINST MEMBERS.

Whenever any complaint shall be preferred against a member of the Association for misconduct in his relation to this Association, or in his profession, the member or members preferring such complaint shall present it to the Committee on Grievances, in writing, and subscribed by him or them, plainly stating the matter complained of, with particulars of time, place and circumstances.

The committee shall thereupon examine the complaint, and if they are of the opinion that the matter therein alleged is of sufficient importance, shall cause a copy of the complaint, together with a notice of not less than five days, of the time and place when the committee will meet for the consideration thereof, to be served on the member complained of, either personally or by leaving the same at his place of business during office hours, properly addressed to him. If, after hearing his explanations, the committee shall deem it proper that there shall be a trial of the charge, they shall cause a similar notice of five days of the time and place of trial to be served on the party complained of.

The committee shall be furnished with a list of witnesses, their names and place of residence, who it is proposed shall be examined to sustain the charge, which shall accompany the complaint when
made to the committee; and when the day is set for trial the member complained of, upon his demand therefor, shall be entitled to a copy of said list of witnesses. At the time and place appointed for the trial, or at such other time as may be granted by the committee, the member complained of shall file a written answer or defense. Should he fail to do so, the committee may proceed thereupon to the consideration of the complaint.

The committee shall thereupon, and at such other times and places as they may adjourn to, proceed to hear the evidence adduced and try the complaint, and shall determine all questions of evidence.

The complainant, and the member complained of, shall each be allowed to appear personally and by counsel, who must be members of the Association; and the complainant, and the member complained of, shall each be competent witnesses. The witnesses shall vouch for the truth of their statements on their word of honor. The committee shall have power to summon witnesses; if any such witnesses are members of the Association, a neglect or refusal to appear may be reported to the Association by the committee, and treated as a misconduct.

The committee, of whom at least four must be present at the trial, except that a less number may adjourn from time to time, shall hear and decide the allegations submitted to them; and if they find the complaint or any material part of it, to be true, they shall so report to the Association, with their recommendation as to the action to be taken thereon.

The decision of the committee shall be served on the member complained of, and if the decision be that the complaint, or any material part thereof, is true, and in that case only, the committee shall also serve a copy of the complaint, answer, if there be an answer and decision on the President of the Association; and if requested, either by the member or members complaining, or the member complained of, shall annex thereto a copy of the evidence taken, which said document shall be regarded as a report of the committee to the Association.

Every such report shall be acted on only by the Association at an annual, stated or adjourned meeting of the Association, and of which the member complained of shall have due notice, to be served upon him by direction of the committee. The committee shall thereupon proceed to take such action on said report as they may see fit, provided only that no member shall be expelled unless by the vote of two-thirds of the members present and voting.

Whenever any trial shall be determined on, the member complained of may object, for cause, to any of the members of said committee, which said causes he shall state in writing and present to the committee. Thereupon the committee shall report the facts to the President, and inclose to him a copy of the objections for cause; and the President shall forthwith summon the Central Council to meet with him and determine what weight, if any, the objections
for cause are justly entitled to have; and if the President and a
majority of the Central Committee present and voting shall determine
that the objections for cause are not well taken, and the same are
overruled, the President shall so inform the Committee on Grievances;
but if the President and a majority of the Central Council, as afore-
said shall determine that any of said objections for cause, to any mem-
ber of the Committee on Grievances is well taken, then the President
shall so inform said committee, and forthwith appoint another mem-
ber or members to supply the temporary vacancy caused thereby; and
the method herein provided shall be resorted to until a committee
is obtained against whom the member complained of urges no just
objection for cause.

If any member of the Bar of the State of Tennessee shall collect
money in his professional capacity for a client, and wrongfully fail
or refuse to account for the same, it shall be the duty of the Presi-
dent, or any Vice-President of the Bar Association of Tennessee, on
complaint being made to him by any person, to appoint a suitable com-
mittee from among the members of this Association to investigate
the case, and report the facts to the officer appointing this commit-
tee; and if, in the judgment of that officer, a case can be made out
against the offender, said appointing officer shall order same or
another committee to prosecute the offender in the courts for dis-
barment.

If any member of the Bar of Tennessee shall be guilty of any
unprofessional conduct, for which he could, under the then existing
laws of the land, be disbarred, it shall be the duty of the President
and Vice-President of the Bar Association of Tennessee to proceed
to have him disbarred, as indicated in the by-law just preceding this.

All the foregoing proceedings shall be kept secret, except as their
publication is hereinbefore provided for, unless otherwise provided
for by this Association.

X.—NOMINATIONS AND ELECTIONS.

Nominations of candidates to fill the respective offices may be
made at the time of election by any member, and as many candi-
dates may be nominated for each office as members may wish to
name, but all elections, whether to office or membership, must be
by ballot. A majority of the votes cast shall be sufficient to elect to
office, but five negative votes shall be sufficient to defeat an election to
membership.

XI.—SUPPLYING VACANCIES.

All vacancies in any office or committee of this Association shall
be filled by appointment of the President, and the person thus ap-
pointed shall hold for the unexpired term of his predecessor; but
if a vacancy occur in the office of President, it shall be filled by the
Association at its first stated meeting occurring more than ten days
after the happening of such vacancy, and the person elected shall hold for the unexpired term of his predecessor.

XII.—ANNUAL DUES.

All annual dues of this Association shall be paid on or before the first day of March in each year, and any member failing to pay his annual dues by that time shall be in default, and, upon the order of the President, the Secretary shall strike the name of such member from the rolls of membership, unless for good cause shown the President shall excuse such default, in which last event the name of such member shall, upon the order of the President, be restored by the Secretary to the roll of membership.

XIII.—AMENDMENT OF BY-LAWS.

These By-Laws may be amended at any stated, adjourned or annual meeting of the Association by a majority of those present.

XIV.—RESIGNATION OF OFFICERS AND MEMBERS.

Any officer may resign at any time upon settling his accounts with the Association. A member may resign at any time upon the payment of all dues to the Association; and from the date of the receipt by the Secretary of a notice of resignation, with an endorsement thereon by the Treasurer that all dues have been paid as provided, the person giving such notice shall cease to be a member of the Association.

XV.—SALARY OF SECRETARY AND TREASURER.

The annual salary of the Secretary and Treasurer shall be two hundred dollars, one-half of which shall be due on the first day of May, and the other half on the first day of November in each year, but may be paid earlier, or at other times, if the Central Council shall, in writing, so direct; but this shall be in full of all compensation to him. No other officer of the Association shall receive any salary or compensation.

XVI.—SPECIAL MEETING.

If the President and Central Council shall determine that it is necessary for the Association to hold any other meetings during the year than the regular annual meeting, the same shall be held at such time and place as the President and Central Council may fix, upon twenty days' notice of such time and place, to be given by the Secretary by publication in a newspaper; and the Secretary shall give this notice upon the order of the President.

XVII.—NUMBER OF PAPERS.

Not more than six papers, in addition to the regular order of business, shall be read at each annual meeting and not more than one at each of the sessions of the Association.
XVIII.—LENGTH OF PAPERS.

No paper read before the Association shall occupy more than thirty (30) minutes.

XIX.—CENTRAL COUNCIL TO FURNISH SUMMARY OF REPORT.

It shall be the duty of the Chairman of each standing committee of the Association to send to the Secretary of the Association at least thirty (30) days before each annual meeting the report and recommendations which his committee intends to present to the meeting. The Secretary shall, as soon as practicable after the receipt of the same, print and distribute to the members of the Association a brief summary of the recommendations contained in said reports.

XX.—HONORARY MEMBERS.

All Chancellors and Judges of the Superior Courts of this state, and resident Judges of the Federal Courts, are honorary members of this Association, and they are relieved from the payment of admission fees and dues.
LIST OF MEMBERS.

<table>
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<tr>
<th>Member</th>
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<tr>
<td>Acklen, Jno. H.</td>
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<td>Akers, Albert W.</td>
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<td>Albright, Edward</td>
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<td>Anderson, Harry</td>
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Davis, Judge Ervin L. ................................ Tullahoma
Eldridge, Judge Thos. E. ............................ Memphis
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<tr>
<td>Everett, Judge S. J.</td>
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<tr>
<td>Frazier, Hon. Jas. B.</td>
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<tr>
<td>Galloway, Judge J. S.</td>
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<tr>
<td>Green, Judge Grafton</td>
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<tr>
<td>Haynes, Hal H., Chancellor</td>
<td>Bristol</td>
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<td>Heiskell, F. H., Chancellor</td>
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<td>Heiskell, Gen. J. B.</td>
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<tr>
<td>Henderson, Judge G. Mc.</td>
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<tr>
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<td>Hughes, Judge H. Y.</td>
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<td>Laughlin, Judge H. W.</td>
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<td>New York</td>
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<td>Maiden, Judge R. F.</td>
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<td>McConnell, T. M., Chancellor</td>
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<td>O'Rear, Judge E. C.</td>
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### LIST OF ACTIVE AND HONORARY MEMBERS AR-RANGED ALPHABETICALLY AS TO THE PLACE OF RESIDENCE:

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<tr>
<th>Bristol</th>
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<td>Bachman, E. K.</td>
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<td>Burrow, Robert</td>
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| Wickle, Douglass |                     |

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| Sawyer, C. J.    |                     |
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Thompson, J. A. 

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Phillips, Isaac G
Templeton, H. M.
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Lee Montgomery, Sedalia, Mo.

42 W. 44th Street, New York.
Thos. W. Davis, Wilmington, N.

Edward B. McCarter, Columbus,
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F. H. Kellogg, South McAlester,
I. T.
Clinton O. Bunn, Ardmore, Okla.
R. A. Letter, Fenton Bldg., Port-
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Da.
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The University of North Dakota
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Tennessee State Library,
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INDIVIDUALS.

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   M. M. Fogg,               University of Nebraska, Dept of
Hon. Wm. J. Kraft,           Rhetoric, Lincoln, Neb.
Mr. Francis Rawle,           Camden, N. J.
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                           phia, Pa.