THE LEGAL TENDER CASES IN 1870.

The recent death of Justice Stephen J. Field of the Supreme Court of the United States releases me from a sacred obligation, imposed by my father, the late Justice Joseph P. Bradley, when on his deathbed and enables me to publish to the world the true and heretofore unknown history of the controversy in the secret conferences of the Supreme Court, which led up to and resulted in the famous Legal Tender decision of that Court,-the reversal of the decision of the U. S. Supreme Court in Hepburn v. Griswold, and to vindicate the memory and reputation of my father, by refuting the slanderous charge that Judge Strong and Judge Bradley were appointed to the bench with the distinct understanding that they would vote to reverse the first decision of the Court on that question-the constitutionality of the Legal Tender Act,

The obligation above referred to was that I should not permit the documents herewith printed to become public, "as long as any Justice who was on the bench at that time was still living," and being given me by my father at such a solemn moment and reinforced by the personally expressed wish of Justice Strong, I have religiously conformed to it, but not without great effort, in the face of repeated statements published by distinguished writers, in which they have accepted a mere political rumor of the day, as a *fact* and have referred to the incident as the "packing" of the Court.

Paul L. Ford, in the "Introduction" to his edition of the "Federalist" so refers to it, and J. W. Shuckers in his elaborate "Life and Public Services of Salmon Portland Chase" (Chief Justice Chase), devotes a whole chapter to the subject, pointedly and suggestively intimating that it was a prearranged scheme, if not a corrupt bargain between the then Executive, Gcn. Grant, and the two appointees, Strong and Bradley.

Ex-Secretary of the Treasury, Charles S. Fairchild, in a public address at Boston a few years ago, repeated the charge, and this at last, induced Senator George F. Hoar, of Massachusetts, to publish a refutation of it, based on historical facts and dates, but more particularly in defense of his distinguished brother, Hon. E. R. Hoar, at the time Attorney General, and who had warmly supported and urged the appointment of Judges Strong and Bradley. But the real history of the action of the Court itself is contained and only contained in the "Statement," now given to the public.

The original paper, prepared by Mr. Justice Miller, at the request of the majority of the Court, and signed by them (now in my possession), was kept by him until his death, when Mr. Justice Bradley obtained it and preserved it till the day before he died, at which time he consigned it to my keeping with the injunction before mentioned. This was done with the knowledge and consent of Mr. Justice Strong, the surviving signer of the paper.

It is now given to the public, not only as a vindication of these two great and honorable judges, but in the hope that it will definitely and for all time

settle this often misrepresented controversy and silence the tongues and pens of those who have lightly tossed about the reputations of two men, whose names in legal history will long remain as bright stars in American jurisprudence.

The facts of the case leading up to the controversy cannot be better stated than by quoting from Senator Hoar's letter to the *Worcester Spy* of December 7, 1896:

"On the 7th day of February, 1870, the Supreme Court of the United States met at 12 o'clock. The Senate met at the same hour. After the disposition of some other business, Chief Justice Chase announced the decision of the Court in Hepburn v. Griswold. The Court held, in substance, that it was not within the constitutional power of Congress to make the United States Treasury notes legal tender for debts, past or future. The Chief Justice in his opinion said, in substance, that this power was not expressly granted to Congress by the Constitution, and was not implied as being necessary to the execution of other expressly granted powers, including the power to declare and carry on war. The Judge who gave this decision was himself the author of the law which he declared unconstitutional, and had recommended its passage, and had procured the votes of reluctant Senators and Representatives by personal interviews in which he had urged the passage of the measure on the ground that it was impossible to carry on the war without it, and that the government could neither pay its soldiers nor fulfil its contracts for the supplies and materials of war, if it were restricted to gold and silver alone. Among the persons with whom Mr. Secretary

Chase had these personal interviews is my late colleague, Mr. Dawes, then a leader in the House of Representatives, and several other living persons whom I might name, as well as a good many who are deceased. I mention this not for the sake of implying any censure upon that great statesman and patriot, Chief Justice Chase, for declaring in his place upon the bench the law as it then seemed to him, after the exigencies of the war had passed. Indeed, he deserves the greater honor, if, in interpreting the Constitution in his place upon the bench, he disregarded the consideration that his own reputation might be affected by the charge of inconsistency or by the condemnation which his decision would imply of his own previous conduct. I only mention the fact to show that it was very unlikely that anybody should have expected beforehand that he alone among the leading Republican statesmen of the war period, should come to such a conclusion.

This decision was announced, as I have stated, on Monday, February 7, 1870. I suppose that opinions were read in other cases, that motions were heard, as was then usual on Monday morning, and that probably this opinion was not read before two or three o'clock. Indeed, the reading of the Chief Justice's opinion, and those of the minority, must have taken an hour or two. On the same day, February 7, 1870, the nominations of Justices Strong and Bradley were sent to the Senate. The fact that they were sent there was announced in the *Washington Evening Star* of February 7, and in the Boston and New York evening papers that day. I have now in my hand copies of the nominations which I have obtained from the files of the Senate. They read as follows :

"*To the Senate of the United States:*

"I nominate Joseph P. Bradley, of New Jersey, to be Associate Justice of the Supreme Court of the United States.

"U. S. GRANT.

"Executive Mansion, February 7, 1870."

This is a precise copy of the nomination of the Hon. William Strong, except the name and State. The Senate journal does not show the receipt of any particular nomination until the Senate goes into executive session, which may not be for some days. But the nominations are made public at once, and these were made public all over the country on the afternoon of February 7. I have also in my hand a copy of what was printed in the *Washington Evening Star* of Feb. 7. At the head of the first column, first page, under the heading, "Nominations," is the announcement that the President sent to the Senate that afternoon the nomination of Joseph P. Bradley to be Associate Justice of the Supreme Court of the United States, vice E. R. Hoar, rejected; and William Strong to be Associate Justice of the Supreme Court of the United States, vice Edwin M. Stanton, deceased.

In the *New York Tribune*, of Tuesday, February 8, is the Washington letter of February 7: "The President sent to the Senate to-day the names of Bradley and Strong." In the *Boston Evening Transcript of* February 7, is the statement: "The President has just nominated to the Senate, Judge Strong of Pennsylvania and Joseph P. Bradley of New Jersey as Associate Justices of the Supreme Court." But, more than all, the *Boston Herald* published on the morning of February 8, has, likewise, an announcement of these nominations made the day before. The evening edition

of the *Herald* for February 7, is not in our library. I presume you will find the same thing there, though that is unimportant.

The Senate journal, as I have said, does not show the receipt of any particular Executive nomination until it is opened and laid before the body in Executive session, which may not take place for days or weeks, although ordinarily there is one every few days. But the *Congressional Globe* of that morning shows that the Senate merely transacted its routine morning business, and then took up resolutions in honor of a deceased member, and adjourned. It further shows that during the routine morning business, and before the introduction of bills and resolutions, the President's secretary came in with sundry legislative messages. It is the only time he came in that day. So, undoubtedly, the Executive message nominating the Judges was delivered at the same time with the legislative messages, and was upon the table of the Senate a few minutes after 12 o'clock.

I have dwelt upon these details to show the absolute accuracy of my statement and that of my brother, which I shall quote hereafter, that these nominations were made before the decision. But the question whether the Chief Justice announced his opinion or the nominations got to the Senate first by a few minutes is of the most trifling character, because the President's signature to the nominations must have been made before the session of the Senate that morning, and the Cabinet meeting at which they were discussed was held Tuesday of the previous week, and, as will appearvery soon, the nomination of Judge Strong, at least, had been discussed and agreed upon long before.

The decision of the Supreme Court in Hepburn v. Griswold was made and entered when the Judges had finished reading their opinions on Monday, February 7th, 1870, after the nominations of Justice Strong and Bradley had been laid upon the table of the Senate. It was some hours after they had been signed by the President. It was some days after they had been agreed on in Cabinet meeting. It was weeks after the probable appointment of Judge Strong, as I shall show presently, had been announced in the newspapers. *That was the first and only decision of the Supreme Court in Hepburn v. Griswold. I shall speak presently of what took place November 27, 1869. What I am speaking of now is the decision of the Supreme Court.

The practice of the Supreme Court of the United States is, I suppose, well understood in Massachusetts. It has lately been described by Mr. Justice Harlan in a public address in Cincinnati.

I have taken pains also to get from a very high authority, indeed, a statement to the same effect. The course is precisely the same as that pursued by the Supreme Court of Massachusetts, except that while the decisions of the Supreme Court of the United States are announced, according to the old practice, orally from the bench, the decisions of our Court are now made by a rescript filed in the clerk's office, and accompanied by a brief written statement of the Court's reasons. The course of proceeding in the Supreme Court of the United States is this : After the hearing of arguments the Judges meet in consultation. Each of the Judges states his opinion as fully as he may desire. After every Judge has been heard, and the matter has been discussed as far as any member of the Court thinks fit,

the Judges vote upon the case. The Chief Justice then directs what Judge shall deliver the opinion of the Court. If any Judge dissent, he is at liberty to prepare a minority opinion giving his reasons and the reasons of the other Judges who may agree with him. No record is made of this proceeding, and it is kept absolutely secret within the breasts of the Judges until the public announcement of the opinion in the way I have stated. At some future meeting of the Judges, when the opinion of the Court has been prepared, it is read over to the Judges. It is discussed, changed or modified in consequence of any suggestion that may be made. In very recent years it has been the custom of the Judge preparing the opinion to send copies to his brethren. It sometimes happens that an investigation by the Judge who has the responsibility of preparing the opinion changes his mind and suggests to him some new point of view, which he reports to his fellows, and which changes their minds also. I have had this happen twice in my own practice in Massachusetts. One case was Taft v. Usbridge, where the Court first came to a conclusion in my favor, which was afterward reversed ; and one was the case of Wolcott v. Winchester, where the Court first came to a conclusion against me, but afterward decided in my favor. But no record whatever is made of anything except the mere memoranda of the Judges to aid their own memory until the public announcement. Now to call this proceeding a decision of the Court is, in my opinion, a misuse of language. It is in the highest degree secret and confidential. Any Judge who should betray the confidence of the Court in this matter would be absolutely disgraced, would forfeit the respect of his fel-

lows ; and when we consider the effect upon properties and business affairs of many of these decisions of the Supreme Court of the United States, I suppose it is not too much to say that he would deserve impeachment. I inquired of two Justices of the Supreme Court of Massachusetts, both of whom had been reporters, whether they had ever known of this secret getting out from the Supreme Court of Massachusetts since the beginning of the Government ; and they both replied that they had never known or heard of such a case. In the case of the Supreme Court of the United States I have never known or heard of such a case, with one or two exceptions, although I have been tolerably familiar with that Court and pretty intimately acquainted with every member of it for nearly twenty-eight years. There was a case some time ago where a decision which considerably affected the price of stocks in some way leaked out. Whether it came from some imprudent remark of one of the Judges, or from some page or attendant about the Court room who came across some paper which had been carelessly left exposed, nobody knows. But it exited great feeling on the part of the members of the Bench. Before the Dred Scott decision President Buchanan expressed in his message the hope that the question of the power of Congress over slavery might be removed from political discussion by the determination of the Supreme Court. It was conjectured, but never proved, and I think never believed by the large majority of the profession of the country, that he might have had some understanding in the matter with Chief Justice Taney. I do not believe it myself. The knowledge that the question was before the Court and the general opinions

upon public questions of its members were quite sufficient for President Buchanan's hope, without attributing anything wrong to any member of the Bench.

I ought frankly to concede that to this ascertainment in conference of the opinions of the members of the Court, the term "decision" is not infrequently applied, although there is nothing final in its character. But the word to be used is of no consequence if only the substance of the transaction be clearly understood. There is no finality about it. It is merely what the Judges call a "semble." The Judges hold their minds open to reconsider, modify, or reverse their opinions if new light be shed upon the case by the researches of the Judge who prepares the opinion, or by further reflection or further discussion when the opinion is read in full. And they keep these opinions an absolute secret.

A second meeting of the Judges was held in regard to Hepburn v. Griswold on the 29th day of January, 1870. The opinion in that case was not read and agreed to in conference until that day. (See the opinion of Chief Justice Chase in the Legal Tender Cases, 12 Wallace, 572.)

The dates with which we have to deal with are these:

The opinion of the Judges ascertained in conference 27th November, 1869.

The opinion read and agreed to in conference January 29, 1870.

The opinion of the Court announced, and the decision entered upon the docket, February 7, 1870.

The statute increasing the number of Judges passed April, 1869, to take effect December, 1869.

The nominations of Judges Strong and Bradley sent to the Senate February 7, 1870.

Stanton nominated, December 20, 1869.

Stanton died December 24, 1869.

Judge Grier's resignation to take effect February 1, 1870.

Judge Hoar nominated December 15, 1869.

Judge Hoar rejected February 3, 1870.

It appears from the above statement that when the decision was entered and the opinion was publicly announced, there were but four Judges upon the Bench who agreed to that decision, out of a Court, which when full, consisted of nine. This consideration has not the slightest effect upon the validity of the decision. Whether it should have any weight as to the propriety of a rehearing, is a fair question.

I have no doubt the Court discussed, in consultation, the case of Hepburn v. Griswold, November 27, 1869, and the opinion of the majority was then ascertained. We will consider presently the question whether that opinion leaked out. But first let us take the history of these appointments. When President Johnson came into power the Supreme Court consisted of ten members. By the statute of July 23, 1866, it was enacted that there should be no new appointments, until by death or resignations the Court should be reduced to seven members, and seven thereafter should be the number of Justices. This statute has been generally supposed to have been passed to take from President Johnson the power of appointing any new Judges in place of some of the members of the Court who were growing old, and whose places, in the course of nature, would shortly be vacant. When President Grant came in,

the number of the Court had become reduced to eight members. The docket had become crowded with business, and suitors had to wait years for a hearing. Accordingly, at the short spring session in 1869, an act was passed increasing the number of Justices to nine, and authorizing the President to nominate an additional Judge to the session of the Senate, which would take place the following December. The President nominated to that vacancy Mr. Hoar, then Attorney General. This nomination was made December 14, 1869. I have never heard that anybody supposed or intimated that that nomination was made for the purpose of pacliing the Court, although, as you will observe, it was made three weeks after the first conference of the Supreme Court in regard to Hepburn v. Griswold, and the conclusion then arrived at, by whatever name you choose to call it. There were two members of the Cabinet from Massachusetts. There was none from the great State of Pennsylvania, and there was none from the South. I suppose I should not have to go beyond the columns of the *Boston Herald*, or beyond the abundant testimonials of eminent lawyers, to support the statement that Judge Hoar's character and legal ability were such as to render no other explanation of his selection necessary.

President Grant had determined upon this appointment months before. September 33, 1869, the President called upon Judge Hoar at his room, stayed two hours, and informed him that there was no lawyer from the Southern States he felt willing to appoint to the Court, and asked him to accept the office. I hare now before me my brother's letter to me of that date, in which he states these facts, and asks my advice as to his acceptance.

Mr. Justice Grier, early in December, 1869, sent in his resignation, to take effect on the first of the following February. I have not the date when Judge Grier sent in his resignation. But the nomination of Mr. Stanton, his successor, of which I. have the record with me, was made by the President December 20, 1869. I hat-e never heard that anybody ever dreamed that the selection of Stanton was made for the purpose of packing the Court. A petition asking his appointment had been sent to the President, signed, if I am not mistalien, by every Republican member of the Senate. He had been a great lawyer. He had been Attorney General of the United States. He was the great War Secretary. With the exception of Grant and Seward and Sumner and Chase, he was undoubtedly the most conspicuous figure in American public life. He was a Pennsylvanian, and belonged to the Circuit to which the President would naturally look for a successor to Mr. Justice Grier. Stanton died after accepting the office and before taking his seat, on the 24th day of Decembcr, 1869. Mr. Hoar was rejected by the Senate on the third day of February, 1870, four days before the decision of Hepburn v. Griswold.

When Judge Hoar was nominated, it became necessary for the President to look out for another Attorney General. William Strong of Pennsylvania was offered the place. He came to Washington to see about it. I, myself, saw him there and was introduced to him. I knew at the time that it was expected that he would be my brother's successor, although I cannot say from memory that I heard him say that he expected to take the place. So when Stanton died,

and Judge Hoar was rejected and remained in the old office, it seemed almost inevitable that Judge Strong, if he were fit for the place, should be offered one of the vacant Judgeships. He was from Grier's circuit, and from Pennsylvania, the State in that circuit to whose able Bar the President had looked for an Attorney General. He was admirably qualified for the place. He had been a great Judge in his own State. He was not only the head of the Bar in that circuit, certainly the leading Republican lawyer, and he held a place in the reverence and affection of the people who knew him, as a man of singular purity and integrity, which I had almost said was equalled by that of John Jay alone. I think I am not over bold when I affirm that the bitterest partisan in this country, of whatever political opinion, or from whatever part of the country he may come, will not question in the light of his long service upon the Bench, that the nomination of William Strong needs no explanation other than the statement of the conspicuous merit and quality of the man. This nomination would have been practically inevitable, if the legal tender decision, or the legal tender law, had never been heard of.

Stanton died December 24, 1869. But it was quite natural that the President should not nominate his successor until the question of Judge Hoar's confirmation or rejection was settled. If Judge Hoar had been confirmed, the original plan of having Mr. Strong Attorney General might have been carried out, although he would probably have been appointed to Judge Grier's place. I have no special means of forming an opinion on that question. But the President awaited the final action of the Senate, which undoubtedly had been expected for some time before the final vote, and then sent in the two

I do not think it necessary to vindicate the selection of Mr. Justice Bradley, any more than that of Judge Strong. I have heard eminent lawyers compare him with Chief Justice Marshall, in the vigor and grasp of his intellect, and attribute to him a variety of accomplishments which would not be attributed to Marshall. But such utterances, when we experience a great public loss like that of Judge Bradley, are apt to be extravagant. It is only necessary to say, what I am sure every living lawyer who is interested in such things will agree to, that there is no greater or purer judicial fame than that of Judge Bradley among the Judges who were upon the Court when he took his place upon it, or who have been upon the Court from that day to this.

One thing ought, however, to be said. It was by Judge Bradley's advice that the great railroad, for which he was counsel, determined, when the legal tender laws were in force, that honor and duty required them to pay their debts in gold.

Now, having stated the facts, let us come directly to this foul charge. It can only be sustained by proving three things :

(I.) That the confidence of the Court had been betrayed, and the views of the Judges upon the constitutionality of the legal tender law which they had expressed to each other in their conference, November 27, had leaked out ;

(2.) That these views had become known to President Grant and to the Attorney General or the Cabinet ;

(3.) That in consequence of such knowledge they had done something they would not have done but for that.

These three points have been so conclusively disposed of in Senator Hoar's "Refutation" that further comment on that question is unnecessary. The Court finally having its full complement of Judges, and the imperative necessity of obtaining a final decision of the questions involved in the case of Hepburn v. Griswold forcing itself upon the Government, application for a rehearing of them was made by the Attorney General, and it is to this application and the result of it that the "Statement" prepared by the majority of the Court, and herewith published, has to do. Let it speak for itself !-[EDITOR.]

A statement of facts relating to the order of the Supreme Court of the United States for a re-argument of the Legal-Tender Question, in April, 1870.

[As much adverse criticism has been made upon the action of the Supreme Court in re-considering the Legal-Tender question in other cases, after the decision made in the case of *Hepburn* v. *Griswold*, (8 Wall. 603), the following statement of the facts connected therewith, made by the Justices who voted for the re-consideration, is due to the truth of history. It was elicited by a statement made by Chief Justice CHASE, and placed by him on the files of the court, but withdrawn when he learned that a counter statement would be made. Inasmuch, however, as his statement has evidently been used by his biographer, if not in other ways, it is no more than just that the statement of the Justices should be printed for preservation and for future reference if necessary.

It is proper to add, that Mr. Justice GRIER, one of the majority who decided *Hepburn v. Griswold*, had tendered his resignation in December, 1869, to take effect the 1st of February, 1870 ; and that the decision in that case was not announced until Monday, the 7th of February. The nomination to the Bench of Messrs. STRONG and BRADLEY was made on the same day, but had been prepared the week before, and had been under consideration for some time previous, in consequence of recommendations from the Bar and others, without any reference to the legal tender question.

The statement is as follows :]

LATHAM
v.
THE UNITED STATES.

DEMING
v.
THE UNITED STATES. I

The very singular paper filed by the Chief Justice in these cases, in regard to the order of the Court, by which they are set down for hearing on all the questions presented by their respective records, leaves the court no alternative but to present a reply in the same manner that the statement of the Chief Justice is presented.

The paper itself is without precedent in the records of the Court. On the first day of this month the Court announced, by the mouth of the Chief Justice, that these cases would be heard on the 11th day of the month, on all the issues involved in the record.

In making this announcement the Chief Justice did all that was necessary to prevent any misconception of his opinions by stating that he and Justices Nelson, Clifford and Field dissented from the order. This statement was placed in the records of the Court,

The present statement [that of the Chief Justice], therefore, was not necessary to explain the position of those gentlemen, or to vindicate their action, for it was well understood and was assailed by no one.

It is an effort to take the action of the Court out of the ordinary and usual rules which govern it in the simple matter of deciding when it will hear a case, and what shall be heard in that case, and subject the Court to censure, because it will not consent to have the rights

of the parties in such cases controlled by the vague recollection of some members of the Court, presented only in conference, not reduced to writing, nor ever submitted to the consideration of counsel charged with the conduct of the cases. If this be a just ground of censure, we must submit to it, and will be content to bear it.

In reference to the facts on which the Court acted, it is conceded by all that the cases, having been passed without losing their place on the docket, were entitled to a preference whenever either party should call them up and insist on a hearing. The Attorney-General, on behalf of the United States, did this on Friday, March 25. At the same time he stated that the cases presented the same question in regard to the constitutionality of the legal tender statutes that had been decided in the case of *Hepburn v. Griswold*, at the present term, and asked the court to hear argument on that question. Mr. Carlisle, counsel for Latham, was present, and reminded the Court that some six weeks before he had asked that his case might be set down for hearing, and that he now wished for an early hearing, but hoped that the legal tender question would not be reconsidered in his case.

He did not at that time in timate in any manner that there had been any agreement of counsel, or any action of the Court, which precluded that question in his case.

The nest day being conference day, the Court acted on the motion of the Attorney General ; but on Monday morning, before it could be announced, the Chief Justice produced a letter from Mr. Carlisle to him, remonstrating against reopening the legal tender ques-

tion in his case, and insisting that he had a right to expect that the case of *Hepburn v. Griswold* would, as to that point, decide his case also ; but he did not state in that letter that any order of the Court had been made to that effect, or any agreement of counsel, verbal or otherwise.

This letter of Mr. Carlisle, the only written document, paper or statement ever presented to the Court before its order was announced, as a foundation for refusing to hear the legal tender question in the two cases, was never filed with the clerk, and cannot now be found by us.

The Court, in deference to Mr. Carlisle's statement, made an order that on Thursday, the 31st of March, the whole matter should be heard in open Court. On that day the Attorney-General, who had been shown Mr. Carlisle's letter, appeared and insisted on his motion. Mr. Carlisle opposed it, and in argument gave his history of the cases in this Court. He also argued that from that history he had a right to expect that whatever should be the judgment of the Court in *Hepburn v. Griswold* as to the constitutionality of the legal tender acts, should conclude that matter in his case. *But he did not state or rely on any agreement with counsel of the government of the one case by the other, or any express order of the Court to that effect.*

Mr. Merriman, the senior counsel in Deming's case, was present at this argument. He took no part in it. He made no objection to the argument of the legal tender question in his case, and did not then claim, nor has he ever claimed in court, that that question was precluded by any action of the Court, or agreement of counsel.

On full consideration of all that was then before it, the Court announced on Friday morning, the 1st of April, that the two cases would be heard on all the questions presented by the records on Monday, the 11th, ten days thereafter; and at the same time the Chief Justice announced the dissent of himself and the other Justices already mentioned, to this order.

When that day arrived, a letter was presented from Mr. Carlisle, dated in this city, of the Saturday before, in which he said he had not had time to prepare for the argument, and that he had an engagement to try a case in New York on Tuesday, which he had not been able to postpone, and again urged the injustice of a reargument of the legal tender question in his case, and stated that he *understood when his case had been passed, that it would abide the decision in Hepburn v. Griswold.* A telegram was also read stating Mr. Merriman's illness. The Court from the bench postponed the hearing for one week.

Since that time the Chief Justice has received a letter from Mr. Norton, former Solicitor of the Court of Claims, who once had some charge in that capacity of these cases, in which he states, that when the cases were continued in March, 1868, he understood that they would be governed as to the legal tender question by the decision of *Hepburn v. Griswold,*

Of both these letters, now the only papers on file in regard to the matter, it is to be observed—

1. That they were presented after the Court had appointed a day for hearing all that might be said for or against the motion, and after both parties had had a full hearing, and after the Court had, on full consideration of all that was before it, fixed the day for

hearing, and decided to hear the whole matter in issue. Of Mr. Norton's letter it may be further said, that it was made after Mr. Carlisle's two efforts to prevent a hearing had both been considered and overruled, and is made by a gentleman not now engaged in the cases, without verification, and without notice to any party, or counsel in the case.

2. That neither of them assert that any agreement, contract or promise was made by the counsel of the United States, that *Hepburn* v. *Griswold* should control these cases in any matter of law whatever.

We do not doubt that counsel for appellants and counsel for the United States believed, and in that sense understood, that the judgment of the Supreme *Court* in *Hepburn* v. *Griswold,* and the other legal tender cases argued at the same time, would establish principles on that subject that would govern the cases now under consideration, and all other cases in which the same questions might arise.

This understanding was no more than the expectation, usual and generally well founded, that a principle decided by this Court will govern all the cases falling within it. But this expectation must be subordinated to the possibility, fortunately rare, that the Court *may* reconsider the questions so decided ; and confers no absolute right.

We have thus far considered only what occurred in open Court since the motion of the Attorney-General was made to take up these cases ; and in what has been said the Court, consisting of Justices Swayne, Miller, Davis, Strong and Bradley, all concur.

But the paper, to which we are replying, under takes to give a history of the connection of these two

cases with certain others, involving the legal tender question, so much at variance with the records of the Court, and with the recollections of the three Justices of the Court first above named (the other two not then being members of the Court), that we do not feel at liberty to permit it to pass in silence.

This statement invades the sanctity of the conference room, and in support of its assault upon the Court, does not hesitate to make assertions which are but feebly supported by the recollections of a part of the four Judges who join in it, but which are inconsistent with the record of the Court, and are contradicted by the clearest recollections of the other three Judges who then composed a part of the Court, who oin in this answer.

It is attempted, by speaking of these cases as two out of nine, which the Court constantly had in view as involving the legal tender question, to sustain the inference, that they were to be decided with the -others, and were submitted to the Court, so far as the legal tender question was concerned, at the same time.

Now, the first and only time the legal tender cases were grouped together in any order of the Court was on the 2d day of March, 1868, when the following order was made of record :

"No. 89. S. P. & H. P. Hepburn *v.* Henry Griswold, }
" No. 225. Frederick Bronson v. Peter Rodes. }

" Ordered by the Court, That these cases stand continued for re-argument by counsel at bar on the first' Tuesday of the nest term, and that the Attomev General have leave to be heard on the part of the United States."

" No. 35. Mandelbaum *v.* People of Nevada.
" No. *60.* The County of v. The State of Oregon.
" No. 67. John A. McGlynn, Es'r, &c., v. Emily Magraw, Ex'trix.
" No. 71. Joseph C. Willard *v.* Benj. 0. Tayloe.

" Ordered by the Court, That these causes stand continued to the next term, with leave to counsel to reargue the same if they see fit on any question common to them and to Nos. 89 and 225."

The Chief Justice says that there were nine of these cases in all, which were to be governed by the decision of the Court made on the general argument in regard to legal tender. Here are six of them grouped in these two entries standing together. If Latham's and Deming's cases stood on the same agreement, or the same order, why were they not included ? It will not do to say that they were carelessly omitted, for the order is evidently drawn with particularity, and there can be no doubt that it includes all that it was intended to include.

Nor will it do to say that these cases could not be included because they had other questions besides legal tender, for the cases of *Willard* v. *Tayloe* and *Mandelbaum v. Nevada,* which are in the order, included other questions, and were finally decided without touching that question. The case of *Horwitz* v. *Butler,* which is necessary to make out the nine alluded to, although it involved nothing else but legal tender, was argued by itself after *Bronson* v. *Rodes* was decided. There was, therefore, evidently no general agreement or order, that cases not named should abide those that were, because they involved that question.

It is said that subsequently to the decision of *Hepburn* v. *Griswold,* these cases " were called on sev-

eral occasions, and it was again stated by the Chief Justice from the bench that the legal tender question having been determined in the other cases would not be again heard in these."

This statement is, as we are satisfied, founded in an entire misapprehension. If any statement had been made from the bench that no argument would be heard in these cases of the legal tender question, it would certainly have attracted the attention of the Judges who did not agree to that opinion, and would have met with a denial on their part so emphatic as to be remembered.

The cases now under consideration were numbered six and seven of the docket of this term. They had, therefore, as the records of the Court show, been called and passed on the Sth December, two months before the announcement of the decision of *Hepburn* v. *Griswold*, which was February 8.

It further appears, that on the 10th December the Attorney General moved to dismiss the appeal in Latham's case because it had not been taken in due time. The opinion of the Chief Justice is entered of record overruling this motion, because, though the appeal was not allowed within ninety days, it had been prayed within that time. In all these orders no hint is given that these cases were to abide the judgment in *Hepburn v. Griswold.*

Very soon after the decision of *Hepburn v. Griswold*, Mr. Carlisle called attention to the Latham case, and asked that an early day be assigned for its hearing. The Chief Justice was about to do this in open Court, when Mr. Justice Miller requested him to take the matter into conference. When the motion was called

in conference, Mr. Justice Miller said that the case involved the legal tender question, and that he hoped it would not be set for hearing until the two vacancies. on the bench were filled, as nominations were then pending for both of them. No objection was made to this, and the motion of Mr. Carlisle was postponed indefinitely. The Chief Justice remarked, as those of us who were present well recollect, that he considered the legal tender question as settled by *Hepburn* v. *Griswold,* as far as it went, but none of the Judges gave any intimation that there was anything in the history of these which precluded that question from being considered in them. If it could not, there was no reason for postponing their hearing for a full bench, as was done, for they are otherwise quite unimportant, either in principle or amount, and were entitled to a speedy hearing, as they had been long delayed.

Conceding, as we do freely, that our brethren believe that such an order or statement was made verbally, should it govern our action ?

We cannot consent to this, because if any order or statement was made orally, unless it was reduced to record, or is assented to or admitted by the counsel for the United States, it is no sufficient legal ground for refusing to hear the appellee on any defence found in the record of these cases.

In support of this we hold the law to be that without some order of Court made of record, or some written stipulation signed by the party or his counsel, or some verbal agreement of the parties established to the satisfaction of the Court, no party can be deprived of the right to any defence in this Court which the record of his case presents.

Much stress is laid in the paper we are considering upon the long deliberation, the clear majority and the liberality of the Court in giving time to the minority to file the dissent in *Hepburn v. Griswold*, and we are freely told the steps in conference which led to the final result.

The minority in that case are profoundly impressed with the belief that the circumstances of that decision, if well understood, would deprive it of the weight usually due to the decisions of this Court. The cases had been on hand eighteen months or more. There was no pressure for a decision. There was one vacancy on the bench. It was believed that there would soon be another. Under these circumstances the minority begged hard for delay until the bench was full. But it was denied. When, after all this argument and protracted consideration, the case was taken up in conference, and was there discussed for three or four hours, in which discussion every Judge took part, the vote was taken and the Court was found to be equally divided on affirming or reversing the judgment of the Court of Appeals of Kentucky. * Before the conference closed, however, the vote of one of the Judges who had been for reversing the judgment was changed. The circumstances under which this vote was changed were very significant, but we do not deem it proper to state them here. Without that change no opinion could have been rendered holding the legal tender statutes unconstitutional.

The question thus decided is of immense importance to the government, to individuals and to the public. The decision only partially disposed of the great question to which it related, and has not been received by

the profession or by the public as conclusive of the matter. If it is ever to be reconsidered, a thing which we deem inevitable, the true interests of all demands that it be done at the earliest practicable moment.

We did not seek the occasion, but when the case seemed fairly before us we could not shrink from our duty as we understood it.

We could not deny to a party in Court the right which the law gave him to a hearing on all the defences which he claimed to have. When, on the other hand, the rules of the Court did not admit of a rehearing in the case of *Hepburn* v. *Griswold*, we did not attempt to strain or modify those rules to reach the question. In this case, as in all others, we have endeavored to act as the law and our duty required.

The foregoing paper of eighteen pages [in the manuscript] was prepared and agreed to as the reply of the Court to a paper filed by the Chief Justice on behalf of himself and Justices NELSON, CLIFFORD and FIELD. That paper has been withdrawn by them from the files of the Court, and this is, therefore, not filed.

We all concur in the statements of the foregoing paper as to the reasons for our action in the matter to which it refers, and the statement of facts we declare to be true so far as they are matters which took place while we were respectively members of the Supreme Court.

WASHINGTON, April 30, 1870.

N. H. SWAYNE.
SAN. F. MILLER.
DAVID DAVIS.
W. STRONG.
JOSEPH P. BRADLEY.

[NOTE.—The original draft of the statement, as drawn by Justice MILLER, from the asterisk on page $1, concluded in the words printed below. But, on consultation with the other Justices at the time it was thought best to omit it, as Justice GRIER was still living, and might be pained if it should come to his knowledge. Justice MILLER, however, preserved it, and placed it in the same envelope with the statement as modified, where it was found after his death. It was as follows :]

* This would have affirmed the judgment, but settled no principle.

An attempt was then made to convince an aged and infirm member of the Court that he had not understood the question on which he voted. He said that he understood the Court of Appeals of Kentucky had declared the legal tender law unconstitutional, and he voted to reverse that judgment. As this was true, the case of *Hepburn v. Griswold* was declared to be affirmed by a Court equally divided, and we passed to the next case.

This was the case of *McGlynn, Ex.*, v. *Magraw*, and involved another aspect of the leg-al tender question. In this case the venerable Judge referred to, for whose public services and character we entertain the highest respect, made some remarks. He was told that they were inconsistent with his vote in the former case. He was reminded that he had agreed with a certain member of the Court in conversation on propositions differing from all the other Judges, and finally his vote was obtained for affirming *Hepburn* v. *Griswold*, and so the majority, whose judgment is now said to be so sacred, was obtained.

To all this we submitted. We could do nothing else. In a week from that day every Judge on the

bench authorized a committee of their number to sap to the Judge who had reconsidered his vote, that it was their unanimous opinion that he ought to resign.

These are the facts. We make no comment. We do not say he did not agree to the opinion. We only ask, of what value was his concurrence, and of what value is the judgment under such circumstances ?

That question thus decided is of immense importance to the Government, to the public, and to individuals. The decision only partially disposed of the great question to which it related, and has not been received by the profession or by the public as concluding the matter. If it is ever to be reconsidered, a thing which we deem inevitable, the best interests of all concerned, public and private, demands that it be done at the earliest practicable moment.

We have not sought the occasion, but when the case is fairly before us, if it shall be found to be so in these cases, we shall not shrink from our duty, whatever that may be. For the present, we believe it is our duty to hear argument on this question in these cases.

Whether the judgment of the Court in *Hepburn v. Griswold* shall be found by the Court to be conclusive, or whether its principles shall be reconsidered and reversed, can only be known after the hearing ; and in the final judgment of the Court, whatever it may be, we are satisfied there will be acquiescence.

At all events, the duty is one which we have not sought-which we cannot avoid.

PERSONAL,

POLITICAL, HISTORICAL

AND

PHILOSOPHICAL.

BURR, AARON.

I have just finished (November 29, 1837) the perusal of the second volume of Davis's Memoirs of Aaron Burr. I took up that work with the most bitter prejudices against Burr, but I must confess that a perusal of it has very much softened, if not entirely eradicated, my detestation of his character. Burr, no doubt, was a persecuted man. He had intrigue, perhaps too much like Pope, he practiced it when a straightforward course would have answered his turn as well. This rendered him suspected ; being suspected, made him suspicious ; being thus suspicious and suspected, his conduct toward General Hamilton, on the one hand, and the conduct of the administration towards him in relation to the liberation of Mexico on the other, are accounted for. He went too far in call, ing out General Hamilton, although he received serious provocations which had never been caused, nor revenged by similar conduct on his part. He was above abusing a rival, but he would take all honorable means of triumphing over him. Hamilton was not above abusing a rival; but he would not go to such lengths, perhaps, to secure a triumph. As to his being guilty of treason in 1806 and 1807, there is very little ground to imagine such a thing. Aaron Burr was not that devil incarnate which I had supposed him to be.

The letters which passed between him and his daughter are some of the finest models of epistolary writing I ever saw. I think them superior to Lady Mary W. Montague-not in mind, nor in polish, nor in

literary merit, nor in refinement, but in that playful ease, and in that eternal sprinkling of the purest attic salt which should characterize the epistolary. They are perfect specimens of letters. Everybody can see that the author of the book has crowded as many of these letters into it as he possibly could, in order to exhibit Burr in his most attractive light-his private relations-and thus abstract the attention of the reader from the events of his public life. Though, on a perusal of the book, one could not point out any particular event of Burr's public life on which the author could have been more full than he has been. On the whole, the work is a good one, in my view, and will tend to repress the imputation of sinister and vindictive motives to public men, by teaching the lesson that a man may be hunted down as a monster in society, who, to his own intimate friends, exhibited the tenderest, noblest feelings of our nature.

A LOVE LETTER.

SEPTEMBER 6, 1838.—"This world has not so many charms for me as it once had. I have been tossed on its ruder surges so long that I have learned to look for pure and abiding happiness in some more pure and abiding world. But life must be spent here; duties must be discharged here, and I should be ungrateful to my Maker if I did not believe that He has provided me with some source of happiness connected with the situation in which He has seen fit to place me. But, where is happiness to be found. She

is not seen in the giddy world of fashion, nor does she smile on the plumes of vanity and conceit. She is social in her nature, and domestic in her habits. Sweet in her disposition, her smile is bewitching. Tenderness beams in her eyes, and affection throbs in her heart. Her own fireside is her empire ; beyond it her wishes never extend. Good sense and intelligence are her attendants ; religion is her friend." Such is the picture which I have often draw-n of the purest earthly bliss-a picture which has had its counterpart in real life, but which I have had little hope ever to realize.

(NOTE.) This extract is part of a love letter which, however, was never sent to the person for whom it was intended.

ADMISSION TO THE BAR.

DECEMBER 29, 1839.—On Wednesday evening, November 13, 1839, I was examined, at Trenton, before the Justices of the Supreme Court of New Jersey, on application for license to practice law ; and on the next day, licensed and admitted to practice as an attorney at law and solicitor in chancery in said State. The following Friday I started for Albany, and after staying at home nearly five weeks, returned to Newark Wednesday, 18th inst., where I still remain, undecided where to settle. Whilst at home, I witnessed much of the Helderberg disturbances, which elicited a call from the Governor of New York on the militia to suppress them. No blood was shed but that of divers pigs and fowls.

(Signed) J. P. BRADLEY.

A PICTURE.

George B. Corkhill, of Washington, D. C., lately purchased an engraving, a little old and rough looking, exhibiting a Judge with ass's ears sitting on a tribunal, with Justice blindfolded on his left. Before him an old man brings forward a female figure, who holds a torch in one hand, and with the other clutches by the hair a little imp, who makes wry faces and kicks about resistingly. Behind the female figure are some attendants of hers, one of whom carries a drag-net on her shoulder. Guards stand at the door half concealed. In the estreme left hand upper comer an open window shows a demon in the distance on the wing, dragging away a female figure, as if it were a spirit taken to perdition. The engraving has a legend, as follows :

> Attrahit insonte perjura calumnia Apelle.
> In jus immiscens fanda nefanda simul
> Auriculis judex insignis tepora aselli
> Jus paritcr reddit collite cu comite
> Temporis at demum quae fertur filia seros
> In lucem profert qui latuere dolos.

Which may be freely translated thus :

> " False swearing Calumny drags into Court
> Apelles innocent. The stupid Judge,
> Confounding Right and Wrong, his temples crowned
> With Ass's ears, with blindfold Justice by,
> Awards alike to both-the Good-the Bad.
> Time's daughter (Truth), who now at length is brought,
> Reveals the hidden Fraud, alas, too late !

The moment seized by the artist seems to be that at which Truth, with torch in hand, and clutching by the hair the struggling imp, representing the fraud

that has lain concealed, and which has just been dragged from the water, reveals to the Court the awful mistake it has made. The Judge seems greatly surprised, and poor Justice hangs down her head in shame. The old man who brings " Truth " forward may be either " Time " or the agonized father of the victim, who was unjustly condemned, and whose spirit is seen to the left carried away by a demon. The drag-net of " Truth," held by one of her attendants, shows her perseverance in finding out the fraud, and reminds us how all hidden things are brought to light by her indefatigable efforts, even from the bottom of the sea.

The engraving has inscribed on a slab or caryatides, in the body of the piece, this note : " Georgius Ghisi, Mant. f 1560." That is, executed by George Ghisi of Mantua 1560. At the foot is inscribed on a scroll, " Luca Penis. in." That is, " Luca Penni's design." Luca Penni was born 1500, and was a, scholar of " Raphael." Ghisi of Mantua was a generation later. In Spooner's Biographical history of the Arts, under the title " Ghisi, George," is a list of some of Ghisi's engravings, and amongst others, this, " An allegorical subject representing a Judge on his tribunal with ass's ears, *after Luca Penni.*" The engraving purchased by Mr. Corkhill is probably a French copy. I judge that it is not an original, because wanting the artist's monogram, and because it has an imprimatur, "cum privilegio regis." It may have been copied in the reign of Louis XIV or XV.

(Signed) J. P. BRADLEY.

JUNE, 1882.

201 " I" STREET, June 9, 1882.

DEAR MR. CORKHILL:

In looking over my version of the legend of your engraving, it occurs to me that the " immisccns fanda nefanda simul " may be attributed to the Prosecutor, " Calumnia," rather than to the Judge, whose greatest crime appears to be his stupidity. Correcting it on this theory, the rendering would be :

> False swearing Calumny drags into Court
> Apelles innocent, and guileful pleads,
> Together mixing up things Right and Wrong.
> The Judge with ass's ears on temples grown,
> Like judgment gives, with blind associate by,
> Time's daughter (Truth), who now at length is brought,
> Reveals the hidden fraud, alas, too late.

This is more liberal, and seems to be more in keeping with the original.

Yours truly,

(Signed) JOSEPH P. BRADLEY.

TRANSLATION OF LUCAN'S EULOGY ON POMPEY.

> Casta domus luxuque carens, corruptaque ninquam
> Fortuna domini, clarum et venerabile nomen
> Gentibus, et multum nostrae quod proderat urbi.

> A household chaste, of luxury devoid
> And by its master's fortune uncorrupt.
> A name renowned and venerated wide
> Among the peoples, and that hath enhanced
> Our city's weal.
>
> *Lucan's Pharsalia, IX.*

18844.

TO MY SISTER "MARY," MARCH 14, 1886.

The clouds are gathering, soon the night will come,
And we shall reach our long-expected home.
But from the mile post marked with "Seventy-three"
I hail you, sister, where you follow me;
Six stages back is all the space between,
For you, as I, the best of life have seen;
The most, if not the best, for who can know
Which is the best for mortals here below,
Youth, hope and fancy, or the sober close
Of life's long trials settling to repose,
Lit up by gleams reflected from that shore
Where wait our loved ones who have gone before?
They wait, they beckon, why should we withstand
The law that draws us to that happy land?
Then, cheerful, onward, let us hence pursue
The journey left that hides that land from view.

(Signed) J. P. BRADLEY.

ANSWER TO A REQUEST FOR A MOTTO.

WASHINGTON, 19th Sept., 1887.

DEAR SIR:

I know of no motto truer or more to be studied by a young man than the following:

Haec sunt Fortunae optima dona:
Sana mens in corpore sano,
Sedulus labor, probitas pura.

The best gifts of fortune are these:
Health of body, a sound understanding,
Pure integrity, industry untiring.

Yours truly,

(Signed) JOSEPH P. BRADLEY.

MR. ELLERY S. AYER,

Boston.

DREAMLAND.

I do not know whether I am singular, but I have a dream-world to which I often repair in sleep. I do not refer to those phantastic scenes and incidents which have no rational connection or cause, and which often attend our unquiet slumbers, and leave little trace behind, or any deep impression. My dream-world is very different. It has generally the same phantasmagoria of surrounding objects and scenery, and is altogether a pleasant and homogeneous system of things. The singularity of it is, that it has this constant sameness after the lapse of years. The principal scene is located in a city, having a great resemblance to the City of Newark, where I formerly resided and in this underworld city I am always residing and have an office in the business part of the town, on the ground floor, fronting on the main street ; but it is usually closed in consequence of my prolonged absences. I sometimes go in to look over some old and rare books that I keep there-books the like of which I never saw in my waking moments. One of these books is at least a yard in height, and half a yard in width, and at least four inches thick. The binding is very old and heavy, the corners being much frayed. The print is large and in double, and sometimes treble, columns on the page. It is hard to tell what the subject of it is. It contains chapters on law, and on chronology and on philosophy and on religion, and I find some very curious things in it, some of which, if I get time, I will relate. There are other old books of various sizes, some nearly as large as the one I have described, and thence ranging down to

ordinary quartos and royal octavos. I have generally some anxiety when I visit the office to see whether any of the books have been stolen. I sometimes find them disarranged, but generally put them in their proper places again. My principal trouble arises from the improvements that are often going on in the neighborhood. They have been building a row of brick houses in the rear, on the nest street, and the lots join. I am constantly fearful lest the workmen will come on to my lot and get into my back windows and carry off some of my books, and then sometimes when I am absent, and one of my clerks, or young men, occupy the office part of the day, other lawyers come in and borrow the books ; and some forget to return them. In going up and down the street, I meet many of my old acquaintances, long since dead, and have many interesting conversations with them. I visit this dreamland, sometimes as often as once a month, sometimes only after an interval of a year or more, but I always find it the same, and the old books the same. The impression of its reality has become so strong that even in my waking moments I sometimes imagine for an instant that I possess those old books somewhere, and do not recover from the hallucination until I begin to inquire with myself where they are.

WASHINGTON, January 27, 1889.

THE MARITAL RELATION.

ASSOCIATE JUSTICE BRADLEY IN THE "NORTH AMERICAN REVIEW'" FOR DECEMBER, 1859.

As marriage and the family institution constitute the foundation and chief corner stone of civil society, it is of the greatest moment that the marriage-tie, should never be dissolved save for the most urgent. reason. I cannot assent, however, to the doctrine that it should never be dissolved at all. Mere separation, though legalized, would often be an inadequate and unjust remedy to the injured party, who would thus be subjected to an enforced celibacy. This might suit the notions of those who regard celibacy as a virtue, but would fail to approve itself to those who take a wider and more charitable view of human nature. The divine law, which says, "What God has joined together let not man put asunder," immediately adds an exception, "save for the cause of fornication," showing what the law of nature dictates, that the case is not governed by any iron rule of universal application. The law, "Thou shalt not kill," has its necessary exceptions, a disregard of which would render it mischievous in a high degree. I know of no other law on the subject but the moral law, which does not consist in arbitrary enactments and decrees, but is adapted to our conditions as human beings. This is so, &ether it is conceived of as the will of an all-wise Creator, or' as the voice of humanity, speaking from its experience, its necessities and its higher instincts. And that law surely does not demand that the injured party to the

marriage vows be forever tied to one who disregards and violates every obligation which it imposes ; to one with whom it is impossible to cohabit ; to one whose touch is contamination. Nor does it demand that such injured party, if legally free, should be forever debarred from forming other ties through which the lost hopes of happiness for life may be restored. It is not reason, and it cannot be law, divine or moral, that unfaithfulness, or wilful and obstinate desertion, or persistent cruelty of the stronger party, should afford no grounds for relief. The most rigid creeds, to the contrary, hare found methods of dispensation from the theoretical rule. And if no redress be legalized, the law itself will be set at defiance, and greater injury to soul and body will result from clandestine methods of relief. Yet so desirable is the indissolubility of marriage as an institution, so necessary is it to the happiness of families and the good of society, so pitiable the consequences that often flow from a dissolution, that every discouragement to such a remedy should be interposed. Not only should the Judge take every care to see that just cause exists, but that no other remedy is possible. No jugglery or privacy should be tolerated, however high in station the parties may be. Investigation of the truth should be thorough and open, and should be a matter of public concern, participated in by the public representative of the law. It should be regarded as a quasi-criminal process, if not accompanied with criminal sanctions. Only serious and even severe methods of administering the law will be sufficient to repress the growing tendency of discontented parties:: to rush into divorce courts.

RUTGERS' ALUMNI DINNER.

LETTER OF "REGRET" SENT BY JOSEPH P. BRADLEY, DATED WASHINGTON, FEBRUARY 26, 1891.

L. LAFLIN KELLOGG, Esq.,

DEAR SIR:—I am sorry that I cannot be present to-morrow evening to join our alumni at their annual dinner, and to answer personally to the toast of "The Bench." I can only say in this circumscribed way, that "The Bench" of the forum is quite as uneasy and anxious a seat as "The Bench" of the country schoolhouse, or the old stone college, without the opportunity of cutting your name on it with a jackknife. That must be done with a different weapon. How deeply we all sympathize with each other on looking back, with a sigh, to those happy days when the only care was to con a lesson well, or to make a creditable recitation; and yet, as the boy is father to the man, so the college is mother-alma mater-to every branch of professional life, looked back to, looked up to as the source of all that is good or excellent in years of riper development. But the standards of attainment and approbation, how different! It is not now a question of Greek roots, or mathematical abstractions, with anxious desire to win a professor's smile; it is a question of honest duty performed in the hard struggles of life; of wisdom daily acquired; of "increasing in favor with God and man," each of us squaring his life, or trying to do so, by some standard appropriate to his calling; the merchant, by probity and diligence in business; the physician, by the most advanced

analysis of human ills and their remedies ; the divine, by the lofty ideals of sacred literature and the moral manifestations of modern society ; the lawyer, by studying the fountains of jurisprudence, as applied to the phases of every-day business ; the jurist, by the lights of truth and justice, from whatever source derived, and all with a watchful world for spectators and audience and judges.

Before us, on the Bench, stands the awful Goddess of Justice and Law, watching every word and weighing every decision ; if we make a mistake, sending a chill through every vein ; if we decide right, rewarding us only with a kindly nod of approval, but leaving us to incur small thanks, and often deep curses, from those whose cases we are called upon to determine. And, how fearful is the abiding consciousness, that, however just our decisions may be, wretchedness, poverty, ruin on one side or the other, may hang on our words. Rejoice, fellow Alumni, for your freedom from such trials. Your pursuits do not necessarily involve, as our functions often do, the ruin of fortunes and the destruction of all hope in the world.

So the Bench greets you with the wish that you may never have occasion to approach it, except as able and disinterested spectators, or with an invitation to another " Alumni " dinner.

Let me give you something new and fresh : " Sol Solstitiae et occidentem illustra."

EQUALITY.

"*We* hold it to be self-evident that all men are created equal." This is our creed as a nation. But the question of importance is, in what respect equal? Not equal in mind, for this experience teaches us to be untrue. Not equal in compared vigor, for *this* is contrary also to experience. Not equal in the dispensations of Providence, nor equally favored by fortune. In fine, there is scarcely one thing in which we may be said to be equal. In what sense is it, then, that we are declared to be equal by the Declaration of Independence? The answer must be, *politically equal.* But again, wherein does this political equality consist? Does it consist in the distribution of wealth, and a common possession of the comforts and elegancies of life? Certainly not; or else the great apostles of our liberty; our Washington, our Franklin, our Adams, our Jefferson, were traitors to their creed, and selfishly dismissed from their intentions the design of realizing the great doctrines which they so solemnly avowed. Besides, it cannot be in this sense that they meant; for in this sense it would be nonsense and vanity. The luxuries of life do not consist merely in dollars and cents. These, it is true, might be distributed with a comparative ease amongst the expectant throng. But there are your music, your paintings, your other trophies of art; there are your stores of literature, your black letter, your dead letter, your antiquities, your offsprings of the muse, there are your refined emotions, your generous feeling, your whole aspirations-all these, and ten thousand more are real, bona-fide luxuries, that not only occupy, but enchant

hundreds and thousands who are susceptible of what they are calculated to inspire. Now, if one class of luxuries may be possessed in common, there is no reason why every class may not be-as, if we arc all created equal, it were unjust that any should have at their command sources of delight which are denied to the rest. But there are many species of luxury, those in particular which I enumerated, which the great mass of mankind are *incapable of enjoying*, and of which they ever would be incapable, how equably soever the grosser attendants of prosperity might be distributed. Hence an equalization of wealth would not be followed by an equal power of enjoying life (which is the object of wealth), and the very object proposed would never be attained. Further, a dull equalization of wealth would smother enterprise, produce listlessness, and induce a man, instead of aiming to support himself by his own exertions, to depend for his support upon the rest, conscious always that however indolent and inactive himself might be, he would still share an equal portion with his fellows — with even the most industrious of them ; for any attempt to punish inactivity by subjecting it to want, would be an admission of the principle that industry should be rewarded, and this is the great principle that supports the present machinery of society. Leaving then the notion that community of wealth is meant by the equality alluded to in the Declaration, what else, may we ask, can it mean ? Does it mean social eqality ? Such a state would make all the classes (I do not say orders) of society commingle their intercourse ; would introduce the cobbler into the most elegant drawing

room to take a cup of tea with the gayest belle of the town, or else, perhaps, to debate with grave Senators on the affairs of State. Could this have been meant? Certainly not. This is the least possible of all meanings that could be attached to the term. Men *will* choose their own company in whatever state of society you may choose to place them. This is the last vestige of liberty with which they are willing to part, and any state of society which forbids a man this privilege, I shall neither contend for nor against. In what, then, can this *political equality* consist? Does it consist in each man having an equal voice in the civil government of his country? This is what I conceive it to be. But this is esercisod originally, and only so. After the elements of society are once organized in the least, after some one has exercised the privilege (which belongs equally to all) of nominating a chairman or a president in any meeting of the citizens-after that moment-after the choice of that chairman has been approved, much of the authority, which till then was equally esercisod by all, is now confided to him. If this meeting adopt a constitution for the regulation of their conduct, a constitution which any soul of them had the privilege of proposing, then and thereafter that constitution is charged with much of the authority which, till then, had existed only in the people. Thus, by public decrees and constitutions, the people deposit a certain portion of their own power with particular individuals, and these individuals have, then, a right which the multitude has not, of making laws and administering government. Rights, it will be observed, are delegated to them. They are not made a privileged class. *We* have *no orders* of

society. *No privileged classes.* We have a plenty of classes, and this class is one of them. It is made their *business* and their *duty* (they might have declined if they pleased) to attend to public matters. It all arises from the necessity of the division of labor. All cannot rule, nor can all be ruled. All cannot plow, nor can all sow, nor reap. No more can all neglect such employments, else the race would become extinct. Each has his business to perform, his part to act. It is a duty he owes to the rest as well as to himself. In this way, all are equally *dependent, equally necessary*, to the body politic. Hence, all have an equal right to govern the whole where that right has not been previously conveyed away. This is *Political Eqality.*

POLITICAL ECONOMY.

Prof. Perry defines Political Economy to be the *Science of Exchanges,* or, in other words, the *Science of Value.* This does not accord with my notion of the science. Exchange and value have much to do with political economy, and play an important part ; but it seems to me to be rather *the science of producing National Wealth ;* that is to say-public and private resources.

The questions which political economy professes to answer, or ought to answer, are such as these : What are the best methods of supplying a given society with all its material needs ? Under the circumstances, is agriculture essential ? If essential, how can it be

encouraged? May it be encouraged at the expense of manufactures? Or is it better to leave both to the natural laws that govern action? Will the erection of railways be advantageous? Or may the capital expended on them be laid out to better advantage? If the means of intercourse and transportation are sufficiently subserved by water in the particular case, and if capital expended on railways would be wasted, would the employment of such surplus capital in the erection of steam engines and machinery be beneficial so as to multiply the forces of production? Or, would it be better to invest it in commerce with foreign countries? And, if the same amount of wealth could be created by each course, which would be the preferable in the long run, as affecting the future well-being of the State? Is the encouragement of the fine arts calculated to promote the physical or material prosperity of society?

In short, we expect political economy to tell us the effect of all measures and all pursuits on the general supply and distribution of material resources, and consequently, upon the national well-being, so far as material resources are concerned.

To produce national valor, military science is to be consulted; national virtue, moral science; national intelligence, educational science; but the secret of national wealth must be sought in the science of political economy. The study of all these sciences may be necessary to understand the entire necessities and well-being of a State; for intellectual and moral development and military power may be as essential as wealth and resources to the national prosperity and glory, and each of these aspects of social great-

ness may be but necessary complements of the others all being required to produce that symmetrical completeness which alone can produce true national aggrandizement.

Professor Perry, adopts Frederick Bastiat's definition of value as the relation between two services exchanged. He also dilates on the excellency of the word "service" for explaining the principles of political economy. But I think he uses the word service ambiguously, namely, both for the *efforts* or ***labor*** by which one performs a service, and for the utility which it subserves to him who receives it. Thus, we say : A rendered *service* to B, which was of great *service* to him; *i.* e., A performed a labor which was of great *utility* to B. These ideas are very distinct the one from the other. *The same labor* may be of *great utility* to-day and no utility to-morrow. Now, the value to me is the utility to me.

Professor Perry defines utility to be the capacity which any thing or any service has to gratify any human desire.

FENIANISM.

Whilst equal representation and industrial privileges are to be sought in every legal way, political separation or independency for Ireland is a delusive dream. Effort in that direction will only injure the Irish cause. For, think : the British Empire is the most powerful in existence. It embraces the earth, and all its power would be put forth to prevent an independent kingdom so near its heart as Ireland. It

is as if Lombardy (or Cisalpine Gaul) had attempted independence in the height of the Roman power. When the British Empire goes into disintegration (which it will at some future time) Ireland may be independent. But that catastrophe is not to be expected, not even wished for, now. The centers of civilization are not so distributed, nor are its forms so perfect as to make it desirable. America, perhaps, might be the gainer, for she is now subservient to the financial supremacy of England. But the world would be an immense looser, and in the general loss, even America would participate. Ireland could not anticipate much benefit from such a cataclasm. She would be deeply involved in it.

But at all erents, whoever seeks to make Ireland independent must aim at nothing short of the destruction of the British Empire, whatever other consequences may ensue. That is the necessary objective.